

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

**RECEIVED**

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CC Docket No. 96-45  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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Federal-State Joint Board on )  
Universal Service )  
)  
Multi-Association Group (MAG) Plan for )  
Regulation of Interstate Services of )  
Non-Price Cap Incumbent Local Exchange )  
Carriers and Interexchange Carriers )  
\_\_\_\_\_)

CC Docket No. 00-256

**AT&T OPPOSITION TO PETITION FOR RECONSIDERATION**

Pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, and its Public Notice (Report No. 2495), published in 66 Fed. Reg. 37029 (July 16, 2001), AT&T Corp. ("AT&T") submits this opposition to the petition for reconsideration and clarification filed by the National Telephone Cooperative Association ("NTCA") of the Commission's Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, FCC 01-157, released May 23, 2001 ("RTF Order").<sup>1</sup> In that order, the Commission adopted the proposal of the Rural Task Force ("RTF") and revised the mechanism by which rural carriers receive high-cost universal service support. The RTF's proposal was part of a delicately-crafted compromise plan that significantly enhanced the support that rural carriers would receive, increasing the size of the rural portion of the

<sup>1</sup> In addition to NTCA, the Coalition of Rural Telephone Companies, the Competitive Universal Service Coalition and the Illinois Commerce Commission filed petitions for reconsideration of the *RTF Order*.

universal service fund (“USF”) by \$1.26 billion over a five-year period according to the Commission’s estimate. Nonetheless, NTCA now seeks further embellishments to the plan relating to the: (1) availability of “safety valve” support for acquired exchanges, and (2) calculation of the rural carrier portion of the 2002 high-cost loop fund. These modifications, which would further increase the size of the rural high-cost fund, are entirely unwarranted and the Commission should reject them.

**I. THE COMMISSION SHOULD NOT MODIFY THE “SAFETY VALVE” RULE TO ALLOW INCREASED SUPPORT FOR THE FIRST YEAR OF AN ACQUIRED EXCHANGE.**

NTCA (at 4-5) contends that the fact the current rules do not provide safety valve support for first year investments in newly acquired exchanges will have adverse effects on rural carriers and consumers and should be modified. NTCA (at 5) proposes that “[i]nvestment 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 proposal should be rejected for several reasons.

First, increasing the scope of the safety valve would disturb the limitations on investment in transferred exchanges that was proposed by RTF. Section 54.305 of the Commission’s rules expressly limits first-year high-cost support for acquired exchanges to the per-line support, if any, received by carrier that sold the exchange. The purpose of this rule is clear. As the Accounting Policy Division has reiterated, “Section 54.305 of the Commission's rules provides that a carrier acquiring exchanges from an unaffiliated carrier shall receive the same per-line levels of high-cost universal service support for which the

acquired exchanges were eligible prior to their transfer.<sup>2</sup> \* \* \* \* *Section 54.305 is meant to discourage carriers from transferring exchanges merely to increase their share of high-cost universal service support, especially during the Commission's transition to universal service support mechanisms that provide support to carriers based on the forward-looking economic cost of operating a given exchange.*<sup>3</sup>

The Commission expressly adopted Rule 54.305 to avoid skewing carriers' decisions regarding the purchase of exchanges. As the Commission stated in the *Universal Service Order*, CC Docket No. 96-45, FCC 97-157, ¶ 308 (rel. May 8, 1997), "[u]ntil support for all carriers is based on a forward-looking economic cost methodology, . . . potential universal service support payments may influence unduly a carrier's decision to purchase exchanges from other carriers. In order to discourage carriers from placing unreasonable reliance upon universal service support in deciding whether to purchase exchanges from other carriers, we conclude that a carrier making a binding commitment on or after May 7, 1997 to purchase a high cost exchange should receive the same level of support per line as the seller received prior to the sale." *Id.*

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<sup>2</sup> *Citizens Telecommunications Company of North Dakota and U S WEST Communications, Inc. Joint Petition for Waiver of the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules*, CC Docket No. 96-45, Memorandum Opinion and Order, DA 00-1548, ¶ 3, released July 12, 2000 (citations omitted) ("*Citizens Order*"). Thus, for example, if a rural carrier purchases an exchange from a nonrural carrier that receives support based on the Commission's new universal service support mechanism for nonrural carriers, the loops of the acquired exchange shall receive the same per-line support as calculated under the new nonrural mechanism, regardless of the support the rural carrier purchasing the exchange may receive for any other exchanges. *Id.*

<sup>3</sup> *Citizens Order* ¶ 3 (emphasis added).

