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Before the
FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45

REPLY OF INNOVATIVE TELEPHONE

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March 12, 2001

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TABLE OF CONTENTS

SUMMARY

Innovative Telephone applauds the efforts of the Rural Task Force ("RTF" or "Task Force"), the Federal-State Joint Board on Universal Service ("Joint Board"), and the Commission to develop an appropriate mechanism to provide universal service support to rural and insular carriers. A majority of commenters support the Commission's adoption of the Joint Board's *Recommended Decision*, which itself recommends adoption of the entire package of recommendations presented in the *RTF Recommendation*. The *RTF Recommendation* represents the compromise reached by the Task Force after two years of careful deliberation. Remarkably, this diverse group managed to reach a consensus that achieved unanimous support.

<u>The Commission should adopt the RTF's recommendations in their entirety.</u>

Innovative Telephone urges the Commission to adopt the *Recommended Decision* in its entirety, as requested by the Joint Board. The *Recommended Decision* complies with Congress's mandate to preserve and advance universal service in rural, insular, and high cost areas. Of course, minor clarifications may be needed with regard to some aspects of the RTF's recommendations, as the Commission noted in the Further Notice of Proposed Rulemaking ("*FNPRM*"). The Commission should not disturb, however, the delicately balanced and widely supported compromise that has been achieved by the RTF.

Despite the widespread support for the *RTF Recommendation*, a number of parties have requested that the Commission modify particular recommendations to serve their own self-interests. Innovative Telephone urges the Commission to reject these requests. In particular, Innovative Telephone opposes the proposal to introduce a productivity factor that would immediately re-base the high cost fund downward and then further deflate the fund in future

years. This proposal is contrary to the mandate that the Commission establish funding that is "sufficient" to preserve and advance universal service. The data recently submitted in this proceeding by the RTF adequately demonstrate that modest increases in high cost support are necessary to reduce the funding shortfalls that rural and insular carriers are expected to suffer over the five-year term of the RTF plan. Even with the reasonable growth in support under the RTF plan, the most recent data show that the funding shortfall will significantly exceed $500 million over the next five years.

Claims by some opponents of the *RTF Recommendation* that the plan would double the size of the high cost fund or increase the fund by more than $1 billion are wildly inaccurate. A review of the actual data submitted by RTF shows that the increases in high cost support will be far more modest.

The Commission should adopt the RTF's proposal for "catastrophic event" support. "Catastrophic event" support is especially important to insular carriers, such as Innovative Telephone, that are particularly vulnerable to significant cost "spikes" due to frequent hurricanes and other severe weather patterns. Innovative Telephone agrees with the RTF's comments, which explain that the this mechanism would not allow "double recovery." The proposed provision would permit support only where all other forms of support prove to be insufficient. Moreover, this exception to the proposed freeze on per-line support in competitive study areas maintains the status quo in universal service support. Innovative Telephone urges the Commission to adopt the "catastrophic event" provision proposed in the *RTF Recommendation* and to reject the proposal to create an additional hurdle by requiring carriers to obtain state commission approval before receiving support.

The Commission should not create artificial restrictions on investments that qualify for "safety valve" support, nor should it allow state commissions to adopt such restrictions. The Commission should reject requests by several parties to artificially restrict the types of investment that qualify for "safety valve" support. Existing rules place adequate safeguards that only reasonable investments will qualify for support. If the Commission believes that a definition of "meaningful investment" is necessary, it should adopt a definition that is sufficiently broad to allow insular and rural carriers to recover costs incurred in providing any telecommunications service encompassed by "universal service." The Commission should also reject the proposal to delegate responsibility for defining "meaningful investment" to state commissions. State commissions already have authority to monitor carriers' use of universal service support and the *RTF Recommendation* endorses this oversight role.

