

FCC MAIL SECTION

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Federal Communications Commission

FCC No. 96J-1

RE:

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

In the Matter of)	
)	
Federal-State Joint Board)	CC Docket No. 96-45
on Universal Service)	
)	

RECOMMENDED DECISION

Adopted: June 19, 1996;

Released: June 19, 1996

By the Federal-State Joint Board:

Introduction

1. The Federal-State Joint Board recommends that the Federal Communications Commission ("Commission") extend the indexed cap ("interim cap") limiting growth in the Universal Service Fund ("USF"). The cap, set to expire on July 1, 1996, absent extension by the Commission,¹ was implemented in 1994 in an attempt to moderate the growth of the USF during the pendency of a broader rulemaking revising the Part 36 jurisdictional separations rules governing the USF. On February 8, 1996, while that proceeding was pending, the Telecommunications Act of 1996 ("1996 Act") was enacted; that legislation contemplates modifications to the existing system of providing universal service support.² For the reasons discussed below, we believe that the interim cap should be retained until the new universal

¹ 47 C.F.R. § 36.601(c). Under the interim cap, growth in the total level of the USF is indexed to growth in the total number of working loops nation-wide. Id.; see also Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, Report and Order, 9 FCC Red 303, para. 20 (1993) (Interim Order). A working loop is "[a] revenue producing pair of wires, or its equivalent, between a customer's station and the central office from which the station is served." 47 C.F.R. Part 36 Appendix-Glossary.

² Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

service rules recommended by this Joint Board and implemented by the Commission pursuant to the 1996 Act become effective.

Background

2. Creation and Prior Modification of the Universal Service Fund. The USF rules were adopted in 1984 to promote universally available telephone services at reasonable rates.³ The rules provide interstate assistance to local exchange carriers ("LECs") whose average cost per loop⁴ is substantially higher than the national average cost per loop. LECs with loop costs above a specified threshold may allocate an additional percentage of their loop costs to the interstate jurisdiction.⁵

3. In 1993, the Commission initiated a rulemaking in which it sought to examine and re-evaluate the Part 36 jurisdictional separations rules governing USF assistance.⁶ Because the fund had grown unpredictably, the Commission proposed to implement an interim cap on its growth during the anticipated duration of the rulemaking.⁷ The Joint Board convened in CC Docket 80-286 ("80-286 Joint Board") subsequently recommended,⁸ and the Commission adopted, an interim cap on USF growth that was to expire on January 1, 1996.⁹ In December 1995, recognizing that the rulemaking initiated in the Interim Notice would require additional time to complete, the 80-286 Joint Board determined that a six-month extension was appropriate to moderate the growth of the USF during the remainder of the rulemaking period.¹⁰

³ Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, Decision and Order, 96 FCC 2d 781 (1984).

⁴ The costs used in determining a carrier's average cost per loop are specified in 47 C.F.R. § 36.621(a). Under these rules, certain costs are categorized as "loop" costs. These costs are added together and divided by the total number of working loops to determine the carrier's average loop cost. The number of working loops is defined in 47 C.F.R. § 36.611(a)(8).

⁵ LECs with average cost per loop above 115 % of the national average cost per loop can allocate a specified percentage of these costs to the interstate jurisdiction. 47 C.F.R. § 36.631(c), (d). This allocation is in addition to the 25% interstate allocation allowed under the Commission's general jurisdictional separations rules. See 47 C.F.R. § 36.154(c).

⁶ Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, Notice of Proposed Rulemaking, 8 FCC Rcd 7114 (1993) ("Interim Notice").

⁷ Id. at paras. 11-15.

⁸ Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, Recommended Decision, 9 FCC Rcd 334 (1993).

⁹ Interim Order.

¹⁰ Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, Recommended Decision, FCC No. 95J-1 (released December 8, 1995).

