

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
)	Pursuant to Public Notice
)	FCC 00J-3
Rural Task Force Recommendation to)	
The Federal-State Joint Board)	
)	
_____)	

REPLY COMMENTS OF THE AD HOC
TELECOMMUNICATIONS USERS COMMITTEE

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SUMMARY

The Ad Hoc Telecommunications User Committee advocates a universal service support mechanism for rural and non-rural carriers alike that is explicit, targeted, competitively neutral, and properly sized to support universal service and nothing more. The emergence of competition in rural and high cost areas, as encouraged by the Telecommunications Act of 1996, requires a universal service support mechanism that does not handicap the competitive race by reimbursing incumbent rural carriers for their inefficient investments.

Neither the Rural Task Force nor parties supporting it have made a persuasive showing that the Commission should depart from its earlier decisions in the universal service arena. Moreover, the recommendations of the Rural Task Force would distinguish rural carriers from non-rural carriers and reward the incumbent rural carriers for their inefficient past investment decisions while inflating the universal service fund to unprecedented (and unconstrained) levels.

In its endorsement of an embedded cost model to size the rural carriers' universal service support, the Rural Task Force is encouraging economic inefficiencies and creating barriers to competition – two results that a forward-looking cost model would avoid. A forward-looking cost model ensures that support for rural carriers accurately reflects the true cost of providing universal service, thereby encouraging competition in rural areas and promoting efficiency in the provision of universal service. In addition, the use of a forward-looking cost model is consistent with the objectives of the Act and the FCC's previous universal services orders, while an embedded cost model is not.

The universal service funding mechanism should make no distinction between rural and non-rural carriers in the type of cost mechanism used to size the fund or in the method of disaggregating support to the carriers. Since both rural and non-rural carriers serve high cost areas, both rural and non-rural carriers should be subject to a unified universal support mechanism which ensures that support is disaggregated and targeted to the high cost areas that need the funding the most.

The core services supported by the universal service fund must be clearly defined and limited to those services that meet the requirements established by the Commission and, more importantly, the statutory standards established in the Act. The Rural Task Force's recommendation to expand support for advanced services facilities violates the standard in the Communications Act, is beyond the scope of this proceeding, and lacks any factual or analytic basis.

There is no record support for re-basing the indexed cap on the High Cost Loop Fund or increasing the size of the fund. The Rural Task Force has not provided any demonstration that the current level of support is insufficient to support the universal service goals identified in the Act and the Commission's orders. Accordingly, the Joint Board should reject the Rural Task Force's recommendations to increase the current level of universal service support.

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Reply Comments

The Ad Hoc Telecommunications Users Committee (“Ad Hoc” or “the Committee”) hereby submits its Reply Comments in response to the initial comments filed pursuant to the Public Notice¹ seeking comment of the Rural Task Force (“RTF”) Recommendation to the Federal-State Joint Board on Universal Service (“Joint Board”).²

¹ Federal-State Joint Board on Universal Service, CC Docket 96-45, FCC-00J-3, *Public Notice: Federal-State Joint Board on Universal Service Seeks Comment on Rural Task Force Recommendation*, (rel. October 4, 2000).

² Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Rural Task Force Recommendation to the Federal-State Joint Board on Universal Service* (rel. September 29, 2000) (“RTF Recommendation”).

INTRODUCTION

Ad Hoc's members are among the nation's largest high-volume consumers of telecommunications services and facilities. The Committee is therefore committed to the development of regulatory rules and policies that promote the availability of high quality telecommunications services and facilities at reasonable prices. To that end, Ad Hoc has consistently supported universal service subsidies as long as those subsidies are properly sized, collected, and distributed in an economically efficient and pro-competitive manner.

Ad Hoc urges the Joint Board to reject many of the RTF's recommendations because they would harm ratepayers and the public interest. Collectively, the recommendations of the RTF would not reflect an appropriate quantitative assessment or efficient use of universal service support, and would discourage the emergence of competition in the rural and high cost areas of the country.

