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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
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 REPLY COMMENTS ON RTF FNRPM

Pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, and its Further Notice of Proposed Rulemaking in CC Docket No. 96-45, released May 23, 2001, published in 66 Fed. Reg. 34603 (June 29, 2001) ("*RTF FNPRM*"), AT&T Corp. ("AT&T") submits these reply comments on the proposal of the Rural Task Force ("RTF") to freeze high-cost loop support on a per-line basis in rural carrier study areas when a Competitive Eligible Telecommunications Carrier ("CETC") initiates service.[1] As shown in Part I, the notion that the growth of the rural high-cost fund ("HCF") should be controlled by providing the CETC less support than the ILEC, as some commenters suggest, would violate the Commission's long-established concept of portability of

[1] The *RTF FNPRM* is a part 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*"). In that order, the Commission adopted the proposal of the RTF and revised the mechanism by which rural carriers receive high-cost universal service support.

high-cost support as well as competitive neutrality. As demonstrated in Part II, contrary to some parties' positions, freezing per-line support does not violate "sufficiency" requirements and is an entirely valid technique for managing high-cost support. Finally, as demonstrated in Part III, freezing per-line support at competitive entry is necessary to avoid siphoning support from competitive rural study areas to study areas without competition.

I. THE COMMISSION SHOULD REJECT COMMENTERS' SUGGESTION TO CONTROL THE SIZE OF THE HIGH-COST SUPPORT BY BASING SUPPORT TO CETCS ON THEIR OWN COSTS.

As AT&T showed, and as other parties acknowledge, absent freezing per-line support, the predictable impact of a CETC serving lines "won" from the incumbent local exchange carrier ("ILEC") would be that the ILEC's reported number of working lines would decrease and the associated embedded costs per line would increase, such that there would be an increase in portable per-line support for both the ILEC and the CETC, thus driving up the size of the fund.[2] AT&T at 2-3; Texas Office of Public Utility Counsel at 5-6; *see also infra* at 6-7.

Various commenters contend that the Commission should solve the problem of excessive CETC support by basing such support on the CETC's costs rather than the incumbent's. NRTA/OPASTCO at 2-3; NTCA at 3-4; USTA at 6. This proposal should be rejected. First, providing disparate support amounts to the ILEC and the CETC is entirely contrary to the Commission's notion of portability of support, which has been long

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2 Under Part 36, Subpart F, portable loop support is based on ILEC data submissions only.

established and is not now open to reconsideration.[3] As the Commission determined in the *Universal Service Order* "paying the support to a competitive eligible telecommunications carrier that wins the customer or adds a new subscriber would aid the entry of competition in rural study areas." *Id.* ¶ 311.

Moreover, using the rural ILEC's embedded costs as a basis for determining CETC support is the only currently available mechanism that would make support "predictable," given that an objective forward-looking cost-based measurement does not exist for rural ILEC lines. In fact, precisely because there is no data on CETC costs of providing universal service, the Commission concluded that "determining a rural ILEC's per-line support" and using that amount "to calculate universal service support for all eligible telecommunications carriers serving customers within that rural ILEC's study area will be the least burdensome way to administer the support mechanisms and will provide the competing carrier with an incentive to operate efficiently." *Universal Service Order*, ¶ 313. As the Commission confirmed, "[b]esides using a forward-looking or embedded costs system, the alternative for calculating support levels for competing eligible telecommunications carriers consists of requiring the CLECs to submit cost studies." Requiring submission of a cost study would not only burden the CLEC but it would not provide any predictability or stability to high-cost funding.

The Commission subsequently emphasized (in the context of addressing nonrural LEC high-cost support) that "[t]o ensure competitive neutrality, . . . a competitor that wins a high-cost customer from an incumbent LEC should be entitled to the same

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3 *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-157, released May 8, 1997, ¶¶ 311-313 ("*Universal Service Order*").

amount of support that the incumbent would have received for the line, including any interim hold-harmless amount."[4] It further stated that "[w]hile hold-harmless amounts [which are based on the ILEC's embedded costs] do not necessarily reflect the forward-looking cost of serving customers in a particular area, . . . this concern is outweighed by the competitive harm that could be caused by providing unequal support amounts to incumbents and competitors. Unequal federal funding could discourage competitive entry in high-cost areas and stifle a competitor's ability to provide service at rates competitive to those of the incumbent." *Id.* For these reasons, the Commission should reject the notion that a CETC receive less support than the incumbent as a means of constraining the size of the HCF.

