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

In the Matter of	)	
	)	
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
	)	
Petitions for Reconsideration filed by:	)	
	)	
Coalition of Rural Telephone Companies	)	
Competitive Universal Service Coalition	)	
Illinois Commerce Commission	)	
National Telephone Cooperative Association	)	

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ORDER ON RECONSIDERATION

Adopted: June 10, 2002 **Released:** June 13, 2002

By the Commission: Commissioner Copps issuing a statement.

I. INTRODUCTION

1. In this Order on Reconsideration, we address the requests to reconsider portions of the Commission's order modifying the Commission's rules for providing high-cost universal service support to rural telephone companies based on the proposals made by the Rural Task Force.[1] Specifically, we amend our rules to provide that the amount of high-cost loop support available to rural carriers in 2002 should be adjusted to account for mid-2001 implementation of the rules adopted in the *RTF Order*.[2] In addition, we deny requests filed by the Coalition of Rural Telephone Companies, Competitive Universal Service Coalition, and Illinois Commerce Commission to reconsider certain elements of the *RTF Order*.[3] We conclude that these

[1] *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 Nos. 96-45, 00-256, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking, 16 FCC Rcd 11244 (2001) (*RTF Order*).

[2] *See* 47 C.F.R. § 36.603(a).

[3] On July 5, 2001, the following parties filed petitions for reconsideration in this proceeding: Coalition of Rural Telephone Companies (RTC Petition), Competitive Universal Service Coalition (CUSC Petition), Illinois Commerce Commission (Illinois Commission Petition), and National Telephone Cooperative Association (NTCA Petition).

petitioners have failed to present any new arguments that lead us to reconsider these issues.

II. BACKGROUND

A. *RTF Order*

2. On May 23, 2001, the Commission released the *RTF Order* modifying the Commission's rules for providing high-cost universal service support to rural telephone companies for the next five years based on the consensus proposals made by the Rural Task Force.[4] The Commission's action was taken based on recommendations from the Federal-State Joint Board on Universal Service to ensure that support provided to rural carriers is specific, predictable, and sufficient.[5] The Joint Board encouraged the Commission to take advantage of the consensus achieved by the diverse interests represented on the Rural Task Force and use the Rural Task Force Recommendation as a foundation for implementing a universal service plan for rural carriers for the next five years.

3. In relevant part, the Commission took the following action: (1) adopted the recommendation of the Rural Task Force to re-base the high-cost loop support fund for rural telephone companies as if the indexed cap and corporate operations expense limitation had not been in effect for the calendar year 2000 and retained an indexed cap on the fund; (2) adopted a "rural growth factor" that allows the high-cost loop support to grow based on annual changes in the Gross Domestic Product-Chained Price Index (GDP-CPI) and the total number of working loops of rural carriers; (3) modified section 54.305 of the Commission's rules to provide a "safety valve" that provides support for additional investment made in acquired exchanges; (4) adopted three paths for disaggregation and targeting of high-cost support; (5) adopted the use of a wireless mobile customer's billing address as the basis for determining the customer's location for purposes of delivering high-cost universal service support; (6) concluded that states should file annual certifications with the Commission to ensure that eligible telecommunications carriers (ETCs) providing service in the service area of a rural carrier use such support consistent with section 254(e); and (7) concluded that the adopted framework shall remain in place for five years and implementation shall begin as of July 1, 2001.[6]

4. The Commission concluded that adopting a modified embedded cost mechanism for rural carriers for a five-year period strikes a fair and reasonable balance among the goals and principles enumerated in section 254 of the Act.[7] Specifically, the Commission found that the adopted plan will provide sufficient support for purposes of section 254, consistent with the goal

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[4] The Rural Task Force members were appointed by the Joint Board in July 1998, and deliberated for over two years before presenting their Recommendation to the Joint Board on September 29, 2000. *See Federal-State Joint Board on Universal Service Announces Rural Task Force Members*, Public Notice, CC Docket No. 96-45, FCC 98J-1 (Jt. Bd. 1998).

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

[6] *See generally RTF Order*. In the *RTF Order*, the Commission recognized that in some cases carriers may not be subject to the jurisdiction of the state. In these instances, this Commission will assume the role of the state commission. *See* 47 C.F.R. 54.314(b) (certification of support for rural carriers); 47 C.F.R. § 54.315 (disaggregation).