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Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45

REPLY OF INNOVATIVE TELEPHONE

Innovative Telephone (formerly known as the Virgin Islands Telephone Corporation),[1] by its attorneys, hereby submits this reply to the comments submitted in response to the Commission's *Further Notice of Proposed Rulemaking* ("*FNPRM*") released on January 12, 2001, and published in the Federal Register on January 26, 2001.[2]

Innovative Telephone supports the Commission's adoption of the *Recommended Decision*[3] of the Federal-State Joint Board ("Joint Board") and the recommendations of the Rural Task Force ("RTF") encapsulated therein. The *Recommended Decision* and underlying *RTF Recommendation*[4] comply with Congress's mandate to preserve and advance universal service in

[1] The Virgin Islands Telephone Corporation is doing business under the trade name "Innovative Telephone."

[2] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Further Notice of Proposed Rulemaking, FCC 01-8 (rel. Jan. 12, 2001) ("*FNPRM*"), *summarized at* 66 Fed. Reg. 7867 (proposed Jan. 26, 2001).

[3] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, FCC 00J-4 (rel. Dec. 22, 2000) ("*Recommended Decision*").

[4] *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. Sept. 29, 2000) ("*RTF Recommendation*" or "*Recommendation*").

rural, insular, and high cost areas."[5] It reflects the RTF's lengthy study and careful deliberation of complex issues. Remarkably, it also represents a compromise solution that garnered the unanimous approval of the RTF's diverse members. A substantial majority of commenters now support adoption of the *Recommended Decision*.

The Joint Board, respecting the broad base of support within the RTF for this finely balanced solution, has recommended that the Commission adopt the *RTF Recommendation* without modification.[6] The Commission should respect the unanimous support within the RTF for this package of universal service reforms, and the subsequent endorsement of the entire *RTF Recommendation* by the Joint Board. It should act quickly to adopt the *RTF Recommendation* in its entirety, as recommended by the Joint Board.

I. THE COMMISSION MUST PRESERVE THE HISTORIC, CAREFULLY CRAFTED COMPROMISE ACHIEVED BY THE RURAL TASK FORCE WHICH IS REPRESENTED IN THE RECOMMENDED DECISION.

The *RTF Recommendation* represents a truly historic and remarkable achievement – a broad government and industry compromise in one of the most complex and controversial areas of telecommunications: universal service. RTF membership included representatives from state public utility commissions, state consumer advocates, local exchange carriers, long distance carriers, competitive local exchange carriers, the wireless industry, and the Rural Utilities Service ("RUS"). This diverse membership ensured that the RTF deliberations considered all points of

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5 47 U.S.C. § 254(b)(3).

6 *See Recommended Decision* at ¶ 14. The Joint Board raised a number of implementation issues that are addressed in the *FNPRM*. *See FNPRM* at ¶¶ 4-7.

view. Remarkably, the *RTF Recommendation* received the unanimous support of the entire Task Force.[7] It is "a delicately-crafted package"[8] that balances the interests of its various constituents.

The Joint Board wisely adopted a similar consensus approach when it acted upon the *RTF Recommendation*. Although many Board members would have preferred to modify some of the provisions, they elected to respect the integrity of the RTF's unanimous solution.[9] The Joint Board thus recommended that the Commission adopt the entire proposal without changes.[10]

Now that the Commission is reviewing the *Recommended Decision*, many parties have submitted comments urging the Commission to tinker with the RTF recommendations. Rather than supporting adoption of the RTF's compromise as an integrated whole, they urge the Commission to amend it to suit their own self-interests, oftentimes proposing actions that are unrelated to this proceeding. For example, AT&T has conditioned its support of the plan upon elimination of the Universal Service Fund ("USF") lag.[11] California urges the Commission to eliminate the National Exchange Carrier Association ("NECA") pooling system.[12] All of the proposed modifications would disturb, to a greater or lesser extent, the fragile balance of the

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7 *See* Separate Statement of Joint Board Chairman Susan Ness, *Recommended Decision*, at 1 ("Ness Statement").

8 *RTF Recommendation* at 3.

9 *See* Ness Statement at 1.

10 *See Recommended Decision* at ¶ 22.

11 *See* AT&T FNPRM Comments on Joint Board Rural Task Force Recommended Decision, CC Docket 96-45, at 17 (Feb. 26, 2001) ("AT&T FNPRM Comments").

