

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
Federal-State Joint Board on Universal Service) CC Docket No. 96-45
Darien Telephone Company, Inc.,)
Logan Telephone Cooperative, Inc., and)
Roanoke & Botetourt Telephone Company)
Requests for Review of Decisions of the Universal)
Service Administrative Company)

ORDER

Adopted: July 31, 2006

Released: August 7, 2006

By the Commission: Commissioner McDowell issuing a statement.

I. INTRODUCTION

1. In this Order, we grant requests for review filed by Darien Telephone Company, Inc. (Darien), Logan Telephone Cooperative, Inc. (Logan), and Roanoke & Botetourt Telephone Company (R&B) pursuant to sections 54.719 and 54.722 of the Commission's rules. The companies request that the Commission review decisions by the Universal Service Administrative Company (USAC) that significantly reduced the companies' safety net additive support, and deducted previously dispersed safety net additive support from their universal service support payments. USAC recalculated the companies' safety net additive support pursuant to the Wireline Competition Bureau's (Bureau's) guidance in interpreting section 36.605 of the Commission's rules. We find that the Bureau's interpretation that safety net additive support should be based only on the carriers' first qualifying year incorrectly limits the support these carriers should have received. Consistent with the policies underlying the Commission's adoption of the safety net additive support rules, we conclude that these carriers should receive safety net

1 See 47 C.F.R. §§ 54.719, 54.722; Darien Telephone Company, Inc., CC Docket Nos. 96-45 & 00-256, Request for Review of an Administrator Decision (filed May 2, 2005) (Darien Request for Review); Logan Telephone Cooperative, Inc., CC Docket Nos. 96-45 & 00-256 (Logan request for Review), Request for Review of an Administrator Decision (filed May 2, 2005); Roanoke & Botetourt Telephone Company, CC Docket Nos. 96-45 & 00-256, Request for Review of an Administrator Decision (filed May 2, 2005) (R&B Request for Review).

2 See 47 C.F.R. § 36.605; Letter from Jeffrey J. Carlisle, FCC, to Irene Flannery, USAC, dated Jan. 14, 2005 (Carlisle Letter).

3 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, 11277-82, paras. 77-90 (2001) (Rural Task Force Order); Federal-State Joint Board on Universal Service, CC Docket No. 96-45, High-Cost Universal Service Support, WC Docket No. 05-337, FCC 06-60 (released May 16, 2006) (RTF Extension Order) (extending the rules adopted in the Rural Task (continued...))

additive support for each year in which they qualify. We direct USAC to refund to Darien, Logan, and R&B the safety net additive support that was deducted from the companies' universal service support payments, and to recalculate their safety net additive support, consistent with our clarification herein. Specifically, we clarify that section 36.605 of the Commission's rules provides that carriers may qualify for safety net additive support in more than one year.

II. BACKGROUND

2. *Safety Net Additive Support.* Rural carriers receive high-cost loop support for a variable percentage of their unseparated loop costs, depending on the number of loops they serve and the degree to which their costs exceed the national average cost per loop.⁴ High-cost loop support for rural carriers is subject to an indexed cap,⁵ which limits total support to the previous year's total, increased by the "rural growth factor."⁶ In the *Rural Task Force Order*, the Commission adopted safety net additive support rules to "provide additional support to those rural carriers that have made significant investment in rural infrastructure in years in which the [high-cost loop] fund is capped."⁷ Specifically, those rural carriers that have an increase in total plant in service (TPIS) per loop of 14 percent or more qualify to receive support above their capped support amount for the incremental additional investment.⁸ Once a carrier qualifies, it also receives safety net additive support in any of the succeeding four years in which the cap is triggered, whether or not it meets the 14 percent threshold in those succeeding years.⁹ The Commission determined that "this additional support will provide rural carriers with appropriate incentives to invest in the network infrastructure serving their communities."¹⁰

3. *Bureau Interpretation.* In response to USAC's request for guidance in interpreting the safety net additive rules, the Bureau directed USAC to base safety net additive support on the amount the carrier receives in its first qualifying year.¹¹ USAC had proposed three alternatives in the event that a carrier has an increase in TPIS of 14 percent or more in more than one year: (1) base support on the first qualifying year; (2) base support on the most recent qualifying year; or (3) base support on each qualifying year. The Bureau claimed that the Commission's rules do not contemplate qualifying for safety net additive support in multiple years. The Bureau noted that only approximately five percent of rural carriers had increases in TPIS of more than 14 percent between 1998 and 1999.¹² Quoting the *Rural* (Continued from previous page) _____
Force Order on an interim basis until the Commission concludes its rural review proceeding and adopts changes, if any, to those rules as a result of that proceeding).