[7] *RTF Order*, 16 FCC Rcd at 11248, para. 8.

of ensuring that consumers in rural, insular, and high-cost areas have access to telecommunications services at rates that are affordable and reasonably comparable to rates charged for similar services in urban areas.[8] In light of diversity among rural carriers, and based on previous experience in developing the forward-looking high-cost support mechanism for non-rural carriers, the Commission concluded that five years is a reasonable amount of time to maintain the adopted plan in place, while other long-term solutions are considered.[9]

B. Petitions for Reconsideration

5. On July 5, 2001, four petitions for reconsideration were filed in response to the *RTF Order*. In its petition, NTCA argues that it was the intent of the Commission to re-base the rural high-cost fund to the year 2000 levels and to grow the fund from that point by the rural growth factor. NTCA notes that due to the mid-year 2001 implementation of the adopted plan, application of section 36.603(a) of the Commission's rules will result in support in 2002 for rural carriers being calculated by adding the totals for the first half of 2001, during which the new plan was not in effect, and the second half of 2001, during which the plan was in effect.[10] NTCA contends this will make rural carriers eligible for less support in 2002 than the Commission intended, a result that would be compounded over the course of the five-year plan. NTCA suggests two possible remedies.[11] In particular, the Commission could amend section 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 2001 limited by the previous cap. Alternatively, the Commission could start with the uncapped fund for 2000 and directly calculate the 2002 cap by increasing it for 2001 and 2002 using the rural growth factor. In addition, NTCA requests that the Commission amend its rules to provide "safety valve" support for the first year investment in acquired exchanges.[12]

6. In its petition, RTC requests that the Commission reconsider or clarify various issues relating to the application of universal service support to wireless carriers. Specifically, RTC requests that the Commission reconsider its determination to use a wireless mobile customer's billing address as the basis for determining the customer's location for purposes of

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[8] *RTF Order*, 16 FCC Rcd at 11257, para. 26.

[9] *RTF Order*, 16 FCC Rcd at 11256, para. 25.

[10] Section 36.603(a) provides, in relevant part, 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 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.

47 C.F.R. § 36.603(a) (emphasis added).

[11] Letter from Daniel Mitchell, Counsel for NTCA, to Magalie Roman Salas, FCC, filed Dec. 7, 2001.

[12] NTCA Petition at 4-8. 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. 47 U.S.C. § 54.305. In the *RTF Order*, the Commission modified this rule to provide support for additional investment in the acquired exchanges.

delivering high-cost universal service support.[13] RTC contends that use of the billing address may have little relationship to the actual utilization of wireless service due to the mobile nature of such service.[14] RTC also contends that the Commission's universal service rules do not adequately define how wireless carriers are to quantify such concepts as "loops."[15] Finally, RTC argues that providing support to a competitive carrier using one technology based upon the costs of the incumbent carrier using a different technology is not competitively neutral or technologically neutral. RTC suggests that the Commission must therefore begin development of a mechanism that recognizes these differences.[16]

7. The CUSC urges the Commission to provide greater transparency of funding information and eliminate state certification requirements for competitive ETCs. Specifically, CUSC requests that the Commission require the Universal Service Administrative Company (USAC) to publish and make available on its website information relating to the geographic boundaries of wire centers and study areas and the amount of support available in each geographic location prior to the distribution of support.[17] CUSC also contends that because competitive ETCs are not subject to state rate regulation, self-certification for compliance with section 254(e) should not be limited to the narrow class of carriers that are not subject to state jurisdiction, but should extend to all competitive ETCs.[18] In addition, CUSC requests that the Commission reconsider various aspects of its decision to adopt the Rural Task Force's recommendation regarding geographic disaggregation and targeting of high-cost support. CUSC contends that these rules allow the incumbent carrier to manipulate the disaggregation and targeting of support in an anti-competitive manner. Therefore, CUSC requests that whenever a rural study area is disaggregated for purposes of funding, the study area should automatically be disaggregated for purposes of ETC designation as well.[19] CUSC also suggests that competitive ETCs be given the same right as the incumbent rural carrier to initiate study area disaggregation.[20]

8. The Illinois Commission alleges that the funding increases resulting from the actions taken in the *RTF Order* are excessive and not based upon a sufficient evidentiary record.[21] The Illinois Commission contends that, as a net contributor state, Illinois ratepayers are unfairly burdened as a result of excessive increases in the universal service fund.[22] The Illinois

[13] RTC Petition at 3-6.

[14] RTC Petition at 4-5.