Thereafter, the Commission issued a Report and Order extending the interim cap until July 1, 1996.¹¹

4. Changes to the Universal Service Proceeding Resulting from the Telecommunications Act of 1996. The 1996 Act mandates a significant revision of universal service support mechanisms, setting forth specific principles on which the preservation and advancement of universal service must be based.¹² The 1996 Act requires, inter alia: that quality services should be available at just, reasonable and affordable rates;¹³ that access to advanced telecommunications and information services should be provided in all regions of the nation;¹⁴ and that consumers in all regions of the nation, including low-income consumers and those in rural, insular and high-cost areas, should have access to telecommunications and information services.¹⁵ Furthermore, the 1996 Act requires that all providers of telecommunications services should make an equitable and nondiscriminatory contribution to support universal service¹⁶ and that there should be specific, predictable and sufficient mechanisms to preserve and advance universal service.¹⁷ The 1996 Act also expands the category of beneficiaries of universal service support, specifically including schools, libraries and health care providers.¹⁸

5. In addition to establishing new principles and goals for universal service, the 1996 Act required the Commission to convene a Federal-State Joint Board and initiate a proceeding to implement the relevant sections of the Act concerning universal service.¹⁹ The Joint Board in the instant proceeding was established as a result of the Commission's March 8, 1996 Notice of Proposed Rulemaking and Order Establishing Joint Board.²⁰ Therein, the Commission specifically requested comment on whether the interim cap should be extended until this Joint Board and the Commission have completed their deliberations in the universal service

Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, Report and Order, 11 FCC Rcd 2538 (1995).

¹¹ 47 U.S.C. § 254.

¹² Id. at § 254(b)(1).

¹³ Id. at § 254(b)(2).

¹⁴ Id. at § 254(b)(3).

¹⁵ Id. at § 254(b)(4).

¹⁶ Id. at § 254(b)(5).

¹⁷ Id. at §§ 254(b)(6), (h)(1)(A)-(B).

¹⁸ Id. at § 254(a)(1).

²⁰ Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking and Order Establishing Joint Board, FCC 96-93 (released March 8, 1996).

proceeding.²¹ The 1996 Act set forth a timetable for action by this Joint Board and the Commission. Pursuant to Section 254(a)(1), we must make a recommended decision to the Commission by November 8, 1996. Thereafter, the Commission must issue its final rules by May 8, 1997.

Discussion

6. Comments. Generally, those parties who favor extending the interim cap believe it would be beneficial to retain the cap until the Joint Board and Commission have completed their deliberations in this proceeding.²² The Missouri Public Service Commission points out that the cap has already been in effect for two years and that, given the strict timetable for reform set forth in the 1996 Act, altering the USF cap for the intervening period would cause further instability in an already uncertain regulatory environment.²³

7. Other parties believe the interim cap should remain in place during any transition period needed to implement new support mechanisms under the 1996 Act.²⁴ In addition, the Texas Office of Public Utility Counsel argues that extending the cap would give the States and the industry time to adjust to the onset of competition.²⁵ However, various parties suggest that the interim cap on the USF should be retained indefinitely.²⁶ For example, America's Carriers Telecommunications Association maintains that the cap should be retained to protect against previously-alleged abuses of the USF mechanism.²⁷ Bell Atlantic argues that the current interim cap should be adopted permanently as a means of reducing the incentive to over-invest.²⁸

8. Parties who oppose the extension of the interim cap argue that limiting the size of the universal service fund will render it insufficient to achieve universal service objectives and fulfill

²¹ Id. para. 40.

²² See Comments of Texas OPUC at 18; Comments of Florida PSC at 12; Comments of the West Virginia Consumer Advocate at 10; Comments of the Missouri PSC at 10; Comments of Rural Utilities Service at 16; Comments of the National Cable Television Association, Inc. at 12.

²³ Comments of Missouri PSC at 10.

²⁴ Comments of New Mexico Attorney General at 4; Comments of the Rock Port Telephone Company at 2; Comments of the Idaho Public Utilities Commission at 10; Comments of Wyoming PSC at 17.

²⁵ Comments of Texas OPUC at 18.

²⁶ See, e.g., Comments of MFS Communications Company, Inc. at 19.

²⁷ Comments of America's Carriers Telecommunication Association at 7, citing NPRM at note 86 (incorporating the portions of the record of CC Docket No. 80-286 that relate to changing the support mechanisms in the Commission's jurisdictional separations proceedings).

