

RECEIVED ROOM

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

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

RECOMMENDED DECISION

Adopted: December 22, 2000

Released: December 22, 2000

By the Federal-State Joint Board: Joint Board Chairman Ness and Commissioners Furtchgott-Roth and Tristani issuing separate statements; Joint Board State Chairman Schoenfelder and Commissioner Rowe concurring and issuing separate statements; Public Counsel Hogerty concurring in part and dissenting in part and issuing a separate statement; Chairman Wood issuing a statement at a later date.

I. INTRODUCTION

1. In this Recommended Decision, we send to the Commission the Rural Task Force Recommendation that can serve as a good foundation for implementing a rural universal service plan that benefits consumers. Generally, we find that the Rural Task Force sought to achieve the goals of the Telecommunications Act of 1996 to preserve and advance universal service, facilitate competition in rural areas, and provide a predictable level of universal service support.¹ Moreover, we believe that implementation of the Rural Task Force's framework would provide a stable environment for rural carriers to invest in rural America.

II. BACKGROUND

A. Statutory Requirements

2. In the 1996 Act, Congress established a number of principles for the preservation and advancement of universal service in a competitive telecommunications environment. In particular, section 254 of the 1996 Act provides that consumers in all regions of the Nation, including consumers in rural, insular, and high-cost areas, should have access to telecommunications services at rates that are affordable and reasonably comparable.² Section 254 also provides that access to advanced telecommunications and information services should be provided in all regions of the Nation, and that federal universal service support mechanisms should be specific, predictable, and sufficient to preserve and advance universal service.³ The Commission adopted the additional principle that federal support mechanisms should be competitively neutral, neither unfairly advantaging nor disadvantaging particular

¹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act). The 1996 Act amended the Communications Act of 1934. 47 U.S.C. §§ 151, *et seq.*

² 47 U.S.C. § 254(b)(3).

³ *Id.* at §§ 254(b)(2), (5).

service providers or technologies.⁴ Federal universal service policies should strike a fair and reasonable balance among these principles or goals enumerated in section 254 of the 1996 Act.⁵ The 1996 Act also requires the Commission to consult with the Federal-State Joint Board on Universal Service (Joint Board) in implementing section 254.⁶

B. Prior Joint Board and Commission Actions

3. Pursuant to the 1996 Act, the Joint Board provided its first set of recommendations regarding universal service to the Commission in November 1996.⁷ Based on these recommendations, the Commission adopted the *First Report and Order* in May 1997.⁸ Among other things, the Commission concluded that federal universal service support for all carriers, both rural and non-rural,⁹ should be based on the forward-looking economic cost of constructing and operating the network used to provide the supported services, rather than each carrier's embedded costs.¹⁰ The Commission explained that using forward-looking economic costs provides sufficient support without giving carriers an incentive to inflate their costs or to refrain from efficient cost cutting.

4. Nevertheless, the Commission adopted the Joint Board's recommendation that rural carriers not use a cost model or other means of determining forward-looking economic cost immediately to calculate their support for serving rural high-cost areas.¹¹ The Commission agreed with the Joint Board that, compared to the large non-rural carriers, "rural carriers generally serve fewer subscribers, serve more sparsely populated areas, and do not generally benefit as much from economies of scale and scope. For many rural carriers, universal service support provides a large share of the carriers' revenues, and thus,

⁴ See *id.* at § 254(b)(7); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8801-03 paras. 46-51 (1997) (*First Report and Order*) (subsequent history omitted).

⁵ *First Report and Order*, 12 FCC Rcd at 8803 para. 52.

⁶ See 47 U.S.C. § 254(a).

⁷ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd 87 (Jt. Bd. 1996) (*First Recommended Decision*).

⁸ *First Report and Order*, 12 FCC Rcd 8776.

⁹ "Rural carriers" are local exchange carriers (LECs) that meet the definition of a rural telephone company contained in section 153(37) of the 1996 Act, and "non-rural carriers" are LECs that do not meet this definition. 47 U.S.C. § 153(37).