II. FREEZING PER-LINE SUPPORT WOULD NOT VIOLATE THE ACT'S "SUFFICENCY" REQUIREMENTS NOR WILL IT LEAVE STRANDED INVESTMENT.

NTCA (at 3) argues that the "sufficiency" requirement of Section 254 is the only lawful measure of support and that freezing per-line support would violate the Act. Other parties contend that freezing per-line support will leave stranded costs. MTA at 2; TCA at 6. Both of these attacks on the concept of frozen per-line support should be rejected.

Like the cap on the rural high-cost fund, which the Fifth Circuit has upheld as a valid component of managing high-cost support, frozen per-line support is simply a means of managing high-cost support. *Alenco Communications, Inc. v. FCC*, 201 F.3d. 608

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[4] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ninth Report & Order and Eighteenth Order on Reconsideration, FCC 99-306, released November 2, 1999, ¶ 90.

(5th Cir. 2000). In particular, the frozen per-line mechanism is designed to deal with the completely illogical outcome of using embedded costs to measure high-cost support which, if the CETC wins lines from the ILEC, would result in both the ILEC and the CETC getting more per-line support than the lines had received previously.

To avoid this result, the RTF proposal would freeze ILEC per-line high-cost loop support in a rural carrier study area whenever a CETC initiates service. This frozen per-line support would apply to both the ILEC and the CETC and would be grown by an annual rural growth factor ("RGF") (growth in lines + inflation) for purposes of determining future year support rather than any underlying increase in the ILEC's per-line costs because of competitive entry. Because of the RGF the ILEC will be assured of protection against inflation.[5]

The stranded cost argument does not apply because the frozen per-line mechanism, like the indexed cap on the HCF, "sizes" the amount of high-cost support, and is not designed to guarantee a return on investment. Indeed, the RTF had expressly urged the Commission to address stranded investment as a separate issue. *See RTF Recommendation to Joint Board,* released Sept. 29, 2000, at 39.

As the *Alenco* court explained in response to rural LECs' challenges on capping of high-cost support, "petitioners' sufficiency challenge fundamentally misses the

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[5] Although AT&T believes that the RTF's proposal to freeze per-line support is basically a sound approach for guarding against excessive growth in the size of the rural carrier high-cost loop fund, one minor correction should be made. Application of the rural growth factor to frozen per-line support in the study area is inappropriate double-counting. Because the per-line mechanism already includes line growth, only the inflation component of rural growth factor should be applied to the frozen per-line support. AT&T at 4-5; Texas Office of Public Utility Counsel at 11.

goal of the Act. The Act does not guarantee all local telephone service providers a sufficient return on investment; quite to the contrary, it is intended to introduce competition into the market. Competition necessarily brings the risk that some telephone service providers will be unable to compete. The Act only promises universal service, and that is a goal that requires sufficient funding of customers, not providers. So long as there is sufficient and competitively-neutral funding to enable all customers to receive basic telecommunications services, the FCC has satisfied the Act and is not further required to ensure sufficient funding of every local telephone provider as well. Moreover, excessive funding may itself violate the sufficiency requirements of the Act" by forcing consumers to bear excess subsidies.[6] *Alenco* at 620. Similarly, adoption of the RTF's proposed freeze of per-line support is fully consistent with the sufficiency provisions of the Act.

III. FREEZING PER-LINE SUPPORT AT COMPETITIVE ENTRY IS NECESSARY TO AVOID SIPHONING OFF HIGH-COST SUPPORT FROM RURAL STUDY AREAS WITHOUT COMPETITVE ENTRY.

A number of commenters contend that untoward HCF growth in the near future is speculative and thus oppose freezing per-line support at competitive entry. GVNW at 3; NRTA/OPASTCO at 2; USTA at 2-4. They are wrong.

Per the Part 36 rules, the portable per-line support is determined based on the annual data submissions of the ILEC. 47 C.F.R. § 36.611. Under normal circumstances, embedded costs per line generally decrease with line growth, but, with competitive entry, the potential exists for the ILEC to lose lines without shedding much costs, thereby driving

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[6] For example, in the absence of a freeze, a CETC could obtain additional high-cost funding by offering inexpensive second lines in addition to the lines captured from the ILEC as a marketing tactic.

up its costs per line. As RTF acknowledged in its December 14, 2001 *Ex Parte*, with competitive entry and ILEC loss of lines, in the absence of freezing the per-line support, the real possibility exists that the per-line support amount for the ILEC study areas would increase precipitously, resulting in a "spiraling" increase of support for that study area that would be available to both the ILEC and the CETC.

