John Staurulakis INCORPORATED

7852 Walker Drive, Suite 200, Greenbelt, Maryland 20770
phone: 301-459-7590, fax: 301-577-5575
internet: www.jsitel.com, *e-mail:* jsi@jsitel.com

September 19, 2005

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: CC Docket No. 96-45
Notice of *Ex Parte* Presentation

Dear Ms. Dortch:

On September 16, 2005, John Zoucks of Darien Telephone Company, Inc. ("Darien"), Steve Goodman of Roanoke & Botetourt Telephone Company ("R&B") and Steve Meltzer, Brian Sullivan and John Kuykendall of John Staurulakis, Inc. ("JSI") met with Michelle Carey, legal advisor for Chairman Kevin J. Martin to discuss three Requests for Review of an Administrator Decision which were filed by Darien, R&B and Logan Telephone Cooperative, Inc. in the above referenced docket.[1] In the meeting, the company and JSI representatives explained how a decision by the Universal Service Administrative Company ("USAC") has significantly reduced the three companies' Safety Net Additive Support and reasons why this decision by USAC should be reversed. A copy of the presentation is attached.[2]

Respectfully submitted,

/s/ John Kuykendall

John Kuykendall
Director – Regulatory Affairs

Attachment

cc: Michelle Carey

---

[1] In a Public Notice, the Commission sought comment on the three requests and specified that this proceeding would be a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. *See Darien Telephone Company, Inc., Logan Telephone Cooperative, Inc., and Roanoke & Botetourt Telephone Company Request Review of the Universal Service Administrative Company's Decisions Regarding Safety Net Additive Support*, CC Docket No. 96-45, Public Notice, DA 05-1953, rel. July 6, 2005.

[2] A compilation of all of the filings in this proceeding was also presented to FCC staff.

Darien Telephone Company, Inc., Logan Telephone Cooperative, Inc. and Roanoke & Botetourt Telephone Company Requests for Review of the Universal Service Administrative Company's Decision Regarding Safety Net Additive Support

Ex Parte Meetings – September 16, 2005

I. Introduction

- **The three companies seek reversal of a decision by the Universal Service Administrative Company (USAC) which has significantly reduced the companies' Safety Net Additive (SNA) support.**

- **SNA is an additional universal service support provided to rural carriers that have made significant investment in rural infrastructure during the period in which the support level would otherwise exceed the indexed cap on the high cost support loop fund. To be eligible for SNA, a rural carrier must realize growth in Telecommunications Plant in Service (TPIS) per loop of at least 14 percent more than the study area's TPIS per loop investment at the end of the prior period.**

II. Summary of Facts

- **The companies qualified for SNA support in more than one year. USAC advanced support based upon its interpretation of Section 36.605 of the Commission's Rules (SNA Rule) which for these companies meant that they received a higher level of SNA support for the subsequent year filing.**

- **Unknown to the companies, in a memorandum dated November 24, 2003, USAC asked the FCC's Wireline Competition Bureau for its interpretation of the SNA Rule as it applied in situations where companies qualify for SNA support in subsequent years.**

- **In a letter dated January 14, 2005, the Bureau informed USAC that SNA support should be based on the amount calculated for the first qualifying year.**

- **In letters dated March 2, 2005, USAC informed the companies that this "clarification" of the SNA rule required it to recalculate SNA for these companies on both a retroactive and prospective basis.**

- **USAC's recalculation meant that the entire amount calculated by applying the "clarification" retroactively was automatically deducted from the companies' March (and, in the case of R&B, March and April) NECA settlements and that effective immediately, the companies' SNA support on a going forward basis was significantly reduced (see schedule below).**

Company	Retroactive Adjustment	Decrease in Monthly SNA	Amt Deducted from NECA Stlmts
Darien	($125,074.00)	($5,698.00)	($130,772.00)
Logan	($133,025.00)	($5,321.00)	($138,246.00)
R&B	($255,050.00)	($10,202.00)	($265,252.00)