¹⁰ *First Report and Order*, 12 FCC Rcd at 8899-901 paras. 224-229. At the time of the *First Report and Order*, three federal universal service support mechanisms provided support for rural and non-rural carriers, for the most part based on embedded costs averaged over entire study areas. The high-cost loop support and Local Switching Support (formerly DEM Weighting) programs under Part 36 of the Commission's rules provided support for intrastate-allocated costs. See *infra* notes 21-22. The Long Term Support program provided support for interstate-allocated costs. See *infra* note 22. These three support mechanisms currently provide approximately \$1.568 billion in annual high-cost support to over 1,300 rural carriers. See Letter from D. Scott Barash, Vice President and General Counsel, Universal Service Administrative Company (USAC), to Magalie Roman Salas, FCC, dated November 2, 2000, at Appendix HC 3 (USAC 1st Quarter 2001 Projections). The Commission's new, forward-looking high-cost support mechanism for non-rural carriers became effective on January 1, 2000. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ninth Report and Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432, 20439 (1999) (*Ninth Report and Order*), *pets. for review pending sub nom., Qwest Corp. v. FCC*, 10th Cir. No. 99-9546 and consolidated cases (1999).

¹¹ *First Report and Order*, 12 FCC Rcd at 8934 para. 291.

any sudden change in the support mechanisms may disproportionately affect rural carriers' operations."¹² Accordingly, working with rural carriers and their associations, the Commission stated that it would not implement forward-looking support for rural carriers before January 1, 2001, and only after selecting an appropriate high-cost support mechanism based on recommendations from the Joint Board and a Rural Task Force appointed by the Joint Board.¹³ In recommending a proxy model as a framework for determining non-rural carrier high-cost support, the Joint Board emphasized that it did "not intend for the Commission to create any precedent for any potential revisions to support mechanisms for rural carriers."¹⁴ In this regard, the Commission agreed with the state Joint Board members that a task force "should provide valuable assistance in identifying the issues unique to rural carriers and analyzing the appropriateness of proxy cost models for rural carriers."¹⁵

C. Rural Task Force Recommendation

5. The Joint Board announced the creation of the Rural Task Force in September 1997, and appointed the Rural Task Force members in July 1998.¹⁶ The Joint Board requested that the Rural Task Force provide its recommendations no later than nine months after the implementation of the forward-looking high-cost mechanism for non-rural carriers, which became effective on January 1, 2000.¹⁷ Accordingly, the Rural Task Force presented its Recommendation to the Joint Board on September 29, 2000.¹⁸ The Recommendation represents the consensus of individual Rural Task Force members, who work for a broad range of interested parties, including rural telephone companies, competitive local exchange carriers, interexchange carriers, wireless providers, consumer advocates, and state and federal government agencies. The Rural Task Force offers its Recommendation as an integrated package, and asks that it be adopted without modification. It urges that the Recommendation be implemented immediately and remain in place over a five-year period. The Recommendation is attached as Appendix A to this Recommended Decision.¹⁹ Below, we summarize salient features of the Recommendation.

6. The Rural Task Force recommends against using the Commission's forward-looking high-cost mechanism for non-rural carriers to distribute high-cost support for rural carriers.²⁰ Instead, it recommends the use over the next five years of a modified version of the current high-cost loop support

¹² *Id.* at 8936 para. 294.

¹³ *Id.* at 8917 para. 252-53, 8936 para. 294.

¹⁴ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Second Recommended Decision, 13 FCC Rcd 24744 at 24758 para. 30 (Jt. Bd. 1998) (Second Recommended Decision).

¹⁵ *Id.* at 8917 para. 253; *see also id.* at para. 255; *Second Recommended Decision*, 13 FCC Rcd 24744 at para. 30 (Jt. Bd. 1998).

¹⁶ *See Federal-State Joint Board on Universal Service Announces Rural Task Force Members*, CC Docket No. 96-45, Public Notice, FCC 98J-1 (Jt. Bd. rel. July 1, 1998); *Federal-State Joint Board on Universal Service Announces the Creation of a Rural Task Force*, CC Docket No. 96-45, Public Notice, 12 FCC Rcd 15752 (Jt. Bd. 1997).