I. A FORWARD-LOOKING COST MODEL SHOULD BE USED TO SIZE RURAL CARRIERS' UNIVERSAL SERVICE SUPPORT.

Certain commenters, including the Public Service Commission of the Virgin Islands ("Virgin Islands' PSC"), the Western Alliance, and the ILECs' trade associations³ ("the Associations"), support the RTF's recommendation to use an embedded cost model to size the rural carriers' universal service support. Ad Hoc urges the Joint Board to stand by its previous determination that a forward-looking model is the appropriate model for sizing universal service support, for all

³ United States Telecom Association, the Organization for the Promotion and Advancement of Small Telecommunications Companies, and the National Rural Telecom Association (collectively "the Associations").

of the reasons identified by the Joint Board and the FCC in their prior decisions on universal service funding.⁴

As Ad Hoc pointed out in the earlier universal service proceedings,⁵ any reliance on a carrier's embedded costs to determine universal service support rewards inefficient past investment decisions and obstructs the development of competition. The use of a forward-looking cost model, on the other hand, ensures that support levels correspond to the true cost of providing universal service and thereby both encourages competition in rural areas and promotes efficiency in the provision of universal service. Neither the commenters supporting the RTF's recommendation nor the RTF provide compelling evidence that would justify use of a costing model different from the forward-looking methodology already adopted by the FCC. At a minimum, Ad Hoc agrees with AT&T that the economic impact of the RTF recommendation needs to be quantified before the Joint Board endorses the recommendation.⁶

A. The Rural Task Force's Recommendation To Use An Embedded Cost Model Is Inconsistent With Previous Commission Determinations.

The FCC has already determined that a forward-looking model is the appropriate mechanism to determine rural carrier support. In *The Universal Service Order*, the Commission ruled that:

In addition, we find that the use of mechanisms incorporating forward-looking economic cost principles would promote competition in rural study areas by providing more accurate

⁴ See note 7, *infra*, and text accompanying.

⁵ See, e.g., *Reply Comments of Ad Hoc Telecommunications Users Committee*, CC Docket No. 96-45, May 7, 1996; and *Comments of the Ad Hoc Telecommunications Users Committee*, CC Docket No 96-45, December 19, 1996.

⁶ AT&T Comments at 1, 3.

investment signals to potential competitors. Accordingly, we find that, rather than causing rural economies to decline, as some commenters contend, the use of such a forward-looking economic cost methodology could bring greater economic opportunities to rural areas by encouraging competitive entry and the provision of new services as well as supporting the provision of designated services. Because support will be calculated and then distributed in predictable and consistent amounts, such a forward-looking economic cost methodology would compel carriers to be more disciplined in planning their investment decisions.⁷

As WorldCom observes in its Comments,⁸ the RTF's recommendation to use an embedded cost model is not only inconsistent with previous determinations in this docket but it is also at odds with the task assigned to the RTF by the Joint Board. The RTF was instructed to "focus solely on studying the establishment of a forward-looking economic cost ("FLEC") mechanism for rural carriers" and to examine "specific issues of platform design, input values and timing of the transition to the FLEC mechanism."⁹ Thus, the RTF's recommendation is, in effect, an attempt to obtain FCC reconsideration of a final determination in the absence of any basis for changing that determination.

B. Rural Carrier Support Should Be Determined Using A Forward-Looking Mechanism That Reflects The Unique Characteristics of Rural Carriers.

Both the Virgin Islands PSC and the Western Alliance fault the forward-looking cost model for not taking account of the unique rural characteristics that

⁷ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, FCC 97-157, *Report and Order*, (rel. May 8, 1997) ("Universal Service Order") at ¶ 293 (footnote omitted).

⁸ WorldCom Comments at 4.

⁹ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, FCC 97J-1, *Public Notice: Federal-State Joint Board on Universal Service Announces the Creation of a Rural Task Force; Solicits Nominations for Membership on Rural Task Force*, (rel. September 17, 1997) ("Public Notice: Creation of RTP").

impact rural carriers' costs.¹⁰ But as WorldCom emphasizes in its comments, the RTF's criticism of the FLEC model is based on the lack of available cost inputs specific to rural carriers rather than any inherent problems with the structure or mechanism of the forward-looking model.¹¹ At this point in time, Ad Hoc believes it is impossible to determine whether the specific forward-looking cost model currently being used for non-rural carriers is the correct model for rural carriers. Instead, Ad Hoc supports WorldCom's recommendation that the Commission initiate a proceeding to develop the appropriate forward-looking principles for rural carriers and establish appropriate cost inputs that would reflect the unique characteristics of rural carriers.¹² In keeping with its charge from the Joint Board,¹³ the RTF recommendation could have provided the Commission with a blueprint for identifying issues related to the development of rural inputs and inviting comment on those issues. Although the RTF did not do as the Joint Board had directed, the Joint Board and the Commission should nevertheless continue their efforts to develop a forward-looking methodology for rural carriers.

C. Both Rural And Non-Rural Carriers' Support Should Be Determined Using A Forward-Looking Mechanism That Disaggregates And Targets Support To High Cost Areas.

