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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge	)	CC Docket Nos. 96-262, 94-1, 91-213, 95-72

FOURTH ORDER ON RECONSIDERATION IN CC DOCKET NO. 96-45, REPORT AND ORDER IN CC DOCKET NOS. 96-45, 96-262, 94-1, 91-213, 95-72

Adopted: December 30, 1997 **Released:** December 30, 1997

By the Commission: Commissioners Ness and Powell issuing separate statements; Commissioner Furchtgott-Roth dissenting and issuing a statement.

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I. INTRODUCTION

1. In the Telecommunications Act of 1996,[1] Congress amended the Communications Act of 1934[2] by, among other things, adding a new section 254 to the Act. In section 254, Congress directed the Commission and states to take the steps necessary to establish support mechanisms to ensure the delivery of affordable telecommunications service to all Americans, including low-income consumers, eligible schools and libraries, and rural health care providers. Specifically, Congress directed the Commission and the states to devise methods to ensure that "[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas . . . have access to telecommunications and information services . . . at rates that are reasonably comparable to rates charged for similar services in urban areas"[3] and to "establish competitively neutral rules . . . to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and non-profit elementary and secondary school classrooms, health care providers, and libraries."[4] On May 8, 1997, the Commission released the *Universal Service Report and Order*,[5] implementing section 254 of the Act and establishing a universal service support system that becomes effective on January 1, 1998 and that will be sustainable in an increasingly competitive marketplace.

2. In the *Order*, the Commission adopted rules that reflect virtually all of the recommendations of the Federal-State Joint Board on Universal Service[6] and meet the four

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[1] Pub. L. No. 104-104, 110 Stat. 56 (the 1996 Act).

[2] 47 U.S.C. §§ 151, *et seq.* (the Act). Hereinafter, all citations to the Act and to the 1996 Act will be to the relevant section of the United States Code unless otherwise noted.

[3] 47 U.S.C. § 254(b)(3).

[4] 47 U.S.C. § 254(h)(2)(A).

[5] Federal-State Joint Board on Universal Service, *Report and Order*, CC Docket No. 96-45, FCC 97-157, 12 FCC Rcd 8776 (rel. May 8, 1997) (*Order*). The Commission released an erratum correcting the *Order* on June 4, 1997.

[6] *See* Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Recommended Decision*, 12 FCC Rcd 87 (1996). Pursuant to section 254(a) of the Act, the Commission established a Federal-State Joint Board to make recommendations to the Commission regarding universal service. The Federal-State Joint Board is composed of eight members, three Federal Communications Commission Commissioners, four state Commissioners nominated by the National Association of Regulatory Utility Commissioners, and one state-appointed utility consumer advocate nominated by the National Association of State Utility Commissioners. *See* In the Matter of Federal-State Joint Board on Universal Service, *Notice of Proposed Rulemaking and Order Establishing Joint Board*, CC Docket No. 96-45, FCC 96-93 (1996), at para. 132.

critical goals set forth for the new universal service program: (1) that all of the universal service objectives established by the Act, including those for low-income individuals, for consumers in rural, insular, and high cost areas, and for schools, libraries, and rural health care providers, be implemented; (2) that rates for basic residential service be maintained at affordable levels; (3) that universal service funding mechanisms be explicit; and (4) that the benefits of competition be brought to as many consumers as possible. Recognizing that, as circumstances change, further Commission action may be needed to ensure that we create sustainable and harmonious federal and state methods of continuously fulfilling universal service goals, the Commission also committed itself to work in close partnership with the states to create complimentary federal and state universal service support mechanisms. These efforts are ongoing.

3. Through the *Order* and the accompanying orders reforming the Commission's access charge rules,[7] the Commission established the definition of services to be supported by federal universal service support mechanisms and the specific timetable for implementation. The Commission set in place rules that will identify and convert existing federal universal service support in the interstate high cost fund, the dial equipment minutes (DEM) weighting program, Long Term Support (LTS), Lifeline, Link Up, and interstate access charges to explicit competitively neutral federal universal service support mechanisms. The Commission also modified the funding methods for the existing federal universal service support mechanisms so that such support is not generated, as at present, entirely through charges imposed on long distance carriers. Instead, as the statute requires, equitable and non-discriminatory contributions will be required from all providers of interstate telecommunications service. The Commission took other steps to make federal universal service support mechanisms consistent with the development of local service competition, and established a program to provide schools and libraries with discounts on all commercially available telecommunications services, Internet access, and internal connections. The Commission also established mechanisms to provide support for telecommunications services for all public and not-for-profit health care providers located in rural areas.

4. The Commission also named the National Exchange Carrier Association (NECA) the temporary Administrator of the universal service support mechanisms on the condition that NECA agree to make changes to its governance that would render it more

[7] Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing and End User Common Line Charges, CC Docket Nos. 96-262, 94-1, 91-213, and 95-72, *Notice of Proposed Rulemaking, Third Report and Other and Notice of Inquiry*, 62 Fed. Reg. 4,670 (rel. Dec. 24, 1996) (*Access Charge Reform NPRM*); *First Report and Order*, FCC 97-158 (rel. May 16, 1997) (*Access Charge Reform Order*). *See also* Price Cap Performance Review for Local Exchange Carriers, CC Docket No. 94-1, *Fourth Report and Order*, FCC 97-159 (rel. May 21, 1997).

representative of non-incumbent local exchange carrier (LEC) interests.[8] As a condition of its appointment as temporary Administrator, the Commission subsequently directed NECA to establish the Universal Service Administrative Company (USAC), an independently functioning subsidiary corporation that will perform the billing, collection, and disbursement functions for all of the universal service support mechanisms.[9] The Commission further directed NECA to create the Schools and Libraries Corporation and Rural Health Care Corporation to perform all functions associated with administering the schools and libraries and rural health care programs, respectively, except those directly related to billing and collecting universal service contributions and disbursing support.[10]

5. On July 10, 1997, the Commission released a reconsideration order on its own motion in this proceeding.[11] Among other things, the *July 10 Order* (1) clarified certain issues relating to contracts for services to schools and libraries; (2) modified the formula for recovery of corporate operations expense from high loop cost support mechanisms; and (3) clarified issues concerning coordination between the Commission staff and the state staff of the Joint Board in CC Docket No. 96-45 in implementing the new monitoring program.

6. Sixty-one parties have filed petitions for reconsideration and/or clarification of the *Order* and the *July 10 Order*.[12] In this Fourth Order on Reconsideration, we address issues raised by petitioners that either must or should be addressed before the new universal service program begins. We will address the remaining issues in one or more subsequent reconsideration orders in this docket.