¹⁷ *See id.*

¹⁸ Letter from William R. Gillis, Chair, Rural Task Force, to Magalie Roman Salas, FCC, dated September 29, 2000 (Rural Task Force Recommendation or Recommendation).

¹⁹ Appendix A; *see also* Rural Task Force web site at www.wutc.wa.gov/rtf/rtfpub.nsf?open.

²⁰ The Rural Task Force emphasizes that its Recommendation applies only to rural, insular, and high-cost areas served by rural carriers, and not to areas served by non-rural carriers. *See* Appendix A at 18.

mechanism under Part 36 of the Commission's rules, based on carriers' embedded costs.²¹ In addition, the Rural Task Force recommends continuation of the Long Term Support (LTS) and Local Switching Support (LSS) programs.²²

7. The Rural Task Force's proposed modifications to the high-cost loop support mechanism include various upward adjustments to current limits on universal service support for rural carriers, including (a) recomputing the indexed cap on high-cost loop support²³ and the corporate operations expense limitation²⁴ as if the caps had not been in effect for the calendar year 2000,²⁵ (b) providing above-the-cap "safety net additive" support for carriers with over 14 percent growth in telecommunications plant in service on a per-line basis, and (c) creating a "safety valve" to provide additional support for "meaningful investment" in acquired telephone exchanges.²⁶ The Rural Task Force also recommends that per-line universal service support payment levels within a study area become fixed once a competitive

²¹ High-cost loop support under Part 36 provides support for a variable percentage of carriers' unseparated loop costs, as reflected in their books, depending on the number of working loops they serve and the degree to which their costs exceed the national average cost per loop. See 47 C.F.R. §§ 36.601, *et. seq.*; *First Report and Order*, 12 FCC Rcd at 8891-92 paras. 209-11. Specifically, carriers with 200,000 or fewer working loops receive support equal to 65 percent of that portion of their unseparated loop costs exceeding 115 percent of the national average but not greater than 150 percent of the national average, and 75 percent of that portion of their unseparated loop costs exceeding 150 percent of the national average. For carriers with greater than 200,000 working loops, the formula is similar, but with reduced levels of support. For example, a carrier with 200,001 loops reaches the 75 percent support level only for costs that are greater than 250 percent of the national average. The national average is calculated based on the loop costs of both rural and non-rural carriers. The term "unseparated" refers to costs as calculated before applying the jurisdictional separations process, which divides between the state and federal jurisdictions the costs of those portions of local exchange carriers' telephone plant that are used for intrastate and interstate services. See 47 C.F.R. § 36.631.

²² LTS provides support for the interstate-allocated loop costs of rate-of-return carriers (typically small rural carriers) that participate in the National Exchange Carrier Association (NECA) common line pool, and LSS (formerly DEM Weighting) is available to support the intrastate switching costs of carriers with 50,000 or fewer loops. 47 C.F.R. §§ 36.125(b), 54.301, 54.303. The Commission removed LTS and LSS, as well as high-cost loop support under Part 36, from the interstate access charge system in 1997, and they are now collected from all providers of interstate telecommunications services on an equitable and non-discriminatory basis. See *generally Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Fourth Order on Reconsideration, 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, *Report and Order*, 13 FCC Rcd 5318, 5343-45 paras. 40-41, 5352-54 paras. 56-58 (1998) (*Fourth Order on Reconsideration*).

²³ An indexed cap that limits the increase in support each year to the annual nationwide growth in loops restricts total high-cost loop support under Part 36 of the Commission's rules. See 47 C.F.R. Part 36, Subpart F; *First Report and Order*, 12 FCC Rcd at 8940 para. 302 ("indexed cap effectively limits the overall growth of the fund, while protecting individual carriers from experiencing extreme reductions in support").

²⁴ The Commission's rules limit the amount of corporate operations expenses that carriers may recover through high-cost loop support under Part 36. See 47 C.F.R. § 36.621; *First Report and Order*, 12 FCC Rcd at 8930-32 paras. 283-85.