The RTF recommendation that most commenters agree upon -- at least in theory, if not in application -- is the recommendation to disaggregate and target

¹⁰ Virgin Islands' PSC Comments at 8; Western Alliance Comments at 6-8.

¹¹ WorldCom Comments at 2.

¹² WorldCom recommends that the Commission should proceed with the Further Notice of Proposed Rulemaking (FNPRM) that it announced in the *Universal Service Order* (¶ 255). WorldCom Comments, at 4-5.

¹³ See *Public Notice: Creation of RTF* at ¶ 2.

support to high cost areas. Employing a statewide average methodology can deny high cost areas sufficient universal service support. Ad Hoc has a long-standing record of supporting disaggregation of universal service support to the study area level and therefore agrees with the RTF's recommendation. Although Ad Hoc has not previously supported methodologies that would disaggregate costs below the study area level,¹⁴ Ad Hoc supports the RTF recommendation based upon its understanding of the safeguards built into the recommendation. The RTF proposes a safeguard pursuant to which "the ILEC's study area support available in total for a study area from disaggregated method(s) would equal the total support available without disaggregation."¹⁵ With the adoption of this safeguard, Ad Hoc would support the RTF recommendation to disaggregate study area level support to high cost areas.

The RTF erred, however, in its conclusion that an embedded cost model is the only cost mechanism that will efficiently and equitably disaggregate support to high cost areas. RTF's analysis fails to consider the possibility of building a disaggregated support mechanism into a forward-looking model. Accordingly, the Commission should not consider (and certainly should not adopt) the RTF's recommendation until it obtains input on the viability of an adjustment to the forward-looking model which would enable a disaggregated support methodology.

¹⁴ See, e.g., *Erratum to Reply Comments of the Ad Hoc Telecommunications Users Committee*, CC Docket 96-45, January 14, 1999.

¹⁵ *RTF Recommendation* at 34.

II. THE JOINT BOARD SHOULD NOT MAKE A DISTINCTION BETWEEN RURAL AND NON-RURAL CARRIERS WHEN DETERMINING THE MECHANISM FOR ALLOCATING THE UNIVERSAL SERVICE FUND.

Several parties, including the Associations, the National Exchange Carriers Association (“NECA”), and the Virgin Islands’ PSC, support in their respective comments the RTF recommendation that a distinction between rural and non-rural carriers be made when assessing universal service support. The RTF proposes to distinguish between rural and non-rural carriers in its recommendations to (1) use an embedded model to size the rural carriers’ support; (2) disaggregate rural carriers’ support differently from non-rural carriers’ support; (3) re-base the indexed cap on the HCL Fund and grow the fund annually using a “Rural Growth Factor”; and (4) support investment in advanced services for rural carriers.

Ad Hoc disagrees with these recommendations and urges the Joint Board to adopt a universal service mechanism that unifies rural and non-rural carriers and encourages the development of competition. In its comments, Qwest has aptly noted that, if the state-wide averaging mechanism is inappropriate for allocating rural carriers’ support, it is also inappropriate for allocating non-rural carriers’ support.¹⁶ The Joint Board should reconcile the differences between the rural and the non-rural mechanisms for allocating universal service support. Ad Hoc recommends that both rural and non-rural carriers use a forward-looking model that disaggregates and targets support to the high cost areas that need the support the most.

¹⁶ Qwest Comments at 8-10.

A. The Telecommunications Act Of 1996 Makes No Distinction Between Rural And Non-Rural Carriers When Establishing The Universal Service Guidelines.

As Qwest details in its comments, Section 254 of the Telecommunications Act of 1996 requires no disparate treatment of rural and non-rural carriers when it directs the Commission to establish “explicit and sufficient” support for universal service and when it specifies which carriers must contribute to the fund.¹⁷ It also establishes the same eligibility requirements for rural and non-rural carriers’ receipt of universal service support.¹⁸ Many of the RTF recommendations that would differentiate among rural and non-rural carriers are therefore in direct contradiction to the principles of the Act and should be rejected by the Joint Board.

B. Both Rural And Non-Rural Carriers Serve High Cost Areas.

California, New York State Department of Public Service *et al.*, The Rural State Commissions, and Qwest note in their respective comments that high cost areas may have the same characteristics regardless of whether they are being served by a rural or a non-rural carrier.¹⁹ The Rural State Commissions object that, by creating two different universal service mechanisms for rural and non-rural carriers, universal service support will be provided based on the nature of

¹⁷ *Id.* at 2.

