

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

FCC-00J-3

**COMMENTS ON THE RURAL TASK FORCE RECOMMENDATION  
BY THE PEOPLE OF THE STATE OF CALIFORNIA  
AND THE CALIFORNIA PUBLIC UTILITIES COMMISSION**

The People of the State of California and the California Public Utilities Commission (California) hereby file these comments in response to the Public Notice, released on October 4, 2000 by the Federal Communications Commission (FCC), seeking comment on the final recommendation of the Rural Task Force (RTF) to provide universal service support in areas served by rural carriers.<sup>1</sup> The recommendation is the result of the Federal-State Joint Board's charge to the RTF to consider appropriate funding mechanisms for rural carriers consistent with the universal service and pro-competitive policies of the Telecommunications Act of 1996. The RTF rejects the adoption of a forward-looking cost model for determining universal service support in

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<sup>1</sup> The RTF was created by the Joint Board to develop a recommendation for the establishment of a forward-looking economic cost mechanism for rural telephone carriers. The RTF's recommendation, submitted September 29, 2000 to the Joint Board, represents the consensus of individual Task Force members, and not necessarily the positions of organizations or companies to which the Task Force members belong. RTF Recommendation at 3 n. 3.

areas served by rural carriers, and instead recommends the adoption of a modified embedded cost model that would increase the size of the current universal service fund of \$1.553 billion by another \$118.5 million. Taking into account annual inflation, line growth and other adjustments, the rural universal service fund would continue to expand in subsequent years. In addition, the RTF proposes universal service funding to support investments necessary for providing access to advanced services. For the reasons discussed below, California opposes the recommendation of the RTF.

In previous comments, California indicated that a methodology for funding universal service to high cost areas, both rural and nonrural, served by nonrural carriers should include the following principles: (1) it should use forward-looking costs to determine universal service support; (2) it should narrowly target areas of actual need; (3) it should produce a federal fund that is modestly sized; (4) and it should minimize the burden on those states that are net contributors to the fund.<sup>2</sup> These principles are consistent with the policies underlying the Telecommunications Act of 1996 (1996 Act), and apply with equal force to a methodology for funding universal service to high cost areas served by rural carriers.

For at least four reasons, the RTF's recommendation to maintain a funding mechanism for rural carriers that relies on embedded costs and broadens the scope of federal universal service support thwarts these fundamental principles. First, the RTF fails to adequately explain why a forward-looking cost methodology is appropriate for

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<sup>2</sup> Comments of California on Joint Board Second Recommended Decision, CC Docket No. 96-45, DA 98-2410 (December 23, 1998).

nonrural carriers serving high cost areas that are rural but inappropriate for rural carriers serving the same types of areas. Absent any evidence that conditions in rural areas served by rural carriers differ markedly from conditions in rural areas served by nonrural carriers, there is no basis for rejecting outright a forward-looking cost methodology. Indeed, it does not appear that the RTF ever considered possible modifications to the FCC's Synthesis Model or the use of another forward-looking cost model, coupled with a hold-harmless provision and a phased transition to such a model for universal service support. At a minimum, these alternatives should be considered before a decision is made to abandon forward-looking cost-based support mechanisms altogether.

Second, RTF's proposal to inflate the current rural universal service fund, based on "modified" embedded costs with no apparent cap, lacks a reasoned basis. Initially, the RTF would expand the overall size of federal universal service funding to rural carriers by another \$118.5 million.<sup>3</sup> This fund would then be increased annually to take into account line growth and inflation. On top of this, a "safety net additive" would be calculated for each study area where growth in telecommunications plant is greater than 14 percent annually to compensate rural carriers for a portion of that investment.<sup>4</sup> Another ill-defined "safety valve mechanism" may provide additional support "capped at some appropriate level" to rural carriers which acquire other carriers' exchanges lines through a sale or merger and make additional investments in those exchanges.<sup>5</sup>

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<sup>3</sup> RTF Recommendation at 4.

<sup>4</sup> RTF Recommendation at 27.

