

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

2001 JUL 13 P 4: 32

In the Matter of)
)
Federal-State Joint Board on)
Universal Service)
)
)
)
)
)
)

RECEIVED
CC Docket No. 96-45

TWENTY-THIRD ORDER ON RECONSIDERATION

Adopted: July 5, 2001

Released: July 11, 2001

By the Commission: Commissioner Abernathy not participating

I. INTRODUCTION

1. In this Order, the Commission on its own motion¹ makes a correction to section 36.605(c)(3)(ii) of its rules adopted in the *Fourteenth Report and Order* released on May 23, 2001.² The correction concerns the calculation of safety net additive support in the years following qualification for such support and is necessary to make the rule consistent with the text of the underlying order.³ Specifically, this correction revises the language in section 36.605(c)(3)(ii) to make it clear that rural telephone companies receive the lesser of either: (1) the sum of capped support and the safety net additive support in each year or (2) uncapped support in each year when the cap is not triggered.

II. BACKGROUND

2. In the *Fourteenth Report and Order*, the Commission adopted the safety net additive mechanism, which seeks to mitigate the potential negative effects of a cap, and provide rural carriers with the predictability to make investments in their communities.⁴ Rural telephone companies that become eligible for safety net support receive support for the incremental expense adjustment associated with new

¹ Section 1.108 of the Commission's rules provides that "[t]he Commission may, on its own motion, set aside any action made or taken by it within 30 days from the date of public notice of such action" 47 C.F.R. § 1.108. The Federal Register item for the *Fourteenth Report and Order* was published in the Federal Register on June 5, 2001. See Federal-State Joint Board on Universal Service, 66 Fed. Reg. 30,080 (2001).

² *Federal-State Joint Board on Universal Service, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Report and Order in CC Docket No. 00-256, FCC 01-157 (rel. May 23, 2001) (Fourteenth Report and Order).*

³ *Id.* at para. 88.

⁴ *Id.* at para. 80.

investments. Recognizing that the costs associated with these investments are not typically recovered in one year, the Commission adopted provisions that allow for recovery in the four succeeding years provided that the cap, as calculated by section 36.601 of the Commission's rules, is subsequently triggered.⁵ The Commission described the mechanics of the payment of support in the succeeding years as follows:

[i]n any of the succeeding four years in which the cap 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. Therefore, qualifying carriers will receive safety net additive in each year that the cap is triggered under the five-year plan we adopt in this order."⁶

This formulation was necessary to prevent rural telephone companies from receiving more support than the amount they would have received if the cap had not been triggered.⁷ As adopted, however, the rule states in relevant part that "[s]upport in the four succeeding years shall be the lesser of ... the amount of support based on [a] recalculation of support,"⁸ thus indicating that the Administrator should recalculate safety net additive support in each of the four succeeding years.

III. DISCUSSION

3. This Order on Reconsideration corrects section 36.605(c)(3)(ii) of our rules so that support paid in the succeeding four years shall be the lesser of: (1) the sum of capped support and the safety net additive received in the qualifying year or (2) uncapped support in that year if the cap is not triggered.⁹ Uncorrected, the rule could be read to require the Administrator to recalculate safety net additive support in the succeeding years in order to determine the amount that the rural telephone company is eligible to receive.¹⁰ As described above, such an interpretation would be contrary to the Commission's stated intent in the order. Accordingly, we modify section 36.605(c)(3)(ii) so that safety net additive support paid in succeeding years will be the lesser of: (1) the sum of capped support and the safety net additive received in the qualifying year or (2) uncapped support in that year if the cap is not triggered.¹¹

IV. PROCEDURAL MATTERS

A. Regulatory Flexibility Act Certification

4. The Regulatory Flexibility Act (RFA)¹² requires an Initial Regulatory Flexibility Analysis (IRFA)¹³ whenever an agency publishes a notice of proposed rulemaking, and a Final Regulatory Flexibility Analysis (FRFA)¹⁴ whenever an agency subsequently promulgates a final rule, unless the

⁵ *Id.* at para. 88. See also 47 C.F.R. § 36.601.

⁶ *Fourteenth Report and Order*, at para. 88.

⁷ *Id.*

⁸ *Id.* at Appendix A.

⁹ *Id.* at para. 88.

¹⁰ 47 C.F.R. § 36.605(c)(3)(ii).

¹¹ See Appendix A.

¹² See 5 U.S.C. § 601 *et seq.* The RFA was amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Title II of the Contract with America Advancement Act of 1996, Pub. L. 104-121, 110 Stat. 847 (1996).

¹³ 5 U.S.C. § 603.

¹⁴ 5 U.S.C. § 604.

agency certifies that the proposed or final rule will not have "a significant economic impact on a substantial number of small entities," and includes the factual basis for such certification.¹⁵ The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."¹⁶ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.¹⁷ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).¹⁸ The SBA defines a small telecommunications entity in NAICS code 51331 (Wired Telecommunications Carrier) as an entity with 1,500 or fewer employees.¹⁹

5. In the *Fourteenth Report and Order*, the Commission prepared a FRFA detailing the ways in which the Commission had sought to minimize the burden of new regulations on small businesses.²⁰ The rule change adopted in this Order on Reconsideration is merely a correction of the rule adopted in the *Fourteenth Report and Order*. Therefore, we certify pursuant to the RFA that the final rule adopted in this order will not have a significant economic impact on a substantial number of small entities.²¹ The Consumer Information Bureau, Reference Information Center, will send a copy of the *Twenty-Third Order on Reconsideration*, including this final certification, to the Chief Counsel for Advocacy of the SBA in accordance with the RFA.²² In addition, this certification and order will be published in the Federal Register.²³

B. Effective Date of Final Rules

6. Pursuant to 5 U.S.C. § 553(d), the rule change adopted herein shall take effect thirty (30) days after publication in the Federal Register.

V. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1-4, 201-205, 218-220, 254, 303(r), 403, 405, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 218-220, 254, 303(r), 403, 405, and 410, this Twenty-Third Order on Reconsideration in CC Docket No. 96-45 IS ADOPTED.

¹⁵ 5 U.S.C. § 605 (b).

¹⁶ 5 U.S.C. § 601 (6).

¹⁷ 5 U.S.C. § 601 (3) (incorporating by reference the definition of "small business concern" in Small Business Act, 15 U.S.C. § 632).

¹⁸ Small Business Act, 15 U.S.C. § 632.

¹⁹ 13 C.F.R. § 121.201.

²⁰ *Fourteenth Report and Order*, at para. 212-236.

²¹ See 5 U.S.C. § 605 (b).

²² *Id.*

²³ *Id.*

8. IT IS FURTHER ORDERED that Part 36 of the Commission's Rules, 47 C.F.R. Part 36, IS AMENDED as set forth in Appendix A hereto, effective 30 days after publication in the Federal Register.

9. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this Order on Reconsideration in CC Docket No. 96-45, including the Regulatory Flexibility Act Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

APPENDIX A – RULE CHANGE

1. Section 36.605 is amended by revising paragraph (c)(3)(ii) to read as follows:

(c)(3)(ii) continue to pay safety net additive support in any of the four succeeding years in which the total carrier loop expense adjustment is limited by the provisions of § 36.603. Safety net additive support in the succeeding four years shall be the lesser of:

- (A) the sum of capped support and the safety net additive support received in the qualifying year; or
- (B) the rural telephone company's uncapped support.