12 *See* Comments of the People of the State of California and the California Public Utilities Commission, CC Docket 96-45, at 7 (Feb. 26, 2001) ("California FNPRM Comments"). California also urges the Commission to follow four new principles in this proceeding, none of which bear any relation to the universal service principles established by Congress in Section 254. *See id.* at 2. Rather, the four principles merely serve California's own self-interest.

compromise solution and risk losing the broad support that now exists for the *RTF Recommendation*.

In short, the Commission must reject the various requests that it tinker with the recommendations of the RTF and the Joint Board. Instead, Innovative Telephone agrees with NECA's comments that the Commission should defer to the highly pragmatic approach taken by the RTF and Joint Board[13] and adopt the compromise package that has received support from every member of the Task Force. Although the package is not all that Innovative Telephone feels is warranted, on balance, it represents an improvement over the existing system and should be adopted by the Commission. The Commission should focus, therefore, on addressing the implementation issues raised by the Joint Board and discussed below.

II. THE COMMISSION MUST REJECT THE PROPOSAL TO CONSTRAIN THE SIZE OF THE HIGH COST FUND BY USE OF A PRODUCTIVITY FACTOR IN ORDER TO ENSURE THAT INSULAR AND RURAL CARRIERS RECEIVE "SUFFICIENT" SUPPORT.

Before addressing some of the implementation issues raised in the *FNPRM*, two issues raised must be swiftly rejected in order to preserve the plan's benefits: arbitrary funding limits and fund size concerns.

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13 In its most recent comments, NECA states: "[T]he proposals are reasonable, and, in NECA's view workable. Because the RTF proposals were forged in a 'crucible of compromise,' they convey integrity of purpose, and strengths drawn from the RTF members' shared vision. The Commission, therefore, must give the Joint Board Recommendation on the RTF proposals extraordinary weight as it considers reforming universal service for the long term." NECA Comments, CC Docket No. 96-45, at 3 (Feb. 26, 2001) ("NECA FNPRM Comments").

A. The Insertion of a Productivity Factor Would Prevent Insular and Rural Carriers from Receiving "Sufficient" Support, Contrary to the Mandate of Section 254.

Ad Hoc urges the Commission to introduce an annual productivity factor, or "X-factor," to re-base the high cost loop ("HCL") fund downward to reflect productivity increases in the telecommunications industry since 1994, and to reduce HCL funding on a going-forward basis.[14] It notes that Tier 1 LECs have been subject to a 6.5% "X-factor" since 1997 under price cap plans for interstate access charges and proposes that this same 6.5% productivity factor should apply to HCL funding for rural and insular carriers.[15] Ad Hoc further proposes that the High Cost Fund III proposed by the RTF should also be whittled down each year by an "X-factor," and again suggests that a 6.5% factor would be appropriate for this purpose.[16] These proposed modifications to the universal service funding mechanism have no basis in law or fact.

Ad Hoc's proposal is contrary to the mandate of Section 254 that funding be "sufficient" to preserve and advance universal service.[17] In no less than three places within this Section, Congress emphasized that "sufficiency" must be the cornerstone of universal service funding in rural, insular, and high cost areas.[18] Congress's prime concern is that underfunding must not occur that would cause rates in these areas to rise above levels that are reasonably comparable to those in urban areas.[19] Notably, Section 254 does not provide that restraints should be placed on

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14 *See* Comments of the Ad Hoc Telecommunications Users Committee, CC Docket 96-45, at 16-17 (Feb. 26, 2001) ("Ad Hoc FNPRM Comments").

15 *See id.*

16 *See id.* at 26-27.

17 47 U.S.C. § 254(b)(5), (d), (e).

18 *See id.*

19 *See id.* § 254(b)(3).

the growth of universal service support to insular and rural carriers by a productivity factor, let alone allow for the reduction of funding due to artificial constraints. Nowhere in Section 254 has Congress authorized placement of artificial limits on the level of universal service support.