<sup>5</sup> RTF Recommendation at 30.

Incumbent local exchange carriers would also be able to recover costs for catastrophic events.<sup>6</sup>

In all of these respects, RTF's proposal is arbitrary and inconsistent with Section 254 of the 1996 Act. RTF initially makes no effort to establish that current support levels are insufficient to justify its recommendation for increased support. Nor does RTF provide any evidence to suggest the need for "safety net" provisions, or that such provisions are at all consistent with the definition and purpose of universal service under Section 254(c) and (e) of the 1996 Act. To be sure, both of the proposed "safety net" provisions could stimulate excessive and/or inefficient investment by rural carriers to maximize their universal service receipts and thereby unduly burden net contributors to the federal universal service fund. Similarly, RTF fails to explain how the use of federal universal service funds, as opposed to other ratemaking mechanisms, for the recovery of costs of catastrophic events is consistent with Section 254. In short, RTF's proposal would size the rural universal service fund at an arbitrary level with no rational basis for its expanded scope.<sup>7</sup>

Third, at the same time that the RTF seeks to inflate federal universal service funding for rural carriers, it makes no attempt to show which study areas will be funded, whether such funding is narrowly targeted to study areas of actual need, or whether such funding is necessary to ensure reasonably comparable rates among the states. 47 U.S.C.

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<sup>6</sup> RTF Recommendation at 26.

<sup>7</sup> In addition, the RTF's suggestion that the rural fund can be assessed on the broadest possible funding base (i.e., assess both interstate and intrastate revenues) is directly in conflict with the Fifth Circuit's decision in Texas Office of Public Utility Counsel v. FCC, 183 F.3d 393 (5<sup>th</sup> Cir. 1999), and must be rejected. RTF Recommendation at 8, n.12.

§ 254(b)(3). Without this fundamental showing, no determination can be made whether the proposed funding mechanism is at all consistent with the policy to preserve and advance universal service under Section 254 of the 1996 Act.

Fourth, the RTF provides no basis for funding investments to provide access to “advanced services” at this time.<sup>8</sup> Once again, the RTF has not made the evidentiary showing justifying the need for federal universal service funding. At a minimum, the Joint Board should determine whether customers in rural areas in fact lack access to the Internet, and if so, whether the lack of access is due to the absence of quality facilities allowing such access, or to other factors, such as location of Internet Service Providers (ISPs) outside the local calling area (local v. toll charges to access ISPs). Until these basic determinations are made, it is premature to assume that universal service funding is necessary to support investments to enable access to advanced services, or to assume that any particular level of support is sufficient.<sup>2</sup>

In sum, the RTF’s wholesale rejection of a forward-looking cost model for funding universal service for rural carriers in favor of an uncapped embedded cost-based mechanism, with ill-defined modifications, is ill-conceived. Not only is RTF’s proposal

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<sup>8</sup> Currently, investments to provide access to advanced services are not recoverable from a federal universal service fund.

<sup>2</sup> Indeed, in a press release accompanying the issuance by the United States Department of Commerce of the report, *Falling Through the Net: Toward Digital Inclusion*, Gregory L. Rohde, assistant secretary and NTIA administrator said: “I am pleased to report that the geographical aspect of what had been a digital divide has virtually disappeared ... Rural areas, once left behind, are catching up quickly with other parts of the country and have surpassed some of the central cities in their Internet use.” Press Release, U.S. Dept. of Commerce, October 16, 2000.

inconsistent with the principles of the 1996 Act, but RTF has not provided the empirical evidence necessary to support its proposal nor otherwise demonstrated how universal service would be impacted in each study area or individual state. California therefore urges the Joint Board to reject the RTF recommendation.

Respectfully submitted,

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By: /s/ ELLEN S. LEVINE

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November 2, 2000

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day caused the foregoing document to be served upon all known parties of record by mailing, by first-class mail, postage prepaid, a copy thereof properly addressed to each party.

Dated at San Francisco, California, this 2nd day of November, 2000.

/s/ ELLEN S. LEVINE

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Ellen S. LeVine