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Rural Telephone Coalition

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

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

REPLY COMMENTS

of the

RURAL TELEPHONE COALITION

January 10, 1997

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SUMMARY

The Commission's decision must ultimately provide for mechanisms that meet the statutory test that federal support be "specific," " predictable," and "sufficient." This requires that the Commission reject flawed proposals as well as erroneous assumptions and conclusions in the *Recommended Decision*. The recommended benchmark that is the beginning point for determining the level of support is one of the flawed proposals that must be rejected. The benchmark irrationally compares backward looking revenues with hypothetical forward looking costs and uses historic revenues in a changing regulatory environment to identify the revenue streams an ILEC can "expect" in the future. Besides the mismatch of revenues and costs, the use of a nationwide average is inappropriate. That average will reflect urban, instead of rural revenues in light of the sparse number of rural lines.

The proposal to use yet-to-be-developed cost proxy models to predict forward looking costs and determine support levels in conjunction with the benchmark also fails to comply with the Act. The RTC urges the Commission to use embedded costs to determine support levels for rural telephone companies. Many commenters agree that the proxy models presently under consideration should not be used as the sole measure to determine the level of support for these companies. They, like the RTC, are concerned that the models have not been validated and therefore cannot be used to determine that the resulting support will be "specific," "predictable," and "sufficient," in compliance with the statutory criteria in the Act.

A mandate to apply proxies to rural companies, even after a three year transition, is potentially most dangerous to rural companies and will likely be injurious to high cost areas and

rural consumers. The Commission should ignore suggestions to the contrary and at least adopt the transition period recommended by the Joint Board. Even with a plan that has been validated, priced out and reasonably found to provide "sufficient" support, provision must be made for outliers and anomalies on the impact scale. Thus, the better course would be to ameliorate potentially harsh effects of moving to proxies by adopting a longer transition period that both allows small carriers to voluntarily opt for recovery on the basis of proxies, adopting a maximum reduction factor similar to the 5 percent SPF reduction used in the transition to the 25% gross allocation of non traffic sensitive costs to the interstate jurisdiction and providing for individual cost study relief where necessary.

The RTC does agree that it is appropriate to use proxies to measure differences in costs across various areas. In the case of rural telephone companies, these differences vary greatly even within their service area. Any plan that the Commission adopts should recognize that disaggregation of support within rural company service areas is required by cost variances that result from the clustering and dispersion characteristics of the population distribution in small communities. Disaggregation is necessary to prevent cream skimming by new entrants solely interested in serving the most attractive pockets in rural areas. Cream skimming should also not be encouraged by allowing new entrants to receive support on the basis of ILEC averaged per-line support.

The Commission may not lawfully cap or freeze support even during a transition period. A cap or freeze will plainly lead to insufficient recovery. The comments show that the Joint Board's recommendation is already defeating the universal service principles and goals of the Act by putting a damper on the deployment of infrastructure in high cost areas.

The Commission should ensure that its decision does not reverse the progress that has been made in bringing service to high cost areas and must simply ignore or reject comments that suggest alternatives that do not comply with the Act or fail to further universal service principles. The majority of commenters do not support competitive bidding for example. This idea should be abandoned. The Act envisions support to the facilities provider. Suggestions that pure resellers should receive support, if adopted, would violate the Act. Likewise, restricting the support available for multiline businesses and second homes would violate portions of the Act that require comparability of rates and services between rural and urban areas. The restrictions are also bad public policy as they would discourage economic development in rural areas and disadvantage small businesses contrary to stated public policy goals for rural America.

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Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	

Reply Comments of the
Rural Telephone Coalition

The Rural Telephone Coalition ("RTC") files these Reply Comments in response to the comments filed on December 19, 1996, in the proceeding captioned above.[1] The RTC is comprised of the National Rural Telecom Association ("NRTA"), the National Telephone Cooperative Association ("NTCA"), and the Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO"). These associations together represent more than 850 local exchange carriers (LECs) that provide service to rural communities throughout the United States.

