

In the *Universal Service Order*¹ (§ 302), the Commission continued to prescribe a cap on the growth of the universal service fund ("USF") used to support high-cost loops until rural carriers calculate their support using forward-looking economic cost ("FLEC"). It stated that this "overall cap will prevent excessive growth in the size of the fund during the period preceding the implementation of a forward-looking support mechanism." The Commission further concluded that such a cap "will encourage carriers to operate more efficiently by limiting the amount of support they receive" and that "excessive growth in high loop cost support would make the change to forward-looking support mechanisms more difficult for rural carriers if those support mechanisms provide significantly different levels of support." Based on its "experience with the indexed cap on the current high cost support mechanisms," the Commission concluded that "the indexed cap effectively limits the overall growth of the fund, while protecting individual carriers from experiencing extreme reductions in support." *Id.*

On petitions for review of the *Universal Service Order*, various parties challenged the overall cap which limits the total available support to the previous year's level, adjusted for growth in the number of working loops. The Fifth Circuit, however, affirmed the reasonableness of the overall cap, stating that the "cap's track record, however, reflects a reasonable balance between the Commission's mandate to ensure sufficient support for universal service and the need to combat wasteful spending. The agency's broad discretion to provide sufficient universal service funding includes the decision to impose cost controls

¹ Federal-State Joint Board on Universal Service Reform, CC Docket No. 96-45, Report and Order, FCC 97-157, released May 8, 1997 ("Universal Service Order").

to avoid excessive expenditures that will detract from universal service." *Alenco Communications Inc. v. FCC*, No. 98-60213, 2000 WL 60255, slip op. at 7 (5th Cir. Jan 25, 2000).

Given that the Commission is scheduled to reexamine the basis of high-cost support for rural carriers after January 1, 2001, it would certainly be unwise to eliminate the overall cap and let costs burgeon now. This is all the more true because even once the Commission implements high-cost support for rural carriers based on efficient forward-looking economic cost, it will no doubt provide (as it did for non-rural carriers) a transitional hold-harmless provision under which rural carriers would receive the greater of either their pre-existing universal service support amount or the support to which they would be entitled under the new forward-looking cost-based mechanism.² As the Commission emphasized, the interim hold-harmless provision is a *transitional* measure that is intended to protect consumers in high-cost areas from potential rate shock during the shift to the forward-looking mechanism. The overall cap on the growth of the high-cost loop component of the USF will also help prevent rate shock upon conversion to a forward-looking cost-based system for rural carriers. Accordingly, it would be

² In the *Methodology Order*, the Commission established an interim hold-harmless provision under which non-rural carriers would receive the greater of either their pre-existing universal service support amount or the support to which they would be entitled under the new forward-looking cost-based mechanism. Federal-State Joint Board on Universal Service Reform, CC Docket No. 96-45, Ninth Report & Order and Eighteenth Order on Reconsideration, FCC 99-306, ¶¶ 78-88, released November 2, 1999 ("Methodology Order").

entirely inappropriate to eliminate the overall cap on the size of high-cost loop support fund at this time.

CONCLUSION

For the reasons stated above, the Commission should not eliminate the overall cap on the USF available for high-cost loop support.

Respectfully submitted,

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March 6, 2000

CERTIFICATE OF SERVICE

I, Laura V. Nigro, do hereby certify that on this 6th day of March, 2000, a copy of the foregoing "AT&T Reply Comments on High-Cost Loop Support Cap" was served by U.S. first class mail, postage prepaid, on the parties named on the attached Service List.

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