Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 96-45
Federal-State Joint Board on	)	FCC 01-8
Universal Service	)	

COMMENTS
OF THE
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION
ON THE FURTHER NOTICE OF PROPOSED RULEMAKING
CONCERNING THE RURAL TASK FORCE RECOMMENDATION

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SUMMARY

NTCA supports the core recommendations contained in the Rural Task Force (RTF) proposal, particularly the use of a modified embedded cost approach to determine the level of universal service support for rural local exchange carriers (LECs) and the partial lifting of the overall cap on rural support. Although it is NTCA's opinion that any cap on rural will ultimately frustrate the goal of comparable rates and services between urban and rural areas, as well as slow investment in broadband to the last mile in many rural areas, the RTF's recommended modification to the cap presents a great improvement over the current overall cap mechanism.

NTCA urges the FCC to repeal 47 C.F.R § 54.305, the "parent trap rule" which limits the amount of support rural carriers receive for acquired exchanges. The RTF's attempt to address this problem through its proposed "safety valve" mechanism will not provide sufficient support for the expected number of acquired exchanges by rural carriers during the 5-year life of the RTF proposal.

If the FCC does, however, adopt the safety valve mechanism or an amended version of it, Commission should apply the new safety valve mechanism retroactively to all rural carriers who have acquired exchanges since May 8, 1997, the effective date of the parent trap rule, and who have not received a parent trap waiver prior to the effective date of the new safety valve mechanism. Some carriers have already petitioned and received waivers of the parent trap rule, however, other carriers will not have an opportunity to obtain a waiver prior the Commission's decision in this proceeding. Depending on the effective date of a new safety valve mechanism, some carriers may be precluded from seeking additional support under the safety valve for needed upgrades to

the acquired exchanges. Plugging this loophole by applying the new safety valve mechanism retroactively to all rural carriers who have acquired exchanges since May 8, 1997, will ensure that all eligible rural carriers have the opportunity to apply for additional “safety value” support needed to upgrade acquired facilities.

NTCA further recommends that the FCC not freeze a rural incumbent LEC’s support at the point of competitive entry because it violates Section 254 and fails to resolve multiple competitive eligible telecommunications carrier (CETC) issues that need to be addressed more comprehensively. The proposed automatic freeze at the point of competitive entry does not provide incumbent rural LECs with any way of predicting the point at which service to a single customer by a CETC triggers the cap and freezes their support. Moreover, nothing in Section 214 or Section 254 requires that CETCs receive the same support as the incumbent or that the incumbent’s support be frozen at the time a CETC begins service in an area served by a rural LEC**.** This approach would only gut Section 254(e) and undermine the FCC’s ability to enforce Section 254 (e) and (k)**.** NTCA urges the FCC to solve multiple carrier and multiple line support issues in a comprehensive manner when it redefines federally supported services. Allowing CETCs to receive frozen HCL support based upon the embedded costs of the incumbent, as suggested by the RTF, would impede the Commission’s ability to ensure that the “carrier that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.” High cost support to a CETC should therefore be based on that carrier's costs.

NTCA wholeheartedly supports the proposal concerning the recovery of costs associated with catastrophic events that affect a carrier’s ability to provide universal service. NTCA, however, recommends that the recovery for catastrophic events should not be limited to the carrier's per-line frozen support and/or an indexed cap on the high-cost support fund. The Commission cannot expect consumers served in an area hit by a catastrophic event to suffer the loss of quality universal service merely because the carrier's per-line support has been frozen and can no longer cover the exceptional costs incurred during a disaster. Further, the FCC should clarify that these catastrophic costs are separate from those included under the RTF's recommended, rural HCL support mechanism, and therefore should not be subject to the proposed indexed cap. Catastrophic events are totally outside the control of the affected carriers, and cost recovery should not be achieved at the expense of other carriers that are eligible for support. The indexed cap does not contemplate recovery of extraordinary costs like those associated with storms and other acts of God and should not limit the associated cost recovery.

Finally, access issues, like High Cost Fund III, should not be decided in this proceeding but resolved in the MAG proceeding that is currently before the Commission. The Joint Board recognized in its *Recommended Decision* 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."

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The National Telephone Cooperative Association ("NTCA") submits these comments in response to the Commission's *Further Notice of Proposed Rulemaking* ("*FNPRM*"), FCC 01-8, released on January 12, 2001, in the proceeding captioned above.[1] NTCA represents over 500 local exchange carriers ("LECs") providing access to interexchange carriers ("IXCs") throughout rural America. They are also all "rural telephone companies" as defined in the Telecommunications Act of 1996 (the "Act").[2]

I. INTRODUCTION

On December 22, 2000, the Federal-State Joint Board on Universal Service ("Joint Board") submitted to the Commission the Recommendation of the Rural Task Force ("Task Force") as "a good foundation for implementing a rural universal service plan that benefits consumers and provides a stable environment for rural carriers to invest in rural America."[3] The Commission now seeks comments on this conclusion, as well as on certain implementation issues identified by the Joint Board.