I. COST PROXY MODELS SHOULD BE USED ON A VOLUNTARY BASIS ONLY.

A. LECs MUST BE ABLE TO RECOVER THEIR EMBEDDED COSTS.

The RTC's initial comments expressed concern that the Joint Board's recommendation to determine high-cost support by the use of a yet-to-be-developed cost proxy model which would predict forward looking costs does not satisfy the Section 254(b)(5) requirement providing that support levels must be "specific," "predictable," and "sufficient." First and foremost, the Joint Board's *Recommended Decision* fails to address issues raised regarding LECs' recovery of

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[1] Unless otherwise indicated, all citations herein are to comments filed in this proceeding on December 19, 1996.

embedded costs.[2] The *Recommended Decision* merely provides a review of parties' concerns and concludes that "it is vital that the Commission use forward-looking economic costs as the basis for determining support levels."[3]

Several parties concur with the RTC's concerns regarding embedded costs and recommend that the Commission allow rural companies to receive universal service support based on ongoing, embedded costs. USTA, for example, argues that "[u]niversal service support should be based on actual, embedded costs that are regulated and unseparated."[4]

Other parties urge the Commission to at least account for LECs' actual forward looking costs in the new high-cost support system. ALLTEL states:

> ALLTEL cannot emphasize enough the importance that actual costs incurred by LECs in the provision of universal service be recognized and recovered if there is to be an incentive for them to continue to provide universal service.[5]

Bell Atlantic also warns that no proxy model can adequately propagate actual levels of cost. "Proxy models produce artificial cost levels which will differ from LECs' actual costs."[6] In an attached affidavit, economist Robert Crandall states:

> No such model can be a completely accurate estimate of an existing carrier's or a new carrier's costs... Use of the proxy model will not compensate incumbent LECs fully for

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2 RTC comments at 1-3.

3 *Recommended Decision* at para. 275.

4 USTA comments at 2. *See also*, ALLTEL Telephone Services Corporation (ALLTEL) at 10, John Staurulakis, Inc. (JSI) at 5, and the Minnesota Independent Coalition at 16.

5 ALLTEL comments at 4.

6 Bell Atlantic comments at 12.

the difference between their embedded costs and the benchmark rate.[7]

B. PARTIES URGE THE COMMISSION TO PLACE A GREATER EMPHASIS ON TESTING THE VALIDITY OF PROXY MODEL RESULTS.

The Joint Board recommends the use of a proxy system that has not been proved to predict accurately the costs, albeit forward looking costs, for all or even any rural telephone companies.[8] In addition to its concern regarding calculations of cost, the RTC continues to emphasize that, despite the claims of the sponsors, there is little evidence to show that the results of the proxy calculations bear any reasonable comparison to network costs associated with those they are attempting to predict. As ALLTEL notes: "[T]he Commission and Joint Board have not even begun to address the parameters that should be incorporated into a rural universal service proxy model let alone to validate the outputs from such a model."[9] Other parties join the RTC in expressing concern over the lack of verification of the proxy models. ITCs, Inc. exclaims:

> [n]ever in the history of Joint Board proceedings has there been a recommendation such as mandating proxy models that had not been thoroughly explored in terms of the impacts on all of the parties affected as well as the consumer.[10]

The RTC urges the Commission to consider those comments that describe the detrimental

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[7] *See* Bell Atlantic comments, Affidavit of Robert Crandall at para. 13.

[8] RTC comments at 4-6.

[9] ALLTEL comments at 8. ALLTEL also emphasizes that there is no evidence that allowing universal service funding for rural carriers to remain on an actual cost basis would have an adverse impact on local competition or universal service. *Ibid.*

[10] ITCs, Inc. comments at 6. The Western Alliance also objects to the adoption of a "nonexistent, untested and dangerously volatile and inexact proxy/benchmark support mechanism" as the future basis for calculating federal universal service support. Western Alliance at 2.

impact a proxy error produced by a non-validated model may have on carriers' ability to provide universal service. Such errors could severly impact investment in necessary infrastructure. Tularosa Basin Telephone Company plainly states that the if the current recommendation is adopted, it "will not encourage investment in the infrastructure necessary to provide telecommunciations services in rural, high cost areas."[11] Without proper verification, rural telephone companies will not be assured that the cost proxy models will result in revenue streams that are predictable and sufficient, providing correct signals about levels of infrastructure investment.

