

**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)	

WESTERN WIRELESS REPLY COMMENTS ON MAG SFNPRM

Western Wireless Corp. (“Western Wireless”) submits these reply comments in response to the Second Further Notice of Proposed Rulemaking in the MAG proceeding. [1/](#)

Western Wireless submits that the Commission’s overall goals in this proceeding must be: (1) to advance both universal service and competition simultaneously, such that the universal service mechanisms neither artificially impede competition nor artificially promote it; (2) to eliminate unlawful implicit subsidies [2/](#) by reducing the interstate access charges imposed by rural incumbent local exchange carriers (“ILECs”), consistent with the Commission’s broader goals

[1/](#) *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Report and Order and Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 4122 (2004) (“*SFNPRM*”).

[2/](#) *Alenco Communications v. FCC*, 201 F.3d 608, 623 (5th Cir. 2000); *COMSAT Corp. v. FCC*, 250 F.3d 931, 938 (5th Cir. 2001); *Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393, 425 (5th Cir. 1999). See also AT&T at 11-12.

regarding intercarrier compensation; [3/](#) and (3) to increase the incentives for rural ILECs (and their competitors) to deploy resources efficiently and competitively.

Ultimately, the best way to address all three of these goals is by eliminating rate-of-return (“ROR”) regulation, as Western Wireless has proposed in its petition for rulemaking. [4/](#) The revenue guarantees of ROR regulation should be eliminated altogether, because they impede competition, yield excessive universal service fund and access charge levels, and create incentives for inefficiency.

However, Western Wireless believes that the Commission would take a significant step in the right direction by adopting the approach advocated by AT&T in this proceeding: (i) continue to enforce the “all-or-nothing” rule; (ii) adopt a modified version of the CenturyTel incentive regulation plan, with no “low-end adjustment” revenue guarantees, on a mandatory (not voluntary) basis for larger ROR ILECs, and (iii) adopt a modified version of the ALLTEL/Madison River/TDS proposal for all remaining ROR ILECs unless they opt in to the CenturyTel plan. [5/](#)

First, the Commission should retain and enforce the “all or nothing” rule. [6/](#) The purpose of the rule is to prevent ILECs from improperly increasing

[3/](#) *Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001).

[4/](#) *Western Wireless Corp. Petition for Rulemaking to Eliminate Rate of Return Regulation of Incumbent Local Exchange Carriers*, RM-10822, CC Docket No. 96-45 (filed Oct. 30, 2003) (“*WW ROR Petition*”).

[5/](#) AT&T at 2-3, 8-9; *accord*, MCI at 2-4. In the alternative, Western Wireless would support the Commission’s applying the existing price cap system to all but the smallest ROR ILECs, as Sprint suggests. Sprint at 1-2.

[6/](#) That rule, 47 C.F.R. § 61.41(d), provides that ILECs whose access charges are subject to price cap regulation may not withdraw, in whole or in part, from such regulation and return to

their access charges by engaging in cost misallocation or other anticompetitive activities. Indeed, Western Wireless has shown that frequent waivers of the “all or nothing” rule and other rules give ILECs and investors an artificial incentive to engage in exchange sale transactions. ^{7/} There is no public policy reason for universal service contributors and access ratepayers to line the pockets of ILECs that purchase and sell exchanges. Instead, the FCC’s rules should neither artificially promote nor impede such transactions.

The “all or nothing” rule remains essential, even after the Commission’s recent, ill-considered modification to that rule, which sets up an artificial incentive encouraging price cap carriers to sell exchanges to ROR ILECs by enabling ROR ILECs to boost access revenues by converting purchased price cap exchanges to ROR. Parties seeking to eliminate the “all or nothing” rule contend that there is no evidence that cost-shifting and gaming the system have occurred. ^{8/} But there is no evidence that these events have not occurred either, because no regulatory authority is effectively monitoring ROR ILECs’ cost allocations and

ROR regulation. In the order accompanying the SFNPRM, the Commission modified to rule to permit ROR ILECs that purchase lines from price cap ILECs to return those lines to ROR regulation.

