

centered ILECs and CLECs to warrant the conclusions required by the Act -- that the resulting support will not only translate into “just, reasonable and affordable . . . and reasonably comparable” rural ILEC rates, but will also will satisfy the statutory standard for federal support that is “specific” (*i.e.* sufficiently tied to a particular ILEC’s costs and circumstances) and “sufficient to achieve the purposes of [the universal service] section” (again, adequate but not excessive (§254(e) in light of each individual rural ILEC’s costs, rates and network development needs).

IV. INDUSTRY SUPPORT FOR COMPETITIVE BIDDING IS LACKING.

The competitive bidding proposal does not receive much support or attention by the majority of the commenters. GTE remains one of the only fervent advocates of the flawed proposal. Yet GTE has not come up with a concrete bidding scheme that is workable.

In fact, GTE has basically given up designing a competitive bidding system and, instead, leaves it up to the Commission.

GTE believes that the Commission should call upon its staff’s extensive experience in auction design to craft a system that will be successful in the universal service application.⁸²

Unfortunately, the Commission’s experience in auctioning highly sought after spectrum to the highest bidder does not necessarily translate into the universal service application of auctioning historically ignored (except, of course, by rural telephone companies) regions to the lowest bidder. GTE has yet to devise a system and the Commission should not waste its valuable resources on the quixotic competitive bidding proposal.

Even if one were to ignore the economic and practical impossibilities of designing a working auction, the competitive bidding proposal would still lead to a lack of incentives for

⁸² GTE comments at 60.

investing in mandated “quality services”.⁸³ Low bids reward the carrier who plans to invest the least amount of resources to an area. Congress envisioned “quality” not “cut-rate” services in rural areas. Also, a low bid might not be “sufficient” as the Act requires, and the inherent vagaries of competitive bidding, characterized by shifting providers and support levels, would not be “predictable” nor “specific.”⁸⁴

Additionally, the authority to designate eligible carriers is given to the states, not the Commission.⁸⁵ Simply put, the Commission lacks the authority to compel states to proceed by competitive bidding. GTE attempts to circumnavigate this fact with its statement that “GTE envisions that the auctions would be conducted by or on behalf of the states.”⁸⁶ States have the statutory option to choose one or multiple eligible telecommunications carriers in rural areas if it is in the public interest⁸⁷ and cannot be forced to conduct an auction themselves or submit to the results of a Commission auction. The competitive bidding proposal deserves the lack of interest it garners in the comments and should be allowed to sink under the weight of its own inconsistencies without the expense of any more industry or Commission resources.

V. UNIVERSAL SERVICE SUPPORT SHOULD FLOW TO FACILITIES.

The *Recommended Decision* is unclear about the flow of universal service support to resellers, unbundlers, and those who use a combination of the two. Many commenters are

⁸³ 47 U.S.C. Section 254(b)(1).

⁸⁴ 47 U.S.C. Section 254(b)(5).

⁸⁵ 47 U.S.C. Section 214(e).

⁸⁶ GTE comments at 61.

⁸⁷ 47 U.S.C. Section 214(e)(2).

concerned about the flow of support and offer their own interpretations of who receives support. The RTC urges the Commission to bear in mind the statutory requirement that support shall be used “only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”⁸⁸

One curious interpretation of “portable” support is provided by the Telecommunications Resellers Association (TRA) which, predictably, argues that pure resellers should receive high-cost support since “the public interest and competitive calculus is clear.”⁸⁹ There is no need for calculus to refute TRA’s claim. First, the Act is quite explicit in excluding pure resellers and requires “facilities or a combination” of facilities and resale for support.⁹⁰ As Sprint clearly states, the reseller “is obtaining service out of the wholesale tariff (retail rates less avoided costs), it is already getting the benefit of universal service payments inherent in the ILEC’s retail rates.”⁹¹ In other words, if a reseller receives portable support for capturing an ILEC customer, it will be double-dipping. The ILEC will be stuck maintaining the facilities that provide universal service without the necessary high-cost support. Meanwhile, the reseller will be receiving both the discounted wholesale rate that contains high-cost support *and* the portable support that, by law, should be used only for “facilities”.⁹² The Commission must limit the potential for double recovery of support flows.

⁸⁸ 47 U.S.C. Section 254(e).

⁸⁹ TRA comments at 16.

⁹⁰ 47 U.S.C. Section 214(e)(1)(A).

⁹¹ Sprint comments at 21.

⁹² 47 U.S.C. Section 254(e).

Portable support through unbundled elements presents a similar double recovery dilemma. Many commenters seek clarification and interpretation of this issue. The Pacific Telesis Group believes “the Commission should define how high-cost assistance will be apportioned when part of the network elements for a customer are provided by the ILEC and part are provided by a CLEC.”⁹³ Pacific Telesis goes on to suggest:

where a facilities-based carrier provides unbundled elements to a competitive local exchange carrier, the universal service support should be divided between the ILEC and the CLEC in proportion to the facilities provided by each carrier.⁹⁴

In other words, support should flow to the facilities provider that is paying the actual cost to maintain the facilities (either owned outright or purchased through unbundling, *not* resale). The RTC believes that only actual investment and commitment to the provision of universal service deserves support.