In that regard, the Commission should heed particular emphasis on the use of actual costs for small and rural telephone companies, as potential proxy errors are most dangerous for these carriers.[12] USTA agrees, maintaining that no rural company should be required to adopt a proxy that does not reflect its actual costs.[13] Many other parties affirm that the Joint Board's recommendation for a future proxy model is vague, unpredictable and insufficient, and express specific concern over the future of adequate support for rural high-cost areas.[14] If the Commission does implement a proxy-based high cost support mechanism, it must be voluntary, with an option to demonstrate individual costs.[15]

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[11] Tularosa Basin Telephone Company comments at 3.

[12] *See* RTC comments at 6. *See also*, RTC Further Comments at 7-9, CC Docket 96-45, August 9, 1996.

[13] USTA comments at 4.

[14] *See*, for example, Western Alliance comments at 39.

[15] *See*, RTC comments at 9. *See also,* RTC Further Comments at 21, August 9, 1996.

C. THE RTC WILL PARTICIPATE IN THE PROXY WORKSHOPS; THE COMMISSION SHOULD ALSO CONSIDER THE RTC's PREVIOUS COMMENTS REGARDING PROXY MODELS.

In its comments, the RTC explained that it is willing to participate in the workshops to refine and modify the proposed models. Further, the RTC recognized that continued work on the models may provide substantial benefits.[16] The RTC also reiterates its support for a further proceeding to look at rural issues *before* implementation for rural LECs begins.[17] Issues of concern for small and rural companies should be addressed as early as possible, so that at the very least, any model adopted for universal service support will have sufficient flexibility to address the unique concerns of rural LECs. Further, the RTC agrees with Harris, Skrivan & Associates, LLC that "[w]hile small companies may not have the resources to develop proxy models of their own, they may have a better knowledge of their facility costs and can therefore make valuable contributions to the process."[18]

However, the RTC is concerned that the Commission may use the workshops merely to encourage some sort of industry consensus on one of the previously proposed models. If the Joint Board's concept of the workshops if merely a session of "tweaking" the parameters of the previously proposed models, the RTC urges the Commission to consider RTC comments from the beginning of this proceeding and the previous universal service proceeding, CC Docket No. 80-286.

The RTC stresses that the Commission must address issues raised by the rural telephone

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[16] RTC comments at 9.

[17] *Id.* at 7.

[18] Harris, Skrivan & Associates, LLC comments at 3.

companies at the beginning of the proxy implementation process.[19] The Joint Board recommends that rural telecommunications carriers begin a transition to the proxy methodology adopted for calculating high cost support in areas served by non-rural incumbent LECs (ILECs) beginning in the year 2001.[20] However, the Commission must not wait until the year 2001 to modify the structure of any proxy-based mechanism in order to address rural telephone company concerns. Adopting any model before thoroughly analyzing its impact on rural carriers could be harmful to the long-term provision of universal service. Therefore, the RTC asks the Commission to address each of the proxy-related issues the RTC has raised throughout the proceeding before adopting any model.

D. THE RTC OPPOSES ADOPTION OF THE HATFIELD MODEL.

Finally, the RTC is concerned that some parties have stated their support for the previously proposed Hatfield Model[21] because it is "the best basis for the proxy model."[22] The RTC fears that many proponents of the Hatfield Model may have chosen to support the model as it stands due to the limited time frame of the workshops[23] and because a Commission decision in this proceeding is expected in May, 1997. However, the Commission should remember that the Act does not require that all issues regarding the new universal service support mechanism be

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[19] RTC comments at 10.