Ad Hoc's proposal is merely a rehash of the argument that it and several other parties raised last year in comments on the *RTF Recommendation*.[20] These parties criticized the *RTF Recommendation* for failing, in their eyes, to sufficiently encourage "efficiency." In prior comments, Innovative Telephone identified the obvious flaw in the this argument: "Section 254 simply does not authorize adoption of an artificial incentive to cut costs. Indeed, cost-cutting or efficiency is not one of the Section 254 principles of universal service."[21]

Ad Hoc's proposal is also astonishing in its departure from the abundant factual evidence accumulated in this proceeding showing that the reasonable cost of providing universal service by rural and insular carriers has increased modestly each year since 1994.[22] The Commission has itself observed that the HCL fund increased in size each year between 1984 and 1992, reflecting

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[20] *See* Reply Comments of the Ad Hoc Telecommunications Users Committee, CC Docket No. 96-45, at 13-14 (Nov. 30, 2000); WorldCom Comments on the Rural Task Force Recommendation, CC Docket No. 96-45, at 7-8 (Nov. 3, 2000); *see also* Comments on the Rural Task Force Recommendation by the People of the State of California and the California Public Utilities Commission, CC Docket No. 96-45, at 4 (Nov. 2, 2000) (asserting that the RTF's recommendations, by increasing the level of universal service support, "could stimulate excessive and/or inefficient investment").

[21] Reply of the Virgin Islands Telephone Corporation, CC Docket No. 96-45, at 4 (Nov. 30, 2000) ("Vitelco RTF Reply"). Innovative Telephone also noted that the *RTF Recommendation* provisions actually do promote efficiency, by allowing carriers to recover only a portion of their costs under the "safety net" and "safety valve" mechanisms. *See id.* at 5.

[22] NECA has reported that rural and insular carriers have experienced growing payment shortfalls each year since 1994, even as the HCL fund has increased in size. *See* NECA FNPRM Comments at 6. The payment shortfall has risen from $36 million in 1994 to almost $133 million in 2000. *See id.* NECA submitted these figures in earlier comments in this proceeding and they remain undisputed. *See* NECA Comments, CC Docket No. 96-45, at 5 (Nov. 3, 2000).

increases in costs incurred by insular and rural carriers.[23] Moreover, costs are expected to continue to increase modestly in the foreseeable future as carriers invest in an effort to increase telephone penetration and maintain a modern network in rural and insular areas.

Increased costs, of course, are only to be expected as the number of lines served by rural and insular carriers increases and inflation forces carriers' costs upwards. Indeed, these two drivers provide the basis for the RTF's recommendation that the HCL fund should be indexed by a "Rural Growth Factor" that accounts for both of these factors.[24] Remarkably, despite this wealth of evidence, Ad Hoc asserts that "there is ample evidence that the *cost* of providing the services being funded by the dollars subject to the cap have been declining."[25] Notably, Ad Hoc fails to cite any of the alleged "ample evidence." Its proposal is a recipe for establishing support that would be insufficient today, and increasingly inadequate with each passing year.

Furthermore, all productivity increases are already incorporated into the calculation of funding. To the extent that cost savings or growth are achieved, they are automatically reflected in carriers' bottom-line costs. There is thus no justification for introducing a productivity factor.

Wisely, the Joint Board declined to adopt Ad Hoc's efficiency argument and instead recommended adoption of the entire *RTF Recommendation* as a complete package.[26] The Commission should do likewise because Ad Hoc's proposal has no basis in law or fact.

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23 *See Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, Report and Order, 9 FCC Rcd 303, at ¶ 22 (Dec. 23, 1993).

24 *See RTF Recommendation* at 25.

25 Ad Hoc FNPRM Comments at 16.

26 *See Recommended Decision* at ¶ 22.

B. Claims that Adoption of the Recommended Decision Would Double the Size of the High Cost Fund Are Unfounded.

Several parties have included exaggerated claims regarding the impact of the *RTF Recommendation* on the size of the USF. Because these assertions are inaccurate or misleading, Innovative Telephone wishes to point the Commission toward accurate information in the record.

