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
	)	

REPLY COMMENTS
of the
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES

I. INTRODUCTION

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits these reply comments in response to the comments filed on the Second Further Notice of Proposed Rulemaking (SFNPRM) in the Multi-Association Group (MAG) Plan proceeding.[1] OPASTCO is a national trade association representing over 560 small incumbent local exchange carriers (ILECs) serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 3.5 million customers. All

[1] *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, FCC 04-31 (rel. Feb. 26, 2004) (Order and SFNPRM).

of OPASTCO's members are rural telephone companies as defined in 47 U.S.C. §153(37).

Commenters in this proceeding overwhelmingly support the Commission's tentative conclusion to make optional for all rate-of-return (ROR) carriers any alternative regulation plans it may adopt and to permit carriers to elect participation in such plans by study area. The record also demonstrates that the Commission should allow ROR carriers to elect alternative regulation and remain in the National Exchange Carrier Association (NECA) pools.

II. COMMENTERS OVERWHELMINGLY AGREE THAT ANY ALTERNATIVE REGULATION MUST BE OPTIONAL FOR ALL ROR CARRIERS AND ELECTABLE ON A STUDY AREA BASIS

The vast majority of commenters concur with the Commission's tentative conclusion that any alternative regulation plans that it may adopt should be optional for all ROR carriers.[2] Commenters also strongly agree with the Commission's premise that ROR carriers should be allowed to elect any new regulatory options on a study area basis.[3] As USTA correctly notes, the differences encountered in the operating conditions among rural ILECs are quite significant, and as a consequence of this, alternative regulation may not be suitable for all ROR carriers.[4]

Despite the strong record in support of the Commission's tentative conclusion

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[2] *See,* ALLTEL Communications, Inc., Madison River Communications, LLC, and TDS Telecom, Inc. (ALLTEL, *et al*) Comments, p. 6; National Exchange Carrier Association (NECA) Comments, p. 1; National Telecommunications Cooperative Association (NTCA) Comments, pp. 2-3; United States Telecom Association (USTA) Comments, p. 4; Verizon Comments, pp. 8-9. *See also,* OPASTCO Comments, pp. 2-3.

[3] *See,* ALLTEL, *et al,* Comments, p. 7; Independent Telephone & Telecommunications Alliance (ITTA) Comments, pp. 5-6; NTCA Comments, p. 2; Wisconsin State Telecommunications Association (WSTA) Comments, p. 2. *See also,* OPASTCO Comments, pp. 3-4.

[4] USTA Comments, p. 4. *See also,* Order and SFNPRM, para. 86.

favoring optionality on a study area basis, AT&T continues to advocate a mandatory incentive plan for all ROR ILECs.[5] In a similar vein, MCI argues that price cap regulation should be mandatory for some subset of ROR carriers or their parent companies.[6] However, neither of these commenters have adequately justified their proposals to make any alternative regulation mandatory for any ROR carrier.

The record in this proceeding provides an ample basis for continuing to reject the "one-size-fits-all" fallacy for RORs carriers and making any alternative regulation that is adopted entirely optional. As Verizon correctly states, "ROR carriers vary considerably with regard to access to resources, number of lines served, as well as service costs."[7] Furthermore, the Commission itself has found that ROR carriers "have fewer opportunities than large price cap carriers to achieve cost savings because of their limited size, their lumpy investment patterns, and fluctuating operating expenses."[8] It is because of these important distinctions that the principles underlying incentive regulation simply could not be forced onto any ROR carrier.[9]

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[5] AT&T argues that the CenturyTel, Inc. incentive regulation proposal be imposed on all larger ROR ILECs (those with more than 50,000 access lines). Additionally, even the smallest ROR ILECs (those with fewer than 50,000 access lines) would be required to move to alternative regulation, by electing either the CenturyTel plan or the ALLTEL, *et al,* "Rate-of-Return Carrier Tariff Option." *See,* AT&T Comments, pp. 14-17 and 27-28.