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[1] *Further Notice of Proposed Rulemaking, In the Matter of Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, FCC 01-8 (rel. January 12, 2001).
[2] 47 U.S.C. §153(47).
[3] *FNPRM* at para. 1.

NTCA reiterates its overall support for the core recommendations of the Task Force.[4] These include the recommendations to use a modified embedded cost approach rather than a proxy model to determine the level of support, to provide support for all lines, to allow the dissaggregation of support and to modify the current overall and corporate operations expense caps. The Task Force has convincingly shown that the proxy model is an inappropriate tool for determining the forward-looking costs of rural carriers. Use of an embedded cost method avoids the numerous problems that arise from application of the Commission's non-rural synthesis model. The Task Force also recognized the need for a flexible disaggregation plan to more accurately target support and help to prevent "cream skimming" by new entrants. NTCA has embraced a similar concept within the Multi-Association Group ("MAG") Plan.[5] And while NTCA has taken the position that any cap will ultimately frustrate the goal of comparable rates and services between urban and rural areas, as well as slow investment in broadband to the last mile in many rural areas, the Task Forces recommended modification to the caps presented a great improvement over the current cap mechanisms.

NTCA also supports the Task Force's request for, and the Joint Board's commitment to, rapid action on this recommendation. As stated in its comments to the Joint Board, NTCA believes the Rural Task Force should be commended for achieving a consensus on a wide set of suggested policies and principles, and it supports the Task Force's suggestion that the plan adopted by the Commission remain in effect for a five-

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[4] *See*, generally, NTCA comments to the Federal State Joint Board on Universal Service, CC Docket No. 96-45, FCC 00J-3, November 3, 2000 (hereafter NTCA Comments).

[5] The MAG Plan, Improved Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers RM No. 10011, *Petition for Rulemaking of the LEC Multi-Association Group*, was filed with the FCC on October 20, 2000 by the following association members: NTCA,

year period, with proper review of the adopted universal service funding approaches well before the end of the five years.[6]

II. NTCA SUPPORTS MOST MEASURES DETAILED IN THE TASK FORCE PLAN, BUT URGES CAUTION IN DETERMINING PROPER SAFETY NET AND SAFETY VALVE RULE.

The Commission seeks comment as to whether the *Rural Task Force Recommendation* should be adopted as a means of "providing stability to rural carriers and encouraging rural investment." The Commission also asks if the recommendation provides for support that is "sufficient for purposes of the Telecommunications Act of 1996."[7] NTCA firmly believes the Task Force plan adopted by the Joint Board in its *Recommended Decision* is a welcome step in the right direction for the carriers serving rural America, providing far more stability than the currently capped universal service system. The Task Force's decision not to recommend the use of the Commission's Synthesis Model to determine forward-looking costs of rural carriers, or in conjunction with the already adopted, non-rural mechanism for determining high cost support, is consistent with NTCA's long-standing position opposing the proxy model as an integral part of any support mechanism.

NTCA has consistently opposed the imposition of any cap on the federal universal service support mechanism and continues to believe that caps on the universal service support funds are, in fact, unlawful.[8] Nonetheless, NTCA has already supported and

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National Rural Telecom Association (NRTA), Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) and United States Telecom Association (USTA).

[6] *Rural Task Force Recommendation* at 3.

[7] *FNPRM* at 2.

[8] "Carriers should not be subject to any cap on the mere assumption that the ultimate outcome of this proceeding will lead to a mechanism that reduces the overall support fund's size but still complies with the statute's 'sufficient' and 'predictable' requirement. A cap is particularly inappropriate at this time when consumers through the nation are demanding access to advanced services that require investment in new and costly technology. The Act requires that the Federal support mechanism be "sufficient" to both

reiterates here its support for the proposed rebasing of the high cost fund to the calendar year 2000 and the suggested freeze of the national average loop cost at $240, which approximates the actual average for year 2000 support.[9] In no event should support levels go below the rebased cap.

The Safety Net and Safety Valve measures proposed in the Task Force plan, however, give rise to concerns regarding sufficiency of the fund. While both represent welcome additives over the existing funding cap rules, NTCA urges the Commission to consider the limitations inherent in the proposed Safety Net and Safety Valve recommendations as discussed below.

III NTCA SUPPORTS THE SAFETY VALVE CONCEPT BUT BELIEVES ITS CONSTRAINTS WILL RENDER THE PROPOSAL INSUFFICIENT.