III. Reasons Why USAC's Decision Should be Reversed

- **FCC's Goals for SNA Would be Thwarted if Decision is Left to Stand**
  - **Purpose of SNA is to provide appropriate incentives and predictability for rural telephone companies to invest in network infrastructure.**
  - **Petitioners made investments in reliance on receipt of level of SNA support calculated by USAC under its reasonable interpretation of the SNA Rule.**
  - **Not until March of this year were the companies made aware that a significant amount of SNA support would be taken back and future SNA support dramatically reduced.**
  - **The predictability that SNA support was designed to provide to rural telephone companies cannot be achieved if USAC's decision to significantly reduce the companies' level of SNA support is allowed to stand.**
- **USAC's Actions are Contrary to Due Process**
  - **Due Process requires that fair notice be provided to those impacted before a governmental agency can apply a rule on a retroactive basis.**
  - **The companies had no notice that USAC's reasonable interpretation of the SNA Rule was under question or that funds were subject to refund.**
  - **Even plain reading of the SNA Rule does not provide adequate notice.**
- **Reversal of USAC's Decision is Necessary to Rebuild Confidence in Universal Service Administration**
  - **In response to the invitation by the Commission to comment on the requests for review, no commenters opposed.**
  - **Commenters that supported the requests demonstrated that the Commission can and should do all to avoid sending the signal that rules can change without due process and retroactive repayment of support is possible without a rational purpose.**

IV. Conclusion

As demonstrated above, strong support exists for the Commission to grant the requests for review of USAC's decision. At the very least, the Commission should instruct USAC to immediately refund the SNA support which was deducted in the NECA settlement process.

Federal Communications Commission
Washington, D.C. 20554

January 14, 2005

Irene Flannery
Universal Service Administrative Company
High Cost & Low Income Division
2000 L Street, N.W.
Suite 200
Washington, D.C. 20036

Re: Safety Net Additive Support

Dear Ms. Flannery:

This letter is in response to the memorandum submitted by the Universal Service Administrative Company (USAC), dated November 24, 2003 (USAC November 24, 2003 Memorandum), in which USAC requests the Telecommunications Access Policy Division's (TAPD's) guidance in interpreting the safety net additive (SNA) support provisions in section 36.605 of the Commission's rules. Specifically, USAC asks whether carriers who meet the SNA eligibility criteria in more than one period may be eligible to receive additional support, and if so, how much and over what time period. *See* USAC November 24, 2003 Memorandum at 1.

A rural study area qualifies for SNA support if the incumbent local exchange carrier (LEC) realizes growth in Telecommunications Plant in Service (TPIS) per loop of at least 14 percent more than the study area's TPIS per loop investment at the end of the prior period.[1] USAC presents an example of a rural incumbent LEC that met the 14 percent TPIS trigger in two subsequent years and proposes three alternative methods for calculating its SNA support. For the reasons set forth below, we find that SNA support should be based on the amount calculated for the first qualifying year, as described in USAC's Scenario #1. *See* USAC November 24, 2003 Memorandum at 2. This amount would be paid in the qualifying year and in any of the four succeeding years in which the indexed cap on high-cost loop support is triggered.[2] Additional SNA support should not be available where an incumbent LEC meets the 14 percent TPIS trigger in subsequent years, absent a change in the Commission's rules.

[1] The rules also require that the incumbent LEC notify USAC that it has reached the 14 percent TPIS trigger. *See* 47 C.F.R. § 36.605(c)(2).

[2] We note, however, that the period may be less than four years if the Commission does not extend SNA support beyond the duration of the five-year plan adopted in the *Rural Task Force Order*. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourteenth Report and Order and Twenty-Second Order on Reconsideration, *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, Report and Order, 16 FCC Rcd 11244 (2001) (*Rural Task Order*).

