Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers	)	CC Docket No. 00-256
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	

COMMENTS OF THE
NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.

The National Exchange Carrier Association, Inc. (NECA) submits these comments in response to the Commission's *Second Further Notice of Proposed Rulemaking* in the above-captioned proceeding.[1]

NECA supports making additional incentive regulation alternatives available for rate-of-return (ROR) companies on an optional basis. The Commission should not, however, require holding companies seeking to take advantage of such alternatives to withdraw non-incentive plan study areas from the NECA pools. Contrary to the tentative conclusion set forth in the *Second FNPRM*, allowing carriers to leave non-incentive plan

[1] *See* Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC Docket No. 00-256, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report and Order and Second Further Notice of Proposed Rulemaking*, 19 FCC Rcd 4122 (2004) (*Second FNPRM*).

study areas in NECA's pools increases rather than decreases assurance that companies will comply with the Commission's accounting and affiliate transaction rules.

Finally, the Commission should not limit the availability of optional incentive plans to companies or study areas outside the NECA pools. As shown herein, existing NECA settlement mechanisms can easily be adapted to mirror proposed incentive regulation plans within the context of the interstate access charge pools.

I. THE COMMISSION SHOULD NOT REQUIRE COMPANIES TO WITHDRAW STUDY AREAS FROM THE NECA POOLS IN ORDER TO PARTICIPATE IN OPTIONAL INCENTIVE PLANS.

The Commission asks for comment on two specific incentive regulation proposals. The *CenturyTel Proposal* would allow a ROR carrier to elect a modified price cap plan for some of its study areas.[2] The *Rate-of-Return Company Tariff Option*, proposed by ALLTEL Communications, Inc., Madison River Communications, LLC, and TDS TELECOM, Inc., would expand the availability of the existing section 61.39 tariff filing option to all ROR carriers, not just those with 50,000 lines or fewer.[3]

The Commission notes that both proposals contain a feature that would permit a ROR carrier operating multiple study areas to move some, but not all, of its study areas to incentive regulation.[4] In this regard, the Commission expresses concern that allowing a holding company to leave non-incentive plan cost study areas in the NECA pools may expose pool members to the risk of improper cost-shifting.[5] Based on this concern the

[2] *Second FNPRM* at Appendix C.

[3] *Id.* at Appendix D.

[4] *Id.* at ¶ 68.

[5] *Id.* at ¶ 91.

Commission tentatively concludes that the opportunity to elect alternative regulation on a study area basis should be available only to holding company groups in which all non-average schedule companies file their own cost-based tariffs.[6]

There is no reason to require companies wishing to elect alternative regulation for some of their study areas to withdraw all cost study areas from the NECA pools. To the contrary, allowing non-incentive plan companies to continue participating in the NECA pools provides additional assurance that companies are operating in compliance with the Commission's accounting and affiliate transaction rules.

As NECA has previously explained to the Commission, pool data submissions are subject to extensive cost study reviews that are in addition to reviews that occur in the context of Commission access tariff proceedings.[7] The NECA rate banding process, which separates pool study areas into rate categories based on costs,[8] provides additional protection against improper cost shifting. Under rate banding, pool participants have strong incentives to keep costs low so as to avoid "moving up" to higher rate band levels. Moreover, sudden or unexpected changes in rate band levels may make improper cost shifting easier to detect.[9]

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[6] *Id.*

[7] *See, e.g.*, NECA *Reply Comments*, CCB/CPD No. 99-36 (Mar. 19, 2001).

[8] NECA *FNPRM Comments* at 5-8, CC Docket 00-256 (Feb. 14, 2002).

[9] NECA cost study and related review procedures applicable to pooling companies are *in addition to* reviews of company data that may take place in the context of state commission reviews of company financial data, reviews of universal service fund data by the Commission, USAC and NECA, telephone company internal and external audits, and other investigations the Commission or state regulators may initiate.

Accordingly, the Commission should not take any action that would require companies electing an optional incentive regulation plan to withdraw their non-average schedule company study areas from the NECA pools.

II. THE COMMISSION SHOULD NOT TAKE ANY ACTION IN THIS PROCEEDING THAT WOULD PRECLUDE IMPLEMENTATION OF OPTIONAL INCENTIVE REGULATION PLANS WITHIN THE NECA POOLS.

