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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
Federal State Joint Board on) CC Docket No. 96-45
Universal Service.)

COMMENTS OF THE OHIO CONSUMERS' COUNSEL
On Level of Local Usage to be Supported by Federal Universal Service Mechanisms

Introduction

Robert S. Tongren, in his capacity as the Ohio Consumers' Counsel (OCC) on behalf of the residential telephone consumers of the State of Ohio¹, offers these comments in response to the Federal Communications Commission's Further Notice of Proposed Rulemaking (FNOPR) in this docket (FCC 98-278), on the level of local usage to be supported by the Federal universal service mechanisms. The FNOPR was published in the Federal Register on December 10, 1998.²

In the May 1997 Universal Service Order the Commission determined that local usage should be supported by the federal universal service support mechanism, and that the Commission would determine the level of usage to be supported. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (rel. May 8, 1997) [US Order] ¶¶ 65, 67. In a FNOPR issued in July 1997, the Commission sought comment on the level of usage issue.³ In the current FNOPR, the Commission seeks closure on this issue. FNOPR ¶ 46.

¹ See Chapter 4911, Ohio Revised Code.

² The FNOPR also asked for comments on other universal service issues. The OCC may offer reply comments on these issues.

³ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 97-256, Further Notice of Proposed Rulemaking (July 18, 1997). Curiously, in the July 1997 FNOPR (¶ 178), despite statements in

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Ohio telephone companies have long-standing “experimental” message rate programs with limited enrollment.)⁸

In Ohio, it is clear that **when customers, especially residential customers, have a choice, they overwhelmingly choose flat rate service.**⁹ The same appears to be true in all other states where the option is offered.¹⁰ In the telecommunications market, flat rate service is definitely the service “chosen by a substantial majority of customers.”

Customers see value in the convenience of flat rate service. They choose flat rate service even in the face of telephone company claims that usage sensitive service would save them money. Clearly, flat rate service offers value beyond “saving money”; customers would save even more money by doing without telephone service entirely. Such abstinence is not, however, among the goals enunciated in the 96 Act.

Consumer preference for flat rate plans for other types of usage-sensitive services is well-recognized. For instance, flat rate usage plans have become the dominant factor for Internet service. Flat rate service is even creeping into the long-distance market. “Sprint offers unlimited long-distance calling on weekends,” *Cleveland Plain Dealer* (November 6, 1998) at 3-C.¹¹ Contrary to the anticipated arguments from some members of the industry, it is thus unlikely that the dominance of flat rate service is the result of an

⁸ Given the fact that most smaller Ohio local exchange carriers offer only flat rate service, a Commission decision denying support to flat rate service could mean that these small rural companies would not receive federal universal service support.

⁹ Specific penetration numbers available to the OCC are proprietary to the ILECs in question.

¹⁰ Only a few jurisdictions have eliminated flat rate service for LEC residential customers. See “Reference Book of Rates, Price Indices and Expenditures for Telephone Service,” FCC Industry Analysis Division, July 1998 at Table 1.3 (out of the 95 cities sampled, only 6 in three states [3 in Illinois, 2 in Wisconsin and New York City] have no residential flat rate service available, having only message or measured rates). (The same Table shows that there are 8 cities that have no residential message or measured service available.)

¹¹ Confusingly, some in the industry refer to a uniform per-minute rate as “flat rate.” The flat rate service referred to herein is unlimited usage for a set monthly amount.

Flat rate service should be supported.

Flat rate residential service should be included in the definition of universal service supported as part of the basic service package that will be provided by Eligible Telecommunications Carriers (ETCs), pursuant to 47 U.S.C. § 214(e).⁴

Flat rate service (unlimited usage for a set fee) clearly meets the definition of universal service in 47 U.S.C. § 254(c)(1)(B), as a service which has “through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers.”⁵ When customers have a choice, they overwhelmingly pick flat rate service.

Not all LECs even offer alternatives to flat rate service. In Ohio, only Ameritech Ohio and Sprint offer a residential measured service option⁶ throughout their territories; Cincinnati Bell and GTE North offer measured service in some exchanges. Only Ameritech Ohio offers a message rate option⁷ throughout its territory; ALLTEL Ohio, Cincinnati Bell and Western Reserve offer the option in some exchanges. (Two small

the May 1997 Universal Service Order, the Commission indicated that it was only able to “tentatively conclude” that local usage should be included in the basic service package. In the current FNOPR, the Commission again seeks comment on “how much, *if any*, local usage we should require ... as part of a basic service package...” FNOPR ¶ 46 (emphasis added). The record is clear that usage must be supported: In the Universal Service Order, the Commission correctly dismissed the arguments of those who argued against supporting usage (US Order ¶ 66). This is not an issue that should require continual re-evaluation.

⁴ Most telephone companies offer only flat rate service, including access and unlimited usage for a single rate under which the price of usage cannot be separately determined. By contrast, where a company offers flat rate and message or measured rates, the access portion and the usage portion may be separately tariffed or the usage component of flat rate service can otherwise be calculated.

⁵ In the Universal Service Order (¶61), the Commission found that a service need not meet all of the four § 254(c)(1) criteria.

⁶ Where the customer is billed for each call according to the duration and often the distance and time of day of the call (much like “long distance” calling has traditionally been billed).

⁷ Where the customer is billed a set amount for each call regardless of duration, etc. Message service rates often include a block of call allowance (e.g., 30 calls) with a per-call charge thereafter.

isolated -- or a universal -- industry or regulatory bias in favor of maintaining allegedly below-cost residential services.¹²

In Ohio, the PUCO has made flat rate service part of the universal service package. *In the Matter of the Commission Investigation Relative to the Establishment of Local Exchange Competition and Other Competitive Issues*, PUCO Case No. 95-845-TP-COI, Entry on Rehearing (February 20, 1997), Appendix A [Local Service Guidelines]. Local Service Guideline XIII.A. 1. states that “[u]niversal service includes ... availability of flat-rate service....”