The most extreme claim is California's assertion that the RTF's recommendations would "result in a doubling of the amount of federal universal service support to rural LECs from about $1.5 billion to about $3 billion."[27] Remarkably, California cites no support for this claim. It is apparent that none exists. In fact, the evidentiary record developed in this proceeding refutes its assertion. Data compiled by NECA and submitted by the RTF show that adoption of the *RTF Recommendation* would increase total universal service support, which includes "safety net" and "safety valve" support, by less than $132 million in 2001, from approximately $1.705 billion to $1.837 billion.[28] Even in the final year of the plan, the increases in the total funding for insular and rural carriers would be far more modest than California asserts. Total universal service support in 2005 would rise from $1.921 billion to $2.211 billion, an increase of less than $290 million, or 15%.[29] This is a far cry from the $1.5 billion increase and "doubling" of support alleged. Moreover, even with the additional support that would be available under the *RTF*

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27 California FNPRM Comments at 4.

28 *See* Ex parte letter from William R. Gillis, Chair, RTF, to Magalie Roman Salas, Secretary, FCC, CC Docket No. 96-45, Attach. 2, at "preliminary" page (Nov. 10, 2000) ("RTF *ex parte*"). These "total support" figures include HCL funding, Long Term Support, and Local Switching Support.

29 *See id.*

Recommendation, the NECA data show that insular and rural carriers would experience a funding shortfall of more than $539 million during the plan's five-year term.[30]

WorldCom has also presented data that may give a false impression of the impact of the *RTF Recommendation*. Its comments state that "the combined effect of the modified High Cost Loop (HCL) mechanism, "safety net" mechanism, and "safety valve" mechanism would be to increase the size of the universal service fund by over $1 billion by 2005."[31] WorldCom fails to explain that the $1 billion dollar figure cited represents the cumulative increase in funding over the entire five-year term of the RTF plan.[32]

WorldCom also misrepresents the impact of the "safety net" mechanism. It asserts that this mechanism alone would have "a funding level of $1.2 billion."[33] As the National Telephone Cooperative Association ("NTCA") correctly points out, the NECA data show that "safety net" would actually be quite modest.[34] "Safety net" funding would amount to less than $230,000 in 2001, and rise to a maximum level of less than $1.3 million in 2005.[35] Over the entire five-year

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30 *See id.* If the RTF plan were not adopted, the RTF data show that funding shortfalls would exceed $1.4 billion over this five-year period. *See id.*

31 WorldCom Comments on the Recommended Decision, CC Docket No. 96-45, at 2 (Feb. 26, 2001) ("WorldCom FNPRM Comments").

32 *See* RTF *ex parte*, Attach. 2, at "preliminary" page. The increase in funding attributable to the *RTF Recommendation* arises from increases in the size of the HCL fund and the addition of "safety net" and "safety valve" support. Combined, these adjustments total $1.114 billion over the five-year term of the RTF plan, assuming that "safety valve" support is capped at 5% of the HCL fund and reaches this cap every year. *See id.*, note 5.

33 WorldCom FNPRM Comments at 2, n.5.

34 Comments of the National Telephone Cooperative Association on the Further Notice of Proposed Rulemaking Concerning the Rural Task Force Recommendation, CC Docket No. 96-45, at 18 (Feb. 26, 2001) ("NTCA FNPRM Comments").

35 *See* RTF *ex parte*, Attach. 2, at "preliminary" page.

term of the RTF plan, "safety net" support would be less than $3.7 million.[36] This funding would represent substantially less than one-tenth of 1% of the total support that would be available under the existing rules. As noted above, all of the increases in universal service support in the *RTF Recommendation* combined, summed over the entire five-year term of the plan, would not rise to $1.2 billion.[37] WorldCom's assertion is a gross exaggeration of the true data.

III. THE "CATASTROPHIC EVENT" PROVISION IS A CRITICAL ELEMENT OF THE RTF RECOMMENDATION AND IS WIDELY SUPPORTED.

A. The "Catastrophic Event" Provision Would Allow Insular and Rural Carriers to Continue to Receive Support to Recover from Natural Disasters, Yet Would Not Permit "Double Recovery."