²⁵ The Rural Task Force estimates that this particular proposal would increase the size of the high-cost loop support fund by approximately \$118.5 million in the first year, representing \$83.9 million in additional high-cost loop support and \$34.6 million in additional support for corporate operations expenses. For Rural Task Force estimates of the potential cost of other aspects of its Recommendation, see Letter from William R. Gillis, Rural Task Force, to Magalie Roman Salas, FCC, dated November 10, 2000.

²⁶ Section 54.305 of the Commission's rules currently limits universal service support for acquired exchanges to the per-line support received by the seller. 47 C.F.R. § 54.305.

eligible telecommunications carrier begins providing service in the study area, and subsequently adjusted for growth in lines and inflation rather than changes in cost. Under the Rural Task Force's proposal, "safety net additive" support, support for acquired exchanges and "safety valve" support, support for competitive eligible telecommunications carriers, and catastrophic event support²⁷ would be excluded from the cap on high-cost loop support. Total "safety valve" support would be limited to five percent of the overall cap.

8. The Rural Task Force also recommends the use of a new annual index known as the "rural growth factor" to adjust the cap on high-cost loop support, the corporate operations expense limitation, and fixed per-line support (in areas where competitive carriers are providing service) on a going-forward basis. The rural growth factor would be the sum of annual line growth for rural carriers and a general inflation factor (Gross Domestic Product-Chained Price Index).

9. The Rural Task Force suggests various other reforms. Among other things, it proposes that rural carriers be given a choice of three different options for disaggregating and targeting per-line universal service support, to be exercised within 270 days of the effective date of the proposed new rules. Furthermore, the Rural Task Force recommends adoption of a "no barriers to advanced services" policy, and suggests a number of principles for replacing any implicit subsidies in interstate access charges with explicit universal service support.²⁸

III. DISCUSSION

10. The Rural Task Force faced a challenging task. Congress recognized that, while competition could encourage investment in rural infrastructure and bring new, improved services to rural America, special measures were required to preserve and advance universal service. In several areas, Congress provided separate rules for markets served by small, rural telephone companies.²⁹ Accordingly, in implementing the 1996 Act, the Joint Board and the Commission have consistently recognized that rural carriers face diverse circumstances and that, in considering universal service support mechanisms, "one size does not fit all." The Rural Task Force thus was charged with the task of considering the needs of rural carriers.³⁰ The Rural Task Force recommends a flexible plan designed to balance competing goals, a

²⁷ Under the Rural Task Force Recommendation, fixed per-line support in areas where competitive carriers are providing service would be subject to adjustment by the incumbent carrier to recover costs associated with catastrophic events.

²⁸ We note that the Multi-Association Group (MAG) recently submitted to the Commission a comprehensive proposal for interstate access charge and universal service reform for rate-of-return carriers. *Petition for Rulemaking of the LEC Multi-Association Group*, RM 10011 (filed October 20, 2000) (*MAG Plan*); see *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation*, CC Docket No. 98-77, Notice of Proposed Rulemaking, 13 FCC Rcd 14238 (1998). The MAG is comprised of the National Rural Telecom Association (NRTA), National Telephone Cooperative Association (NTCA), Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), and United States Telecom Association (USTA).

²⁹ For example, the 1996 Act provides that state commissions may designate more than one eligible telecommunications carrier in an area served by a rural telephone company, but only after determining that such additional designation is in the public interest. See 47 U.S.C. § 214(e)(2). In addition, states may require a telecommunications carrier that seeks to provide service in a rural telephone company's service area to meet the eligible telecommunications carrier requirements of section 214(e)(1). See 47 U.S.C. §§ 214(e)(1), 253(f).

³⁰ See *Federal-State Joint Board on Universal Service Announces Rural Task Force Members*, CC Docket No. 96-45, Public Notice, FCC 98J-1 (Jt. Bd. rel. July 1, 1998); *Federal-State Joint Board on Universal Service*

plan that was endorsed by all the members of the Task Force. We find it significant that the Recommendation represents a consensus of competing views. We encourage the Commission to take advantage of this opportunity to craft a rural universal service plan that enjoys widespread support among diverse interests.