A. Section 54.305 Should Be Repealed.

NTCA urges the Commission to take this opportunity to repeal Section 54.305 of the Commission's rules (the "parent trap" rule.) Currently the rule 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.[10] The parent trap rule was originally intended to be a stopgap measure until carriers eventually received support based on forward-looking economic costs.

"preserve and advance universal service." 47 U.S.C. § 254(b)(5). Further, continuation of the cap will force relitigation of that issue as change progresses and will force individual carriers to seek costly administrative waivers to meet customer needs." NTCA comments at 7. In this regard, NTCA strongly objects to Worldcom's statement to the Joint Board that there is "no evidence that the mechanism adopted in Universal Service Order is not 'sufficient.'" Worldcom comments at 6.

[9] "The suggested rebasing and annual growth by the rural growth factor (RGF) is certainly an improvement over the cap that exists today. NTCA also supports the recommended adjustment to frozen per loop support to allow a carrier to recover costs from catastrophic events affecting its ability to provide universal service." NTCA comments at 5.

[10] 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,

Instead, it has become a disincentive for rural carriers considering the acquisition of exchanges served by non-rural carriers because the per line support that would be received for many of these exchanges is inadequate. Repealing the parent trap rule and allowing acquiring rural carriers to recalculate their per line support based on the average cost of all their lines would allow recovery for the necessary upgrades and repairs for the provision of voice grade service and broadband capability in the newly acquired exchanges. Eliminating the rule will also assist the Commission in meeting its universal service and advanced services mandates by providing sufficient and predictable support to rural carriers acquiring exchanges and allow these carriers to accelerate the deployment of broadband services to rural America.

The Rural Task Force, however, recommended 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. The Task Force provided an illustration of such a mechanism in Appendix D of its recommendation.[11] The Commission invites comments on this proposed safety valve mechanism.

In its example, the Task Force suggested a mechanism for acquirers under which sold or transferred exchanges would be designated as new study areas within the state. Those new study areas that meet the definition of "rural telephone company" would then be eligible to receive fifty percent of the difference between a given year's calculated high cost loop expense adjustment and an index year expense adjustment. According to the proposed example, the total "safety valve" support available to all eligible study areas

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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.

would be limited to no more than five percent of the indexed high cost loop (HCL) fund cap for rural carriers.[12]

If the Commission does adopt a safety valve rule, NTCA recommends that it be applied retroactively to May 8, 1997, the effective date of the "parent trap" rule, and grandfather all rural carriers that have acquired exchanges but have yet to receive a "parent trap" waiver. Since that date, many rural carriers have either acquired or are in the process of acquiring exchanges from larger local exchange providers.[13] Some carriers have already petitioned and received waivers of the parent trap rule,[14] however, other carriers will not have an opportunity to obtain a waiver prior the Commission's decision in this proceeding. Depending on the effective date of the new safety valve rule, some carriers may be precluded from seeking additional support under the safety valve for needed upgrades to the acquired exchanges. NTCA, therefore, urges the Commission to plug this loophole. In doing so, the Commission will ensure that all eligible rural carriers have the opportunity to apply for "safety value" support needed to upgrade acquired facilities and extend and improve services to previously unserved and underserved areas. This will also allow the Commission to make greater strides towards meeting its mandate to provide consumers in all regions of the Nation access to affordable telecommunications services.

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[11] See *Rural Task Force Recommendation* at Appendix D.
[12] *Ibid.*
[13] *See, In the Matter of ATEAC, Inc., Alaska Telephone Company, Artic Slope Telephone Association Cooperative, Inc., Interior Telephone Company, Inc., Mukluk Telephone Company, Inc., United-KUC, Inc., Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix Glossary of the Commission's Rules*, CC Docket No. 96-45, DA 01-101 (released January 17, 2001).
[14] *See, In the Matter of the Mescalero Apache Telecom, Inc. Waiver of Section 54.305 of the Commission's Rules*, CC Docket 96-45, FCC 01-13 (January 18, 2001).

NTCA also supports the practical suggestion by the Task Force that sold or transferred exchanges be recognized as new study areas within the state, allowing for those study areas that meet the rural definition to be eligible for the safety valve. However, NTCA is concerned by certain investment "disincentives" that also seem inherent in the proposal. According to the Appendix D example, the proposed baseline, or index year on which the safety valve calculation would depend, would not be tabulated until the "end of the first year of operations."[15] This means that acquirers would be required to wait an entire year to establish the index, with another year lag before even the first dollar of support is received. This would most likely translate into a "purchase and wait" formula, by which no acquiring company would invest in network upgrades for purchased plant during that first year. This is not only a setup for failure for the acquirer, but is also an anti-consumer policy: if there is sub-standard service prior to the transfer/acquisition, it will not improve for more than a year after it is acquired.