[20] *Recommended Decision* at para. 285.

[21] AT&T Corporation submitted a cost proxy model prepared by Hatfield Associates, Inc., in CC Docket No. 96-98.

[22] *See*, for example, West Virginia Consumer Advocate comments at 5.

[23] On December 12, 1996, the Commission issued *Public Notice* DA 96-2091, specifying that workshops will be held for two days, January 14-15, 1997.

resolved by May. A decision to adopt any particular proxy model as a basis for universal service support must not be made hastily.

The RTC strongly supports comments of those parties that oppose adoption of the Hatfield model, including the comments of US West.[24] USTA also opposes the Hatfield Model in its entirety, citing Dr. William Taylor of the National Economic Research Associates, Inc.: "the hatfield is fundamentally flawed and should not be used in its present form..."[25]

E. THE COMMISSION SHOULD ALLOW PROXY MODELS TO BE USED FOR DISAGGREGATION OF SUPPORT.

It is important that the Commission allow rural telephone companies to use a proxy model prior to the end of the transition, if they elect to do so, since some carriers may elect to use a model for disaggregation purposes. In his affidavit, Robert Crandall points out that the Commission should distinguish the design of a cost model for the purpose of allocation from the cost model that is required to set rates.[26] The RTC suggested in its comments that if the Commission adopts the recommendation for a transition to a proxy methodology as suggested by the Joint Board, rural carriers which continue to use embedded costs during the initial phase should also be allowed to use the proxy model, zones, or other appropriate apportionment to disaggregate support with their study area.[27] Bell Atlantic offered strong and cogent support for using the proxy model for disaggregation purposes.

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24 *See*, generally, comments of US West.

25 USTA comments at 14.

26 *See* Bell Atlantic comments, Affidavit of Robert Crandall at para. 15.

27 RTC comments at 10.

> A proxy model based on the most efficient technology for serving various areas of the country may be useful in reflecting the differences in costs across various areas and therefore could be used to allocate the high-cost funds fairly and reasonable efficiently.[28]

TCA, Inc. also agrees that rural LECs should be able to use proxies to identify high cost loops and then apply that distribution to actual cost.[29]

II. THE JOINT BOARD'S TRANSITION PROVISIONS SHOULD BE REVISED.

A. THE TRANSITION PROVISIONS SHOULD BE COORDINATED WITH THE ACCESS REFORM DOCKET TO MITIGATE THE COMBINED IMPACT.

When the Commission made the major transition from the "SPF" factor to the 25% allocator plus universal service expense adjustment beginning in the 1980s, it developed a substantial transition formula which ultimately ran to eight years and was combined with a maximum reduction factor of 5%.[30] Now the Joint Board is recommending that the Commission close the 1990s by moving the key determinant of Universal Service from actual embedded cost to a proxy model of forward looking cost, and the Commission has proposed substantial changes in the structure and level of access charges.[31] It has further indicated that it intends to revisit the separations manual as well.[32] These changes are potentially more severe than those of the 1980s, but the major difference is that at this point, no one knows or can even carefully estimate either

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[28] *See* Bell Atlantic comments, Affidavit of Robert Crandall at para. 13.

[29] TCA, Inc. - Telecommunications Consultants comments at 5.

[30] *See*, 47 C.F.R. 36. 154(d), *Report and Order*, released March 22, 1996, AAD 95-77.

[31] *Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry*, CC Docket Nos. 96-262, 94-1, 91-213, 96-263, released December 24, 1996.

[32] *Id.* at para. 6.

the individual or cumulative impacts of these changes even on a static basis. The 1980s changes, by contrast, were comparatively well estimated before they were recommended, let alone adopted. In this light, it is hard to say more than it is highly likely that an adequate transition will be absolutely necessary for some ILECs, and that the structure and duration cannot be determined until the magnitude and nature of the combined impacts is known.