[15] RTC Petition at 7 (contending that "[u]nlike a dedicated loop facility, there is no dedicated channel available to each wireless user").

[16] RTC Petition at 11-12.

[17] CUSC Petition at 5-6.

[18] CUSC Petition at 6-7. Section 254(e) provides that carriers shall use universal service support "only for the provision, maintenance, and upgrading of facilities and services for which the support in intended." 47 U.S.C. § 254(e).

[19] CUSC Petition at 10.

[20] CUSC Petition at 11-12.

[21] Illinois Commission Petition at 5.

[22] Illinois Commission Petition at 4.

Commission therefore requests that the Commission revisit this issue and require a more detailed evidentiary record be provided to support any Commission finding that the increased funding is necessary to produce a "sufficient" federal universal service support mechanism.[23] In addition, the Illinois Commission contends that the state certification requirement for ensuring that carriers are using support in a manner consistent with section 254(e) is an onerous and unworkable requirement given the underlying problem of excessive funding.[24]

III. DISCUSSION

9. As discussed in greater detail below, we amend our rules to provide that the amount of high-cost loop support available to rural carriers in 2002 should be adjusted to account for mid-2001 implementation of the rules adopted in the *RTF Order*. In addition, we deny the requests of RTC, CUSC, and Illinois Commission to reconsider other elements of the *RTF Order*. As part of our continuing assessment of support to rural areas, we intend to initiate a proceeding in the future to examine further issues related to the application of the universal service mechanisms to competitive ETCs.

10. *NTCA Petition*. We agree with NTCA that the Commission's rules for calculating a rural incumbent carrier's loop cost expense adjustment should be amended to take into consideration mid-year 2001 implementation of the adopted plan.[25] The Commission based its estimate of the increase in rural carrier universal service funding on data submitted by the Rural Task Force.[26] This data assumed that the adopted plan would be implemented as of January 1, 2001. As NTCA notes, due to July 1, 2001 implementation of the Rural Task Force plan, application of section 36.603(a) would result in 2002 support for rural carriers being calculated by adding the totals for the first half of 2001, during which the plan was not in effect, and the second half of 2001, during which the plan was in effect. We agree with NTCA that mid-year 2001 implementation will result in less support for eligible rural carriers in 2002 than intended by the Commission in adopting the Rural Task Force plan.[27] This result would be compounded over five years.[28]

11. We therefore amend section 36.603(a) of our rules by taking the uncapped support for 2000 and increasing it for 2001 and 2002 by the rural growth factor. Specifically, for the period of January 1, 2002, to December 31, 2002, the annual amount of the rural incumbent local exchange carrier portion of the nationwide loop cost expense adjustment shall not exceed the non-capped amount of the total rural incumbent local exchange carrier loop cost expense adjustment for calendar year 2000, multiplied times one plus the rural growth factor for 2001,

[23] Illinois Commission Petition at 6.

[24] Illinois Commission Petition at 9-11.

[25] NTCA Petition at 8.

[26] *See* Letter from William R. Gillis, Chair, Rural Task Force, to Magalie Roman Salas, FCC, filed Nov. 16, 2000; *RTF Order*, 16 FCC Rcd at 11258, para. 28.

[27] *See* Letter from Daniel Mitchell, Counsel for NTCA, to Magalie Roman Salas, FCC, filed Sept. 26, 2001; NTCA Reply to Oppositions to Petitions for Reconsideration at 6-7.

[28] Section 36.603(a) of the Commission's rules provides that, beginning January 1, 2002, the total high cost loop support available to rural carriers shall equal the total support "for the *immediately preceding calendar year*, multiplied times one plus the Rural Growth Factor." 47 C.F.R. § 36.603(a) (emphasis added).

which then shall be multiplied times one plus the rural growth factor for 2002.[29] We believe this result is consistent with the Commission's intent in adopting the recommendations of the Rural Task Force. We direct USAC to take the administrative steps necessary to implement this rule amendment beginning in the third quarter of 2002, including the provision of retroactive support to any carrier that may qualify for such additional support as of January 1, 2002.[30] Specifically, in addition to any other payments for which carriers qualify in the third quarter 2002, we further direct USAC to provide the additional rural high-cost support retroactively in third quarter 2002 to those carriers that qualify for such additional support pursuant to this rule amendment during first quarter 2002. Similarly, in addition to any other payments for which carriers qualify in the fourth quarter 2002, USAC shall provide the additional rural high-cost support retroactively in fourth quarter 2002 for those carriers that qualify for such additional support during second quarter 2002.