²⁸ Comments of Bell Atlantic at 9.

the statutory mandates of the 1996 Act.²⁹ For example, the Rural Telephone Coalition and the Idaho Public Utilities Commission note that rural carriers are unable to offer rates and services that are "reasonably comparable" to those in urban areas within predetermined funding limits established prior to this statutory mandate.³⁰ Several states argue that capping the fund could jeopardize carriers' ability to provide "affordable" rates in compliance with the 1996 Act.³¹ Similarly, other parties submit that carriers may be unable to receive "sufficient" support to serve high-cost areas if the growth in these areas is greater than the growth in the amount of the USF permitted by the interim cap³² or if a shortfall were to occur and could not be recovered later due to the cap.³³ The Rural Telephone Coalition argues that it is necessary and inevitable for the USF to grow in light of the 1996 Act's specific provisions.³⁴ In contrast, other parties opposing the cap, including NECA, believe that concerns about erratic and excessive growth in the USF are unfounded and that artificial limits are unnecessary.³⁵ Finally, some commenters believe that restricting the size of the fund now may increase the gap that must be filled in the transition to new support mechanisms.³⁶

9. Discussion. We recommend maintaining the current interim indexed cap on USF growth. We believe it is prudent to retain the cap while the Joint Board and the Commission are considering the implementation of the 1996 Act's universal service requirements. The 1996 Act has set forth statutorily-defined deadlines for implementing its provisions and that the interim cap should be extended only until the final rules pursuant to Section 254 of the Act become effective

10. Until the Joint Board's recommended decision and the Commission's final order are adopted, telecommunications service providers will not be subject to additional universal service obligations under the 1996 Act. Moreover, as we have noted, the extension of the interim cap will be relatively brief, extending only until the effective date of new rules implementing the relevant portions of section 254 of the Act. We therefore do not believe, as some commenters suggest, that a brief, clearly limited extension of the interim cap will impair carriers' abilities

²⁹ See, e.g., Comments of Rural Telephone Coalition at 6; Comments of Century Telephone at 6.

³⁰ See, e.g., Reply Comments of Rural Telephone Coalition at 21-22; Reply Comments of State of Idaho Public Utilities Commission et al. at 6-7.

³¹ Reply Comments of State of Idaho Public Utilities Commission et al. at 6-7.

³² Comments of Colorado Independent Telephone Association at 6.

³³ Comments of Harris, Skrivan & Associates at 16; Comments of Century Telephone Enterprises at 6-7.

³⁴ Reply Comments of the Rural Telephone Coalition at 21-22.

³⁵ NECA Comments at 13-14. See also Comments of Minnesota Telephone Association at 2; Comments of Fred Williamson and Associates at 15.

³⁶ Comments of Montana Independent Telecommunications Systems at 10; Comments of GVNW, Inc. at 14.

to comply with the requirements of the 1996 Act. Indeed, NECA's most recent projections indicate that the 1996 USF will fall below the level of the interim cap.³⁷ To the extent that telecommunications service providers may incur significant costs of complying with requirements of the 1996 Act other than the universal service provisions, we believe that such circumstances can be reflected in our recommendations and the Commission's order regarding support mechanisms for universal service.

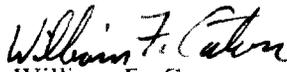
11. Moreover, we continue to believe that it is important to retain the interim cap until new rules are adopted. In light of the provisions of the 1996 Act regarding support for universal service, we believe that we and the Commission must consider revisions to the manner in which support is directed to telecommunications carriers and consumers in high-cost areas. The potential for significant changes in the current support mechanisms for universal service heightens the importance of maintaining the status quo in the interim, in order to facilitate the design and implementation of a reasonable transition to new rules

12. We believe that extending the interim indexed cap until the effective date of our new rules, to be adopted on or before May 8, 1997, will help facilitate an orderly transition to the regime adopted pursuant to our recommendations. Further, we believe that continuation of the indexed cap will not cause undue harm to universal service recipient carriers. Finally, we find no statutory impediment to extension of the interim cap

Recommendation Clause

13. For the reasons discussed above, this Federal-State Joint Board recommends that the Federal Communications Commission extend, until the final universal service rules become effective, the current interim rules prescribing an indexed cap on the total level of the Universal Service Fund, 47 C.F.R. §§ 36.601, 36.622

FEDERAL COMMUNICATIONS COMMISSION


William F. Caton
Acting Secretary

³⁷ NECA Transmittal No. 710 (May 17, 1996).