7. In this order, we clarify or make further findings regarding: (1) the rules governing the eligibility of carriers and other providers of supported services; (2) methods for determining levels of universal service support for carriers in rural, insular and high cost areas; (3) support for low-income consumers; (4) the rules governing the receipt of universal service support under the schools and libraries and rural health care programs; (5) the determinations of who must contribute to the new universal service support mechanisms; and

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[8] *Order*, 12 FCC Rcd at 9216-17.

[9] *See* Changes to the Board of Directors of the National Exchange Carrier Association, Inc. and Federal-State Board on Universal Service, CC Docket Nos. 97-21 and 96-45, FCC 97-253, *Report and Order and Second Order on Reconsideration* (rel. July 18, 1997) (*NECA Report and Order*).

[10] *NECA Report and Order* at para. 30.

[11] *See* Federal-State Joint Board on Universal Service, *Order on Reconsideration*, CC Docket No. 96-45, FCC 97-246 (rel. July 10, 1994) (*July 10 Order*).

[12] A complete list of all petitioners and other parties filing comments or reply comments appears in Appendix B hereto.

(6) administration of the support mechanisms.

II. DEFINITION OF UNIVERSAL SERVICE: SERVICES THAT ARE ELIGIBLE FOR SUPPORT

A. Local Calling Provided by Satellite Companies

1. Background

8. In the *Order*, the Commission defined the "core" or "designated" services that will be supported by universal service support mechanisms as: single-party service; voice grade access to the public switched network; Dual Tone Multifrequency signaling or its functional equivalent; access to emergency services; access to operator services; access to interexchange service; access to directory assistance; and toll limitation for qualifying low-income consumers.[13] In its discussion of the services to be supported by the universal service support mechanisms in the *Order*, the Commission concluded that some amount of local calling must be included within the supported services.[14] The Commission reasoned that in order for consumers in rural, insular, and high cost areas to realize the full benefits of affordable voice grade access, universal service should support usage of, and not merely access to, the local network.[15]

2. Pleadings

9. AMSC, which uses a satellite system to provide voice and data communications services, asks the Commission to clarify that calls to and from "fixed-site" subscribers that originate and terminate within the subscriber's local area constitute local calling.[16] AMSC explains that its satellite communications system provides voice and data communications

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[13] *Order*, 12 FCC Rcd at 8809-10.

[14] *Order*, 12 FCC Rcd at 8812-14.

[15] The Commission did not quantify in the *Order* the amount of local usage that must be provided without additional charge by carriers receiving universal service support for serving rural, insular, and high cost areas, nor did the Commission generally define "local usage." Rather, the Commission determined that it would seek comment in a further notice of proposed rulemaking on a forward-looking cost methodology concerning the amount of local usage that must be provided by eligible telecommunications carriers. *See Order*, 12 FCC Rcd at 8813. The Commission adopted and released that further notice of proposed rulemaking on July 18, 1997. *See* Federal-State Joint Board on Universal Service, Forward-Looking Mechanism for High Cost Support for Non-Rural LECs, CC Docket Nos. 96-45 and 97-160, *Further Notice of Proposed Rulemaking*, FCC 97-256 (rel. Jul. 18, 1997) (*July 18 Further Notice*).

[16] AMSC petition at 5.

services to people who live in rural and remote areas of the United States that are unserved by terrestrial technologies.[17] AMSC further explains that, along with mobile service, it provides "fixed-site" telephone service by installing a transceiver (with a standard interface and handset) at the customer's location. Outbound calls from the customer are routed through the satellite to AMSC's earth station and into the public switched telephone network (PSTN). Similarly, inbound calls to the customer are routed through AMSC's earth station to the satellite and terminate at the customer's location.[18] AMSC asserts that such calls constitute local calls and therefore should qualify as local calling. AMSC argues that a determination that calls completed via satellite do not constitute local calling "would not only be counter to the interests of rural consumers, it also would penalize AMSC for its system design, thereby conflicting with the Commission's explicit goal of technological and competitive neutrality."[19] No party commented on AMSC's petition.

3. Discussion

10. We grant AMSC's request and conclude that calls to and from a satellite company's fixed-site subscribers, for which such subscribers pay a non-distance and non-usage sensitive rate, constitute local calling for purposes of determining whether a carrier is eligible for federal universal service support. We find that, consistent with the principles of competitive and technological neutrality established in the *Order*,[20] non-landline telecommunications providers should be eligible to receive universal service support even though their local calls are completed via satellite. We conclude that any call for which a satellite company's subscribers are not charged on a distance- or usage-sensitive basis constitutes a local call. Our discussion of local calling with respect to satellite companies is not intended to prejudge any other issue pertaining to the definition of local calling with respect to the amount of local calling to be supported by universal service support mechanisms that we may adopt in our forthcoming Order. In that Order, we intend to define the amount of local calling that must be provided by eligible telecommunications carriers.[21]

B. Provision of E911 by MSS Providers

1. Background

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[17] AMSC petition at 2.

[18] AMSC petition at 2-3.

[19] AMSC petition at 5.

[20] *See Order*, 12 FCC Rcd at 8801-03.

[21] *See July 18 Further Notice* at paras. 177-181.

11. In the *Wireless E911 Decision*, released on July 26, 1996, the Commission exempted Mobile Satellite Service (MSS) from the rules requiring wireless carriers to implement 911[22] and Enhanced 911 (E911)[23] services.[24] The Commission expressed its expectation in the *Wireless E911 Decision* that MSS providers eventually would be required to provide access to emergency services, but did not adopt a schedule for implementing such a requirement.[25]

12. In the *Order*, the Commission concluded that access to emergency services, including access to 911 and E911 services, should be included in the services designated for universal service support.[26] The Commission found that E911 service is "widely recognized as essential to . . . public safety"[27] and is consistent with the public interest, convenience, and necessity.[28] The Commission concluded that all eligible telecommunications carriers in localities that have implemented E911 service[29] should be required either to provide access to E911 service or demonstrate "that exceptional circumstances" prevent them from offering access to E911 service at this time.[30] The Commission concluded that a carrier that is

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[22] 911 service is an emergency reporting system whereby a caller can dial 911 and be routed to a common answering location that will assess the nature of the emergency and dispatch the proper response teams.

[23] E911 service includes the ability to provide Automatic Numbering Information, which permits the Public Safety Answering Point to have call back capability if the call is disconnected, and Automatic Location Information, which permits emergency service providers to identify the geographic location of the calling party.