The vast majority of commenters support adoption of the RTF's proposed "catastrophic event" provision.[38] They recognize the necessity of continuing to provide a mechanism for insular and rural carriers to recover costs associated with extraordinary natural disasters. As the RTF comments clearly explain, the "catastrophic event" provision is essential to preserve the existing status quo. Under the current system, rural and insular carriers may recover costs resulting from natural disasters form universal service funding.[39] The "catastrophic event"

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36 *See id.*

37 *See supra* note 32.

38 *See, e.g.*, National Rural Telecom Association Comments, CC Docket No. 96-45, at 5-6 (Feb. 26, 2001); NTCA FNPRM Comments at 14-15; Comments of the Public Service Commission of the United States Virgin Islands, CC Docket No. 96-45, at 6-7 (Feb. 26, 2001); Comments of the Public Utilities Commission of Texas, CC Docket No. 96-45, at 6-7 (Feb. 22, 2001) ("Texas FNPRM Comments"); *see also* AT&T FNPRM Comments at 1-2 (supporting adoption of the entire plan).

39 *See* Comments of the Rural Task Force in Response to Further Notice of Proposed Rulemaking, CC Docket No. 96-45, at 9 (Feb. 20, 2001) ("RTF FNPRM Comments").

exception merely provides for continued recovery of such costs if the Commission adopts the RTF recommendation to freeze per-loop support in a competitive study area.[40]

The RTF has adequately justified the need for the "catastrophic event" provision:

> It is axiomatic that the ability of an insular or rural company to rebuild its network after a disaster is critical to providing universal service to all Americans, the policy at the heart of Section 254 of the 1996 Act. The catastrophic events relief provision in the RTF Recommendation is crucial to the new rural and insular universal service mechanism. The new frozen per-line support provision could limit the ability of rural and insular carriers to recover from disasters and preserve universal service because the per-line support would not include the extraordinary cost of recovering from a disaster that occurred after the support was frozen. Therefore, a limited exception to the per-line freeze in competitive study areas was necessary to fulfill Section 254's universal service mandate for insular and rural areas.[41]

Without this exception, insular areas in particular would not receive sufficient support. As Innovative Telephone has previously stated, insular areas are particularly vulnerable to significant cost "spikes" resulting from hurricanes and other severe weather patterns.[42] Accordingly, the narrow exception recommended by the RTF is essential to ensure that insular carriers receive "sufficient" support in times of critical need.

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40 *See id.*

41 *Id.*

42 *See* Comments of Innovative Telephone, CC Docket No. 96-45, at 13-15 (Feb. 26, 2001) ("Innovative Telephone FNPRM Comments").

Only three parties express opposition to the "catastrophic event" provision.[43] These comments echo the same two mistaken beliefs: (1) that this support is unnecessary in light of other potential sources of funding, particularly insurance; and (2) that the "catastrophic event" provision may allow for "double recovery."[44] These misconceptions can be readily dispelled.

First, as the RTF and Innovative Telephone have previously explained, other potential sources of funding simply do not solve the problem.[45] As the RTF observes, "at times, carriers have not been able to obtain reasonably priced insurance, such as during the early 1990s when Caribbean and Atlantic hurricanes caused such extensive damage to telephone outside plant that insurance coverage was not available for many years."[46] Indeed, Innovative Telephone itself has experienced such difficulty following several hurricanes. Of course, carriers will continue, as they do today, to obtain insurance where available at reasonable rates, because there is always a risk that regulators will not allow carriers to receive full compensation for costs of repairing plant following a catastrophic event.[47] The existence of this regulatory risk ensures that carriers will always obtain insurance coverage whenever possible and prudent.

Other potential sources of funding, such as RUS loans or federal and state emergency relief, are even less adequate substitutes for universal service support. Loans only delay the

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[43] *See* California FNPRM Comments at 14; Competitive Universal Service Coalition Further Comments, CC Docket No. 96-45, at 7 (Feb. 26, 2001) ("CUSC FNPRM Comments"); Comments of Sprint Corporation, CC Docket No. 96-45, at 2 (Feb. 26, 2001) ("Sprint FNPRM Comments").