12. We do not address NTCA's request at this time to amend our rules to provide "safety valve" support for the first year of investment in acquired exchanges.[31] The Commission intends to address this request at a later date.

13. *RTC Petition*. We deny the request of RTC to reconsider the Commission's determination to use a wireless mobile customer's billing address as the basis for determining the customer's location for purposes of delivering high-cost universal service support.[32] Because universal service support is portable, competitive ETCs receive the same per-line high-cost support as the incumbent local exchange carrier for the lines that it serves in the high-cost areas of the incumbent local exchange carrier. It is therefore necessary to establish a reasonable means to identify customer locations in order to determine the support amounts for the competitive carrier. We find no new arguments in RTC's petition that persuade us to reconsider the Commission's decision on this issue.

14. We affirm that the use of the customer's billing address as a surrogate for actual service location is reasonable and the most administratively viable solution to this problem at this time.[33] For example, as the Commission noted in the *RTF Order*, this approach eliminates the need to require many wireless mobile carriers to create a new database for purposes of universal service funding.[34] The Commission addressed concerns similar to those raised in RTC's petition in the *RTF Order*, including the potential for arbitrage opportunities of the universal service

[29] We estimate that this rule amendment will result in approximately $72 million in additional high-cost loop support to rural carriers in 2002.

[30] We note that high cost loop support modifications for 2002 for average schedule companies including how "safety valve" support should be calculated are currently pending before the Commission in a separate proceeding. *See National Exchange Carrier Association, Inc. Proposed 2002 Modifications of Average Schedule Formulas*, Order, APD 01-7, DA 01-2969 (rel. Dec. 26, 2001).

[31] *See also* CenturyTel Comments filed July 31, 2001 at 3-6.

[32] RTC Petition at 3-6. *See also* CenturyTel Comments filed July 31, 2001 at 7-8.

[33] *RTF Order*, 16 FCC Rcd at 11314-15, para. 181; CUSC Comments filed July 31, 2001 at 6-8.

[34] *RTF Order*, 16 FCC Rcd at 11314-15, para. 181.

mechanism.[35] In so doing, the Commission acknowledged that this approach is not a perfect solution.[36] Consistent with the Commission's conclusion in the *RTF Order*, we believe that sufficient safeguards are in place to alleviate those concerns. The Commission has specifically committed to taking enforcement action as appropriate for any such abuses.[37] Moreover, the Commission has indicated that it will continue to monitor the reasonableness of using a customer's billing address as the surrogate for a wireless mobile customer's location for universal service purposes and may revisit this approach in the future.[38]

15. RTC contends that the Commission's universal service rules are generally incompatible for calculating universal service support for wireless carriers.[39] RTC effectively asks the Commission to modify certain of the universal service rules as they apply to wireless carriers and to initiate new proceedings to establish a cost mechanism for wireless carriers.[40] These requests exceed the scope of the *RTF Order*. Many of the rules for which RTC seeks modification were adopted prior to the *RTF Order* and this order is limited to those issues raised on reconsideration of the *RTF Order*. RTC's petition is therefore more appropriately characterized as a request for rulemaking. As part of our continuing assessment of support to rural areas, we intend to initiate a proceeding in the future to examine further issues related to the application of universal service mechanisms to competitive ETCs.

16. *CUSC Petition*. We deny the request of CUSC to reconsider the requirement adopted in the *RTF Order* that state commissions must file annual certifications with the Commission to ensure that carriers use universal service support "only for the provision, maintenance and upgrading of facilities and services for which the support is intended." We therefore deny CUSC's request to permit all competitive ETCs to self-certify their compliance with section 254(e).[41] Specifically, we disagree with CUSC's contention that self-certification should be extended from carriers that are not subject to state jurisdiction pursuant to section 214(e)(6) to all competitive ETCs due to the fact that competitive ETCs may not be subject to state rate regulation.[42] The self-certification process established for carriers not subject to the jurisdiction of a state commission recognized that, in limited instances, there is no state

[35] *RTF Order*, 16 FCC Rcd at 11314-16, paras. 180-184 (noting that a carrier could misuse a customer's billing address by identifying a customer in a high-cost zone when service is primarily taken in a low cost zone for the purpose of receiving a higher level of per-line support).

[36] *RTF Order*, 16 FCC Rcd at 11315-16, para. 183.

[37] *RTF Order*, 16 FCC Rcd at 11315-16, para. 183.