[24] Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 18676 (1996) at para 83.

[25] *Wireless E911 Decision* at para 83.

[26] *Order*, 12 FCC Rcd at 8815-17.

[27] *See* 47 U.S.C. § 254(c)(1)(A).

[28] *See* 47 U.S.C. § 254(c)(1)(D).

[29] As discussed in the *Wireless E911 Decision*, a wireless carrier's obligation to provide E911 services applies only if: (1) a locality has implemented E911 service, i.e., if a public safety answering point (PSAP) capable of receiving and utilizing the data elements associated with the E911 services has requested that the carrier provide E911 service; and (2) if a mechanism for the recovery of costs relating to the provision of such services is in place.

[30] *Order*, 12 FCC Rcd at 8827. The Commission further stated that "[a] carrier can show that exceptional circumstances exist if individualized hardship or inequity warrants a grant of additional time to comply with the general requirement that eligible carriers must provide . . . access to E911 when the locality has implemented E911 service and that a grant of additional time to comply with these requirements would better serve the public interest than strict adherence to the general requirement that an eligible telecommunications carrier must be able

otherwise eligible to receive universal service support, but is currently incapable of providing access to E911 within a locality that has implemented E911 service may petition its state commission for permission to receive universal service support for the designated period during which it is completing the network upgrades necessary for it to offer access to E911 service.[31] The Commission concluded that the period during which a carrier may receive support while completing the essential upgrades should extend only as long as the relevant state commission finds that "exceptional circumstances" exist and should not extend beyond the time that the state commission deems necessary to complete the network upgrades.[32]

2. Pleadings

13. AMSC asks the Commission to clarify that MSS providers are included among the wireless carriers that may petition their state commission for permission to receive universal service support for the designated period during which they are completing the network upgrades necessary to offer access to E911.[33] AMSC further states that, "[i]n its 1996 E911 decision, the Commission fully exempted MSS providers from the E911 requirements for the indefinite future. [citation omitted]. In addition, this exemption should be automatic for MSS providers, since the Commission has already determined that for MSS providers the burden of offering E911 is 'exceptional.'"[34] No party commented on AMSC's petition.

3. Discussion

14. In response to AMSC's petition, we clarify that MSS providers, like other wireless providers in localities that have implemented E911 service, may petition their state commission for permission to receive universal service support for the designated period during which they are completing the network upgrades required to offer access to E911. We deny AMSC's petition, however, to the extent that it requests that MSS providers in localities that have implemented E911 service be relieved of the obligation to demonstrate that "exceptional circumstances" prevent them from offering access to E911 service. We decline

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to provide these services to receive universal service support." *See Order*, 12 FCC Rcd at 8827-28.

[31] The carrier generally must provide the other core services in order to receive universal service support. Carriers that are currently unable to provide single-party service and toll limitation, however, may petition the state commission for permission to receive universal service support for the period during which they are completing the network upgrades necessary to offer these services. *See Order*, 12 FCC Rcd at 8827.

[32] *Order*, 12 FCC Rcd at 8828.

[33] AMSC petition at 6-7.

[34] AMSC petition at 6-7.

to exempt MSS providers "automatically" from the requirement to offer access to E911 service in order to be eligible for federal universal service support. We find that this determination is consistent with the *Wireless E911 Decision*, which held that MSS providers are not presently required to provide access to E911 service. To receive federal universal service support, however, MSS providers must satisfy the eligibility requirements we previously established. We rely on state commissions to ensure that providers that are not currently able to provide access to E911 service are making the network upgrades necessary to provide access to E911 service as quickly as possible.

C. Voice Grade Access to the Public Switched Network

1. Background

15. In the *Order*, the Commission included voice grade access to the PSTN within the "core" services that will be supported by the high cost program of the federal universal service support mechanisms.[35] Consistent with the Joint Board's recommendation, the Commission concluded that voice grade access should occur in the frequency range between approximately 500 Hertz and 4,000 Hertz.[36]

2. Discussion

16. We reconsider, on our own motion, the Commission's specification of a bandwidth[37] for voice grade access to the PSTN and conclude that bandwidth for voice grade access should be, at a minimum, 300 Hertz to 3,000 Hertz.[38] In the *Order*, the Commission determined that voice grade access bandwidth be approximately 500 Hertz to 4,000 Hertz. We reconsider that determination based on our recognition that the 500 Hertz to 4,000 Hertz bandwidth established in the *Order* would require eligible carriers to comply with a voice grade access standard that is more exacting than current industry standards, a result that we did not intend. We note that AT&T operating principles recommend that voice grade access bandwidth be 200 Hertz to 3,500 Hertz,[39] while Bellcore recommends a range of 200 Hertz to

[35] *Order*, 12 FCC Rcd at 8810-11.

[36] *Order*, 12 FCC Rcd at 8811-12. *See also* 47 C.F.R. § 54.101(a)(1).

[37] Bandwidth, as a measure of channel capacity for analog signals, is the range of frequencies that the channel can carry with attenuation less than some specified amount.

[38] We may revisit this definition as voice grade standards evolve.

[39] *See* AT&T, Engineering and Operations in the Bell System 194-195 (Second Edition).

3,200 or 3,400 Hertz.[40] American National Standards Institute (ANSI) defines voice grade access bandwidth as 300 Hertz to 3,000 Hertz.[41] We did not intend to impose a more onerous definition of voice grade access than those generally established under existing industry standards, and conclude that our decision here will ensure that consumers receive voice grade access at levels that are consistent with Commission rules and that are not incompatible with current industry guidelines. We do not adopt the broader voice grade access bandwidth specified in the AT&T and Bellcore operating principles. To the extent that the bandwidth recommended in the AT&T and Bellcore operating principles exceeds the bandwidth established in the ANSI definition of voice grade access, we are concerned that a substantial number of otherwise eligible carriers may be unable to qualify for universal service support if we were to require all carriers to meet this standard as a condition of eligibility. Moreover, networks utilizing loading coils may experience difficulty operating properly at bandwidths exceeding 3,400 Hertz. Carriers that meet current AT&T and Bellcore guidelines, however, will be able to satisfy our definition of voice grade access.

III. CARRIERS ELIGIBLE FOR UNIVERSAL SERVICE SUPPORT

A. Designation of Eligible Carriers

1. Background

17. Section 254(e) provides that, after the effective date of the Commission's regulations implementing section 254, "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support."[42] Section 214(e)(1) sets forth the obligations of an eligible telecommunications carrier.[43] Section 214(e)(2) states that "[a] State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission."[44]

18. In the *Order*, the Commission noted that some carriers are not subject to the

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[40] *See* Bellcore, Principles of Bellcore's Telecommunications Transmission Engineering 666, 680-681 (Third Edition).