The Commission's rules do not contemplate qualifying for SNA support in multiple years. In the *Rural Task Force Order*, the Commission noted that its comparison of cost data submitted to the National Exchange Carrier Association (NECA) by rural incumbent LECs showed that approximately five percent of those companies had increases in TPIS of more than 14 percent between 1998 and 1999.[3] The Commission stated in the *Rural Task Force Order* that "once a study area qualifies for safety net additive, the study area will receive such support in any of the remaining years of this plan in which the cap is triggered, *whether or not* the study area meets the 14 percent TPIS trigger in those years."[4] In addition, because the Commission anticipated that meeting the 14 percent TPIS trigger would be a relatively uncommon occurrence, the Commission's rules do not provide for additional SNA if a carrier qualified again in subsequent years. Thus, when looking at the rule in combination with the stated intent and the text of the *Rural Task Force Order* that led to the adoption of Rule 36.605, we believe that the approach set forth in Scenario #1 represents the proper application of Rule 36.605.

Accordingly, unless the Commission changes section 36.605 of its rules, SNA support shall be based on the amount the carrier receives in its first qualifying year.

Very truly yours,

Jeffrey J. Carlisle
Chief
Wireline Competition Bureau

---

[3] *See Rural Task Order*, 16 FCC Rcd at 11278, para. 82.

[4] *Id.* at 11279, para. 88.

USAC

Universal Service Administrative Company
High Cost & Low Income Division

Karen Majcher
Director, High Cost Support Mechanism

March 2, 2005

Kenneth Johnson
Darien Tel. Co. Inc.
Highway 17 North
P.O. BOX 575
Darien, GA 31305

RE: Changes to the Safety Net Additive Support Calculation beginning February 2005

Dear Kenneth Johnson:

This letter is written to help companies understand how Safety Net Additive (SNA) support will be recalculated based on a recent Federal Communications Commission (FCC) clarification of its rules.

In a January 14, 2005 letter to USAC, the FCC clarified that "***SNA support should be based on the amount calculated for the first qualifying year***," which would then be paid in the qualifying year and in any of the remaining years of the Rural Task Force (RTF) plan in which the High Cost Loop cap is triggered. The FCC said its rules did not contemplate companies qualifying for SNA support in multiple years and determined that ***"additional SNA should not be available where an incumbent LEC meets the 14 percent TPIS trigger in subsequent years."*** In other words, once a company qualifies for SNA support, it will receive SNA support based on its initial qualification letter in any of the remaining years of the RTF plan in which the High Cost Loop cap is triggered.

The FCC's clarification will require USAC to recalculate SNA support for companies that filed subsequent SNA qualification letters after their initial qualification letter. These companies will see a prior period adjustment and a new monthly payment value for SNA support beginning with the February 2005 support disbursements that will be received at the end of March 2005. The estimated impact to your company is as follows:

On a Monthly Basis:

SAC	January 2005 Monthly Support	Revised Monthly Support
220358	$7666.00	$1968.00

On a Summary Basis (Estimated Adjustment from 1st Qualification):

SAC	Total SNA Support Received (A)	Revised Estimate of Total SNA Support to be Received (B)	Estimated SNA Adjustment (B-A)
220358	$197890.00	$72816.00	-125074.00

USAC regrets any inconvenience to your company resulting from this modification to the SNA calculation. A copy of the FCC's January 14, 2005 letter can be found on USAC's website at www.universalservice.org/hc. If you have any questions, please do not hesitate to call USAC's Customer Service Center at 877-877-4925.

Sincerely,

Karen Majcher
Director
High Cost Support Mechanism

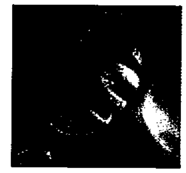
Graphics Off

USAC

The Universal Service Administrative Company

Home | High Cost | Low Income | Rural Health Care | Schools & Libraries

HC Main > Rural Task Force Overview > Safety Net Support



Safety Net Support

Definition of Safety Net Additive Support

Safety net additive support is support above the cap for carriers that make significant investment in rural infrastructure in years in which the high cost loop fund is capped. This support is intended to provide rural carriers with the appropriate incentives to invest in the network infrastructure serving their communities.