The Commission should therefore reject the unsupported suggestions of Ameritech and others that the six year transition recommended by the Joint Board is too long.[33] Ameritech may be correct however in stating that once a *valid* model has been adopted there is no reason to wait three years before beginning the transition. The support must also be "sufficient," which means the Commission will need to determine the impact of whatever changes it adopts. The key, however, is validity and sufficiency, so that the transition cannot be scheduled to begin until validity and sufficiency are established. As we have shown, there is presently no basis in the record to presume validity or sufficiency can be demonstrated for any LEC, much less rural LECs. If adequate optionality to perform individual cost studies is included in the plan, the need for longer transition periods may be lessened. But any plan must provide for anomalies and outliers on the impact scale. Thus, in any event, the transition period should include a maximum reduction factor as suggested by JSI.[34]

The Commission should also reject the Maryland Public Service Commission's recommendation to prevent rural companies from choosing the proxy before the end of the

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[33] Ameritech comments at 13.

[34] JSI comments at 15.

recommended transition period if they choose to do so.[35] The Joint Board was correct to recommend some flexibility for small, rural carriers in this regard.[36] As noted *supra*, the Commission should provide further flexibility by giving rural carriers the option to choose whether to use a proxy or actual costs even after the transition period is completed. Furthermore, the Commission should rely on those parties that have extensive experience with rural telephone companies when making decisions that will affect rural carriers.[37]

B. THE COMMISSION CANNOT LAWFULLY CAP OR FREEZE RURAL HIGH COST SUPPORT, EVEN AS AN INTERIM TRANSITIONAL MEASURE.

The RTC demonstrated in its opening comments that Section 254 precludes the Commission from capping the high cost support mechanism, either during a transition period or as a longer term policy.[38] A cap or freeze in either case would conflict squarely with the section's express directive that rates must be "just, reasonable and affordable" and "reasonably comparable" in urban and rural areas, for nationwide access to advanced and information services and that federal support must be "specific, predictable...explicit and sufficient" to

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[35] The Maryland PSC states that "rural companies should not have the option of voluntarily changing to the proxy model system before the end of the transition period..." Maryland PSC comments at i.

[36] *Recommended Decision* at para. 283.

[37] The RTC notes that only one carrier providing service in the state of Maryland appears to be a "rural telephone company." Compare Maryland Public Service Commission's comments, for example, with the comments of the Wyoming Public Service Commission at 6.

[38] RTC comments at 10-13, 29.

achieve these and the Act's other universal services purposes.[39] The RTC also explained that an interim freeze or cap will not generate "sufficient" support because it does not provide high cost recovery for ongoing infrastructure improvements or commitments to make future upgrades.

There is significant support in the comments of other parties for the RTC argument that the interim freeze is unlawful. For example, the RUS comments explain that the freeze ignores the Commission's declared intention to modify access charges at the same time its new universal service regime takes effect.[40] USTA, ALLTEL and TDS/Century warn that freezing the historical support per line and paying it only for first primary residence and single line business connections would not even provide the historical level of support.[41] JSI agrees, explaining that both sides of the historic support per line equation and the transitional support per line must use the same terms.[42] The Western Alliance cautions that a freeze will also unfairly deprive high cost LECs of support for FCC-ordered changes [such as number portability and dialing parity.][43] The RT Communications (RT) comments and the TDS/Century comments show that a freeze based on past results is already out-of-date[44] because (a) 1996 investments have been made and many

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[39] The RTC supports the fundamental Joint Board "bifurcation" recommendation for continued use of actual embedded costs by rural ILECs during the transition period. However, the RTC believes that the level should not be frozen or rigidly scheduled for transition to a proxy amount unless and until a suitable proxy has been found, validated for rural ILECs, priced out and determined to satisfy the statutory support standards.

[40] RUS comments at 2.

[41] USTA comments at 25-30; ALLTEL at 10-11; TDS and Century at 37-41.

[42] JSI comments at 16-20.

[43] Western Alliance comments at 36.

[44] RT comments at 2, 7-8 and TDS/Century at 40.

