
McLean & Brown

ISSUE UPDATE

January, 2001

FCC Begins Formal Consideration of the RTF Recommendation and the MAG Plan

Introduction

On the first two Fridays of the new year, the FCC issued Rulemaking Notices to begin the formal consideration of both the MAG plan for comprehensive universal service and access reform for rate-of-return carriers, and the RTF recommendation for revised universal service support mechanisms for rural carriers. Each of the Notices raises specific questions on which the FCC seeks public comment. Following is a brief summary of these two Notices:

The MAG Plan

On January 5, 2001 the FCC issued a Notice of Proposed Rulemaking (NPRM) seeking comment on the MAG plan. Significantly the NPRM incorporates four different FCC Dockets – CC Docket 00-256 (a new docket for consideration of the MAG plan), CC Docket 96-45 (the universal service docket), CC Docket 98-77 (the access reform docket for rate of return carriers), and CC Docket 98-166 (the rate-of-return re-prescription docket). In describing the MAG plan the FCC states:

“The [MAG] Petition sets forth an interstate access reform and universal service support proposal for incumbent local exchange carriers (LECs) subject to rate-of-return regulation. It is designed to be implemented over a five-year period beginning July 1, 2001. We appreciate their efforts to develop a consensus among rate-of-return carriers and intend to move forward expeditiously with full consideration of the MAG plan.”

After a comprehensive description of the MAG plan, the FCC sets out numerous issues for public comment. Comments are due 30 days from the publication of the NPRM in the Federal Register (a process that sometimes can take several weeks). Reply comments will be due 15 days following the filing of the comments. The specific areas in which the FCC seeks comments are as follows:

General Issues:

Should the MAG plan be adopted in its entirety as proposed?

- _ If not, what issues should be incorporated into other proceedings?
- _ What impact will MAG have on other open FCC proceedings?

What process should be used to evaluate the MAG plan?

- _ How should concerns of parties who were not members of MAG be addressed?
- _ Comments are invited from all industry segments:
 - LECs, IXCs, wireless, consumer groups, state PUCs, etc.

What are the public policy impacts of the MAG plan:

- _ Competition goals of 1996 Act?
- _ Universal service goals of 1996 Act?
- _ Will the Plan promote consumer welfare?

What will be the impact of the MAG plan on non-price cap carrier revenues?

Access Rate Structure:

The MAG Plan is modeled after the CALLS plan for price cap carriers:

- _ Are the proposed reforms appropriate for non-price cap carriers?
- _ Will they achieve the competitive and consumer benefits anticipated by the MAG members?
- _ Are lower SLC caps for non-price cap carriers consistent with Section 254?

The MAG plan defines two regulatory paths – Path A and Path B

- _ Are two paths necessary to accommodate diversity among non-price cap carriers?
- _ Would the potential regulatory complexity have practical or administrative consequences?
- _ Would the Plan benefit all non-price cap carriers?
- _ Are larger carriers with lower costs more likely to elect Path A?
 - If so, would this inflate access rates of Path B carriers?
- _ What are the characteristics of likely Path B companies?

Is it appropriate to close the RoR proceeding and retain 11.25% for Path B carriers?

Universal Service Support:

The CALLS plan estimates the amount of implicit support in interstate access, and caps this support:

- _ Is it appropriate to cap interstate access support for price cap carriers but not for non-price cap carriers?
- _ To what extent will RAS increase the size of the universal service fund?
 - How will RAS levels change over time?
 - What impact will increases in RAS have on consumers?
 - Will increases be offset by decreases in access rates and other charges?

Should RAS be available for special access which has not been designated as a “supported service”?

If the Commission creates RAS should LTS remain as a separate subsidy element?

Should universal service contributions be recovered through a separate rate element or line item?

The Commission will seek input from the Joint Board.

Incentive-Based Regulation:

Will the MAG Plan create appropriate economic incentives for operating efficiency and investment?

- _ Is it likely to encourage long term investment?
- _ Is it likely to encourage investment in high-speed infrastructure?
- _ Will the ability to fix or adjust RPL reinforce “lumpy” investment patterns and/or encourage cost inflation?
- _ How would consumers benefit from efficiency gains?

To what extent will the incentive plan increase non-price cap carrier revenues?

- _ Does the inflation factor reflect cost changes to Path A carriers?
- _ Should a productivity factor or consumer productivity dividend be included in RPL?
- _ Is a low-end adjustment necessary when carriers have the option to remain under rate-of-return regulation?
 - What level should a low-end adjustment be set at?

What are the costs and benefits of permitting carriers to elect, on a study area basis, when to convert to incentive-based regulation and whether to continue pooling?

Is five years the appropriate transition period for incentive regulation?

Advanced Services:

Have universal service caps and regulatory uncertainty diminished non-price cap carrier’s incentives to invest in new technologies?

Does the MAG plan represent the best means of promoting the deployment of advanced services to rural areas?

What alternative means would best accomplish this goal?

Does the MAG plan require the use of universal service funds to support advanced service infrastructure?