11. The Recommendation preserves a predictable level of universal service support that will provide stability to rural carriers – incumbents and competitors – for planning their investments over the next several years. By recommending a flexible system for disaggregating support to establish the portable per-line support amount available to all eligible telecommunications carriers, the Rural Task Force seeks to encourage competitors to enter high-cost areas. In addition, the Rural Task Force recommends certain modifications to the caps and limitations on high-cost loop support. These modifications are generally designed to provide carriers serving rural areas with increased incentives to invest in new infrastructure and technologies. Under the current mechanism, high-cost loop support for rural carriers is estimated to be \$835 million in 2001. The Rural Task Force estimates that, under its Recommendation, high-cost loop support for rural carriers will be \$961 million in 2001 and increase to \$1.29 billion in 2005.³¹ The Rural Task Force thus proposes to increase the rural high-cost loop fund by \$1.26 billion in the aggregate over the proposed five-year period, compared to the projected growth under the current mechanism.³²

12. In determining federal support for non-rural carriers, the Joint Board previously has recognized its obligation to provide sufficient support to ensure affordable and comparable rates. The Rural Task Force has noted that the 1996 Act sets standards to provide sufficient support while preventing “waste, windfall, and excessive expense for contributing carriers and their customers.”³³ While a significant number of commenters urge the Joint Board to recommend the Rural Task Force plan without modification,³⁴ other commenters, including some rural carriers, believe that the Rural Task

Announces the Creation of a Rural Task Force, CC Docket No. 96-45, Public Notice, 12 FCC Rcd 15752 (Jt. Bd. 1997).

³¹ See Letter from William R. Gillis, Rural Task Force, to Magalie Roman Salas, FCC, dated November 10, 2000. The Rural Task Force support estimates include only high-cost loop support. In addition, based on USAC’s first quarter 2001 projections, rural carriers will receive \$386 million in LSS, \$390 million in LTS, and \$52 million in interstate access support. See USAC 1st Quarter 2001 Projections. These amounts also do not include implicit universal service support that may be included in rural carrier interstate access charges. The Rural Task Force recommends that LSS and LTS remain in place for the duration of its proposed plan and does not comment on the existing interstate access support program for price cap companies.

³² Joint Board staff estimate the \$1.26 billion increase as the difference between the Rural Task Force estimates and projected high-cost loop support based on the current rules. Staff derived current rule estimates by increasing the 2001 rural high-cost loop support estimate of \$835 million, reported in USAC’s first quarter 2001 projections, by 2.86 percent annual industry line growth factor, as reported in the NECA October 2000 filing. See NECA Universal Service Fund 2000 Submission of 1999 Study Results, filed October 1, 2000.

³³ See Appendix A at 8.

³⁴ See, e.g., CenturyTel Comments at 1-2 (urging the Joint Board to act quickly because “[r]eform is critically needed”); Evans Comments at 2 (“The Task Force Recommendation to the Joint Board is the first comprehensive proposal for implementation of the policies and principles of the 1996 Act on the subject of universal service support for high-cost [rural carriers] that includes input of and support by a broad base of interested stakeholders.”); GVNW Comments at 3 (“With the record now developed by a group representing the spectrum of those impacted by rural universal service public policy, it is now time to implement these recommendations for a five year-period.”). NECA Comments at 8-9 (“The RTF *Recommendation* should be adopted immediately by the

Force Recommendation would provide too little support.³⁵ Still other commenters, including several state commissions and carriers, believe it would provide too much support.³⁶ We believe that the nature of these comments is consistent with a recommendation that is a consensus proposal put forth by representatives of disparate interests.