[38] *RTF Order*, 16 FCC Rcd at 11315-16, para. 183.

[39] *See* RTC Petition at 8 n.18 (contending that ". . . the loops for a wireline carrier can be physically observed and counted. There is no physical plant to count for wireless carriers.").

[40] Under the Commission's portability rules, a competitive ETC receives the same support for each line served that the incumbent carrier would receive, based on the incumbent carrier's costs. 47 C.F.R. § 54.307.

[41] CUSC Petition at 6-7. *See* 47 C.F.R. § 54.314. The certification requirement adopted in the *RTF Order* is applicable to all rural carriers and competitive ETCs seeking high-cost support in the service area of a rural local exchange carrier.

[42] The Commission recognized in adopting this requirement that the state commissions may have only limited regulatory oversight in some instances to ensure that federal support is reflected in intrastate rates. *RTF Order*, 16 FCC Rcd at 11318, para. 188.

regulatory authority to ensure compliance with section 254(e). This is not the case for the majority of competitive ETCs. The Commission has previously concluded that state commissions have the principal responsibility in designating carriers as ETCs, including those carriers not subject to state rate regulation under section 332(c).[43] We believe that state commissions that conduct ETC designations should also certify that such carriers are in compliance with section 254(e). It would be contrary to the principle of competitive neutrality to require certain classes of carriers subject to state ETC jurisdiction to receive state certification while allowing others to self-certify. Nor do we agree with CUSC's alternative suggestion that all ETCs be allowed to self-certify compliance with section 254(e). As the Commission concluded in adopting this requirement, we believe that the state certification process provides the most reliable means of determining whether carriers are using support in a manner consistent with section 254(e).[44]

17. We also deny the request of CUSC to reconsider the Commission's decisions regarding disaggregation and targeting of universal service support.[45] We disagree with CUSC's suggestion that, whenever a rural incumbent carrier study area is disaggregated for purposes of targeting funding, the study area should automatically be disaggregated for purposes of ETC designation as well. In the case of an area served by a rural telephone company, section 214(e)(5) defines the competitive ETC's designated service area as the rural telephone company's study area unless and until the Commission and states establish a different definition of service area.[46] We believe that granting CUSC's request in this proceeding would be inconsistent with the statute.[47]

18. We also disagree with CUSC's assertion that the disaggregation rules adopted in the *RTF Order* violate the principle of competitive neutrality because they allow only rural incumbent carriers to select from a range of disaggregation options.[48] Specifically, CUSC contends that competitive ETCs should have the same opportunity to initiate study area disaggregation as the rural carrier. We find that the disaggregation and targeting approach adopted in the *RTF Order* achieves a reasonable balance between rural carriers' need for flexibility and the goal of encouraging competitive entry. The Commission recognized in the *RTF Order* that some incumbent carriers may choose a disaggregation path based on anti-competitive reasons.[49] For that reason, the Commission concluded that a state commission may

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[43] *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, CC Docket No. 96-45, 15 FCC Rcd 12208 at 12260, 12262-63, paras.104, 110 (2000).

[44] *RTF Order*, 16 FCC Rcd at 11317-18, para. 187.

[45] CUSC Petition at 6-7.

[46] 47 U.S.C. § 214(e)(5).

[47] The Commission has recognized one exception to this requirement where an existing study area for a rural carrier extends beyond jurisdictional boundaries, such as state lines or tribal lands. *See, e.g., Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota*, Memorandum Opinion and Order, CC Docket No. 96-45, 16 FCC Rcd 18133, 18139-40, paras. 17-18 (2001).

[48] CUSC Petition at 11.

[49] *RTF Order*, 16 FCC Rcd at 11303, para.148.

require, on its own motion, upon petition by an interested party, or upon petition by the rural incumbent carrier, modification to the disaggregation and targeting of support under the selected path.[50] We affirm the Commission's conclusion that state commissions have the capability to safeguard against anti-competitive manipulation of the disaggregation and targeting of support that could occur with such requests.[51] Competitive ETCs and other interested parties will have an opportunity to participate in this process. We therefore find no basis to conclude that the disaggregation process is inconsistent with the principle of competitive neutrality.