⁴ See 47 C.F.R. §§ 36.601, *et seq.* The term "unseparated" refers to the jurisdictional separations process which divides between the state and federal jurisdictions the costs of those portions of carriers' telephone plant that are used for intrastate and interstate services. See 47 C.F.R. § 36.622; see also *Rural Task Force Order*, 16 FCC Rcd at 11268-70, paras. 55, 58.

⁵ See 47 C.F.R. § 36.603.

⁶ The "rural growth factor" is the sum of the annual percentage change in the United States Department of Commerce's Gross Domestic Product — Chained Price Index (GDP-CPI) plus the percentage change in the total number of rural incumbent loops for the calendar year preceding the annual data filing. See 47 C.F.R. §§ 36.604, 36.611; see also *Rural Task Force Order*, 16 FCC Rcd at 11262, para. 39, 11266, para. 48.

⁷ *Rural Task Force Order*, 16 FCC Rcd at 11277, para. 79.

⁸ 47 C.F.R. § 36.605.

⁹ 47 C.F.R. § 36.605(c).

¹⁰ *Rural Task Force Order*, 16 FCC Rcd at 11277, para. 79.

¹¹ Carlisle Letter at 2.

¹² *Id.*

Task Force Order, the Bureau also noted that after a carrier qualifies for safety net additive support, it receives such support in the qualifying year and in any of the four succeeding years in which high-cost loop support is limited by the indexed cap “*whether or not* the study area meets the 14 percent trigger in those years.”¹³ Moreover, the Bureau contended that, “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 [safety net additive support] if a carrier qualified again in subsequent years.”¹⁴

4. *Requests for Review*. On May 2, 2005, Darien, Logan, and R&B requested that the Bureau review USAC’s decision to recalculate the companies’ safety net additive support based on the Bureau’s interpretation of section 36.605 of the Commission’s rules.¹⁵ The companies had received letters from USAC saying that USAC was recalculating safety net additive support for companies that filed subsequent safety net additive qualification letters after their initial qualification letters.¹⁶ USAC informed Darien, Logan, and R&B that they would see a prior period adjustment and a new monthly payment value for safety net additive support beginning with the February 2005 support disbursements that were received at the end of March 2005.¹⁷ USAC deducted prior period adjustments payments of \$125,074, \$133,025, and \$255,050, respectively, from Darien’s, Logan’s, and R&B’s March (and April, in the case of R&B) support.¹⁸ The companies urge the Commission to review and overturn USAC’s decision to recalculate their safety net additive support, and request that the support that was deducted when USAC retroactively applied the Bureau’s interpretation be refunded immediately.¹⁹

III. DISCUSSION

5. We clarify that section 36.605 of the Commission’s rules provides that carriers may qualify for safety net additive support in more than one year. In doing so, we reverse the Bureau’s determination and find that a carrier’s safety net additive support should not be limited to support it receives in its first qualifying year, if the carrier qualifies again by meeting the 14 percent trigger in a

¹³ See *id.* (emphasis added) (quoting *Rural Task Force Order*, 16 FCC Rcd at 11279, para. 88); 47 C.F.R. § 36.605(3).

¹⁴ See Carlisle Letter at 2.

¹⁵ See Darien Request for Review, Logan Request for Review, R&B Request for Review. The Wireline Competition Bureau released a public notice on July 6, 2005, seeking comment on the requests for review. 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, 20 FCC Rcd 12021 (2005). The National Telecommunications Cooperative Association (NTCA) and the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) filed joint comments in support of the requests for review. See NTCA/OPASTCO Comments, filed Aug. 5, 2005. Darien, Logan, and R&B filed joint reply comments. See Darien, Logan, and R&B Reply Comments, filed Aug. 22, 2005.

¹⁶ Darien Request for Review, at Attachment 1 (Letter from Karen Majcher, USAC, to Kenneth Johnson, Darien, dated March 2, 2005); Logan Request for Review, at Attachment 1 (Letter from Karen Majcher, USAC, to Kimberly Miles, Logan, dated March 2, 2005); R&B Request for Review, at Attachment 1 (Letter from Karen Majcher, USAC, to Chris Foster, R&B dated March 2, 2005).

¹⁷ Darien Request for Review, at Attachment 1 (Letter from Karen Majcher, USAC, to Kenneth Johnson, Darien, dated March 2, 2005); Logan Request for Review, at Attachment 1 (Letter from Karen Majcher, USAC, to Kimberly Miles, Logan, dated March 2, 2005); R&B Request for Review, at Attachment 1 (Letter from Karen Majcher, USAC, to Chris Foster, R&B dated March 2, 2005).