Determination of Support Amount

- To receive support in a particular study area, a carrier must show that growth in telecommunications plant in service (TPIS) per line is at least 14 percent greater than the study area's TPIS in the prior year. A carrier that qualifies for safety net additive support will receive support for its incremental, or additional, expense adjustment associated with new investment.
- Investments made in categories other than those supported by high cost loop support may allow a carrier to qualify for safety net support, but the investment itself will not qualify for additional support under the safety net additive mechanism. That is, safety net additive support can only be applied to the incremental costs associated with new investment in categories eligible for support under the high cost loop support mechanism. For a further explanation of the investment categories eligible for high cost loop support, please refer to § 36.621 of the FCC's rules (47 C.F.R. § 36.621).
- The following formula will be used to determine the amount of safety net additive support for which a carrier is eligible: **(uncapped support in the qualifying year - uncapped support in the base year) - (capped support in the qualifying year - actual support in the base year).**
- The amount of safety net additive support for which a carrier qualifies will be in addition to the capped support it receives under the high cost loop mechanism. Under no circumstances will a carrier eligible for safety net support receive less support than it would normally receive under the cap.
- Consistent with the principle of competitive neutrality, safety net additive support will be available to competitive ETCs in an amount equal to that received by the incumbent rural carrier.
- If the safety net formula results in a negative amount, the carrier will not be eligible for safety net additive support in that year.
- Safety net additive support is only available in years in which the high cost loop fund is capped. In the event that the high cost loop fund is not capped in a particular year, there will be no safety net additive support available to carriers.
- Once a carrier qualifies for safety net additive support, it will receive such support in any of the remaining years of the RTF plan in which the high cost loop cap is triggered. The carrier need not meet the 14 percent TPIS trigger in those subsequent years.
- Safety net additive support does not transfer if an exchange is sold or transferred.

Process Overview
Filing Requirements & Deadlines
Acronym Glossary
Quarterly Graphs

High Cost Loop Support
Local Switching Support
Long Term Support
Interstate Access Support
Forward Looking
Interstate Common Line Support (ICLS)
Safety Net Additive (SNA)
Safety Valve Support (SVS)

Understanding the Audit Process
Certification Requirements
Line Count Requirements
Confidentiality Procedures
Disaggregation

Filing Requirements & Deadlines
Disbursement Data
High Cost Model
Certification Checklist
Disaggregation Maps
IAS Maps

Sample Letters
USAC Forms

QUICK LINK
- Certification Checklists
- Maps
- Sample Lette
- Forms
- FCC Filings
- Appeal Procedures

SITE SEARCI
Search here
go
Search Tips

CONTACT INI
- Contact Us
- HC Filings
- HC Questions
- Report **Frauc Waste and Abuse** with c Whistleblowe Hotline

SITE HELP
- Get Help!
- FAQs
- Site Map
- Site Tour
- Website Polic

Notice Requirement

Carriers seeking to qualify for safety net additive support must provide written notice to USAC that a study area meets the 14 percent TPIS trigger. This notice should be provided in conjunction with the carrier's annual or quarterly data submission to NECA, and should be submitted to the following addresses. Please note that the notice must clearly reference CC Docket No. 96-45.

USAC:

Karen Majcher
Vice President of the High Cost and Low Income Division
Universal Service Administrative Company
2000 L Street, N.W.
Suite 200
Washington, D.C. 20036

The consequence of failure to provide written notice is that the study area will not be eligible for safety net additive support and will have to meet the 14 percent trigger in a subsequent year in order to qualify.

Content Last Modified: August 10, 2005

Need help? You can contact us at (877)877-4925.
Our hours of operation are 8AM to 6PM, Eastern Time, Monday through Friday.
Aware of fraud, waste, and abuse, report it to our Whistleblower Hotline!