The RTF proposal accepted the concept that first-year post-acquisition support would be limited by Section 54.305 and that in subsequent years a rural LEC must prepare a cost study, identifying added investment for the purchased exchanges, that then becomes the basis for determining the safety valve additive in those years. If the rule were modified as NTCA requests so that the rural LEC would get immediate safety valve support, it would drive up the price of the exchange and thus reward the nonrural LEC seller. There is no sound policy reason why this should occur.

In all events, NTCA's proposal could not be implemented because it is premised on defining the first (index) year expense adjustment as the selling carrier's expense adjustment at the time of the sale. Not only has the *RTF Order* (§ 59) eliminated nonrural LEC quarterly reporting of expense data, but such annual reporting as does occur is inapposite because nonrural LECs report their expenses on a study area level rather than related to the particular exchanges that have been sold. *See* 47 C.F.R. §§ 36.611-36.612. Thus, there is no available exchange-level expense data that is germane for the property sold.

In all events, as explained above, NTCA's proposal is beyond the scope of the RTF consensus recommendation and would not further any legitimate public policy objective. Thus, even if it could be implemented, it should not be.

**II. THE COMMISSION SHOULD NOT AMEND SECTION 36.603(a) FOR COMPUTING THE RURAL CARRIER PORTION OF THE 2002 NATIONAL LOOP COST EXPENSE ADJUSTMENT.**

NTCA (at 8-9) also contends that the Commission should revise Section 36.603(a) of its rules so that so that the 2002 rural carrier portion of the nationwide loop cost expense adjustment would be based 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.” NTCA contends that “[i]t seems the intent of the Commission’s action was to rebase rural high-cost fund to the year 2000 levels and to grow the fund from there by the RGF [rural growth factor].” NTCA is wrong.

Contrary to NTCA’s assertion it was *not* the Commission’s intent to grow the rural USF from hypothetical 2001 levels. Rather, it was the Commission’s intent to change the capping mechanism on the rural high-cost fund to lines plus a rural growth factor as applied to the prior calendar year *actual* cost adjustment. *RTF Order* ¶ 40.

Section 36.603(a) properly reflects this fact by providing that:

“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.” (emphasis added)

Because the *RTF Order* did not go into effect until July 1, 2001, Section 36.603(a) properly requires that support for the first half of 2001 be computed pursuant to the old rules and for the second half of 2001 subject to the new mechanism adopted in the *RTF Order*.<sup>4</sup> Thus, the total amount from the “immediately preceding calendar year” should correspond to the total amounts reported by USAC to the Commission as paid out for rural high-cost loop support for purposes of establishing the

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<sup>4</sup> See *Proposed Third Quarter 2001 Universal Service Contribution Factor*, CC Docket No. 96-45, DA 01-1384, n.6, released June 8, 2001.

quarterly 2001 universal service contribution factors.<sup>5</sup> Once again, NTCA is seeking to go beyond the generous support contemplated in the RTF proposal, which would drive the size of the USF even higher, at a time when the adopted enhancements are subject to challenge as overly generous. *See* Illinois Commerce Commission at 4-9.

### CONCLUSION

For the reasons stated above, the Commission should reject NTCA's proposed modifications relating to safety valve support and computation of the rural carrier portion of the national loop cost expense adjustment.

Respectfully submitted,

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<sup>5</sup> Specifically, this would include the USAC data submitted, or to be submitted, to the Commission for establishing the First, Second, Third and Fourth Quarters 2001 Universal Service Contribution Factors.

**CERTIFICATE OF SERVICE**

I, Tracy L. Rudnicki, do hereby certify that on this 31st day of July, 2001, a copy of the foregoing "AT&T Opposition to Petition for Reconsideration" was served by U.S. first class mail, postage prepaid, on the parties named on the attached Service List.

/s/ Tracy L. Rudnicki  
Tracy L. Rudnicki

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