¹⁸ See Darien Request for Review at 2, Logan Request for Review at 2, R&B Request for Review at 2.

¹⁹ See Darien Request for Review at 7, Logan Request for Review at 7, R&B Request for Review at 7.

subsequent year. We are not persuaded by the Bureau's reasoning that carriers may qualify for safety net additive support only once because meeting the 14 percent TPIS trigger would be a relatively uncommon occurrence, and safety net additive support may be received in the four subsequent years regardless of whether the study area meets the 14 percent trigger in those years. The Commission's expectation that qualifying for safety net additive support would be relatively uncommon does not imply that a carrier should receive no additional support if it qualifies again.²⁰ Nor does the fact that carriers qualifying for safety net additive support may receive such support in any of the succeeding four years, imply that they should receive no additional support if they qualify again.²¹ On the contrary, we believe that allowing carriers to qualify more than once is consistent with the purposes underlying the Commission's adoption of the safety net additive support rules.

6. Safety net additive support is designed to encourage investment in rural network infrastructure by ensuring that carriers making significant investment in their high-cost loop plant will receive additional support when the high-cost loop fund is capped.²² The Commission observed that "the types of investments the safety net additive supports require time and extensive planning."²³ We find that it also is likely that these types of investments may be spread over several years. Although safety net additive support may be available in each of five years, the Commission explained that "[p]roviding support in the years succeeding the qualifying year is consistent with the manner in which carriers depreciate capital costs associated with new investments."²⁴ We find this explanation more persuasive than the Bureau's inference that safety net additive support is limited to the first qualifying year. If the latter were the case, similarly situated carriers could receive quite different amounts of support. For example, assume that two rural carriers have the same cost structure, make the same investments in their networks, and qualify for safety net additive support. If one carrier makes the entire investment in a calendar year and a second carrier makes half the investment in that same year and half in the following year, the second carrier would receive approximately half as much safety net additive support as the first carrier.²⁵ By allowing the second carrier to qualify in each year, both carriers would receive approximately the same total amount of safety net additive support in the qualifying and succeeding years.²⁶

²⁰ See *supra* para. 3.

²¹ See *id.*

²² An increase in TPIS of at least 14 percent may allow a carrier to qualify for high-cost loop support, but the investment would not result in additional support unless it was investment in the categories eligible for high-cost loop support. See *Rural Task Force Order*, 16 FCC Rcd at 11278, para. 81.

²³ *Rural Task Force Order*, 16 FCC Rcd at 11278-79, para. 82 (explaining why concerns regarding the potential for gaming are mitigated).

²⁴ *Rural Task Force Order*, 16 FCC Rcd at 11280, para. 88.

²⁵ Support would not be exactly the same when the qualifying years differ, even assuming the same costs. Because the indexed cap changes from year to year, a carrier's capped and uncapped support amounts likely would change and, therefore, its safety net additive support also would change. In addition, a carrier receives the lesser of the sum of capped support and the safety net additive support received in the qualifying year, or its uncapped support. See 47 C.F.R. § 36.605(c)(3)(ii). The example assumes that high-cost loop support is capped, which has been the case in every year since the fund was "rebased" in the *Rural Task Force Order*. See *Rural Task Force Order*, 16 FCC Rcd at 11261-68, paras. 37-53.

²⁶ For purposes of this example, assume that the safety net additive support amounts are exactly the same, and that the first carrier receives \$10 in its qualifying year and in each of the succeeding four years. The second carrier would receive \$5 in its first qualifying year and in each of the succeeding four years, and an additional \$5 in its second qualifying year and in each of the succeeding four years. That is, the first carrier would receive \$50 (\$10 + (continued....))

7. Moreover, we find that providing additional safety net additive support when a carrier qualifies in a subsequent year furthers the Commission's intended goal of "provid[ing] rural carriers with the predictability to make investments in their communities."²⁷ Basing safety net additive support only on the first qualifying year would not provide predictability. To qualify for safety net additive support, carriers are required to provide written notice to USAC in conjunction with their annual or quarterly cost data filings indicating that a study area meets the 14 percent TPIS trigger.²⁸ If carriers receive such support based on only the first qualifying year, a carrier planning to make significant investments over several years may want to choose, as its qualifying year, the year that yields the most safety net additive support. When a carrier files its cost data, however, it cannot determine how much safety net additive support it would receive. High-cost loop support and safety net additive support depend on the carrier's cost relative to all the other cost companies' costs and the operation of the indexed cap, so the carrier would not know which year to choose as its first qualifying year. Allowing a carrier to qualify for safety net additive support in any year that it meets the 14 percent TPIS trigger, provides a more predictable stream of support for its increased investments and thus furthers the universal service goals of the Communications Act of 1934, as amended.²⁹