19. We also decline to adopt CUSC's request that the Commission adopt specific rules governing how the amounts of support in each sub-zone under Path Three (self-certification) are to be calculated in order to ensure support amounts are cost justified.[52] We reaffirm the Commission's prior decision to permit carriers flexibility in how they disaggregate support. We are not persuaded on the record before us that permitting carriers to self-certify to a disaggregation path creates too great an opportunity for the incumbent carrier to manipulate support in an anti-competitive manner.[53] A self-certified disaggregation plan under Path 3 is subject to complaint by interested parties before the appropriate regulatory authority. Moreover, the state or appropriate regulatory authority may require on its own motion at any time the disaggregation of support in a different manner. We believe such regulatory oversight will sufficiently safeguard against the anti-competitive manipulation of the disaggregation and targeting of support.

20. Finally, at this time, we decline to adopt CUSC's request that USAC publish and make available on its website additional information relating to the geographic boundaries of wire centers and study areas and the amount of support available in each geographic location. In the *RTF Order*, the Commission required rural incumbent local exchange carriers to submit to USAC maps in which the boundaries of the designated disaggregation zones of support are clearly specified, which USAC will make available for public inspection.[54] In addition, when submitting information in support of self-certification, an incumbent carrier must provide USAC with publicly available information that allows competitors to verify and reproduce the algorithm used to determine zone support levels.[55] We also note that USAC makes publicly available in its quarterly funding report detailed information relating to the high-cost support received by carriers in each study area. We recognize that the availability of such information is important to competitors in assessing potential entry. We believe that sufficient information is available to competitors under our existing rules and policies and will continue to be available following requests for disaggregation of study areas by rural incumbent carriers. The Commission will, however, continue to monitor this situation and take appropriate steps as necessary.

21. *Illinois Commission Petition*. We deny the request of the Illinois Commission to reconsider the plan adopted in the *RTF Order* for providing high-cost universal service support

[50] *See* 47 C.F.R. § 54.315.

[51] *RTF Order*, 16 FCC Rcd at 11305, para. 154

[52] CUSC Petition at 11-12.

[53] *RTF Order*, 16 FCC Rcd at 11305, para. 152. *See also* NTCA Opposition Comments filed August 6, 2001 at 7-8.

[54] *RTF Order*, 16 FCC Rcd at 11307-08, para. 161.

[55] *Id.*

to rural carriers for the next five years due to concerns relating to the sufficiency of the evidentiary record.[56] Specifically, we disagree with the Illinois Commission that the funding increases adopted in the *RTF Order* are excessive and not based upon an adequate record.

22. Based upon the extensive record developed in this proceeding, the Commission used its expertise and informed judgment to formulate an interim plan for providing high-cost universal service support to rural carriers. That plan was based largely on the recommendations of the Rural Task Force. After exhaustive deliberations and considerable effort, including six white papers, the Rural Task Force submitted its Recommendation to the Joint Board on September 29, 2000. After reviewing the Rural Task Force's proposal, the Joint Board submitted its recommendations to the Commission on December 22, 2000. The Commission carefully reviewed these recommendations, including comments filed by the Illinois Commission and others, in adopting the interim plan for rural carriers.[57] In balancing the competing interests presented in this proceeding, the Commission considered both the adequacy of support to rural carriers and the burden on contributors.[58] In concluding that the modified embedded mechanism for rural carriers strikes an appropriate balance, the Commission rejected the contention that no increase in the current high-cost support levels was warranted.

23. We affirm the Commission's conclusion that it was reasonable to modify the high-cost loop support levels for rural carriers established in 1997 to account for changes in costs and technology, and to ensure that rural carriers can maintain existing facilities until such time as a long-term plan is adopted.[59] For example, the Commission's decision to increase high-cost loop support to rural carriers by "rebasing" the indexed fund cap and the corporate operations expense limitation as if the indexed cap had not been in effect for the calendar year 2000 was reasonable because more than seven years had passed since the Commission originally implemented the indexed cap on high-cost loop support.[60] The Commission concluded that the indexed cap on the high-cost loop fund increasingly limited the amount of high-cost loop support for rural carriers.[61] In addition, the Commission noted that, even with these changes any increase in the universal service contribution factor as a result of this plan would be modest.[62] In the *RTF Order*, the Commission concluded that no commenter proffered any specific evidence that the

[56] *See also* WorldCom Comments filed July 31, 2001 at 2-3.

[57] *RTF Order*, 16 FCC Rcd at 11257, n.65.

[58] *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 412 (5th Cir. 1999); *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 620 (5th Cir. 2000).

[59] *RTF Order*, 16 FCC Rcd at 11258, para. 28. *See also* NTCA Comments at 2-6; USTA Comments filed July 31, 2001 at 2-3.