1997 investment commitments have been irreversibly made and (b) ILECs will now have to contribute towards universal support.

The Wyoming PSC provides data showing the varying impact of the first two years of the freeze on Wyoming companies. It identifies monthly rate increases for five of the seven companies in its report, ranging from more than $11 to more than $16. Plainly, the Joint Board's belief that its transition will minimize disruption and adverse effects on rural ILECs is ill-founded.[45] RT, a Wyoming rural ILEC, and TCA demonstrate further that the transitional freeze will deny sufficient support to rural ILECs.[46] The problem is particularly acute for companies that have recently acquired or agreed to acquire exchanges and make improvements that are not reflected in their frozen universal support based on past period results. RT describes its predicament as the recent purchaser of woefully antiquated US West exchanges, serving from 14 to 4,266 subscribers, with a total of 15,000 subscribers spread over almost 10,000 square miles. The Wyoming PSC required RT to make upgrades (all are needed to satisfy the Joint Board's initial universal service definition) in 3 years. The freeze will prevent RT from obtaining high cost compensation for part of its 1995 investment and leaves recovery of $10.6 million in 1996 investments and $11.8 million in planned 1997 investments uncertain. RT is concerned that its financial arrangements will not remain operative, given the proposed inadequate freeze and premature adoption of a deadline for proxy prescriptions. Its experience is consistent with the Western Alliance's prediction that the insufficient cost recovery climate will put an end to

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45 *See Recommended Decision* at para. 272.

46 RT comments at 7-8 and TCA at 4.

infrastructure upgrades and expansions in many rural areas.[47]

Far from realizing that even an interim freeze conflicts with the above-described tests Congress set for universal service mechanisms and their resulting achievements in Section 254 (b) and (e), some comments seek to restrict interim recovery still further or even to impose a permanent cap on high cost support. AT&T claims that the size of the fund must be "control[led]," not open-ended.[48] The ICC claims, without support, that Congress did not intend higher subsidies, also pressing for a permanent cap on support.[49] MCI reiterates the recommendation's notion that the size of the fund must depend on whether it is apportioned on the basis of intrastate, or only interstate, revenues.[50] MFS proposes capping the overall aggregate support at the current level, on the short sighted theory that today's rates are affordable, ignoring the ongoing changes, such as access reform.[51] The Maryland PSC advocates a cap on the federal contribution per line[52] and even opposes the recommendation to allow rural LECs to elect proxy treatment during the transition, which it assumes would enlarge the total fund.[53] Worldcom urges both a cap and a reduction in support over time.[54] Time-Warner demands controls to prevent a

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47 Western Alliance comments at 24-27.

48 AT&T comments at 27.

49 ICC comments at 2, 5-6.

50 MCI comments at 8.

51 MFS comments at 15.

52 Maryland PSC comments at 6.

53 *Id.* at 8-9.

54 Worldcom comments at 20-21.

"make whole" subsidy.[55]

Proponents of capping, reducing support or freezing interim embedded cost support for rural ILECs have not explained or justified their proposals under the Act's express requirement for "sufficient" and "predictable" federal support. They do not even take into account the Act's addition, for the first time, of school, library and rural health care provider discounts established by Section 254(h), the mandate in Section 254(b)(1) for an "evolving" definition of universal service or the requirement that even high cost recipients must contribute to universal service support beyond performing their unique carrier of last resort obligations. This proceeding to implement the new law on universal service is not the place for the ICC, AT&T or any other party to try to amend what the law says because it preferred the support-reduction theme of CC Docket No. 80-286 before Congress stated its disapproval of that earlier effort at universal service "reform."[56]

The complaints of the Maryland and Delaware PSCs that the states will be net contributors to a nationwide support mechanism are beside the point: The Act specifies that federal support must be "sufficient" for the purposes Congress enacted, funded by non-discriminatory and equitable carrier contributions and that state mechanisms must not burden the federal support regime. The state-by-state impact of the federal regime is not identified in the Act as a criterion for evaluating the federal mechanism and has no bearing on whether the federal mechanism is fair and nondiscriminatory with respect to the nation's carriers or end users. Indeed, the RUS's

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[55] Time-Warner comments at 13.