Rural consumers will not be served by a plan that allows all competitive eligible telecommunications carriers (CETC) lines to receive the same support as the ILEC without any cap while at the same time imposing severe limits on the availability of universal service support to rural areas acquired from another carrier. While it is extremely unfortunate that there is a large disparity in support available for comparably situated exchanges based on who owns the exchange, it must be remembered that this comes from a legacy system in which the large carrier averaged its costs across its entire study area. The large companies, primarily Bell operating companies, only received support based on their average costs which were derived from predominately low cost lines in the largest cities in the nation. Since the universal service support mechanism for

[15] *Rural Task Force Recommendation* at Appendix D.

large companies results in inadequate support for rural areas they are selling these exchanges. The exchanges being sold have always received support. It was implicit support embedded in the average cost structure of the large companies local rates; a structure that is being abandoned to foster competition. In many instances, large companies have sold these exchanges or stopped investing in their high cost rural exchanges.

The implicit support these exchanges received before the introduction of competition needs to be recognized and accounted for in the federal mechanism. After all, federal support is intended to permit comparable services to be offered at comparable rates in rural areas. Explicit universal service support should be equivalent to prior implicit support and should be sufficient to provide comparable ongoing service to customers.

Support should be based on the costs to provide supported services and an exchange sold to another carrier should be eligible to receive sufficient support to provide comparability. Many are concerned about the amount of money a large carrier receives when it sells a rural exchange. However, that money does not affect the rate base used by rate of return carriers that must recover the cost of providing service.[16] Network investment which exceeds the net book at the time of purchase should be eligible to receive support from the newly adopted rural HCL fund. This would be consistent with the merger/acquisition principle adopted by the Task Force stating that "any additional

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[16] Current accounting rules require the acquiring carrier to record the acquired exchange at original cost and to also credit any booked depreciation and amortization for the acquired plant. Thus the net book recorded on the acquiring companies records is the same as the net book for the plant sold. The net book is not affected by the actual selling price of the exchange. Any premium paid over the net book is recorded in Account 2007, Goodwill or Account 2005, Plant Adjustments and cannot be recovered from rate payers.

universal service support should be driven by post-transaction investments made to enhance the infrastructure of and improve the service in these exchanges."[17]

NTCA urges the Commission to fully consider what needs to be done to adequately serve the subscribers of the sold exchange. We urge the Commission to reaffirm these principles. First, support for acquired exchanges should be based on embedded costs just as it is for existing exchanges held by the ILEC. Second, the rural support mechanism needs to encourage the necessary investment to upgrade plant, where necessary, and to continue to invest, as needed, to attain and sustain the basic universal service objectives. At a minimum, there should be full support, in accordance with approved mechanisms without any caps, for all new investments incurred by the purchasing rural carrier. This should start immediately without a waiting period. The Commission should not adopt rules which would delay new investment and consequently keep subscribers from receiving comparable service. The purchasing carrier should be encouraged to begin investment immediately upon acquisition of an exchange.

B. A Five Percent Threshold is Inappropriate for the Safety Value.

NTCA is concerned that there does not appear to be much of an evidentiary record behind the 5 percent factor chosen to limit the HCL following the sale of transfer of an exchange.[18] NTCA believes that the illustrative 5 percent cap is not "appropriate" and is inconsistent with the Task Force's own cited principle that no customer should be "doomed to poor service because they live in exchanges that have been involved in sale/transfer transactions where the previous owner had limited access to universal

[17] *Id.* at 29.
[18] The RTF has clarified that the 5 percent figure was used illustratively. It now makes clear that it only recommends that the "safety value mechanism" be capped at an "appropriate" level. RTF Comments filed in this proceeding on February 20, 2001 (RTF Feb. 2001Comments).

service support funds."[19] Furthermore, the concept of an artificial cap conflicts directly with the requirement that there be enough or "sufficient" support to ensure both the preservation and advancement of a level of services that will evolve as required by Section 254(c) and that must be offered in rural areas at rates that are reasonably comparable to rates charged in urban areas. 47 U.S.C. § 254 (b)(3).

