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

In the Matters of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Muti-Association Group (MAG) Plan for	)	CC Docket No. 00-256
Regulation of Interstate Services of Non-Price	)	
Cap Incumbent Local Exchange Carriers	)	
and Interexchange Carriers	)	

NATIONAL TELEPHONE COOPERATIVE ASSOCIATION PETITION FOR RECONSIDERATION AND CLARIFICATION

The National Telephone Cooperative Association (NTCA)[1] hereby petitions the Federal Communications Commission (Commission or FCC) to reconsider and clarify its safety net additive and safety valve rules adopted in the above-captioned proceeding.[2] The Commission's current rule for calculating a carrier's safety net additive support (additional universal service support for carriers with above-average that investment in their existing plant) in the subsequent years is inconsistent with the Commission's order and should be amended.

The Commission's safety valve rules also prohibit carriers from receiving additional universal service support for investments made to upgrade acquired exchanges during the first year after acquisition. This is a considerable disincentive for rural carriers to invest in acquired exchanges during the first year of operations and a significant disservice to consumers living in acquired exchanges. The rules, unless amended, will ensure that

[1] NTCA is a non-profit corporation established in 1954 and represents 545 rural telecommunications companies. NTCA members are full service telecommunications providers for rural communities, providing local, wireless, cable, Internet, satellite and long distance services to their communities. All NTCA members are small carriers that are defined as "rural telephone companies" in the Telecommunications Act of 1996 (Act). *47 U.S.C. § 151 (37).* They are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

consumers living in exchanges needing upgrades continue to receive the same substandard service that they received prior to the sale of the exchange for at least one more year after the sale. This is unsound public policy and contrary to the spirit of the Telecommunications Act of 1996.

Lastly, the Commission's rule for calculating the rural carrier portion of the national loop cost expense adjustment should be clarified. The rule when applied to 2001 expense adjustments could be interpreted to mean actual 2001 expense adjustments. During the first half of 2001, however, the previous cap rules were in effect with a much lower expense adjustment than for the second half of 2001 when the Commission re-based rural high-cost fund to the year 2000 levels. The Commission should therefore amend the rule by calculating the rural carrier portion of the 2002 national loop cost expense adjustment on an annualized expense adjustment for 2001 based on the second half of the year 2001.

NTCA therefore specifically requests that the Commission: (1) amend its safety net additive support rules to eliminate confusion concerning safety net additive support in subsequent years under the new five-year rural high-cost universal service fund (USF) mechanism; (2) amend its safety valve rules to allow acquiring carriers to receive safety valve support for investments in acquired exchanges during the first year; and (3) amend the 47 C.F.R. § 36.603(a) by calculating the rural carrier portion of the 2002 national loop cost expense adjustment on an annualized expense adjustment for 2001 based on the second half of the year 2001 and excluding the portion of the first half of the year 2001 limited by the previous cap.

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[2] 47 C.F.R. § 1.429.

I. THE COMMISSION SHOULD AMEND ITS SAFETY NET ADDITIVE RULES TO ELIMINATE THE CONFUSION CONCERNING SAFETY NET ADDITIVE SUPPORT IN SUBSEQUENT YEARS.

The rules for determining the amount safety net additive support in the last four years of the Commission's new five-year rural USF plan should to be amended. Rule 47 C.F.R. § 36.605 (c)(3)(B)(i) and (ii) require that a carrier's succeeding year safety net additive support is the lesser of: (1) the amount of the support in the qualifying year; or (2) the amount of the support based on the recalculation of support pursuant to subsection (b).[3] Subsection (b), however, requires the carrier to calculate its qualifying year's safety net additive support. In effect, the rule requires carriers to compare safety net support paid in the qualifying year to safety net support calculated in the qualifying year (i.e., compare equal amounts). The rules do not consider support amounts calculated in succeeding years after the qualifying year. This is inconsistent with the Commission's order.

In the order, the Commission stated that "in any succeeding four years in which the capped is again triggered, the carrier will be eligible for the lesser of the sum of capped support and the safety net additive received in the qualifying year or uncapped support."[4] NTCA recommends that the rule be changed and make consistent with this section of the order so that the rule ensures "qualifying carriers will receive safety net additive in each year that the cap is triggered under the five-year plan"[5]

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[3] 47 C.F.R. § 36.605(b)

[4] *In the Matter of the Federal-State Joint Board on Universal Service; Muti-Association Group (MAG) Plan for the Regulation of Interstate Services of Non-Price cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Dockets 96-45 and 00-256, FCC 01-157, ¶ 88, (rel. May 23, 2001).