[56] Joint Explanatory Statement of the Committee of Conference, Conf. Rep. No. 104-458, 104th Cong., 2nd Sess., p.131 (January 31, 1996).

concern[57] that too much of the responsibility for funding universal service will fall to predominantly rural states is much more in tune with what Section 254 and the Congress that enacted it had in mind in requiring a "sufficient" nationwide federal mechanism and limiting states to supplemental, nonconflicting programs.[58]

Ameritech's vehement opposition to the length of the proposed rural transition period is perplexing.[59] In the second economic analysis attached to its comments seeking to shorten the rural LEC's period of recovering their embedded costs, a contradictory discussion appears.[60] The expert authors of the paper cogently attack the Joint Board's recommendation for a forward looking cost proxy methodology and for providing the same support to eligible ILECs and CLECs, while requiring only ILECs to bear carrier of last resort obligations. The paper criticizes the proposal for failing to allow recovery of an ILEC's past and future expenses as a carrier of last resort, pointing out that the problem is not as immediate for ILECs in rural areas because of the interim provision for recovery of frozen embedded costs.[61] However, the text of the comments makes no effort to explain why this laudable, although partial and temporary, respite from unconstitutional takings should be denied to rural ILECs even earlier than the Joint Board has recommended.

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[57] RUS comments at 3.

[58] Section 254(f).

[59] Ameritech comments at 13.

[60] B. Cherry and S. Wildman, *Ensuring the Viability and Integrity of Universal Service Policy with Competition* at 37-44.

[61] *Id.* at 39.

The Commission should go forward with its rural transition for *at least* the time recommended by the Joint Board. USTA urges the Commission not to freeze interim high cost support. In any case, both the interim and long term high cost support mechanisms must be sufficiently flexible to accommodate upgrades and expansions -- including those connected with mergers or acquisitions -- and remain "predictable" and "sufficient" to fulfill the universal service commitments the 1996 Act made to rural customers.

III. SINCE THE RECOMMENDED REVENUES BENCHMARK FAILS TO IDENTIFY HIGH COSTS ADEQUATELY TO ENSURE "SUFFICIENT," "SPECIFIC" AND "PREDICTABLE" FEDERAL UNIVERSAL SERVICE SUPPORT, A DIFFERENT BENCHMARK IS NECESSARY.

The RTC showed in its opening comments that the recommended benchmark based on nationwide average LEC revenues for local exchange, access and "discretionary" services misses the mark as an identifier of the level of high cost support which Section 254 requires.[62] Among the flaws in the proposal, the RTC explained, it (a) irrationally compares backward looking revenues with hypothetical forward looking costs, (b) uses historic revenues in a radically changing regulatory environment to identify the revenue streams an ILEC can "expect" in the future and (c) has no discernable bearing on whether federal support will pass statutory muster as "sufficient," "predictable" and "specific."

The comments contain overwhelming recognition of the inadequacy of the recommended revenue-based high cost benchmark, countered only by feeble conclusionary support. Numerous comments point to examples that illustrate how "apples and oranges" comparisons invalidate the proposed use of broad nationwide average revenues and proxy costs to quantify high costs. For

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[62] RTC comments at 23-31.