13. The Rural Task Force has proceeded with caution by proposing modifications to the current embedded cost system for a five-year period, rather than attempting to modify the Commission's forward-looking cost mechanism that currently is used to determine non-rural support. We agree with the Rural Task Force that understanding the diversity among rural carriers and the differences between small rural carriers and large carriers is desirable in designing appropriate universal service support mechanisms. The Rural Task Force provided valuable data on these differences in their second White Paper, "The Rural Difference."³⁷ Specifically, the Rural Task Force demonstrated the inappropriateness of using input values designed for non-rural carriers to determine support for rural carriers.³⁸ We urge the Commission to use the period during which a Rural Task Force Recommendation is in place to develop a long-term universal service plan that better targets support to rural companies serving the highest cost areas. The Joint Board should remain involved in the process to develop improvements to the rural system. We also urge the Commission to evaluate the rural and non-rural support systems to ensure they work together efficiently, while at the same time recognizing the significant distinctions among rural carriers and between rural and non-rural carriers.³⁹ In sum, we conclude that the Rural Task Force Recommendation presents a good foundation for implementing a rural universal service plan.

14. We observe that the Recommendation proposes modifications to the Commission's rules that involve specific implementation details that the Commission may need to address. Below, we highlight some of these implementation issues.

Joint Board and the Commission, with due consideration of the potential longer-term effects of imposing artificial limits, such as continuation of any form of capping, on the size of the Rural carrier high cost fund.").

³⁵ See, e.g., Citizens Comments at 2-5 ("proposal to 'right size' the fund by ameliorating the impact of the past cap suggests the imposition of a new cap might necessitate . . . a new right sizing in order to achieve the intended result of spurring investment in rural America"); MTA Comments at 3 (arguing that loss of \$130 million due to caps "is money that could have been directly invested in our telecommunications infrastructure"); NTCA Comments at 7-10 (strongly believes that no caps on the universal service support funds should be retained and that caps are unlawful); USTA Comments at 6-8 (opposing any cap on the rural high-cost fund to ensure sufficiency as mandated by section 254(b)(5) of the Act).

³⁶ See, e.g., Charter Comments at 6-10 ("reform of rural universal service should be about reform, not about tweaking a subsidy structure that is outmoded and antithetical to competition"); New York Comments at 3-4 (no showing that total amount of support recommended would be only that amount necessary to enable rates to establish reasonably comparable rates); WorldCom Comments at 5-8 ("no evidence that rural LECs have been unable to maintain their quality of service or upgrade facilities at the support levels provided by the existing mechanisms"); Ad Hoc Reply Comments at 13-14 ("any increase or elimination of the indexed cap on the [high-cost loop] fund would only encourage a rural carrier to make inefficient investment decisions").

³⁷ See Rural Task Force, *White Paper 2: The Rural Difference* (January 2000) (*White Paper 2*), which is available on the Rural Task Force's web site at www.wutc.wa.gov/rtf/rtfpub.nsf?open.

³⁸ See, *id.*; see, e.g., GCI Comments at 2-3; People Comments at 2-3; WorldCom Comments at 2; Ad Hoc Reply Comments at 5-6; AT&T Reply Comments at 3-4.

³⁹ See *White Paper 2* at www.wutc.wa.gov/rtf/rtfpub.nsf?open.

A. Mergers and Acquisitions Cap & the “Safety Valve” Mechanism

15. Section 54.305 of the Commission’s rules provides that a carrier acquiring exchanges from an unaffiliated carrier shall receive the same per-line levels of high-cost universal service support for which the acquired exchanges were eligible prior to their transfer.⁴⁰ The Rural Task Force recommends that the Commission retain section 54.305 of its rules, but establish an appropriate “safety valve” mechanism to enable rural carriers acquiring access lines eligible for high-cost loop support to recover additional support reflecting “meaningful investment” in acquired access lines.⁴¹ The Rural Task Force provides an illustration of such a mechanism in Appendix D of its Recommendation.⁴² In Appendix D, the Rural Task Force defines “meaningful investment” for purposes of qualifying a rural carrier for “safety valve” support as the difference between the “index year expense adjustment” calculated in accordance with section 36.631 of the Commission’s rules⁴³ and subsequent year expense adjustments.⁴⁴ The Rural Task Force’s example also proposes to limit the total “safety valve” support available to all eligible study areas to no more than five percent of the indexed high-cost loop fund cap for rural carriers.⁴⁵