One need only look at examples such as the recent announcement of Qwest Communications for further evidence that a 5 percent cap on safety valve support is *not* "appropriate" for a five-year plan such as this one and fails to meet the sufficiency test. According to its November 3, 2000, Form 8-K filing with the Securities and Exchange Commission, Qwest is considering the sale of "a couple million" of the rural, local access telephone lines acquired through its purchase of US West.[20] This sale alone could amount to a substantial portion of the National Exchange Carrier Association (NECA) Carrier Common Line (CCL) pool. Under circumstances like these, a safety valve with a 5 percent restriction cannot possibly achieve its stated objective over any length of time. The cap will cut off support at the 5 percent level without any regard for the nature or extent of the availability of the supported services at rates that are comparable to rates charged in urban areas. This automatic cutoff fails the test of "sufficiency" and "predictability." In any given year, carriers will not know or able to gauge the extent of support available until USAC has obtained investment data and determined each carrier's proportionate support of the arbitrarily capped fund. NTCA urges the Commission not to lose sight of the Act's mandate for "sufficient" and "predictable" support in implementing any safety valve and reiterates that the parent trap rule should be

[19] *Rural Task Force Recommendation* at 29.

eliminated completely to ensure that rural customers in acquired exchanges obtain the benefit of comparable rates and services.

IV. THE RECOMMENDATION ON FIXED PER-LINE SUPPORT IN COMPETITIVE AREAS REQUIRES CHANGES AND CLARIFICATION.

A. NTCA objects to measures developed solely to induce artificial competition or to "size" the fund.

In its *Recommended Decision*, the Joint Board agreed with the Rural Task Force that the Commission should freeze support when a competitor begins providing services in a given study area.[21] An automatic freeze at the point of competitive entry is as arbitrary as arbitrary caps on the fund size. Incumbents will have no way of predicting the point at which service to a single customer by a CETC triggers the cap. This cap attempts to control the overall size of a fund that could get out of control from funding multiple carriers and multiple lines. Funding multiple carriers and lines is a concern which the Commission will need to address more directly when it redefines universal service. It should not impose this CETC freeze as a stopgap because it violates Section 254 while failing to resolve multiple CETC issues that need to be addressed more comprehensively.

NTCA has also consistently urged the Commission to avoid adopting support mechanism rules with the goal of artificially inducing competition.[22] Allowing competitive eligible telecommunications carriers to receive frozen HCL support *based upon the embedded costs of the incumbent*, as suggested by the Task Force, would

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[20] *See* Qwest Communications International Inc., Form 8-K, Item 5, filed with the Securities and Exchange Commission on November 3, 2000.
[21] *See Recommended Decision*, FCC 00J-4 at para. 18.
[22] NTCA comments at 10-11. *See also*, Comments of the Rural Telephone Coalition, January 26, 1998, CC Docket No. 96-45 (Report to Congress), DA 98-2 at 24-25. NTCA, 21st Century White Paper Series Paper #3: "The Cost of Competition," December 2000.

impede the Commission's ability to ensure that the "carrier that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."[23] High cost support to a competing eligible carrier should be based on that carrier's costs.

In a recent white paper written for NTCA[24], economist Dr. Dale Lehman of Fort Lewis College in Durango, CO examined the impact of artificially induced competition on the provision of advanced services to rural areas. Lehman finds that

> [a]rtificially induced competition in rural areas serves to undermine the already weak business case for broadband deployment. It threatens the revenue base for these carriers but does not reduce the investments required to provide service. Furthermore, since these carriers continue to have an obligation as the "carrier of last resort" they must continue to place and maintain the telephone plant necessary to meet this obligation. As a result, competition in rural areas and deployment of advanced services are in conflict.[25]

Hence, not only would subsidized competition in rural areas not bring greater service choices and/or lower costs to end users, it could ultimately result in the exact opposite. As a solution, Lehman proposes that competition be allowed to flourish where market conditions permit, but that only the incumbent with "carrier of last resort" obligations receive explicit support.[26]

In its reply comments to the Joint Board, the Competitive Universal Service Coalition (CUS) asserted that NTCA's arguments abandon "the fundamental goal of portability."[27] CUS is mistaken**.** NTCA does not contest the concept of support for competitors that are designated eligible telecommunications carriers (ETCs) and has

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[23] 47 U.S.C. §254(e).
[24] NTCA, 21st Century White Paper Series Paper #3: "The Cost of Competition," December 2000.
[25] *Id.* at 3.
[26] *Id.* at 15.
[27] CUSC reply comments at 3.

consistently said as much on record.[28] The Act provides for support for multiple ETCs but places a higher standard on state designation of ETCs in areas served by a rural telephone company. Section 214(e)(2)(5). Nothing in Section 214 or Section 254 requires that ETCs receive the same support as the incumbent or that the incumbent's support be frozen at the time an ETC begins service in an area served by a rural telephone company**.** NTCA opposes the idea that competitive entry should be a trigger point for freezing support and that a competitor should receive the same support as the incumbent, based on that incumbent's costs. That approach guts Section 254(e) and undermines the Commission's ability to enforce Section 254 (e) and (k)**.**[29]