[44] *See* California FNPRM Comments at 4, 14; CUSC FNPRM Comments at 7; Sprint FNPRM Comments at 2-3.

[45] *See* RTF FNPRM Comments at 10; Innovative Telephone FNPRM Comments at 21-23; Vitelco RTF Reply at 8.

[46] RTF FNPRM Comments at 10 n.4.

[47] *See id.*

inevitable: borrowed funds must eventually be paid back by carriers.[48] Thus, reliance upon loans would "actually end up increasing the affected carrier's recovery costs."[49] The existence of federal or state emergency relief is also unavailing to insular and rural carriers. As the RTF explains, "federal and state emergency grants are usually not available to private companies."[50]

The second misconception – that the "catastrophic event" provision raises the possibility of "double recovery" – is equally baseless. The "catastrophic event" provision would provide carriers with support only to the extent that costs are not recovered from insurance or other sources. The RTF has confirmed this point: "[E]ven if other sources of funding were available, the catastrophic relief provision would only permit recovery of costs that are not covered elsewhere."[51] This categorical statement should end the matter.

B. The Commission Should Not Allow State Commissions to Place Additional Hurdles in the Path of Insular and Rural Carriers Seeking "Catastrophic Event" Support.

Although the Public Utilities Commission of Texas ("Texas PUC") generally supports the "catastrophic event" provision, it suggests that this is an "area in which state regulators should participate in the decision on whether the carrier should receive additional funding as a result of catastrophic events."[52] Innovative Telephone opposes the addition of a new bureaucratic

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48 *See id.*

49 NTCA FNPRM Comments at 14-15.

50 RTF FNPRM Comments at 10; *see also id.* at n.6 (observing that federal disaster assistance is not available to for-profit business entities).

51 *Id.* at 10.

52 Texas FNPRM Comments at 6-7. Texas lends its support "to the extent that such "catastrophic" support is necessary to ensure affordable service to consumers in rural high-cost areas, and is not otherwise addressed by other sources." *Id.* Both of these provisos are satisfied by provisions of the *RTF Recommendation*.

"hurdle" in the path of insular and rural carriers when seeking federal program assistance in times of critical need.

The Universal Service Administrative Company ("USAC") is the entity responsible for administering the high cost support mechanism of the USF and disbursing universal service support funds.[53] The *RTF Recommendation* does not propose amending these USAC functions, nor does it propose making state commissions the "gatekeepers" to recovery of USF support, either in general or specifically with regard to "catastrophic event" funds. Texas PUC's proposal would disrupt the delicately balanced compromise represented by the *RTF Recommendation*. The Commission should therefore reject Texas PUC's proposal.

In sum, the RTF proposal for a catastrophic event exception is a reasonable means of providing carriers with sufficient support to deal with unpredictable cost "spikes," particularly carriers operating in insular areas where these "spikes" are especially acute. The Commission should adopt the exception, as clarified by the RTF comments, without further modification.

IV. THE "SAFETY VALVE" MECHANISM SHOULD PROVIDE SUPPORT FOR INVESTMENTS THAT FURTHER UNIVERSAL SERVICE WITHOUT PROVIDING UNNECESSARY HURDLES TO RURAL CARRIERS.

In its previous comments, Innovative Telephone urged the Commission to adopt the proposed "safety valve" mechanism as a reasonable means of encouraging investment in rural and insular areas.[54] Innovative Telephone continues to support the mechanism, but provides comments below on two specific issues raised in the *FNPRM* and subsequent comments.

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53 *See* 47 C.F.R. § 54.702(a), (b).

54 *See* Innovative Telephone FNPRM Comments at 24-27.

A. The Commission Should Clarify that "Meaningful Investment" Includes Any Investment that Furthers the Provision of Services Supported by Universal Service.