VI. COMPETITIVE LECS SHOULD NOT RECEIVE SUPPORT BASED ON THE AVERAGED EMBEDDED COST OF RURAL INCUMBENT LECS.

In the comments, the RTC demonstrated the fallacy of allowing a CLEC to receive an ILEC’s averaged per-line support.⁹⁵ This is due to the extreme differences in cost between a nearby customer in town 100 yards from the central office and a remote ranch 10 miles out. If a competitor targets⁹⁶ the lower cost customer in the town (the likely and rational competitive

⁹³ Pacific Telesis comments at 24.

⁹⁴ *Ibid.*

⁹⁵ RTC comments at 15-17.

⁹⁶ Although a CLEC is required to serve the entire ILEC study area in order to receive funding (47 U.S.C. Section 214(e)(1) and section 253(f)), the CLEC is more likely to concentrate facilities in the profitable town areas and serve the outlying areas through resale as an afterthought. See discussion *infra* and TCA comments at 4.

outcome), it will receive more support than is necessary to serve that customer due to the use of the incumbent's averaged cost. This, of course, gives the competitor an unfair advantage. As the Washington Utilities and Transportation Commission (WUTC) points out, "[a]ny support mechanism that averages the funding level across areas with different costs will invite uneconomic cream-skimming."⁹⁷ A disaggregated support mechanism would discourage cream-skimming.

The Commission should realize that the CLEC is unencumbered by high-cost obligations and has the freedom to pursue the choicest of customers. The RTC and other commenters⁹⁸ point out the prospect of cream-skimming that will exist regardless of the requirement that a CLEC has to offer services to the entire service area through advertising. As TCA succinctly states, "CLECs can effectively be selective in the customers they accept through their rate structure, and marketing methods."⁹⁹ For example, a CLEC can avoid serving high-cost, outlying customers by advertising a higher rate than the ILEC. The loss of only a few ILEC high-volume, low-cost customers will increase the universal service burden that exists with the remaining higher cost customers. A disaggregated support mechanism can help alleviate this problem and, while not eliminating cream-skimming entirely, will at least not artificially encourage it.

While many commenters laud the idea of "portable" support,¹⁰⁰ not one of its supporters fully considers the ramifications of using ILECs' averaged embedded costs during a transition to

⁹⁷ WUTC comments at 3.

⁹⁸ For example, RTC comments at 15-16, TCA at 4, and WUTC at 3.

⁹⁹ TCA comments at 4.

¹⁰⁰ For example, AT&T comments at 3 and Sprint at 7.

proxies. It goes without saying that the RTC and other rural entities have made pointing out the perverse results of the support mechanism a priority. TCA illustrates the contorted economic signals that use of ILECs' averaged costs sends to competitors.

[P]ortable support for access lines within the area must be based on the cost of providing the access line. The average cost of an access line in a study area may be \$200, while the cost of individual access lines range from \$50 to \$2000. It would not be appropriate to make universal service support portable throughout such a study area based on the average cost of the loop.¹⁰¹

Again, support must be disaggregated in order for the mechanism to be competitively neutral.

VII. SUPPORT FOR MULTILINE BUSINESS, SECOND LINES AND SECOND HOMES CANNOT LAWFULLY OR PRACTICALLY BE EXCLUDED.

The most enthusiastic supporters of the recommendation to deny high-cost support to multiline businesses are MFS and the Association for Local Telecommunications (ALTS). Many IXCs ignore the issue (perhaps due to toll volume) and rural entities state that the Joint Board's results-oriented decision, rather than sound public policy-oriented decision, is contrary to the urban/rural comparability section of the Act. The Act specifically mandates that subscribers in rural areas

should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.¹⁰²

Both ALTS and MFS ignore the Act's urban/rural comparability mandate in their respective comments and provide no public policy rationale for eliminating high-cost support to

¹⁰¹ TCA comments at 3-4.

¹⁰² 47 U.S.C. Section 254(b)(3).

rural multiline businesses. It is worth pointing out that the letter “M” in MFS stands for “metropolitan” and ALTS describes itself in its comments as serving “metropolitan and suburban areas across the country.”¹⁰³ This is a possible explanation for their apparent disregard for small, rural businesses. Support for small businesses is essential. As the U.S. Small Business Administration (SBA) illustrates, “[t]he smallest rural businesses represent the most vulnerable segment of the business community in general”¹⁰⁴ and “[t]hey also typically have the least ability to pass on increased costs to their customers in the form of higher prices.”¹⁰⁵ As the RTC points out in its comments¹⁰⁶, the loss of these businesses could have a devastating effect on the fragile rural economy. There are sound public policy reasons to extend support to businesses with multiple lines and absolutely no public policy reasons to eliminate crucial support.