[60] *RTF Order*, 16 FCC Rcd at 11262-63, paras. 40-41.

[61] According to the RTF, without the indexed cap, the portion of the high-cost loop fund distributed to rural telephone company study areas would have been $83.9 million higher in calendar year 2000. *See* Rural Task Force Recommendation at 20-21. The Commission noted that the weighted average unseparated per-line loop cost for rural carriers increased by an annual average of approximately one-percent per year from 1995-1999. Such increases in the weighted average unseparated per-line loop cost for rural carriers were not reflected in the indexed cap on the high-cost loop fund, which is based on the rate of growth in the total number of rural and non-rural working loops nationwide for the preceding calendar year. *RTF Order*, 16 FCC Rcd at 11263, para. 41.

[62] *See RTF Order*, 16 FCC Rcd at 11258, para. 28 (estimating that any increase in the universal service contribution factor as a result of the adopted plan for rural carriers will range from two-tenths to four-tenths of one percent).

adopted plan would provide support that is excessive.[63] The Illinois Commission petition contains no such empirical evidence to support this contention. We therefore decline to now reconsider the Commission's conclusions.

24. We also decline to reconsider the state certification requirement to ensure that carriers are using support in a manner consistent with section 254(e). As discussed above, we do not agree with the Illinois Commission that excessive funding is provided to rural carriers. We therefore are not persuaded by the argument that any such state certification requirement is unworkable due to excessive funding for universal service purposes. Given that states generally have primary authority over carriers' intrastate activities, we reiterate the Commission's determination that the state certification process provides the most reliable means of determining whether carriers are using support for its intended purpose in a manner consistent with section 254(e).[64]

IV. PROCEDURAL MATTERS

A. Paperwork Reduction Act

25. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 (PRA) and found to impose no new or modified reporting and/or recordkeeping requirements or burdens on the public.

B. Supplemental Final Regulatory Flexibility Analysis

26. In compliance with the Regulatory Flexibility Act (RFA),[65] this Supplemental Final Regulatory Flexibility Analysis (SFRFA) supplements the Final Regulatory Flexibility Analysis (FRFA) included in the *RTF Order*,[66] to the extent that changes to that Order adopted here on reconsideration require changes in the conclusions reached in the FRFA. As required by the RFA,[67] the FRFA was preceded by an Initial Regulatory Flexibility Analysis (IRFA) incorporated in the Further Notice of Proposed Rulemaking, which sought public comment on the proposals in the Further Notice.[68]

1. Need for, and Objective of, the Order

27. Section 254 of the Communications Act of 1934, as amended by the 1996 Act, requires the Commission to promulgate rules to preserve and advance universal service

[63] *RTF Order*, 16 FCC Rcd at 11258, paras, 27-28.

[64] *RTF Order*, 16 FCC Rcd at 11317-18, para. 187.

[65] *See* 5 U.S.C. § 604. The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[66] *RTF Order*, 16 FCC Rcd at 11327-34, paras. 212-236.

[67] 5 U.S.C. § 603.

[68] *Federal-State Joint Board on Universal Service*, Further Notice of Proposed Rulemaking, CC Docket No. 96-45, FCC 01-8 (rel. Jan. 12, 2001) at paras. 9-29.

support.[69] In the *RTF Order*, the Commission adopted interim rules for determining high-cost universal service support for rural telephone companies based upon the modified embedded cost mechanism proposed by the Rural Task Force. The Commission based its estimate of the appropriate funding for rural carriers on data submitted by the Rural Task Force.[70] This data assumed that the adopted plan would be implemented as of January 1, 2001. In this Order, we amend section 36.603(a) of our rules to reflect the fact that July 1, 2001 implementation of the rules, as adopted in the *RTF Order*, would result in less support being provided than intended by the Commission.

2. Summary of Significant Issues Raised by Public Comments In Response to the IRFA

28. No comments were submitted in response to the IRFA or FRFA. On reconsideration, however, NTCA noted that clarification of the section 36.603(a) of the Commission's rules was required to ensure that mid-year 2001 implementation did not result in less support being provided for rural incumbent carriers in 2002 than intended by the Commission in adopting the Rural Task Force plan.