¹⁸ *Id.*

¹⁹ California Comments at 3; New York State Department of Public Service, *et al.* Comments at 4; Rural State Commissions Comments at 2-4; and Qwest Comments at 3.

the carrier, not the customer.²⁰ Ad Hoc agrees; the purpose of universal service support is to protect the interests of *customers* living in high cost areas, not the pecuniary interests of their carriers. Moreover, treating rural and non-rural carriers differently will only impede the development of competition and thus injure the long-term interests of customers in robustly competitive local markets in which prices are reasonable and service quality is high.

If the rules do not discriminate between rural and non-rural carriers, universal service support can be disaggregated and targeted to the high cost areas that need it most, regardless of the nature of the serving carrier. While Ad Hoc agrees with the Rural State Commissions that the current non-rural support model is not perfect,²¹ Ad Hoc urges the Joint Board to take “concrete steps” toward aligning the rural and non-rural models. Rather than adopt the RTF’s recommendation, which would exacerbate differences in the treatment of similarly situated customers, the Joint Board should include the use of a forward-looking mechanism to size rural carrier support and the parallel adoption of a disaggregated support mechanism for both rural and non-rural carriers.

III. THE JOINT BOARD SHOULD CONSIDER CHANGES TO THE DEFINITION OF SUPPORTED SERVICES IN A PROCEDURALLY APPROPRIATE FORUM.

In its recommendation to the Joint Board, the RTF proposed that the “Joint Board review the definition of the services that are supported by federal universal service support mechanisms, and that a “no barriers to advanced services” policy

²⁰ Rural State Commissions Comments, at 3.

²¹ *Id.* at 7.

be adopted.”²² Unlike the commenters who support this approach,²³ Ad Hoc opposes the RTF recommendation because this rural-specific support proceeding is not the appropriate forum for re-visiting the definition of supported services. In order to base its decision on an adequate evidentiary record and to provide sufficient notice and an opportunity to comment, the Joint Board and the Commission must consider the issue in a proceeding that is not narrowly focused on the needs of rural customers.

Moreover, the current system already subsidizes advanced services because these services use facilities, particularly loop plant, that are subsidized. The current system is technologically neutral – it extends subsidies to eligible network plant regardless of whether it is used to deliver advanced services or lower speed services. The RTF has not provided a justification for expanding the current definition of supported services at this time to include the additional incremental facilities used to deliver advanced services. If and when circumstances warrant an expansion to include additional advanced services facilities, the FCC should begin a proceeding to consider both the statutory bases for doing so and the dollar impact on the fund and other beneficiaries of support, both carriers and customers.

²² *RTF Recommendation* at 4.

²³ Virgin Islands’ PSC Comments at 9; State of Alaska Comments at 5; CenturyTel Comments at 2.

A. Advanced Services Do Not Meet The Statutory Standard For Services To Be Supported By The Universal Service Fund.

Ad Hoc supports the position of the New York State Department of Public Service, *et al.*,²⁴ that the statutory considerations for classifying a service as eligible for Federal universal service support mechanisms do not justify support for advanced services. The Telecommunications Act of 1996 lists the factors that the FCC and the Universal Service Joint Board must consider in order to include a service in the definition of eligible services. The FCC and the Joint Board must consider the extent to which services:

- (A) are essential to education, public health, or public safety;
- (B) have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers;
- (C) are being deployed in public telecommunications networks by public telecommunication carriers; and
- (D) are consistent with the public interest, convenience and necessity.²⁵

Whether advanced services can meet the requirements listed above is a contentious and complex issue and Ad Hoc urges the Joint Board and the FCC to pursue the discussion in an appropriate proceeding. But Ad Hoc agrees with the New York State Department of Public Service *et al.*, that the RTF has failed to provide any rationale or factual support for declaring that advanced services satisfy any of the above requirements. Even the State of Alaska – one of the few supporters of the RTF’s recommendation to support advanced services through

²⁴ New York State Department of Public Service, *et al.* Comments at 11.

²⁵ 47 U.S.C. § 254(c)(1).

the federally funded universal service fund – agrees that advanced services *do not currently* meet the statutory requirements outlined in the definition.²⁶

B. Universal Service Support for Advanced Services Does Not Ensure Advanced Service to Rural and High Cost Areas.

Ad Hoc concurs with DigitalLouisiana.org’s position that increased competition, not a higher subsidy, is needed to ensure the availability of reasonably priced, high quality advanced services for rural and high cost areas.²⁷ Indeed, the RTF’s recommendation to support investment in rural infrastructure to produce 28.8 kbps access to the Internet may do more harm than good to rural America if it “bind[s] rural Americans to obsolete technology.”²⁸ The RTF’s recommendation to fund deployment of advanced services at this point in time is premature given the nascent state of both the technology and consumer interest in the service. Rather than engage in industrial policy, uninformed by consumer choices in the marketplace or the state of technology, the Joint Board should reject the RTF’s recommendation and allow competitive markets to develop.