example, the Texas PUC, Cincinnati Bell, Pacific Bell, TCA and USTA explain that the Joint Board's recommended algorithm compares access and discretionary service revenues to proxy model costs that do not purport to measure these costs.[63] As TCA sums up the effect the benchmark will "effectively impute to rural LECs revenues that they do not earn."[64] MCI, too, criticizes the inclusion of revenues not included within residential customers' payments to obtain defined universal service package.[65] MFS points out that comparing revenues and costs is not a valid way to identify high costs in the first place.[66] Time-Warner observes that the aggregated nationwide revenues average cannot reasonably be compared to the disaggregated costs that will be identified by whatever proxy is adopted.[67] RUS states that the nationwide average will reflect urban, but not rural, revenue profiles because of the high proportion of urban lines.[68] Indeed, there is even less reason to believe the benchmark remotely reflects CLEC revenues. TDS and Century observe that rural and urban discretionary service availability and subscription differ significantly, and that the restricted scope of local service and consequent reliance on toll service for community of interest calling is a far greater factor in rural areas.[69] Indeed, there is still less reason to believe the benchmark even remotely reflects CLEC revenues. TDS and Century

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[63] Texas PUC comments at 5-8; Cincinnati Bell at 8-9; Pacific Telesis at 16-17; TCA at 6; USTA at 10-11.

[64] TCA comments at 6.

[65] MCI comments at 9-10.

[66] MFS comments at 24-26.

[67] Time-Warner comments at 14-15.

[68] RUS comments at 2.

[69] TDS and Century comments at 35.

observe that rural and urban discretionary service availability and subscription differ significantly, and that the restricted scope of local service and consequent reliance on toll service for community of interest calling is a far greater factor in rural areas.[70] MFS confirms the Joint Board's concern[71] that competition will distort the benchmark results.[72] Indeed, Cincinnati Bell explains that to assume revenues from discretionary and access services must cover part of the high costs of local exchange service amounts to an unlawful "implicit" subsidy.[73]

Much of the support for the recommended revenues benchmark approach, as proposed, is not buttressed by evidence or explanation of why the results could conceivably perform the intended function: measuring what high costs should be supported by the universal service mechanism. Time-Warner supports a revenues benchmark, but only with major changes that would exacerbate the faults found by opponents of the scheme.[74] So far, however, there is no consensus among the critics about how to rectify the fatal flaws of the recommended revenue benchmark. Some unaccountably suggest including *additional* revenues not included in universal service.[75] The California PUC supports a cost-based benchmark as more stable, but

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70 *Ibid.*

71 *E.g., Recommended Decision* at para. 310.

72 MFS comments at 24.

73 Cincinnati Bell comments at 8. Others agree that the benchmark will perpetuate unlawful implicit subsidies. *See, e.g.*, SBC at 34; USTA at 10-11.

74 Time-Warner comments at 14-28.

75 *Eg.*, Time-Warner at 19, Ad Hoc at 11-12 (suggests adding yellow pages revenues).

opposes a rate-based benchmark.[76] Others sensibly agree that a comparison of costs with costs makes more economic sense, but differ on whether the comparison should be based on actual costs or proxy costs.[77] Others, such as TCA and USTA suggest a rate-based benchmark.[78] Sprint, for example, proposes using the national average of *urban* local rates[79] (ignoring the differences in what is affordable and comparable in rural and urban "local" rates recognized in the Joint Board *Recommended Decision*.[80] USTA proposes a rate benchmark including an area income measurement of affordability.[81]

For the reasons discussed above and in the RTC's opening comments, the RTC urges the Commission to (a) heed the strong record evidence that a nationwide average revenues benchmark is an invalid way to determine levels of support, (b) recognize that the proposed revenue benchmark probably cannot be modified enough to overcome its many flaws and (c) discard the revenues benchmark approach in favor of an actual cost benchmark, comparing individual ILEC costs to averaged actual costs. No benchmark suggestion so far can provide an adequately reliable comparison between an individual rural ILEC's costs and the costs faced by urban-

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[76] California PUC comments at 6-7.

[77] Compare Worldcom at 21 and ALLTEL at 9 (both advocating average proxy costs) with TDS and Century at 36 (suggesting an actual cost benchmark). A proxy cost benchmark would share the problems presented by using a forward looking idealized network to predict costs.

[78] TCA comments at 6; USTA at 10-11.

[79] Sprint comments at 18-20.

[80] *Recommended Decision* at para. 126.

[81] USTA comments at 10-11.