“ALTS respectfully suggests that there is no evidence on record that the single-line businesses are in need of Universal Service support,”¹⁰⁷ much less multiline businesses. ALTS goes on to assert that there “is simply no evidence that without Universal Service support small businesses in high cost, rural areas would refrain from purchasing basic telephone service.”¹⁰⁸ Such evidence has been on the record for years. OPASTCO submitted their study, *Keeping Rural America Connected: Costs and Rates in the Competitive Era*, in CC. Docket 80-286

¹⁰³ ALTS comments at 2.

¹⁰⁴ SBA comments at 12.

¹⁰⁵ *Ibid.*

¹⁰⁶ RTC comments at 19.

¹⁰⁷ ALTS comments at 5.

¹⁰⁸ *Id.* at 6.

October 28, 1994.¹⁰⁹ The study, which is cited by the SBA in this round of comments¹¹⁰, demonstrates that close to 9 percent of businesses polled indicated that they would consider relocating with a rate increase of 25 percent or greater.¹¹¹ Additionally, a \$10 increase in rates would lead to 3.6% of businesses discontinuing service.¹¹² The proposed loss of high-cost support for small businesses would have a deleterious effect on rural economies which are just beginning to recover from the loss of traditional labor and farming jobs through the use of telecommunications infrastructure. The Joint Board should abandon its short-sighted effort to reduce the universal service fund and provide small businesses the high-cost support they need in remote regions of the country.

The *Recommended Decision* to deny support to second lines in residences is also a myopic, results-oriented proposal, contrary to the public interest. In addition, the proposal violates the urban/rural comparability statutes of the Act and would be a complete horror to administer. Many commenters agree. The California Small Business Administration (CA SBA) mentions that “[a]dopting the Joint Board’s recommendation would threaten the affordability and availability of second lines in high cost areas.”¹¹³ As for the administrative nightmare scenario, JSI predicts:

¹⁰⁹ OPASTCO comments, *In the Matter of Amendment of Part 36 of the Commission’s Rules and Establishment of a Joint Board*, CC Docket No. 80-286, Notice of Inquiry, 59 FR 46606 (September 9, 1994), at 4.

¹¹⁰ SBA comments at 17.

¹¹¹ *Keeping Rural America Connected* at 6-11, 13.

¹¹² *Id.* at 6-14.

¹¹³ CA SBA comments at 10.

[f]rom a practical perspective, it will be extremely difficult, if not impossible for any telephone company (particularly a rural telephone company) to obtain the type of information necessary to comply with this recommendation.¹¹⁴

TCA lists the numerous permutations and extenuating circumstances that are possible, such as one CLEC line and one ILEC line, one landline and one wireless line, multiple families in one residence, apartments, etc.¹¹⁵

Even MFS worries that “the practical problem remains as to how to target such support in a non-intrusive, administratively efficient manner...”¹¹⁶ However, MFS’ suggestion of using nine-digit zip codes to match assistance is riddled with inconsistencies.¹¹⁷ MFS proposes this as a solution to eliminating assistance to second residences in resort areas. Resort areas are not inhabited only by the wealthy. They are peopled by ordinary residents. Silver Star telephone company “fails to see how this is in the public interest, or how these subscribers do not have public interest needs” and “these subscribers need access to health, emergency and community services.”¹¹⁸ MFS’ nine-digit suggestion is too blunt of a mechanism and will deny support to families that really need it.

Many commenters are aghast at the administrative difficulties and privacy issues involved in “interrogating” their customers about their number of homes, who is living with them, and constantly updating the answers. Of course, privacy and practical issues aside, the *Recommended*

¹¹⁴ JSI comments at 21.

¹¹⁵ TCA comments at 5.

¹¹⁶ MFS comments at 36-37.

¹¹⁷ *Id.* at 38.

¹¹⁸ Silver Star comments at 4.

Decision to deny support to second lines or second homes is a clear violation of every subscribers right to “access in rural and high-cost areas.”¹¹⁹ The Commission cannot, in good faith, deny rural consumers access to advanced services at reasonable rates that are comparable to urban areas. To do so would be a complete rejection of universal service principles that have been a cornerstone of telecommunications policy since the 1934 Act.

VIII. CONCLUSION

Consistent with these comments, the Commission must reject flawed proposals in the *Recommended Decision*. The mandated application of proxy models to rural companies, even after a three year transition, may harm high cost areas and rural customers. The Commission should opt for a longer transition period. However, the Commission should also allow those rural telephone companies that elect to use the proxy during the transition period to use it for the disaggregation of support. The Commission should not adopt the benchmark recommended as an offset against proxy model forward looking costs. Also, it may not lawfully freeze per line universal service support for rural companies.

¹¹⁹ 47 U.S.C. Section 254(b)(3).

The Commission must ignore or reject comments that propose alternatives that do not comply with the Act's requirements. The competitive bidding proposal should be rejected. The Commission must also reject the recommendation to restrict support available for multiline businesses and second homes. The Commission should ensure that its decision does not reverse the progress had been made in bringing universal service to high cost areas.

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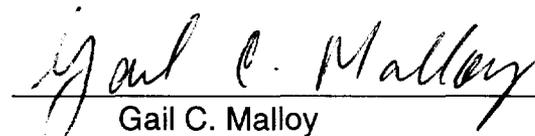
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