[5] *Id.*

II. THE COMMISSION SHOULD AMEND ITS RULES TO PROVIDE SAFETY VALVE SUPPORT FOR FIRST YEAR INVESTMENT IN ACQUIRED EXCHANGES

The Commission's current safety valve rules require that a carrier's index year expense adjustment for an acquired exchange equal the carrier's high-cost loop expense adjustment of the exchange calculated at the end of the carrier's first year of operating the acquired exchange.[6] At the end of each subsequent year, a loop cost expense adjustment for the acquired exchange is calculated and compared to the index year expense adjustment.[7] The rules further provide that up to 50 percent of any positive difference between the subsequent year loop cost expense adjustment and the index year expense adjustment is eligible safety valve support in a subsequent year.[8] The rules then cap the total amount of safety valve support available to all eligible carriers in a given year to five percent of the rural carriers high-cost universal service fund.[9]

One of the problems with safety valve rules is adverse effect on consumers and rural carriers. Carriers receive no safety valve support for first year investments in newly acquired exchanges. The first year of operating an acquired exchange is the most important year for the rural carrier and consumers eager for new and improved services. Traditionally, the first year is a time of great investment by the acquiring carrier in an effort to upgrade old and inefficient equipment. It is also the most significant year for the carrier to establish a good working relationship with consumers living in the new exchange. It is the first time that consumers in acquired exchanges are introduced to their

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6 *Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for the Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers,* Federal Register, Vol. 66, No. 108, Final Rules, 47 C.F.R. 54.305(c) (June 5, 2001).

7 *Id.,* 47 C.F.R. § 54.305(c).

8 *Id.,* 47 C.F.R. § 54.305(d).

9 *Id.,* 47 C.F.R. § 54.305(e).

new telecommunications services provider and form their opinion of new provider's quality service and customer responsiveness. Without sufficient universal service support to assist rural carriers during the first year to implement necessary upgrades to acquired exchanges, the acquiring carrier's first year of operations can result in continued poor service and consumer disdain.

During the first year of the new rural USF model, the current rules provide that acquiring carriers are not eligible for any support in addition to the amounts received under the "parent trap rule."[10] In many instances, however, the parent trap rule provides no universal service support for needed upgrades to acquired exchanges, unless the acquiring carrier petitions the Commission for a waiver of the parent trap rule and the petition is granted.

Investment in an acquired exchange that exceeds the seller's expense adjustment at the time of purchase should be eligible to receive support under the new rules. This is consistent with the merger/acquisition principles adopted by the Task Force that "any additional universal service support should be driven by post-transaction investments made to enhance the infrastructure of and improve the service in these exchanges."[11] It is also consistent with Section 254(b)(3) which states that "[c]onsumers in all regions of the Nation ... should have access to telecommunications ... services ... that are reasonably comparable to those services provided in urban areas ..." Denying safety valve support for acquired exchanges for an entire year amounts to an arbitrage application of Section 254(b)(3) to those consumers who happen to receive service from an acquiring carrier.

[10] 47 C.F.R. § 54.305(a) (The acquiring carriers support is limited to the amount of support the selling carrier received a the time of the sale of the exchange. In many instances the amount of support under the parent trap rule is zero, because the exchange acquired by a rural carrier was previously owned by a large carrier who also serve the large metropolitan cities).

The Commission should therefore amend the safety valve rules to adequately serve the subscribers of acquired rural exchanges.

NTCA recommends, as a matter of sound public policy, that the purchasing carrier be encouraged to begin necessary investment immediately upon acquisition of an exchange. The Commission should therefore amend its safety valve rules to permit safety valve support in the first year of acquisition. It can accomplish this by defining the index year expense adjustment as the selling carrier's expense adjustment at the time of the sale of the exchange.[12] The acquiring carrier's first year expense adjustment for the acquired exchange should then be compared to the seller's index year expense adjustment to determine any positive difference eligible for safety valve support in the acquiring carriers first year of operations. Every subsequent year of operations, should then be compared to the acquiring carrier's first year expense adjustment (the new index year expense adjustment). The proposed rule changes will create the proper incentive for rural carriers to invest in the acquired exchange without delay and provide consumers living in these underserved and unserved exchanges with improved service within the first year after the acquisition.

NTCA's proposed rule changes would alleviate the Commission's concerns regarding the inappropriateness of acquiring carriers relying on the cost data of selling carriers to establish the index year expense adjustment for purposes of safety valve

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11 *Rural Task Force Recommendation*, at 29.

12 Non–rural carriers are required to report their study area average costs to NECA on an annual basis in accordance with sections 36.611 and 36.612 of the FCC's rules. These costs are then used in determining the national average loop cost. *In the Matter of the Federal-State Joint Board on Universal Service; Muti-Association Group (MAG) Plan for the Regulation of Interstate Services of Non-Price cap Incumbent Local Exchange Carriers and Interexchange Carriers,* CC Dockets 96-45 and 00-256, FCC 01-157, ¶103, footnote 274.

support.[13] In most instances when a rural carrier purchases an exchange the selling carrier is a non-rural carrier operating high-cost exchanges based on lower average costs. Consequently, the selling carriers expense adjustment in comparison to acquiring carrier's expense adjustment may yield a positive difference greater than if the selling carrier was a rural carrier. NTCA's recommended changes to the safety valve rules, however, use the seller's cost only to determine the acquiring carrier's safety valve support for the first year of operations in order to provide consumers with immediate improvements to their quality of service and provide the acquiring rural carrier with necessary support to assist in much needed upgrades to previously neglected plant. In each subsequent year, the carrier's safety valve support will be measured based on the acquiring carriers cost data, using the acquiring carriers first year expense adjustment as the new index year expense adjustment. The Commission's concerns would therefore be mitigated significantly by the fact that the seller's cost data is only used for a first year comparison and consumers are provided with immediate relief during the critical first year after acquisition.