²⁶ The State of Alaska relies on the argument that the four requirements need only be considered, but all requirements need not necessarily be met, *if the service is found to be in the public interest*. But the RTF not only failed to demonstrate that advanced services fulfill the four requirements, it failed to provide any justification for exempting advanced services from one or more of the requirements or for considering it *in the public’s interest* to support advanced services with federally-funded universal service support. See State of Alaska Comments at 5, n. 13; *Universal Service Order*, at ¶61.

²⁷ DigitalLouisiana.org Comments at 3-4.

²⁸ *Id.*

IV. THE CAP ON THE HIGH COST LOOP FUND SHOULD NOT BE RE-BASED AND THE SIZE OF THE FUND SHOULD NOT BE INCREASED.

Several commenters, including NECA, Sprint, and the Virgin Islands PSC,²⁹ support the RTF recommendations to re-base the indexed cap on HCL support and increase the corporate operations limitation, which will result in an increase to the current HCL Fund of \$118.5 million.³⁰ The Associations argue for the complete elimination of the cap on the HCL fund.³¹ Ad Hoc strongly disagrees with RTF's analysis and the above commenters, and urges the Joint Board to reject the recommendation.

As WorldCom describes in its comments, the purpose of the indexed cap is to "encourage carriers to operate more efficiently by limiting the amount of support they receive."³² Any increase in the existing cap – and certainly the Associations' proposal to eliminate the cap – would effectively reduce or void all incentives for rural carriers to be efficient in their investment decisions. Coupled with the RTF's recommendation to rely on a carrier's embedded costs to size the rural carriers' support, any increase or elimination of the indexed cap on the HCL Fund would only encourage a rural carrier to make inefficient investment decisions with the knowledge that the costs of those investment decisions will be recovered in their entirety under the embedded cost model. Indeed, such an increase or elimination of the cap will introduce precisely the kind of guaranteed cost recovery mechanism, which rewards poor judgment and wasteful

²⁹ NECA Comments at 6-7; Sprint Comments at 1; the Virgin Islands' PSC Comments at 7.

³⁰ *RTF Recommendation* at 4.

³¹ The Associations Comments at 6-7.

³² *Universal Service Order* at ¶302; WorldCom Comments at 6.

investment, that the FCC rejected when it adopted incentive regulation for larger ILECs. The continuation of the existing indexed cap, on the other hand, will encourage efficient investment by rural carriers and will not obstruct the development of competition.

Verizon notes that the RTF's recommendation does not provide an analysis to justify any increase in the size of the HCL Fund.³³ WorldCom finds that there is simply no evidence that the current level of the Universal Service Fund is insufficient or inadequate to provide the necessary support to rural carriers.³⁴ Until the Joint Board is presented with a factual and persuasive record of insufficient universal service funding to rural carriers, the Joint Board should reject any attempt to increase the fund without proper justification.

CONCLUSION

For the reasons discussed above, the Joint Board and the FCC should stand by previous decisions to use a forward-looking methodology to determine universal service support for rural carriers. All carriers who serve high-cost areas, whether rural or non-rural, should benefit from the same allocation and disaggregation mechanisms. Any expansion of the subsidies for advanced services should be considered in a procedurally appropriate forum based on an adequate record. Finally, rural carrier incentives to operate efficiently should not be compromised by any re-basing or re-sizing of the High Cost Loop Fund.

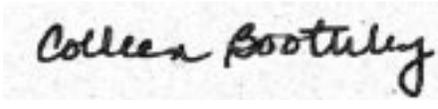
Respectfully submitted,

AD HOC TELECOMMUNICATIONS

³³ Verizon Comments at 2.

³⁴ WorldCom Comments at 6.

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November 30, 2000

Certificate of Service

I, Victoria D. Curtis, hereby certify that a true and correct copy of the preceding Reply Comments of the Ad Hoc Telecommunications Users Committee was served this November 30, 2000 via the FCC's Electronic Comment Filing System and via first-class mail upon the following parties:

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A handwritten signature in black ink, appearing to read "Victoria D. Curtis", written in a cursive style. The signature is positioned above a horizontal line.

Victoria D. Curtis