Mergers and Acquisitions:

Is the elimination of the all or nothing rule warranted?

- _ Do the cost shifting concerns that prompted the rule in 1993 remain valid today?
- _ Is the elimination of the freeze of study areas warranted?
- _ Does the MAG Plan adequately address gaming concerns if the rule (54.305) that restricts a purchaser to the support received by the seller is eliminated?
- _ Are there alternative ways to address the concerns that limits on universal service support discourage the acquisition and upgrading of rural exchanges?
- _ The Joint Board is invited to comment on these issues.

Geographic Rate Averaging and Rate Integration:

Seeks comment on proposed pricing rules for IXCs:

- _ Should all IXC minimum monthly charges be prohibited, or should IXCs only be required to offer at least one calling plan without such charges?
- _ How would the Commission ensure that IXCs comply with pricing rules since they do not regulate IXC's rates?

Rural Task Force Recommendation

On December 22, 2000 the Universal Service Joint Board issued a Recommended Decision that sent the Recommendation of the Rural Task Force (RTF) on to the FCC. The Joint Board praised the comprehensive nature of the RTF's recommendations and commended the collaborative process that developed a unanimous recommendation from a diverse group of participants. The Joint Board also raised several implementation issues regarding the RTF plan for further consideration by the FCC.

In commenting on the plan, the Joint Board stated:

"Generally, we find that the Rural Task Force sought to achieve the goals of the Telecommunications Act of 1996 to

preserve and advance universal service, facilitate competition in rural areas, and provide a predictable level of universal service support. Moreover, we believe that implementation of the Rural Task Force's framework would provide a stable environment for rural carriers to invest in rural America."

"We find it significant that the Recommendation represents a consensus of competing views. We encourage the Commission to take advantage of this opportunity to craft a rural universal service plan that enjoys widespread support among diverse interests."

"While a significant number of commenters urge the Joint Board to recommend the Rural Task Force plan without modification, other commenters, including some rural carriers, believe that the Rural Task Force Recommendation would provide too little support. Still other commenters, including several state commissions and carriers, believe it would provide too much support. We believe that the nature of these comments is consistent with a recommendation that is a consensus proposal put forth by representatives of disparate interests."

On January 12, 2001, the FCC issued a Further Notice of Proposed Rulemaking in CC Docket 96-45 seeking comment on the Joint Board's Recommended Decision. They note that:

"The Joint Board sent to the Commission the Rural Task Force Recommendation as a good foundation for implementing a rural universal service plan that benefits consumers and provides a stable environment for rural carriers to invest in rural America."

The Commission raises a number of specific issues for comment by parties, including the implementation issues raised by the Joint Board. Specifically the FCC asks for comment on:

General Issues:

The FCC seeks comment on the Joint Board's conclusion that the RTF Recommendation is a good foundation for

implementing a rural universal service plan for the next several years.

- _ Should the FCC adopt the RTF plan as a means of providing stability to rural carriers and encouraging investment in rural infrastructure?
- _ Does the RTF plan provide for universal service support that is sufficient for purposes of the Telecom Act of 1996?
- _ What are the public policy impacts of the RTF plan on:
 - Competition goals of 1996 Act?
 - Universal service goals of 1996 Act?
 - Will the plan promote consumer welfare?

How will small business entities, including small incumbent local exchange carriers and new entrants, be affected by the RTF plan?

Specific Implementation Issues Raised by the Joint Board:

“Safety Valve” Mechanism:

(The “safety valve” mechanism provides additional support to carriers who acquire exchanges from another carrier and make “meaningful investment” to upgrade infrastructure. The “example” appended to the RTF recommendation proposes that such support be limited to five percent of the indexed high-cost loop fund cap.)

How should “safety valve” support be distributed if the total amount of support for which rural carriers are eligible exceeds the proposed cap of five percent of the high-cost loop support fund?

How should “meaningful investment” be defined for purposes of safety valve support?

Should a carrier’s safety valve support transfer to a different carrier as a result of a subsequent transfer of exchanges?

Should “safety valve” support be fixed in competitive study areas in the same manner as other high-cost loop support, or would such an approach unduly dissuade investment?

Fixed Per-Line Support in Competitive Study Areas

(The RTF recommendation freezes the amount of per-line support that both the incumbent and new entrant can receive when a competitor enters a study area.)

What is the relationship of the cap on high-cost loop support to fixed per-line support in competitive study areas?

Should the proposed ability of incumbent LECs to adjust their fixed per-line support levels to recover costs associated with catastrophic events be limited by the availability of support from other sources, such as insurance, RUS loans, and federal or state emergency management relief.

“Safety Net” Mechanism

(The RTF plan provides “safety net” support, in addition to capped high-cost loop support, for carriers that make significant investment in rural infrastructure.)

As proposed, would the “safety net” additive mechanism enable rural carriers to recover more than 100% reimbursement on their incremental loop investment?

If so, how should the mechanism be modified?

Other Implementation Issues

The FCC invites interested parties to comment on any other issues related to the implementation of the RTF plan.

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