[41] American National Standards Institute, *Interface between Carriers and Customer Installations - Analog Voicegrade Switched Access Lines with Distinctive Alerting Features* 4 (1995).

[42] 47 U.S.C. § 254(e).

[43] 47 U.S.C. § 214(e)(1).

[44] 47 U.S.C. § 214(e)(2).

jurisdiction of a state commission.[45] The Commission concluded, however, that nothing in section 214(e)(1) requires that a carrier be subject to the jurisdiction of a state commission in order to be designated an eligible telecommunications carrier.[46] Thus, the Commission stated, "tribal telephone companies, CMRS providers, and other carriers not subject to the full panoply of state regulation may still be designated as eligible telecommunications carriers."[47]

2. Pleadings

19. In their petitions, Sandwich Isles and GVNW request that, for carriers not subject to the jurisdiction of a state commission, the Commission should allow the agency with regulatory authority over the geographical area being served to make the eligible telecommunications carrier designation.[48] As it explains in its petition, Sandwich Isles is a telephone company that received a license from the State of Hawaii's Department of Hawaiian Home Lands (DHHL) in 1995 to construct a telecommunications network on Hawaiian Home Lands throughout the state of Hawaii.[49] Sandwich Isles maintains that the government agency that has regulatory authority over either the area being served or the telephone company serving that area should be permitted to make the eligibility designation in order to ensure that the designation will be made by an agency that has knowledge regarding the area to be served and the consumers that reside there.[50] Sandwich Isles further argues that, where a carrier is not subject to the jurisdiction of a state commission, the Act does not require the state commission to make the eligibility designation.[51] No party commented on these petitions.

3. Discussion

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[45] *Order*, 12 FCC Rcd at 8859.

[46] *Order*, 12 FCC Rcd at 8859.

[47] *Order*, 12 FCC Rcd at 8859.

[48] GVNW petition at 22; Sandwich Isles petition at 9-11.

[49] DHHL, according to Sandwich Isles' petition, is a state agency created by federal statute that has exclusive statutory control of, and responsibility for, the management of the Hawaiian Home Lands in Hawaii. Organized under the Hawaiian Homes Commission, DHHL was created to provide land (i.e., the Hawaiian Home Lands) to native Hawaiians. Sandwich Isles explains that, "In recognition of the special relationship that exists between the United States and the native Hawaiian people, Congress has extended to native Hawaiians the same rights and privileges accorded to . . . American Indians . . . under the Native American Programs Act of 1974." Sandwich Isles petition at 1-2, n.1.

[50] Sandwich Isles petition at 10.

[51] Sandwich Isles petition at 11.

20. We read Sandwich Isles' petition to contend that the DHHL, rather than the Hawaii Public Utilities Commission (PUC), should have authority to designate eligible telecommunications carriers on the Hawaiian Home Lands.[52] Section 153(41) defines "[s]tate commission" as "the commission, board, or official (by whatever name designated) which under the laws of any State has regulatory jurisdiction with respect to intrastate operations of carriers."[53] Based on the record before us, it is unclear whether the DHHL meets the Act's definition of "state commission." Based on further information provided by the parties, it now appears that the issue here is not whether there is a state commission with jurisdiction to designate eligible carriers, but which of the state agencies should be considered to be the "state commission" for purposes of designating Sandwich Isles.[54] Before undertaking to develop the record further and to interpret the term "state commission," we encourage Sandwich Isles and the relevant state agencies to resolve this dispute. If they are unable to do so, we encourage Sandwich Isles and the relevant state agencies to bring that fact to our attention so that we may complete action on the pending petitions.[55]

B. Eligibility Designation Date

1. Background

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[52] We note that Sandwich Isles' petition regarding its eligibility to receive universal service support for serving unserved rural areas in Hawaii will be addressed in a separate proceeding. *See* Sandwich Isles' Petition for Waiver of Section 36.611 of the Commission's Rules and Request for Clarification, AAD 97-82, (July 8, 1997).

[53] 47 U.S.C. § 153(41).

[54] Based on a recent order issued by the Hawaii PUC authorizing Sandwich Isles to provide intraLATA and intrastate telecommunications services on lands administered by the DHHL, it appears that Sandwich Isles, at least to some extent, is subject to the jurisdiction of the Hawaii PUC. *See* In the Matter of the Application of Sandwich Isles Communications Inc. for Authorization to Provide IntraLATA and Intrastate Telecommunications Services within and between Hawaiian Home Lands throughout the State of Hawaii Pursuant to Haw. Rev. State. Section 269-16.9, Docket No. 96-0026, Order No. 16078 (Nov. 14, 1997).

[55] We note that Pub. L. 105-125, 111 Stat. 2540 (approved December 1, 1997) recently added subsection (e)(6) to section 214(e) of the Act. Section 214(e)(6) provides that "[i]n the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable federal and State law." Because it appears that Sandwich Isles may be subject to the jurisdiction of at least two state agencies (i.e., the Hawaii PUC and DHHL), subsection (e)(6) does not affect our determination regarding the entity that should be responsible for designating eligible telecommunications carriers on the Hawaiian Home Lands. Although this provision does not govern the circumstances here, where the issue is which state agency has jurisdiction to designate carriers as opposed to the absence of any such agency, we think it is appropriate for the Commission to assist in resolving that issue if the parties are unable to resolve it independently.

21. Section 254(e) of the Act provides that, after the effective date of the Commission's regulations implementing section 254, "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support."[56] In the *Order*, the Commission established January 1, 1998 as the date on which the newly adopted modifications to the existing universal service support mechanisms will take effect. The Commission also established that, consistent with section 214(e)(2), state commissions will make carrier eligibility designations,[57] and that, as of January 1, 1998, only carriers designated as eligible will be eligible to receive universal service support.[58] The Commission further concluded that the Administrator of the universal service support mechanisms shall not disburse funds to a carrier until the carrier has provided to the Administrator a true and correct copy of the decision of a state commission designating that carrier as an eligible telecommunications carrier.[59] In Public Notices released August 14, 1997 and September 29, 1997, the Commission, through the Common Carrier Bureau, alerted state commissions of their obligation to designate eligible telecommunications carriers by January 1, 1998.[60] As provided in the September 29 Public Notice, states must submit to the temporary Administrator by December 31, 1997, a list of carriers designated as eligible and the service areas of such eligible non-rural carriers.