3. Description and Estimate of the Number of Small Entities to Which this Order will Apply

29. In the FRFA at paragraphs 218-229 of the *RTF Order*, we described and estimated the number of small entities that would be affected by the new universal service rules for rural carriers. The rule amendment adopted herein may apply to the same entities affected by the rules adopted in that order. We therefore incorporate by reference paragraphs 218-229 of the *RTF Order*.[71]

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

30. The rule amendment adopted in this Order contains no new reporting, recordkeeping, or other compliance requirements.

5. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

31. In the *RTF Order*, we described the steps taken to minimize the significant economic impact on small entities consistent with the stated objectives associated with the adopted plan for providing high-cost support to rural carriers. Because many of the same issues are presented in this Order, we incorporate by reference paragraphs 233-235 of the *RTF Order*.[72] In this Order, we amend section 36.603(a) of our rules consistent with the intent of the

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[69] 47 U.S.C. § 254.

[70] *See* Letter from William R. Gillis, Chair, Rural Task Force, to Magalie Roman Salas, FCC, filed Nov. 16, 2000; *RTF Order*, 16 FCC Rcd at 11258, para. 28.

[71] *RTF Order*, 16 FCC Rcd at 11329, paras. 218-229.

[72] *RTF Order*, 16 FCC Rcd at 11333-34, paras. 233-235.

Commission in adopting the Rural Task Force plan for providing high-cost universal service support to rural carriers for an interim period of five years. That plan was predicated on funding estimates for rural incumbent carriers based on January 1, 2001 implementation. The adopted rule, however, established July 1, 2001, as the implementation date. The rule amendment adopted herein rectifies this inconsistency, and thereby ensures that appropriate funding is provided to rural incumbent local exchange carriers and competitive ETCs, many of whom may qualify as small entities, over the next five years. As discussed above, the alternative option of denying the request for reconsideration on this issue was considered and deemed to be inconsistent with Commission's intent in adopting the Rural Task Force's plan.

6. Report to Congress

32. The Commission will send a copy of this Order, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A). In addition, the Commission will send a copy of this Order, including the Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order and Supplemental FRFA (or summaries thereof) will also be published in the Federal Register. *See* 5 U.S.C. § 604(b).

V. ORDERING CLAUSES

33. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1-4, 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C §§ 151-154, 214, and 254, and section 1.429 of the Commission's rules, 47 C.F.R. § 1.429, the above captioned petitions for reconsideration ARE DENIED, to the extent discussed herein.

34. IT IS FURTHER ORDERED that the petition for reconsideration filed by National Telephone Cooperative Association on July 5, 2001 is GRANTED IN PART, to the extent discussed herein.

35. 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 thirty (30) days after publication in the Federal Register.

36. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch

Marlene H. Dortch
Secretary

APPENDIX A – FINAL RULES

Part 36 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 36 – JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES

Subpart F – Universal Service Fund

1. Section 36.603 is amended by revising paragraph (a) to read as follows:

§ 36.603 Calculation of rural incumbent local exchange carrier portion of nationwide loop cost expense adjustment.

(a) Effective July 1, 2001, the rural incumbent local exchange carrier portion of the annual nationwide loop cost expense adjustment will be recomputed by the fund administrator as if the indexed cap calculated pursuant to § 36.601(c) and the corporate operations expense limitation calculated pursuant to § 36.621 had not been in effect for the calendar year 2000. For the period July 1, 2001, to December 31, 2001, the annualized 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 non-capped amount of the total rural incumbent local exchange carrier loop cost expense adjustment for the calendar year 2000, multiplied times one plus the Rural Growth Factor calculated pursuant to § 36.604. For the period January 1, 2002, to December 31, 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 non-capped amount of the total rural incumbent local exchange carrier loop cost expense adjustment for calendar year 2000, multiplied times one plus the Rural Growth Factor for 2001, which then shall be multiplied times one plus the Rural Growth Factor for 2002. Beginning January 1, 2003, 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.

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STATEMENT OF
COMMISSIONER MICHAEL J. COPPS

Re: Federal-State Joint Board on Universal Service

I am pleased that we are dealing with a number of reconsideration issues, including importantly correcting an inadvertent error that resulted in a reduced amount of universal service support for rural America.

I would also have preferred to take action on another issue that the Commission fails to address in this order. As it now stands, rural carriers that purchase exchanges are not eligible to receive additional support for investment for the first year they operate those exchanges. As a result of this rule, rural carriers wait a year to upgrade what is often poor equipment and consumers wait a year for new and improved services. I urge the Commission to address this issue expeditiously so that rural carriers are able to undertake necessary investment in their communities.