^{7/} See Economics & Technology, Inc., “Lost in Translation: How Rate of Return Regulation Transformed the Universal Service Fund for Consumers into Corporate Welfare for the RLECs,” pp. 23-25 (attached as Appendix A to Western Wireless Reply Comments, *Elimination of Rate-of-Return Regulation of Incumbent Local Exchange Carriers*, RM-10822 & CC Docket No. 96-45, filed Feb. 13, 2004) (“*WW ROR Reply Comments*”) (finding that the premiums over book cost paid in ILEC exchange sale transactions indicate an expectation that the purchasers will be able to increase the amount of universal service and/or access revenues).

^{8/} See, e.g., USTA at 2; Verizon at 1-4.

reports – “no one is minding the store.” ^{9/} As AT&T points out, and as the Commission has long recognized, in the absence of the “all or nothing” rule, ILECs that operate under both ROR and price caps have both opportunities and incentives to engage in such anti-competitive behavior. ^{10/} The Commission should enforce the rule rather than routinely waiving it.

Second, the CenturyTel plan ^{11/} (or an alternative form of incentive regulation, such as price caps) should be adopted on a mandatory basis for all ROR ILECs with more than 50,000 lines. Like the price cap system that applies to larger ILECs, the CenturyTel plan severs the link between embedded costs and access charges, and thereby heightens carriers’ incentives to operate efficiently. Moreover, reducing access rates prior to inception of the plan – and moving revenues to the ICLS fund, which must remain fully portable – should help eliminate the implicit subsidies currently included in the existing access charges. The plan thus moves in the direction of complying with court decisions holding that implicit subsidies must be eliminated and converted into explicit and portable support. ^{12/} Imposing a long-term freeze on both access charges and universal service per-line funding, as CenturyTel proposes, would impose welcome discipline on the growth of these revenue sources.

^{9/} *WW ROR Reply Comments* at 6.

^{10/} AT&T at 17-21.

^{11/} SFNPRM, Appendix C (from CenturyTel *ex parte* in CC Docket No. 00-256, filed Dec. 23, 2002).

^{12/} *See supra* note 2.

To ensure that the benefits of this plan of incentive regulation are enjoyed as broadly as possible, and to avoid the gamesmanship that would result from making the plan optional, the plan should be *mandatory* for all but the smallest ROR ILECs. Accordingly, the Commission should not adopt its tentative conclusion that alternative regulation plans be optional for each ROR ILEC. [13/](#) Making the plan optional would severely undermine the benefits of the plan, because it would enable ILECs to “opt out” of shifting their implicitly subsidized access revenues into the portable, explicit ICLS fund – thereby shielding their revenues from exposure to competition from wireless eligible telecommunications carriers. Allowing large ROR ILECs to continue retaining implicit subsidies is unlawful and would be profoundly anti-competitive.

In addition, the incentive regulation plan should have no low-end adjustment. As the Commission has recognized in the price cap context, low-end adjustments undermine the incentives for efficiency. They also represent an anti-competitive ROR throwback. The plan should not contain any revenue guarantees, which give ILECs unfair advantages vis-à-vis wireless carriers and other prospective competitors.

Finally, Western Wireless concurs with ITTA that the Commission should act quickly on adopting incentive regulation for ROR ILECs. [14/](#) As ITTA states, competition between wireless carriers and ILECs is growing, and the

[13/](#) *SFNPRM*, ¶ 86.

[14/](#) ITTA at 3-5.

Commission must modify the rules to be more consistent with a competitive marketplace. 15/ There is no need to delay action pending the long-delayed *Intercarrier Compensation* proceeding. 16/

Respectfully submitted,

WESTERN WIRELESS CORPORATION

By: _____

Gene A. DeJordy,
Vice President of Regulatory Affairs
WESTERN WIRELESS CORP.
3650 131st Ave., S.E., Ste. 400
Bellevue, WA 98006
(425) 586-8700

Michele C. Farquhar
David L. Sieradzki
HOGAN & HARTSON L.L.P.
555 – 13th St., N.W.
Washington, D.C. 20004
(202) 637-6462

Mark Rubin
Director of Federal Government Affairs
WESTERN WIRELESS CORP.
401 Ninth St., N.W., Ste. 550
Washington, D.C. 20004
(202) 654-5903

Its Counsel

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15/ *Id.* at 2-3; *see also WW ROR Petition* at 8, 17-20.

16/ *Contra Sprint* at 2.