2. Pleadings

22. In its petition for reconsideration, the National Exchange Carrier Association (NECA) asks the Commission to establish specific dates by which state commissions must file their decisions designating eligible telecommunications carriers and to clarify what procedure, if any, the temporary Administrator should follow in the event that carriers that currently receive universal service support are not designated as eligible by their state commission by January 1, 1998.[61] On December 11, 1997, USTA requested that the Commission clarify that designations of eligible telecommunications carriers made by state commissions by March 31,

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[56] *See* 47 U.S.C. § 254(e).

[57] *Order*, 12 FCC Rcd at 8851-52.

[58] 47 C.F.R. § 54.201(a)(1).

[59] *Order*, 12 FCC Rcd at 8886-87.

[60] Listing of Changes Adopted in the May 8 Order that Will Take Effect January 1, 1998, *Public Notice*, DA 97-1747 (rel. Aug. 14, 1997) (*August 14 Public Notice*); Common Carrier Bureau Announces Procedures for States Regarding Lifeline Consents, Adoption of Intrastate Discount Matrix for Schools and Libraries, and Designation of Eligible Telecommunications Carriers, *Public Notice*, DA 97-1892 (rel. September 29, 1997) (*September 29 Public Notice*).

[61] NECA petition at 2-3.

1998, may be treated as retroactive to January 1, 1998.[62]

3. Discussion

23. In light of section 254's directive that only carriers designated as eligible pursuant to section 214(e) shall be eligible to receive universal service support, we affirm our previous conclusion that, as of January 1, 1998, the temporary Administrator may not disburse support to carriers that have not been designated as eligible under section 214(e). Thus, if a carrier has not been designated as eligible by January 1, 1998, it may not receive support until such time as it is designated an eligible telecommunications carrier. This applies to all carriers, including those that currently receive universal service support under the existing support mechanisms. We agree with USTA, however, that a state commission that is unable to designate as an eligible telecommunications carrier, by January 1, 1998, a carrier that sought such designation before January 1, 1998, should be permitted, once it has designated such carrier, to file with the Commission a petition for waiver requesting that the carrier receive universal service support retroactive to January 1, 1998.[63] A state commission filing such a petition must explain why it did not designate such carrier as eligible by January 1, 1998 and provide a justification for why providing support retroactive to January 1, 1998 serves the public interest. We encourage relevant carriers to file information demonstrating that they took reasonable steps to be designated as eligible telecommunications carriers by January 1, 1998. We find that it is in the public interest to permit telecommunications carriers that were eligible to receive universal service support on January 1, 1998, but that were not designated as eligible by their state commission by that date, to be permitted to seek retroactive support. Allowing retroactive support will permit consumers served by those carriers to benefit from the support to which those carriers would have been entitled, but for circumstances that prevented the state commission from designating the carriers as eligible for receipt of universal service support prior to January 1, 1998.

24. In light of our conclusion above, we dismiss as moot the portion of USTA's petition requesting that carriers designated as eligible telecommunications carriers by March 31, 1998, be automatically entitled to receive support retroactive to January 1, 1998. Regarding NECA's concern that the *Order* does not specify a date by which state commissions must make their eligible carrier determinations, we note that the Bureau's

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[62] USTA Petition for Clarification, CC Docket No. 96-45, filed Dec. 11, 1997 (USTA informal comments).

[63] The deadline for filing petitions for reconsideration in a notice and comment rulemaking proceeding are prescribed in section 405 of the Communications Act of 1934, as amended. *See* 47 U.S.C. § 405(a). The Commission lacks discretion to waive this statutory requirement. *See Virgin Islands Telephone Corp. v. FCC*, 989 F.2d 1231, 1237 (D.C. Cir. 1993); *Reuters Ltd. v. FCC*, 781 F.2d 946, 951-52 (D.C.Cir. 1986). The filing deadline for petitions for reconsideration of the *Order* was July 17, 1997. Therefore, to the extent that USTA's petition, filed December 11, 1997, seeks reconsideration of the *Order*, we will treat it as an informal comment.

August 14 and September 29 Public Notices notified state commissions to submit their eligible carrier designations to the temporary Administrator no later than December 31, 1997.

IV. HIGH COST SUPPORT

A. Indexed Cap on High Cost Loop Fund

1. Background

25. The Act mandates that universal service support be explicit[64] and requires that such support be recovered on an equitable and non-discriminatory basis from all providers of interstate telecommunications services.[65] Consistent with this mandate, the Commission adopted a plan for establishing a system of universal service support for rural, insular, and high cost areas that will replace current implicit federal subsidies with explicit support based on the forward-looking economic cost of providing supported services beginning January 1, 1999.[66] Recognizing the unique circumstances facing rural carriers, the Commission concluded that rural carriers should be permitted to shift gradually to a support mechanism based on forward looking economic cost.[67] The starting date for the transition will be

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[64] 47 U.S.C. § 254(e).

[65] 47 U.S.C. § 254(d).

[66] *Order*, 12 FCC Rcd at 8888-89. For non-rural carriers receiving high cost support, the Commission will calculate support based on an estimate of the forward-looking economic costs of providing supported services in those areas. By August 1998, the Commission will select a federal mechanism for estimating these costs. *Order*, 12 FCC Rcd at 8909-10. The Commission has established a multi-step approach to refining and selecting a federal mechanism. Federal-State Joint Board on Universal Service, Forward-Looking Mechanism for High Cost Support for Non-Rural LECs, CC Docket Nos. 96-45 and 97-160, Further Notice of Proposed Rulemaking, FCC 97-256 (rel. Jul. 18, 1997) (*July 18 Further Notice*). The Common Carrier Bureau has released two public notices providing guidance to proponents of cost models on issues raised in the *July 18 Further Notice*. Guidance to Proponents of Cost Models in Universal Service Proceedings: Switching, Interoffice Trunking, Signaling, and Local Tandem Investment, *Public Notice*, DA 97-1912 (rel. Sept. 3, 1997); Guidance to Proponents of Cost Models in Universal Service Proceedings: Customer Location and Outside Plant, *Public Notice*, DA 97-2372 (rel. Nov. 13, 1997). *See infra* for the distinction between rural and non-rural carriers.