AT&T has used the following example to illustrate the need for freezing per-line support to avoid fund growth at competitive entry. AT&T at 2. Assume the ILEC is obtaining $100 of high-cost support for 10 lines, or $10 per line. If the ILEC loses 50% of its lines to a CETC, under the embedded cost formula, in the following year, the ILEC would still get $100 in high-cost support or $20 per line for each of its 5 remaining lines. Now, however, the CETC, would also qualify for the same amount of support as the ILEC, or $20 per line for each of the 5 lines it "won" from the ILEC. Under this scenario, the amount of support for the study area, still comprised of a total of 10 lines, would have doubled from $100 to $200.

In other words, absent freezing per-line support, the predictable impact of a CETC serving lines "won" from the ILEC, would be that the ILEC's reported number of working lines would decrease and the associated embedded costs per line would increase, such that there would be an increase in portable per-line support for both the ILEC and the CETC, thus driving up the size of the funding requirement for that study area. Moreover, when the indexed cap on the HCF is triggered, in the absence of freezing ILEC per-line support upon competitive entry, this phenomenon could result in a siphoning of support from study areas where there is no competitive entry to the study areas subject to competition. This would result in competitive study areas receiving relatively more support than non-competitive study areas. This outcome is completely illogical because competition should reduce the need for subsidies, not increase it.

CONCLUSION

For the reasons stated above, the Commission should: (1) adopt RTF's frozen per-line mechanism for capping high-cost support in the face of competitive entry, and (2) grow the amount of frozen per-line support only by the inflation component of the rural growth factor.

Respectfully submitted,

AT&T CORP.

By /s/ Judy Sello

Mark C. Rosenblum
Judy Sello

Room 1135L2
295 North Maple Avenue
Basking Ridge, New Jersey 07920
(908) 221-8984

Its Attorneys

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CERTIFICATE OF SERVICE

I, Judy Sello, do hereby certify that on this 28th day of August, 2001, a copy of the foregoing "AT&T Reply Comments on RTF FNPRM" was served by U.S. first class mail, postage prepaid, on the parties named on the attached Service List.

/s/ Judy Sello

Judy Sello

SERVICE LIST
CC Docket Nos. 96-45, 00-256

Jeffry H. Smith
GVNW Consulting, Inc.
8050 SW Warm Springs Street, Suite 200
Tualatin, OR 97062

Geoffrey A. Feiss
General Manager
Montana Telecommunications Association
208 North Montana Avenue, Suite 207
Helena, MT 59601

Margot Smiley Humphrey
Attorney for NRTA
Holland & Knight LLP
2100 Pennsylvania Avenue, NW, Suite 400
Washington, DC 20037

Stuart Polikoff
Stephen Pastorkovich
Jeffrey Smith
OPASTCO
21 Dupont Circle, NW
Suite 700
Washington, DC 20036

L. Marie Guillory
Daniel Mitchell
Attorneys for National Telephone Cooperative Association
United States Telecom Association
1401 H Street, NW, Suite 600
Washington, DC 20005

Paul M. Schudel, No. 13723
Attorney for Nebraska Rural Independent Companies
Woods & Aitken LLP
301 South 13th Street, Suite 500
Lincoln, NE 68508

Jeffrey F. Beck
E. Garth Black
Mark P. Schreiber
Sean P. Beatty
Attorneys for Small Western LECs
Copper, White & Cooper LLP
201 California Street, Seventeenth Floor
San Francisco, CA 94111

Karen Twenhafel
Regulatory Consultant
TCA, Inc. – Telcom Consulting Associates
1465 Kelly Johnson Blvd., Suite 200
Colorado Springs, CO 80920

Laurie Pappas
Deputy Public Counsel
Texas Office of Public Utility Counsel
1701 N. Congress Avenue, Suite 9-180
Austin, TX 78701

Lawrence E. Sarjeant
Linda L. Kent
Keith Townsend
John W. Hunter
Julie E. Rones
United States Telecom Association
1401 H Street, NW, Suite 600
Washington, DC 20005