The *RTF Recommendation* includes a recommendation that the Commission establish a "safety valve" mechanism to provide universal service support for "meaningful new investments" by insular and rural carriers in exchanges acquired by mergers or acquisitions.[55] In response to the Commission's request for comments on the definition of "meaningful investment," several parties have suggested that the Commission adopt narrow definitions of this phrase that would preclude carriers from recovering investment costs associated with the provision of services that fall within the Commission's definition of "universal service." California urges the Commission to exclude costs that it characterizes as "loss of economies of scale."[56] The Competitive Universal Service Coalition ("CUSC") suggests that only costs "directly attributable to introduction of a new service or customer functionality that the selling carrier did not offer" should be allowed.[57] The Commission should reject these proposals to narrowly circumscribe "meaningful investment."

As an initial matter, the California and CUSC proposals would impose restrictions on "safety valve" support that are more onerous than the limitations that apply for universal service support in general. As such, they would preclude carriers from receiving "safety valve" support for some or all investments that further the provision of universal service. There simply is no basis for putting these shackles on the "safety valve" mechanism.

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55 *RTF Recommendation* at 30.

56 California FNPRM Comments at 12.

57 CUSC FNPRM Comments at 5.

On the more pragmatic level, the Commission should refrain from disturbing the compromise achieved by the RTF with regard to this provision. Imposition of a restriction on the types of investments funded by the "safety valve" mechanism would represent a significant change to the *RTF Recommendation* and would upset the broad support that exists for the package of proposals. Moreover, Innovative Telephone agrees wholeheartedly with NECA's assertion that such restrictions are unnecessary.[58] If, however, the Commission believes that a definition of the scope of investments covered by the "safety valve" mechanism is necessary, it should adopt a definition that is sufficiently broad to allow insular and rural carriers to recover costs incurred in providing any telecommunications service encompassed by "universal service." The Commission should reject the proposals to place more restrictive limits on the scope of the "safety valve" mechanism.

B. The Commission Should Not Allow State Commissions to Determine Which Investments Qualify for "Safety Valve" Support.

The Texas PUC supports the "safety valve" mechanism but suggests that the Commission delegate responsibility to determine the definition of "meaningful investment" to state commissions.[59] Like the Texas PUC proposal regarding the "catastrophic event" provision discussed above, this proposal would impose an additional layer of state regulation that would

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58 NECA FNPRM Comments at 9-10. NECA states: "The Commission should not attempt to impose any special definitional qualifications on the type of investments qualifying for safety valve support. Current Part 32 accounting rules and Part 36 USF expense adjustment rules have served the Commission well in identifying the types and amount of costs eligible for high cost support; additional definitions are unnecessary." *Id.*

59 *See* Texas FNPRM Comments at 6.

place another "hurdle" in the path of carriers seeking universal service support. There is no legal or factual basis for creating this added layer of complexity.

Innovative Telephone is not arguing, however, that state commissions have no role to play in overseeing the proper use of universal service support. Indeed, they have an important and substantial role in this area. The Commission has already announced their important role in this area by relying upon "state monitoring of the provision of supported services to ensure that universal service support is used as intended until competition develops."[60] Moreover, the *RTF Recommendation* recognizes their responsibility to ensure that support is used "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."[61] The Commission needlessly further expand this authority, however, to include defining the scope of "meaningful investment."

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60 *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, at ¶ 181 (May 8, 1997) ("*Universal Service Order*").

61 *RTF Recommendation* at 33; 47 U.S.C. § 254(e).

V. CONCLUSION

Innovative Telephone is heartened by the work of the RTF and the Joint Board. The *RTF Recommendation* enjoys the unanimous support of the widely divergent interests of its members. While the package is not perfect, Innovative Telephone is not willing to let "perfection be the enemy of the good." It represents a substantial improvement over the existing system, and provides, as the Joint Board observes, "a stable environment for rural [and insular] carriers to invest in rural America."[62] Thus, for the above reasons, Innovative Telephone urges the Commission to follow the recommendations of the RTF and the Joint Board and act quickly to adopt the package of proposals set forth in the *RTF Recommendation* in their entirety.

Respectfully submitted,

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March 12, 2001

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62 *Recommended Decision* at ¶ 1.

SERVICE LIST

I hereby certify that on this 12th day of March 2001, I caused a copy of the Reply of the Innovative Telephone to be delivered by first class mail to the following:

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