It is clear from the *Rural Task Force Recommendation* that Task Force members endeavored to include measures guarding against "explosive growth" of the HCL fund due to CETC entry. Indeed, the Task Force explained in its executive summary that the plan is meant to strike "a careful balance between the need to provide a fund that is 'sufficient' under the provisions of the 1996 Act while insuring that the overall size of the fund is reasonable."[30] The Act, however, mandates a funding mechanism that is sufficient and also able to provide comparable rural and urban rates and services. NTCA reiterates that

> decisions concerning universal service support mechanisms must not be made on the basis of a mechanism's fund sizing ability. Carriers in high cost areas should have access to a funding mechanism that meets the law's requirements for

[28] *See*, for example, Comments of the Rural Telephone Coalition, January 26, 1998, CC Docket No. 96-45 (Report to Congress), DA 98-2 at 24.
[29] Section 254(k) provides: **"**A telecommunications carrier may not use services that are not competitive to subsidize services that are subject to competition. The Commission, with respect to interstate services, and the States, with respect to intrastate services, shall establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services." 47 U.S.S. § 254(k)**.**
[30] *Rural Task Force Recommendation* at 3.

sufficient support, allowing for reasonably comparable rural and urban rates and services.[31]

B. Cost recovery associated with catastrophic events should not be limited by support for loans, nor should it be subject to the proposed indexed cap.

Most parties, including NTCA, wholeheartedly supported the proposal concerning the recovery of costs associated with catastrophic events that affect a carrier's ability to provide universal service.[32] The Joint Board recommended that the Commission permit incumbent LECs receiving frozen per-line support make adjustments for the recovery of costs associated with such disasters, but suggested that the Commission seek further input as to whether the proposed ability of incumbent LECs to adjust their fixed per-line support levels to recover these costs should be limited by support from insurance, loans, or grants.[33]

As previously cited, several of NTCA's members have experienced such natural disasters and can attest to their devastating financial impact.[34] Though insurance provisions are necessary and do alleviate some of the immediate financial impact, loans taken out to rebuild critical network components actually end up *increasing* the affected

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[31] *See* NTCA comments at 10. *See also*, NTCA comments on the Joint Board's *Second Recommended Decision* for non-rural companies, urging the Joint Board to reject the notion that its role is to cap or "size" the fund. In its December 22, 1998 comments, the Rural Telephone Coalition recognized that the Joint Board did properly focus on comparable rural and urban rates and services by abandoning the 25% federal support ceiling for non-rural support. *Id.* at iii "The requirements that federal funding be "sufficient" and that carriers use support only for the intended universal service purposes are … the only lawful measure of the federal fund's size. It is perfectly valid for the Joint Board to seek to maintain nationwide funding at a level that does not unnecessarily burden any consumer group. But it is patently unlawful for the Joint Board or the Commission to treat preventing significant growth of the federal fund over its current level as an independent test of a suitable federal mechanism. The Joint Board …should be extremely careful to apply the statutory sufficiency standard - not a fund size test – when it turns later to further consideration of a rural ILEC support mechanism."

[32] "Such catastrophic events include hurricanes, floods, earthquakes, fires or other natural disasters." *Rural Task Force Recommendation* at 27.

[33] *Recommended Decision* at para. 19.

[34] *See*, for example, "Ice Storm Takes Its Toll on NTCA Members," by Jennifer Mayne, *Rural Telecommunications Journal*, Vol. 17, No. 3, May, 1998.

carrier's recovery costs. The Commission cannot expect consumers served in an area hit by a catastrophic event to suffer the loss of quality universal service merely because the carrier's per-line support has been frozen and can no longer cover the exceptional costs incurred during a disaster.

Further, the Commission should clarify that these catastrophic costs are separate from those included under the Task Force's recommended, rural HCL support mechanism, and therefore should not be subject to the proposed indexed cap. If an affected study area requires additional per-line funding support to recover from a disaster merely at the expense of other study areas that require funding support to provide universal services, what is the point of singling out disaster recovery? These events are totally outside the control of the affected carriers, and cost recovery should not be achieved at the expense of other carriers that are eligible for support. The indexed cap does not contemplate recovery of extraordinary costs like those associated with storms and other acts of God and should not limit the associated cost recovery.

C. Fixed per-line support levels should also be adjusted to the extent a carrier's costs associated with regulatory mandates are above and beyond what can be recovered within rates.