16. We support the Rural Task Force’s proposal for providing additional support to rural carriers that acquire high-cost exchanges and make post-transaction investments to enhance the network infrastructure. We note, however, that the Task Force’s proposal does not address a number of important implementation issues. In order to ensure effective implementation of the “safety-valve” mechanism, we encourage the Commission to address several implementation issues. First, the Commission should consider the distribution of “safety valve” support if the total amount of eligible “safety valve” support exceeds the cap of five percent of the indexed high-cost loop support fund.⁴⁶ The Commission should also examine the definition of “meaningful investment.”⁴⁷ In addition, the Commission should address whether a carrier’s “safety valve” support should transfer to a different carrier as a result of a subsequent transfer of exchanges. Finally, the Commission should consider whether “safety valve” support is “frozen” when a competitive eligible telecommunications carrier enters the study area, just as other high-cost loop support would be frozen when a competitive eligible telecommunications carrier enters the incumbent’s service area, and whether such an approach would unduly dissuade investment.

⁴⁰ 47 C.F.R. § 54.305. High-cost support mechanisms currently include non-rural carrier forward-looking high-cost support, interim hold-harmless support for non-rural carriers, rural carrier high-cost loop support, local switching support, and Long Term Support (LTS). See 47 C.F.R. §§ 36.601-36.631, 54.301, 54.303, 54.309, 54.311.

⁴¹ See Appendix A at 29.

⁴² See *id.* at Appendix D.

⁴³ See 47 C.F.R. § 36.631.

⁴⁴ See Appendix A at Appendix D-1.

⁴⁵ See *id.*

⁴⁶ See, e.g., USTA Comments at 9-10 (arguing that increased support resulting from a single transfer could exceed the five percent cap).

⁴⁷ For example, it may be more appropriate to define “meaningful investment” so that the “index year expense adjustment” is the year prior to the subsequent year “expense adjustment.” As currently proposed, the “index year expense adjustment” is the study area’s high-cost loop support “expense adjustment” calculated at the end of the acquiring company’s first year of operations.

B. Support in Competitive Study Areas

17. As discussed above, the Rural Task Force recommends that the Commission “freeze” per-line high-cost loop support directed to a rural study area if a competitive eligible telecommunications carrier has been designated and begins providing service in that study area.⁴⁸ Under the Rural Task Force’s proposal, both the incumbent LEC and the competitive eligible telecommunications carrier would receive fixed per-line support. The Rural Task Force also recommends that the Commission increase such fixed per-line support by the Rural Task Force’s proposed Rural Growth Factor.⁴⁹ Although we agree with the Rural Task Force that the Commission should “freeze” per-line high-cost loop support when a competitor begins providing services in a given study area, it is unclear how the high-cost loop fund cap would account for fixed rural carrier support. The Commission should seek additional input from commenters, including the Rural Task Force, on the operation of the high-cost loop fund cap on fixed rural carrier support.

18. The Rural Task Force also recommends that the Commission permit incumbent LECs receiving “frozen” per-line high-cost to adjust frozen per-line support to recover costs associated with catastrophic events affecting the carrier’s ability to provide supported services.⁵⁰ The Commission should seek further input on the impact of “catastrophic” support provided by other sources such as insurance, Rural Utilities Service loans, and federal or state emergency management relief.⁵¹

C. The “Safety Net Additive”

19. In years in which the Rural Task Force’s new indexed cap on the high-cost loop support fund is triggered and growth in telecommunications plant in service (TPIS) per line in a rural study area is at least 14 percent greater than the study area’s TPIS per line in the prior year, the Rural Task Force proposes a “safety net additive,” which would enable a carrier to recover 50 percent of the difference between capped and uncapped support.⁵² Any study area that qualifies for the safety net additive support also would qualify for safety net additive support in each of the four succeeding years, regardless of whether the study area meets the 14 percent criterion in those years.⁵³ Safety net additive support would be in addition to capped high-cost loop support, and would not be subject to the Rural Task Force’s new indexed cap on such support.⁵⁴ We agree with the Rural Task Force that additional support in the form of a safety net additive should be available to rural carriers that make significant investment in rural infrastructure, but urge the Commission to seek further comment on whether the safety net additive mechanism enables a carrier to recover more than 100 percent reimbursement on incremental loop investment.⁵⁵

⁴⁸ See Appendix A at 26.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ See Sprint Comments at 3 (“fund should not become substitute for carriers’ insurance policies”).