NTCA believes that arbitrary caps imposed in the interest of "sizing" support necessarily run afoul of Section 254 of the Act. This proposed change, however, does little to aggravate the Commission's concern about fund size. The safety valve rules would continue to limit the amount of safety valve support that carrier can receive to 50 percent of the difference the index year and subsequent year expense adjustment for the acquired exchange. Consequently, allowing rural carriers to only use seller's expense adjustment to determine safety valve support for the first year of operating an acquired exchange will not result in carrier's receiving excessive support. The proposed rule

[13] *Id.*

changes will instead encourage necessary investment to upgrade old plant as needed to attain and sustain the basic universal service objectives to consumer living in underserved and unserved areas of rural America.

Furthermore, investments in acquired exchanges are subject to state commission review prior to approving any increase in a rural carrier's revenue requirement to compensate for the intrastate portion of these investments. Rural carriers are also under significant competitive pressure from wireless eligible telecommunications carriers to keep their costs and prices low. The combination of state regulatory review and wireless competition also serve as potent force preventing rural carriers from investing unwisely in acquired exchanges.

Lastly, the five percent cap on safety valve support reduces significantly the overall support available to rural carriers acquiring exchanges. The combined effect of the: (1) five percent cap; (2) the 50 percent differential; (3) state regulatory and market forces; and (4) NTCA's proposed use of the acquiring carriers cost data to determine the post-first-year index expense adjustment will make sure that safety valve support to acquiring carriers is timely and predictable under the new rural high-cost USF mechanism. The proposed rule changes will also assist the Commission in its efforts to ensure comparable rates and services to consumers living in rural America in accordance with the section 254 of Telecommunications Act of 1996.

IV. THE COMMISSION SHOULD AMEND 47 C.F.R. § 36.603(a) BY CALCULATING THE RURAL CARRIER PORTION OF THE 2002 NATIONAL LOOP COST EXPENSE ADJUSTMENT ON AN ANNUALIZED EXPENSE ADJUSTMENT FOR 2001 BASED ON THE SECOND HALF OF THE YEAR 2001

Part §36.603(a) of the Commission's new rules is ambiguous. The rule as written contains the following sentence:

> Beginning January 1, 2002, the annual amount of the rural incumbent local exchange carrier portion of the nationwide loop cost expense adjustment calculated pursuant to this subpart F shall not exceed the amount of the total rural incumbent local exchange carrier loop cost expense adjustment for the immediately preceding calendar year, multiplied times one plus the Rural Growth Factor calculated pursuant to § 36.604.

The rule when applied to 2001 expense adjustments could be interpreted to mean actual 2001 expense adjustments. During the first half of 2001, however, the previous cap rules were in effect with a much lower expense adjustment than for the second half of 2001 when the new rules took effect. The combined effect of the two is to cap the 2002 rural carrier portion of the national loop cost expense adjustment at 2001 levels times one plus the rural growth factor (RGF). It seems the intent of the Commission's action was to re-base rural high-cost fund to the year 2000 levels and to grow the fund from there by the RGF. If that is the case, then the Commission should amend the 47 C.F.R. § 36.603(a) by calculating the rural carrier portion of the 2002 national loop cost expense adjustment on an annualized expense adjustment for 2001 based on the second half of the year 2001 and excluding the portion of the first half of the year 2001 limited by the previous cap.

V. CONCLUSION

In order provide consumers in rural regions of the Nation with access to affordable telecommunications services in accordance with section 254 of the Telecommunications Act of 1996, the Commission should: (1) amend its safety net additive support rules to eliminate confusion concerning safety net additive support in subsequent years under the new high-cost universal service fund (USF) mechanism; (2) amend its safety valve rules to allow acquiring carriers to receive safety valve support for investments in acquired exchanges during the first year; and (3) amend the 47 C.F.R. § 36.603(a) by calculating the rural carrier portion of the 2002 national loop cost expense adjustment on an annualized expense adjustment for 2001 based on the second half of the year 2001 and excluding the portion of the first half of the year 2001 limited by the previous cap.

Respectfully submitted,

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July 5, 2001

CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Petition for Reconsideration of the National Telephone Cooperative Association in CC Docket No. 96-45, CC Docket No. 00-256, FCC 01-157 was served on this 5th day of July 2001 by first-class, U.S. Mail, postage prepaid, to the following persons

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