Similarly, NTCA urges the Commission to recognize that rural or insular carriers subject to frozen per-line support after a CETC begins service can face equal difficulty implementing unfunded regulatory directives, such as those the Commission has required under the Communications Assistance for Law Enforcement Act (CALEA.) In the case of CALEA implementation, many NTCA members have voiced concern over substantial expense already incurred since the 1994 passage of the act -- while the wait for any reimbursement agreement on the network modifications remains clouded by uncertainty and subject to the availability of appropriations. NTCA asks that incumbent LECs receiving frozen per-line support also be permitted to make adjustments to the extent that costs associated with regulatory mandates such as CALEA cannot otherwise be recovered and are above and beyond what can be recovered via company rates.

D. The FCC should clarify that incumbents receiving frozen per-line support can still take advantage of the proposed safety net mechanism.

Finally, with regard to the Task Force's provisions for support in competitive study areas, NTCA seeks clarification that incumbents receiving frozen per-line support can still take advantage of the proposed safety net mechanism. This point is unclear in the recommendation and is further confused by the Joint Board's statement that "the Commission should consider whether 'safety valve' support is 'frozen' when a competitive eligible telecommunications carrier enters the study areas, just as other high-cost loop support would be frozen when a competitive eligible telecommunications carrier enters the…area."[35] NTCA is certainly opposed to disallowing incumbents subject to competition from qualifying for an additive over and above the capped HCL fund should they choose to substantially invest in their rural network. Just as a "freeze" of the safety valve would unduly dissuade investment to upgrade purchased plant, disallowing participation in the safety net would negatively affect investment in rural infrastructure.

In view of the proposed freeze on support in areas where a CETC has entered, NTCA also believes the suggested safety net qualifier of 14 percent is simply too high and will become a disincentive to upgrade.[36] Rural customers will continue to demand

[35] *Recommended Decision* at para. 17.
[36] *Rural Task Force Recommendation* at 28.

new broadband services, which in turn will require investment. The Commission must make certain that rules adopted for frozen per-line support in competitive areas will not also "freeze" the network where it is today.

V. THE PROPOSED CONSTRAINT ON THE RECOMMENDED SAFETY NET MECHANISM IS ARBITRARY AND LIMITS ITS ABILITY TO MEET THE SUFFICIENCY REQUIREMENTS OF THE ACT.

A. The projected outcome in real, additive support dollars will not achieve the Task Force's stated objective.

The Task Force's proposed safety net would become available in years during which the new indexed cap on HCL support is triggered, to carriers for whom growth in per-line telecommunications plant in service (TPIS) is at least 14 percent greater than the study area's TPIS per-line in the prior year.[37] The safety net would enable a carrier to recover 50 percent of the difference between capped and uncapped support for that year and the four succeeding years.

NTCA continues to question the 14 percent qualifier and finds that a reasonable rationale for the constraint is lacking. The Task Force apparently arrived at this number by doubling the Rural Growth Factor (RGF), which is close to 7 percent.[38] Though it is a useful number for other purposes, the RGF is simply not related to the measure of investment that may be required by carriers affected by the new cap -- as the safety net is supposed to be. Rather, the RGF is based on growth in access lines and does not equate to investment in technology. NTCA, therefore, finds the 14 percent qualifier to be arbitrary.

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[37] *Ibid.*

[38] The Task Force states it chose the safety net's 14 percent qualification factor "as an estimate of twice the average RGF in recent years." *Rural Task Force Recommendation* at 28, note 52.

More importantly, NTCA is concerned that the proposed additive, based on the 14 percent qualifier, does not amount to a meaningful safety net. As explained before, NTCA believes this proposal to be a welcome measure over the existing funding cap rules. However, this plan would still fail to account for many companies that invest heavily in a given year. The Joint Board has already received comments from several such carriers that have stated they would not meet the 14 percent qualification despite substantial network investment (*i.e.*, Hanson County, McCook Cooperative, Valley Telecommunications).

Even for those who qualify, it allows for only *one-half* of the difference between the needed support and the capped support.[39] NTCA notes that data filed in an *ex parte* with the Commission by the Task Force shows that the safety net is projected to produce almost no real dollars in additive support. According to the submitted price-out data, the safety net will total only $229,580 in 2001, and less than $3.7 million over a five year period.[40] NTCA does not object to the Task Force's particular safety net *mechanism*, but rather its artificial constraint (the required 14 percent growth in per-line TPIS). As it stands, the outcome in real additive support does not achieve the Task Force's stated objective.

B. The proposed safety net will never enable rural carriers to recover more than 100 percent reimbursement on investment.

The Commission asks whether the safety net additive mechanism could enable rural carriers to recover more than 100 percent reimbursement on their incremental loop investment and, if so, how the mechanism should be modified.[41] For qualifying

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[39] *Rural Task Force Recommendation* at 28.
[40] RTF *ex parte* filed 11/6/2000**.**
[41] *FNPRM* at para. 7.

incumbents, the answer is clearly no. Receiving *half* of what should have been recovered via HCL support absent the indexed cap could never net a carrier more than 100 percent of investment.