The *CenturyTel Proposal* contemplates that companies adopting this approach could only do so outside the NECA pools. The *Rate-of-Return Company Tariff Option* contemplates that companies could base rates on historic costs and demand data either inside or outside the NECA pools. NECA believes that either or both plans could be accommodated within existing pool mechanisms and that there is no reason to require any study areas to exit the NECA pools in order to adopt either proposed optional incentive regulation plan.

As NECA has explained, existing NECA pool settlement mechanisms can readily be adapted to accommodate incentive regulation.[10] NECA itself has previously proposed including an optional pool incentive plan similar to the *Rate-of-Return Company Tariff Option*. Under NECA's prior proposal, electing carriers' settlement rates would be pre-

[10] *See Second FNPRM* at ¶ 78 (summarizing NECA comments explaining how alternative incentive regulation plans can be designed to work within the NECA pooling process). *See also* Proposed Revision of Part 69 of the Commission's Rules to Allow for Incentive Settlement Options for NECA Pool Companies, *Petition for Rulemaking* (Nov. 5, 1993), and *Supplemental Comments* (May 15, 1995).

set according to a formula that distributes access charge revenues to participating companies on a demand driven basis.[11]

Under the *Rate-of-Return Company Tariff Option*, NECA would develop settlement rates for each incentive study area based on study area-specific historic cost and demand data.[12] The settlement rates would then remain fixed for a two-year period. Because company earnings would be dependent on the extent to which actual costs can be kept below per-line settlement amounts, pooling companies electing this method would have the same incentives to keep costs low as companies outside the pool.[13]

Furthermore, existing NECA rate banding methods would assure that customers of pooling companies using incentive regulation would benefit from cost efficiencies. The rate banding process groups companies with similar costs per unit of demand into distinct categories. Companies within a band charge the same rates, equal to the average cost per unit of companies in the band and approximating the settlement rate of incentive

[11] Another example of this (although not an "incentive regulation plan" *per se*) is the existing mechanism used for average schedule companies, which receive pool settlements based on formulas that rely on units of demand (*e.g.*, lines, minutes of use, route miles, etc.). The Commission has recognized the similarities between the average schedule mechanism and incentive regulation plans. *See* Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, *Second Report and Order*, 5 FCC Rcd 6786 at ¶ 277 (1990).

[12] Settlement formula methodology would vary by pool, with common line on a per-line basis and traffic sensitive switched access on a per-minutes basis. Traffic sensitive special access settlements would be calculated by methods similar to the existing average schedule formula, which uses a revenue retention ratio.

[13] Although the *CenturyTel* plan does not propose that electing carriers remain in the NECA pool, this plan could also be accommodated in a pooling environment as well, allowing participating carriers to enjoy the administrative benefits of pooling. *See NECA FNPRM Comments* at 8 (Explaining that if the Commission were to adopt an incentive plan for rate of return companies that involves targeted access rates for pool members, NECA would apply existing rate banding methodologies to incentive plan companies based on incentive formula characteristics of each company).

carriers in the band. Rate banding allows low cost companies to remain in the pool and to continue to enjoy the benefits of risk sharing and centralized tariff administration, yet charge lower than average rates to their customers.[14]

Adapting existing pooling approaches to incentive regulation mechanisms avoids the need for carriers to leave the NECA pools in order to gain the benefits of moving to an incentive-based regulatory system. To the extent that carriers continue to participate in the pool, monthly cash flows for all pool members remain more stable as a result. In addition, the administrative burdens and costs of preparing and/or reviewing individual tariff filings are reduced for exchange carriers, the Commission, and pooling companies' access customers.

III. CONCLUSION

The Commission should make optional incentive plans available for rate of return carriers. The Commission should not, however, require carriers adopting proposed optional incentive regulation plans for some study areas to withdraw remaining non-average schedule study areas from the pool. Allowing companies that adopt incentive regulation to leave affiliated study areas in the pool will not result in any additional cost-shifting risks for other pool members, but will instead provide additional assurance as to compliance with Commission cost accounting and affiliate transaction rules.

Finally, the Commission should not limit the availability of optional incentive plans to non-pooling companies. As shown above, existing NECA pooling processes can

[14] NECA currently employs rate banding for the following elements: Local Switching, Multiline Business End User Common Line, and Multiline Business End User Common Line FUSC Surcharge Factor. NECA would expand this list as needed to accommodate incentive regulation plans as adopted.

be adapted to accommodate the proposed incentive regulation plans, allowing carriers to retain the administrative benefits associated with pooling as well as benefit from incentives to reduce costs and improve productivity.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the NECA's Comments was served this 23rd day of April 2004, by electronic filing and first class mail, to the persons listed below.

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