8. Accordingly, we clarify that section 36.605 of the Commission's rules provides that carriers may qualify for safety net additive support in each year that they meet the 14 percent TPIS trigger and notify USAC that their TPIS has increased by 14 percent or more.³⁰ We direct USAC to refund to Darien, Logan, and R&B the safety net additive support that was deducted from the companies' universal service support payments, and to recalculate their safety net additive support, consistent with our clarification.

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\$10 + \$10 + \$10 + \$10) over five years and carrier two would receive \$50 (\$5 + \$10 + \$10 + \$10 + \$10 + \$5) over six years. The Commission recently extended the rules adopted in the *Rural Task Force Order* beyond the initially anticipated five-year period. See generally *RTF Extension Order*. The Federal-State Joint Board on Universal Service currently is reviewing the Commission's rules relating to the high-cost universal service support mechanisms for rural carriers to determine the appropriate rural mechanism to succeed the plan adopted in the *Rural Task Force Order*. See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 19 FCC Rcd 11538 (2004); *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support*, CC Docket No. 96-45, Public Notice, 19 FCC Rcd 16083 (2004); *Federal-State Joint Board on Universal Service Seeks Comment on Proposals to Modify the Commission's Rules Relating to High-Cost Universal Service Support*, CC Docket No. 96-45, Public Notice, 20 FCC Rcd 14267 (2005).

²⁷ *Rural Task Force Order*, 16 FCC Rcd at 11278, para. 80; see also 47 U.S.C. § 254(b)(5).

²⁸ See *Rural Task Force Order*, 16 FCC Rcd at 11280-81, para. 89; 47 C.F.R. § 36.605(c)(2).

²⁹ See 47 U.S.C. § 254(b)(5). Further, our clarification in this Order allowing carriers to qualify for safety net additive support in any year in which the threshold is satisfied is more consistent with the actual language in section 36.605(c) adopted by the Commission in 2001. See 47 C.F.R. § 36.605(c)(1) ("In any year in which the total carrier loop cost expense adjustment is limited by the provisions of § 36.603 a rural incumbent local exchange carrier shall receive safety net additive support as calculated in paragraph (b) of this section, if in any study area, the rural incumbent local exchange carrier realizes growth in end of period Telecommunications Plant in Service (TPIS), as prescribed in § 32.2001 of this chapter, on a per loop basis, of at least 14 percent more than the study area's TPIS per loop investment at the end of the prior period.").

³⁰ USAC also must verify the 14 percent increase. See 47 C.F.R. § 36.605(c)(3).

IV. ORDERING CLAUSE

9. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), 201, 202 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, 202, and 254, and sections 54.719 and 54.722 of the Commission's rules, 47 C.F.R. §§ 54.719 and 54.722, that the requests for review of decisions of the Universal Service Administrative Company filed by Darien Telephone Company, Inc., Logan Telephone Cooperative, Inc., and Roanoke & Botetourt Telephone Company, on May 2, 2005, ARE GRANTED, as described herein.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

**STATEMENT OF
COMMISSIONER ROBERT M. MCDOWELL**

Re: In the Matter of Federal-State Joint Board on Universal Service, Darien Telephone Company, Inc., Logan Telephone Cooperative, Inc., and Roanoke & Botetourt Telephone Company; Requests for Review of Decisions of the Universal Service Administrative Company; CC Docket No. 96-45

I support this item as an interim measure taken in the interest of fairness and predictability for the companies affected. Under the current Universal Service Fund distribution regime, refunding the safety net additive support that was summarily deducted from these companies' universal service support after the companies had received, and most likely had relied, on that safety net additive support is necessary at this time. Further, our clarification of section 36.605 of our rules to provide that carriers may qualify for safety net additive support in each year that they meet the 14 percent trigger will ensure that carriers making similar levels of investment receive similar support.

However, it is important to realize that while our action today addresses a matter of fairness under the current rules; it does nothing to address the need for more comprehensive reform of the Universal Service Fund. I, therefore, see this as an interim measure only. The safety net additive may have been adopted with the best of intentions --to encourage investment in rural network infrastructure -- but it is a part of a support distribution system in dire need of more than just a clarification of a rule.