The Commission should consider, however, whether a competitor might recover more than 100 percent of its incremental loop investment. If the recommendation is adopted as written, "ILECs and CETCs serving the same area would receive the same amount of support per loop."[42] Assuming incumbents in competitive rural areas would still be eligible to participate in the safety net mechanism,[43] would the CETC receive "the same amount of support" plus the incumbent's additive while its own investment costs remain unknown? This would certainly raise a potential inequality issue, one that NTCA urges the Commission to ensure is not inherent in the rules it adopts.

VI. OTHER ISSUES RELATED TO IMPLEMENTATION OF RTF PLAN

A. High Cost Fund III principles should be dealt with only in the concurrent MAG proceeding.

In its comments to the Joint Board, NTCA stressed the importance of parallel timing and consistency among decisions made in this proceeding and the proceeding to consider the MAG plan. The MAG plan provides a comprehensive access charge reform and alternative regulation plan for non-price cap incumbent LECs, but its measures are very closely tied to and dependent upon the measures adopted in the universal service proceeding. NTCA is very pleased that the two proceedings have, indeed, been placed on parallel tracks.

[42] *Rural Task Force Recommendation* at 27.
[43] NTCA asked in Section IV.(D), *supra*, that the Commission clarify that incumbents with frozen per-line support may still qualify for the safety net support additive.

While NTCA believes that access reform for rate of return carriers should be addressed in the docket considering the MAG plan, it reiterates is support for the basic Task Force principles to the extent that they are consistent with MAG.[44] Nonetheless, NTCA stands by its position that High Cost Fund III principles should only be considered in the course of the MAG proceeding, rather than in conjunction with the rural universal service mechanism.[45] The Joint Board recognized in its *Recommended Decision* 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."[46]

B. The FCC should not further delay the MAG proceeding by referring any part of MAG to the Joint Board.

Certain Joint Board members have also urged that their involvement in review of those aspects of the MAG plan that relate to universal service translate into a formal referral to the Joint Board of the universal service issues raised by MAG.[47] NTCA notes that Joint Board members may already comment freely on any part of the MAG plan in a fashion similar to any other party. NTCA urges the Commission to refrain from formally referring any part of MAG to the Joint Board, as this would unnecessarily delay consideration of the two proposals concurrently.[48]

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[44] "The core recommendation …is that an un-capped High Cost Fund III should replace the difference between current interstate access revenues and the repriced interstate revenues. High Cost Fund III would be funded by equitable and nondiscriminatory assessments on all interstate carriers. Support would be geographically deaveraged by cost zone and targeted to high cost areas served by Rural Carriers. These principles are consistent with the specific proposals in the MAG plan. MAG proposes to replace implicit subsidies in access with Rate Averaging Support (RAS) that is a mechanism like High Cost Fund III of the recommendation. MAG also provides for geographic deaveraging by cost zones but goes further to propose three zones per wire center and specify a procedure for deaveraging." NTCA comments at 18.
[45] *Id.* at 19.
[46] *Recommended Decision* at para. 21.
[47] *Ibid.*
[48] Several Joint Board members agree. Joint Board Chairman Susan Ness, for example, states "I would prefer to proceed concurrently with universal service and access charge reform. The two go hand in glove. Although I agree that the Joint Board should be actively involved in issues that affect high-cost universal service mechanisms, I fear that a formal referral to the Joint Board could delay the process of implementing

VII. CONCLUSION

NTCA reiterates its overall support for the recommendations to use a modified embedded cost approach rather than a proxy model to determine the level of support, to provide support for all lines, to allow the dissaggregation of support and to modify the current overall and corporate operations expense caps. NTCA also supports rapid action on this recommendation and is pleased that this proceeding has been placed on a timeline concurrent with the MAG proceeding.

While the recommended safety valve and safety net mechanisms represent substantial improvements over current funding cap rules, the associated, artificial constraints on these mechanisms are arbitrary and render the mechanisms insufficient. NTCA opposes the freeze of incumbent support on the basis of CETC entry and urges the Commission to comply with the "sufficiency" requirements of Section 254 in this proceeding.

Respectfully submitted,

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these reforms beyond the July 1, 2001 target date." *See* Separate Statement of Joint Board Chairman Susan Ness. *See also*, statement of Commissioner Gloria Tristani: "In light of the time limitations and resource constraints that the Commission faces, it is not practical."

Certificate of Service

I, Rita H. Bolden, certify that a copy of the foregoing Comments of the National Telephone Cooperative Association in CC Docket No. 96-45, FCC 01-08 was served on this 26th day of February 2001 by first-class, U.S. Mail, postage prepaid, to the following persons

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