[6] MCI Comments, pp. 2-3. The Commission previously excluded all small and mid-sized ILECs from mandatory price cap regulation. *See, Policy and Rules for Dominant Carriers*, CC Docket No. 87-313, 5 FCC Rcd 6786, para. 106 (1990).

[7] Verizon Comments, p. 8. *See also,* USTA Comments, p. 4.

[8] *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, Second Report and Order and Further Notice of Proposed Rulemaking, *Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, Fifteenth Report and Order, *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation,* CC Docket No. 98-77, Report and Order*, Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers,* CC Docket No. 98-166, Report and Order, 16 FCC Rcd 19613, 19652-19653, para. 86 (2001) (FNPRM).

[9] ALLTEL, *et al*, Comments, p. 6.

Furthermore, not even the largest ROR carriers and holding companies have characteristics that are comparable to the behemoth carriers for which price cap regulation was mandated, contrary to assertions made by AT&T and MCI.[10] As ITTA and other commenters explain, groups of commonly-owned small and rural ILECs scattered through many states share the same cost-of-service and serving conditions of small, independently-owned ILECs.[11] Such groups also lack the economies of scale and scope available to the giant carriers subject to mandatory price cap regulation.[12] Common ownership of such carriers simply does not change the service characteristics or economics of investing in and serving areas where traffic volumes are limited and the customer base over which costs must be spread is small.

Earlier in this proceeding, the Commission noted that it has "consistently" taken the diversity of ROR carriers into account.[13] Therefore, as a continuation of this sound approach, the Commission should move forward with its tentative conclusion to make any alternative regulation it may adopt <u>entirely optional on a study area basis</u>. This will enable carriers to suit their form of regulation to the challenges of each of their individual study areas and ensure that rural consumers continue to receive high-quality, modern services.

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[10] AT&T Comments, pp. 14-16; MCI Comments, pp. 3-4.

[11] ITTA Comments, pp. 5-6. *See also,* ALLTEL, *et al,* Comments, p. 7; WSTA Comments, p. 2.

[12] FNPRM, 16 FCC Rcd 19652, para. 86.

[13] *Ibid.,* 16 FCC Rcd 19617, para. 4.

III. THE RECORD DEMONSTRATES THAT ROR CARRIERS SHOULD BE PERMITTED TO ELECT ALTERNATIVE REGULATION IN THE NECA POOLS

There is support in the record for allowing ROR carriers to elect alternative regulation and still remain in the NECA pools.[14] Pooling provides risk sharing and administrative benefits that will always be important to many small and rural ILECs, some of whom may be interested in electing alternative regulation. In response to the concerns expressed by the Commission, NECA has indicated that rate banding would guard against increased risk exposure for pool members, while also providing sufficient protection against improper cost shifting.[15] Thus, there is no need to require ROR carrier study areas to exit the pools in order to elect alternative regulation. By allowing NECA to make the necessary accommodations, the Commission will make alternative regulation a viable choice for more small, rural carriers.

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[14] *See,* ALLTEL, *et al,* Comments, 8-9; WSTA Comments, pp. 2-3.

[15] NECA Comments, pp. 3-6. ALLTEL, *et al,* also notes that any potential cost shifting would be easily detectable, since the pools are already subject to extensive internal and FCC reviews. ALLTEL*, et al,* Comments, p. 9.

IV. CONCLUSION

The record in this proceeding clearly demonstrates that any alternative regulation plans that the Commission may adopt for ROR carriers must be entirely optional and electable on a study area basis. This will allow each carrier to choose a form of regulation that is best suited for their particular operating environment and enable them to continue to provide high quality service to their customers. In addition, commenters agree that the NECA pools can safely accommodate alternative regulation plans and carriers wishing to elect them should not be forced to exit the pools.

Respectfully submitted,

THE ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES

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CERTIFICATE OF SERVICE

I, Jeffrey W. Smith, hereby certify that a copy of the comments by the Organization for the Promotion and Advancement of Small Telecommunications Companies was sent by first class United States mail, postage prepaid, on this, the 10th day of May, 2004, to those listed on the attached list.

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CC Docket Nos. 00-256 and 96-45
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