[67] *Order*, 12 FCC Rcd at 8889, 8934. Hereinafter we refer to rural carriers as those carriers meeting the definition of a "rural telephone company" in section 3(37). 47 U.S.C. § 153(37). Non-rural carriers are those carriers not meeting this definition. We note that, because a carrier may satisfy the definition of a "rural telephone company" if it provides service to fewer than 50,000 access lines, a carrier meeting this definition does not necessarily serve a geographic area that could be characterized as "rural." Section 3(37) provides that:

> The term "rural telephone company" means a local exchange carrier operating entity to the extent that such entity --
>
> (A) provides common carrier service to any local exchange carrier study area that does not

determined after further review. The Commission directed, however, that in no event would rural carriers transition to a forward looking economic cost mechanism before January 1, 2001.[68]

26. Until an eligible rural or non-rural carrier begins to receive support based upon forward-looking economic cost, the Commission concluded that the carrier will receive support during this transition period based upon the existing support system, with certain modifications.[69] Thus, the *Order* provided that, starting on January 1, 1998, rural carriers will receive support under the existing high cost loop fund,[70] DEM weighting program,[71] and Long

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include either --

(i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or

(ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;

(B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(D) has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996.

[68] *Order*, 12 FCC Rcd at 8889, 8934.

[69] *Order*, 12 FCC Rcd at 8938-39.

[70] The high cost loop fund has operated through the Commission's jurisdictional separations rules, 47 C.F.R. Part 36, to provide assistance to incumbent LECs with higher-than-average local loop costs. The Commission's separations rules currently assign 25 percent of incumbent LECs' loop costs to the interstate jurisdiction. Incumbent LECs with local loop costs exceeding 115 percent of the national average for such costs, however, may allocate additional amounts (generally, 10 percent to 75 percent of the amounts by which such costs exceed the 115 percent threshold) of their local loop costs to the interstate jurisdiction. Prior to the effective date of the rules adopted in the *Order* and *Access Charge Reform Order*, carriers recovered costs assigned to their interstate operations through the interstate access charge structure. For a further discussion of cost recovery methods under the high cost loop fund, see *infra* this section.

[71] "Dial equipment minutes (DEM) of use" is a measure of the holding time of local dial switching equipment for both originating and terminating traffic. 47 C.F.R. Part 36. Prior to the effective date of the universal service rules adopted in the *Order*, DEM weighting assistance was an implicit subsidy recovered through switched access rates charged to interexchange carriers by incumbent LECs serving fewer than 50,000 subscriber lines. *Order*, 12 FCC Rcd at 8892-93. This program has enabled small incumbent LECs to assign a greater proportion of their local switching costs to the interstate jurisdiction than they otherwise would allocate. *Id.* DEM weighting applies independent of, and is unrelated to, the high cost loop fund.

Term Support (LTS) program,[72] as
modified in the *Order*.[73] The *Order* provided that non-rural LECs will be eligible, starting on January 1, 1998, to receive support under the modified high cost loop fund and LTS program until January 1, 1999, when these carriers will begin to receive universal service support based on a forward-looking economic cost methodology.[74] Pursuant to the mandate of section 254 that universal service support be explicit and that support be recovered on an equitable and non-discriminatory basis from all providers of interstate telecommunications services, the Commission required that high cost loop support, DEM weighting assistance, and LTS be removed from interstate access charges and recovered from the new universal service support system.[75]

27. Consistent with its decision to continue using the existing universal service support system, with only minor modifications, until a forward-looking economic cost mechanism becomes effective, the Commission elected to retain the indexed cap on the existing high cost loop fund until all carriers receive support based on forward-looking economic cost.[76] The indexed cap, originally adopted in 1993, limits the maximum annual

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[72] The LTS program supports carriers with above-average loop costs by providing carriers that are members of the NECA common line pool with enough support to enable them to charge a nationwide average carrier common line (CCL) interstate access rate. *Order*, 12 FCC Rcd at 8893. The CCL interstate access rate, also known as the CCL charge, is a per-minute charge that incumbent LECs assess on IXCs. Currently, the LTS program is funded by incumbent LECs that have withdrawn from the NECA common line pool. Such non-pooling incumbent LECs recover the LTS payments they make through their CCL charge to interexchange carriers (IXCs). *Id.*

[73] *Order*, 12 FCC Rcd at 8938-39.

[74] *Order*, 12 FCC Rcd at 8927.

[75] *Order*, 12 FCC Rcd at 8939-42. Prior to the effective date of the rule changes adopted in the Commission's *Order* and *Access Charge Reform Order*, carriers recovered the first 25 percent of their loop costs assigned to their interstate operations through subscriber line charges (SLCs) and CCL charges. The SLC is a flat, monthly charge that incumbent LECs assess directly on end users of telecommunications services. As noted above, the CCL charge is a per-minute charge that incumbent LECs assess on IXCs. Both SLCs and CCL charges are part of the Commission's interstate access charge structure. In the *Access Charge Reform Order*, the Commission reformed the interstate access charge structure by adopting rules that will permit price cap LECs to shift gradually from a cost-recovery mechanism that recovers a significant portion of non-traffic sensitive loop costs through traffic sensitive, per-minute CCL charges to one that recovers these costs through non-traffic sensitive, flat-rated charges. *Access Charge Reform Order* at para. 91. The new cost-recovery mechanism retains the current $3.50 ceiling on the SLC for primary residential and single-line business lines and increases the SLC ceiling on other lines to permit LECs to recover a greater amount of the loop costs assigned to the interstate jurisdiction through flat-rated charges assessed on the end user. To the extent that SLC ceilings prevent price cap LECs from recovering their allowed common line revenues from end users, LECs will recover the shortfall, subject to a maximum charge, through a presubscribed interexchange carrier charge (PICC), a flat, per-line charge assessed on the end-user's presubscribed IXC. *Access Charge Reform Order* at para. 91.

