

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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

**REPLY COMMENTS OF THE  
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION**

The National Telecommunications Cooperative Association (NTCA)<sup>1</sup> hereby submits Reply Comments in response to the Commission's *Second Further Notice of Proposed Rulemaking* in the above-captioned proceeding.<sup>2</sup>

**I. AT&T HAS FAILED TO SHOW THAT COMMISSION GOALS WILL BE ACHIEVED BY MAKING THE PLANS MANDATORY.**

AT&T has failed to provide persuasive arguments to support its position that the CenturyTel and ALLTEL incentive regulation plans should be mandatory for all rate-of-

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<sup>1</sup> NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents more than 560 rural rate-of-return regulated telecommunications providers. All of NTCA's members are full service incumbent local exchange carriers (ILECs) and many of its members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a "rural telephone company" as defined in the Communications Act of 1934, as amended (Act). NTCA's members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

<sup>2</sup> 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*).

return (ROR) carriers. AT&T's arguments rehash prior arguments made in other proceedings. AT&T fails to show that the Commission's efficiency and universal service goals will be promoted by imposing incentive regulation on the wide variety of rate-of-return companies operating in the United States in mostly rural areas.

AT&T argues that the Commission should take this opportunity to create a new support mechanism and reduce the traffic sensitive interstate access rates of all ROR carriers. AT&T has asked for this relief in a pending petition for reconsideration of the MAG Order. NTCA agrees that the Commission should resolve the issues raised in the remaining pending petitions for reconsideration of the MAG Order, but a decision on those petitions should not cloud consideration of the Century Tel and ALLTEL proposals.<sup>3</sup> The Commission has no record on which to judge whether the CenturyTel and ALLTEL proposals will provide incentives to other carriers that have not asked for the plans. It would therefore be arbitrary for the Commission to conclude that its pro-competitive or universal service goals will be achieved with a mandate requiring all ROR carriers to choose between either plan.

Moreover, it would be a waste of administrative resources for the Commission to endorse AT&T's views at this time. The issue of future access reform is central to the Inter-carrier Compensation docket currently pending at the Commission. Consideration of generic access reform in this narrow phase of the MAG proceeding will only complicate an already complex set of issues that the Commission must consider in the Inter-carrier Compensation proceeding. The Inter-carrier Compensation docket is the proper vehicle for consideration of access charge changes. The Commission should

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<sup>3</sup> In fact, NTCA has a pending petition for reconsideration requesting that the Commission treat ICLS as an access recovery mechanism instead of support.

therefore not spend its limited resources considering access charge issues in this proceeding that will necessarily be decided in the Inter-carrier Compensation proceeding.

Furthermore, the Commission has invited the industry to propose reform measures in Inter-carrier compensation docket and many groups have been actively working on proposals. Those proposals are expected to preempt the access reduction and support issues that AT&T raises. If AT&T wants to have its proposal considered, it should submit it in the broad proceeding on access charges. AT&T should not make arguments that invite a piecemeal approach that would make it impossible to seriously consider all the implications of imposing any mandatory incentive form of regulation on small rural companies.

**II. THE UNAVAILABILITY OF REFUNDS UNDER SECTION 204(a)(3) DOES NOT JUSTIFY MANDATORY IMPOSITION OF THE PLANS ON ALL CARRIERS.**

AT&T attacks the streamlined tariff filings. AT&T argues that the unavailability of over-earning refunds provides ROR carriers no disincentive to over-forecast revenue requirements and under-forecast demand when justifying new rates. AT&T's claims are without merit.

First, today's competitive environment greatly discourages over-forecasting revenues and under-forecasting demand. Based on the Commission's most recent Report on CMRS Competition, on average, rural ILECs face competition from three or more wireless carriers in their service territories. In addition, ILECs must adapt to growing levels of competition from cable, municipal, electric, satellite and voice over Internet protocol (VoIP) providers of telephony and broadband services. This robust and increasingly intense competition provides ILECs with a significant incentive to forecast

their revenue and demand as accurately as possible so that they can compete efficiently and effectively.

Second, rural ILEC costs are recognized in the interstate jurisdiction through the separations process and are accounted for in their revenue requirement. In the present environment, existing accounting rules largely ensure that rural ILEC tariffs are just and reasonable.

Lastly, the Commission has made it clear that tariff provisions that are “deemed lawful” when they take effect may be found unlawful subsequently in Section 205 or 208 proceedings.<sup>4</sup> If AT&T seeks to challenge a carrier’s tariff, it may do so through a Section 205 investigation or Section 208 complaint. Contrary to AT&T’s assertions, the Commission has adequate tools to monitor earnings.

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<sup>4</sup> In the Matter of Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996, Report and Order, 12 FCC Rcd 2171, 2182 (1997).

### III. CONCLUSION

The Commission should not mandate the imposition of any incentive regulation plans but rather make the plans optional to rate-of-return carriers.

Respectfully submitted,

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May 10, 2004

CERTIFICATE OF SERVICE

I, Gail Malloy, certify that a copy of the foregoing Reply Comments of the National Telecommunications Cooperative Association in CC Docket No. 00-256, CC Docket No. 96-45, FCC 04-31 was served on this 10th day of May 2004 by first-class, U.S. Mail, postage prepaid, to the following persons.

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