⁵² See Appendix A at 27.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ See, e.g., Bristol Comments at 3; TDS Telecom Comments at 8.

D. Interstate Access Universal Service Support for Non-Price Cap Carriers

20. The Rural Task Force recommends that the Commission replace implicit universal service support included in rural carrier interstate access charges with an uncapped "High Cost Fund III."⁵⁶ The Rural Task Force also articulates several principles that the Commission should follow in implementing that task.⁵⁷ We concur with the Rural Task Force that the Commission should consider creating an explicit universal service support mechanism to replace support that may be implicit within interstate access charges collected by rural carriers.⁵⁸ We acknowledge, however, that the access charge issues raised by the Rural Task Force and the MAG are interstate in nature and, therefore, are properly before the Commission.⁵⁹ However, the MAG plan raises issues beyond interstate access reform, and proposes universal service policy and procedural changes, including rate comparability under section 254(b)(3) and the overall size of the universal service mechanisms. Section 254(b) and 254(c) of the 1996 Act both contemplate that the Joint Board remain involved in matters related to universal service.⁶⁰ We therefore encourage the Commission to ensure the Joint Board remains actively involved in review of those aspects of the MAG plan that relate to universal service. A significant number of Joint Board members urge that this involvement include a referral to the Joint Board of the universal service issues raised by the MAG plan.

E. Future Steps

21. As discussed above, the Rural Task Force urges that its recommendation be implemented immediately and remain in place over a five-year period.⁶¹ In addition to the Commission's ongoing consultation with the Joint Board during this period, we urge the Commission to refer to the Joint Board, no later than January 1, 2002, a proceeding to consider implementation of an appropriate high-cost mechanism for rural carriers after the expiration of the Rural Task Force's plan. We note that the Commission and the Joint Board are already committed to review the operation of the high-cost support mechanism for non-rural carriers on or before January 1, 2003.⁶² This proposed timing would permit the Joint Board and the Commission to consider the appropriate rural mechanism to succeed the plan that the Commission adopts pursuant to the Rural Task Force's recommendation and devote sufficient time to the task prior to the termination of that plan. We also recommend eventual comprehensive review of the high-cost support mechanisms for rural and non-rural carriers as a whole to ensure that both mechanisms function efficiently and in a coordinated fashion. We urge the Commission to use the transitional period during which a modified embedded cost mechanism is in place to develop a long-term universal service

⁵⁶ See Appendix A at 30-32.

⁵⁷ See *id.*

⁵⁸ See AT&T Comments at 5-6; CenturyTel Comments at 2; NTCA Comments at 18; Roseville Comments at 4; TDS Telecom Comments at 6-7.

⁵⁹ See NTCA Comments at 19; Roseville Comments at 4; TDS Telecom Comments at 6-7; USTA Comments at 11.

⁶⁰ See 47 U.S.C. §§ 254(b), (c).

⁶¹ See *supra* discussion at para. 5.

⁶² *Federal-State Joint Board on Universal Service, Access Charge Reform*, CC Docket Nos. 96-45, 96-262, Seventh Report & Order and Thirteenth Order on Reconsideration in CC Docket No. 96-45, Fourth Report & Order in CC Docket No. 96-262, and Further Notice of Proposed Rulemaking, 14 FCC Rcd 8077, 8123 para. 94 (1999).

plan that better targets support to rural companies serving the highest cost areas, while at the same time recognizing the significant distinctions among rural carriers and between rural and non-rural carriers.

IV. RECOMMENDING CLAUSE

22. For the reasons discussed herein, the Federal-State Joint Board on Universal Service, pursuant to section 254(a)(1) and section 410(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 254(a)(1), 410(c), recommends that the Commission adopt the Rural Task Force Recommendation as a foundation for implementing a rural universal service plan.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
Secretary

APPENDIX A

**RURAL TASK FORCE
RECOMMENDATION TO
THE FEDERAL-STATE JOINT BOARD ON UNIVERSAL SERVICE**