[76] *Order*, 12 FCC Rcd at 8929-30.

growth in the total amount of support available from the high cost loop fund to the previous year's support amount, increased by an index factor that is equal to the rate of growth in the total number of working loops nationwide for the preceding calendar year.[77] While maintaining the cap as currently calculated, the Commission also established a method for recalculating the cap after January 1, 1999, the date on which non-rural carriers will begin to receive support for high cost loops based on forward-looking costs.[78] Because only rural carriers will continue to receive support under the modified existing system of support after January 1, 1999, the cap will be based, after that date, on the costs of rural carriers, adjusted annually by the average growth in lines of rural carriers during the previous year.[79]

28. The Commission originally adopted the cap because it determined that it would limit fund growth and moderate annual fluctuations in the size of the fund.[80] In the *Order*, the Commission decided to continue using the indexed cap because it would prevent excessive growth in the existing high cost loop fund during the period preceding implementation of a forward-looking support mechanism.[81] The Commission also concluded that rapid growth in high cost loop support could make the change to a forward-looking support mechanism more difficult for rural carriers if the new system provided significantly different levels of support.[82]

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[77] *See* 47 C.F.R. § 36.601(c). The Commission first adopted an indexed cap on the high cost loop fund in 1993 for a two year period, beginning January 1, 1994, based on the Commission's concern about wide fluctuations in the rate of annual growth of the high cost loop fund. *See* Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, *Report and Order*, CC Docket 80-286, 9 FCC Rcd 303 (1993). The cap subsequently was extended for six months, until July 1, 1996. *See* Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, *Report and Order*, CC Docket 80-286, 11 FCC Rcd 2538 (1996). On June 6, 1996, the Commission adopted the Joint Board's recommendation to extend the interim cap limiting growth in the existing high cost loop fund until the effective date of the rules the Commission adopted pursuant to section 254 of the Act and the Joint Board's recommendation. *See* Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report and Order*, 11 FCC Rcd 7920 (1996).

[78] *Order*, 12 FCC Rcd at 8940.

[79] *Id. See also* 47 C.F.R. §§ 36.601(c), 36.622(c) and (d).

[80] *See* Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, *Report and Order*, CC Docket 80-286, 9 FCC Rcd 303, 305 (1993). Prior to adoption of the indexed cap, the high cost loop fund had grown by approximately 60 percent in eight years, with annual rates of growth ranging from one percent to more than 19 percent. At that time, the Commission had proposed adopting a new high cost assistance program, and it anticipated that the cap would ease carriers' transition to the planned high cost assistance program. *Id.* at 305-06.

[81] *Order*, 12 FCC Rcd at 8930, 8940.

[82] *Order*, 12 FCC Rcd at 8940. By moderating potentially erratic growth in the high cost loop fund, the Commission found that continued use of the indexed cap should ease carriers' transition to a forward-looking economic cost mechanism, under which annual support amounts will become more predictable. *See id.*

Based on its experience with the indexed cap on the existing high cost loop fund, the Commission found, in the *Order*, that the cap "effectively limits overall growth of the fund, while protecting individual carriers from experiencing extreme reductions in support."[83]

2. Pleadings

29. Several petitioners challenge the Commission's continued imposition of a cap on the existing high cost loop fund on the basis that the cap violates the Act's requirement that universal service support be "sufficient."[84] Western Alliance claims that continuation of the indexed cap after the effective dates of sections 254(b)(5) and 254(e) of the Act is unlawful. Because there was no statutory requirement that universal service support be "sufficient" when the indexed cap was originally adopted, Western Alliance asserts that the cap is an "arbitrary reduction" of an eligible carrier's universal service support below the amount of support deemed "sufficient" under the Commission's rules.[85] RTC asserts that the Act's requirement of "sufficient" support does not justify continued application of the cap during the interim period while the Commission is developing a forward-looking economic cost mechanism. RTC claims that carriers should not be subject to the cap on the "mere assumption" that the Commission's efforts will lead to a forward-looking cost mechanism that "reduces support but still complies with the statute's 'sufficient' and 'predictable' requirement."[86]

30. In objecting to continuation of the indexed cap on high cost loop support, several petitioners argue that the indexed cap on the existing high cost loop fund also will operate to cap LTS and DEM weighting support levels.[87] Western Alliance claims that if the cap is not recalculated as of January 1, 1998, existing LTS and DEM weighting support for rural carriers will be "virtually eliminated by the indexed USF cap."[88] Petitioners opposing continuation of the indexed cap on high cost loop support urge the Commission to repeal the cap or, at a minimum, to adjust the cap to account for increases in LTS and DEM weighting support and to account for the addition of new rural carriers and new service areas not

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[83] *Order*, 12 FCC Rcd at 8930, 8940.

[84] Alaska Telephone petition at 3; RTC petition at 18-20; Western Alliance petition at 11-12; USTA petition at 16-18 (also arguing cap is contrary to Act's principle that the fund be "predictable").

[85] Western Alliance petition at 18-19.

[86] RTC petition at 19.

[87] Alaska Telephone petition at 3; RTC petition at 18-20; Western Alliance petition at 11-12; USTA petition at 16-17.

[88] Western Alliance petition at 12.

counted the previous year.[89]

31. Several petitioners also claim that continued imposition of the cap is an arbitrary decision insofar as the cap will not accommodate certain legitimate cost increases for some carriers.[90] RTC charges that the cap excludes legitimate cost increases associated with new high cost loops and fails to reflect the addition of new eligible LECs, such as those in Guam.[91] Alaska Telephone asserts that the indexed cap "assumes that loop growth and changes in cost characteristics will be uniform throughout the whole country" and fails to take into account regional diversity, differing growth rates, disparate cost-of-living indexes, and the occurrence of natural disasters.[92] Western Alliance claims that increases in costs due to infrastructure upgrades and natural disasters for some carriers will reduce the proportion of support recovered by all eligible carriers.[93] RTC contends that the Commission's claim that the cap will prevent excessive growth in the size of the fund is "speculation" because the Commission fails to define "excessive growth" and ignores the cap's impact on quality of service.[94]

32. In their oppositions to these petitions, several parties support continuation of the indexed cap on the existing high cost loop fund.[95] AT&T maintains that the indexed cap applies only to the high cost loop component of universal service support and that LTS and DEM weighting support will be permitted to grow based on other provisions in the Commission's Part 54 rules. AT&T disputes RTC's suggestion that the cap is arbitrary and argues that the Commission's decision to continue the indexed cap is a prudent means of preventing excessive growth in the size of the fund.[96] AT&T claims that the successful operation of the cap is shown by the apparent absence of waiver requests that have been filed with the Commission seeking relief from harm allegedly caused by the cap, despite the fact

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[89] RTC petition at 19-20; USTA petition at 16-17.

[90] Alaska Telephone petition at 3; RTC petition at 18-19; Western Alliance petition at 11-12.

[91] RTC petition at 18, 20 (urging that the cap be recalculated to accommodate new high cost loops and new eligible carriers); *cf.* USTA petition at 17 (noting that the cap will need to be adjusted every year to include new recipients, but complaining that this "volatility will make the fund unpredictable, contrary to the principles of the Act.").

[92] Alaska Telephone petition at 3.

[93] Western Alliance at 11.

[94] RTC petition at 18-19.

[95] AT&T opposition at 12; Bell Atlantic opposition at 6; Airtouch opposition at 22.

[96] AT&T opposition at 12.

that carriers experiencing significant adverse impacts were encouraged to submit waiver requests.[97] AT&T notes that the waiver process remains open to any party that is significantly harmed by the cap.[98] Bell Atlantic asserts that petitioners have not demonstrated harm to any ratepayer due to the operation of the indexed cap and that petitioners merely posit hypothetical scenarios under which costs could rise sharply.[99] Bell Atlantic therefore argues that there is no justification for removing the cap for all carriers, but suggests that unforeseen circumstances may warrant revisiting the cap for a carrier or group of carriers that can demonstrate actual harm.[100]

33. In reply, RTC claims that supporters of continuation of the cap did not refute arguments that extending the cap is unlawful and contrary to the public interest.[101] USTA agrees with RTC that the Commission should require the cap to be recalculated each year to ensure that the loop count includes all local service providers. USTA agrees with AT&T that the cap applies only to the high cost loop component of universal service support, and asks the Commission to clarify that the cap does not apply to LTS and DEM weighting support.[102]

3. Discussion

34. We affirm the Commission's decision to retain the indexed cap on high cost loop support until all carriers receive support based on a forward-looking economic cost mechanism. For the reasons set forth below, we also reject petitioners' requests that we provide further adjustments to the cap beyond the adjustments that are required to occur, beginning on January 1, 1999, under our current rules.[103] As an initial matter, we are not persuaded by arguments that continuation of the indexed cap on high cost loop support will result in support that is not "sufficient." Much of petitioners' concern about the sufficiency of the modified existing system of universal service support appears to be based on their misapprehension that the indexed cap will operate after January 1, 1998 not merely to limit the growth of the high cost loop fund, but also to limit the growth of the modified DEM weighting and LTS programs. In light of this apparent confusion, we clarify here that the

[97] AT&T opposition at 13 n.13.

[98] AT&T opposition at 13 n.13.

[99] Bell Atlantic opposition at 7-8.

[100] *Id.*

[101] RTC reply at 4-5.

[102] USTA reply at 6.

[103] 47 C.F.R. § 36.601(c).

indexed cap on the high cost loop fund will not operate to cap support under the modified DEM weighting or LTS programs. Rather, local switching support and LTS will be calculated and permitted to increase based on the formulas provided in sections 54.301 and 54.303, respectively.[104]

35. Section 36.601(c) of our rules sets forth the method for calculating the indexed cap and clearly provides that this limitation applies only to loop-related costs, not local switching support or long term support.[105] In addition, section 36.601(a) states that:

> [t]he term Universal Service Fund in subpart F refers only to the support for *loop-related costs* included in § 36.621. The term Universal Service in Part 54 refers to the comprehensive discussion of the Commission's rules implementing section 254 of the Communications Act of 1934, as amended . . . ."[106]

This clarification should alleviate any concern that the cap may result in insufficient support to the extent that these concerns are based on the erroneous premise that the indexed cap's limitation on growth of the high cost loop fund will limit the growth of the modified support programs adopted pursuant to Part 54 of our rules.

36. Petitioners have presented no new evidence that would lead us to depart from the Commission's earlier finding that the indexed cap on the high cost loop fund is a reasonable means of limiting the overall growth of the fund. We are not convinced that, simply because the cap was adopted prior to the imposition of a "sufficiency" requirement, the application of a cap necessarily fails to provide sufficient support. To the contrary, we agree with AT&T that the fact that no waiver requests have been filed by incumbent LECs during the more than three years that the indexed cap has been in effect suggests that the cap does not prevent carriers from receiving sufficient support. Moreover, parties have failed to present evidence, beyond mere generalizations, that the cap will result in insufficient support in the future. Absent specific evidence that the cap as modified in response to implementation of section 254 will likely result in insufficient support, which petitioners have not offered, we conclude that the cap is consistent with our obligation to ensure that support is sufficient.

37. We also are not persuaded by petitioners' arguments that the indexed cap on

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[104] 47 C.F.R. §§ 54.301, 54.303.

[105] 47 C.F.R. § 36.601(c) ("Limitations imposed by this subsection shall apply only to amounts calculated pursuant to this subpart F.").

[106] 47 C.F.R. § 36.601(a) (emphasis added).

the high cost loop fund should be eliminated or recalculated. Contrary to RTC's assertion that the indexed cap does not take account of cost increases due to the addition of new high cost loops or new eligible carriers, we note that our rules provide for annual adjustments that will reflect such growth. Specifically, section 36.601(c) provides:

> Beginning January 1, 1999, the total loop cost expense adjustment shall not exceed the total amount of the loop cost expense adjustment provided to rural carriers for the immediately preceding calendar year, *adjusted to reflect the rate of change in the total number of working loops of rural carriers* during the [preceding] calendar year . . . .[107]

Thus, both new high cost loops that eligible rural carriers add during the previous calendar year as well as high cost loops of newly eligible carriers that did not qualify as rural carriers in the previous calendar year will be factored into the calculation of the rate of change in the total number of working loops of rural carriers, pursuant to section 36.601(c). Accordingly, we find no basis for making additional adjustments to the indexed cap, beyond those already required by section 36.601(c).

38. We are similarly unpersuaded by Alaska Telephone and Western Alliance that the indexed cap on the high cost loop fund is unlawful because it fails to account for differences among carriers due to differing regional growth rates, infrastructure upgrade schedules, repair of disaster damage, or other circumstances that may be unique to particular carriers. We agree with Bell Atlantic that petitioners' claims of harm by operation of the cap under the new system of support are speculative. As noted by AT&T, a waiver process has been and remains available to carriers that may experience a significant adverse impact by operation of the cap.[108] We note again that the fact that no carrier has applied for relief under the Commission's waiver process or otherwise sought relief from the cap since it was first implemented in 1994 suggests that carriers have not experienced undue hardship because of the cap.[109]

39. We therefore affirm the Commission's previous finding that the cap is a reasonable means of limiting the overall growth of the high cost loop fund, and thus

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[107] 47 C.F.R. § 36.601(c) (emphasis added).

[108] 47 C.F.R. § 1.3; *see also* Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, *Report and Order,* CC Docket 80-286, 9 FCC Rcd 303, 305 (1993) ("[I]f circumstances change, the Joint Board encouraged recipients who would experience a significant adverse impact per loop per month [because of the indexed cap] to submit waiver requests, and we support that means of addressing any unforeseeable problems that may occur during the interim period [that the indexed cap is in effect]").

[109] 47 C.F.R. § 1.3.