Flat rate service meets the statutory standard for support. The OCC submits that, without a doubt, support for flat rate service is in the public interest. In this time of fervent emphasis on economic cost, it is appropriate to remember that the public interest includes more than just economic components. The overall importance of communication to society is one such non-economic (or supra-economic) component. The creation of an entirely measured rate regime -- as could follow the Commission’s decision not to support flat rate usage -- would impose a societal cost in terms of suppressed communications. This impact would, of course, fall more severely in rural America than in the low-cost urban centers. Clearly, the availability of flat rate service is part of the “comparability” between high and low cost areas required by the Act. 47 U.S.C. § 254(b)(3).

Under all of these circumstances, the Commission’s characterization of its authority as to support “a certain portion of local usage” (US Order ¶ 66) might be misconstrued. As noted later in the US Order (¶ 67), the Commission’s focus is on establishing a *minimum* level for support, not a maximum that can be supported.

¹² In Ohio, the incremental cost of residential flat rate service has been considered for Ameritech Ohio (in PUCO Case No. 93-487-TP-ALT), and for Cincinnati Bell Telephone (in PUCO Case No. 96-899-TP-ALT). Both companies claimed that residential rates were subsidized. As discussed below, in Ameritech, the company settled for *decreasing* residential rates. In CBT, the company settled for a rate freeze, when its litigation position had been that a residential/business rate rebalancing was required.

Other usage patterns should also be eligible for support.

Yet this Commission should not mandate that only carriers offering flat rate may receive US support. There are incumbent local exchange carriers currently providing service who -- with approval from their state commissions -- do not provide flat rate service.¹³ Wireless carriers do not -- as yet -- offer flat rate service. And a CLEC may offer service to residential customers only via a message or measured rate. These providers should not be required to adopt flat rate service as a condition for receiving federal US support.¹⁴

For such carriers, otherwise qualified as ETCs, the Commission should set a minimum level of usage that, when provided with access at a combined affordable rate, should be supported by the universal service funds. The level of usage to be supported will be discussed below.

The Commission requests comment “on whether carriers should only be eligible to receive universal service support with respect to subscribers who select a basic service package that includes a certain amount of local usage without additional charge.” FNOPR ¶ 50.¹⁵ This could be flat rate service; it could also be options known as “block of time” or “block of calls.” From the customer’s viewpoint, it is the usage package that should be supported, however the LEC bills for it. A strict measured regime, or a strict per-call structure, is equally deserving of support if the net effect is an affordable package that includes at least the threshold level of usage.

¹³ Ohio is not among those states where the state commission has allowed suppression of this service most valuable to customers. The last time that mandatory usage sensitive service was proposed was by GTE in a 1984 rate case; the Public Utilities Commission of Ohio rejected that proposal in favor of optional usage sensitive service. *General Telephone Company of Ohio*, PUCO Case No. 84-1026-TP-AIR, Opinion and Order (July 23, 1985) at 8-11.

¹⁴ A state commission may, however, pursuant to its statutory authority, mandate the offering of flat rate service to residential -- or, indeed, to *all* customers.

¹⁵ A carrier will receive support only for those customers whose rates are supported. See Universal Service Order ¶ 96, referring to “residential and business connections in high cost areas that ... receive high cost support....”

The Commission also seeks “comment on whether carriers should only be eligible to receive universal service support if a certain percentage of their subscribers subscribe to a basic service package that includes ... flat-rated usage....” *Id.*¹⁶ If -- as discussed above -- the package of access and usage is priced at a level requiring support, the package should be supported, regardless of the status of flat rate service for that carrier. As also noted above, state commissions have made decisions -- in the exercise of their discretion -- that eliminate the availability of flat rate service. Such decisions should not exclude carriers (and their customers) operating pursuant to those commission orders from federal universal service support.

The supported usage need not be measured per minute; message service is also offered by many carriers and is selected by a fraction of residential customers. If a carrier offers message or measured rate service that, assuming the minimum level of usage, is priced below its cost in the interest of affordability, then that service should be supported by federal universal service funds.

The supported level should not be set at the mean of usage; instead, the mean plus one standard deviation (as identified by the Commission) will capture most usage, and should be selected as the level to support. According to the FNOPR (footnote 104), that would be 750 minutes per month, or 300 calls per month for message service.¹⁷ If a carrier offers access plus the supported level of usage at below their total cost, that combination should receive support just as when flat rate service is involved.

Usage averages for wireless service are not appropriate to use for setting a minimum usage standard. Wireless usage is suppressed due to high per minute charges.

¹⁶ The FNOPR actually refers to “a certain amount of flat-rated usage....” As noted above, where local service is concerned, flat rate usage allows unlimited calling for a single total charge.

¹⁷ The Commission should reconsider the supported level if the level of actual usage changes. In fact, given that the data in the FNOPR is at least a year old, the Commission should resubmit the usage data request referred to in FNOPR footnote 104.

See FNOPR ¶ 52. Thus the wireline standard should be used to determine whether a wireless carrier receives support for its service package.

By definition, ETCs are “eligible” because they qualify under the FCC US standard (Universal Service Order ¶ 134), but also because they offer service at rates that need support. If a NEC or wireless provider offers some rates below its cost in order to preserve affordable service in all of its service territory, that effort should be supported -- for the customers who pay those affordable rates.

Support for various usage patterns is competitively neutral

This is the answer to the Commission’s concerns about competitive neutrality. US Order ¶ 69. All the competing sectors (ILECs, CLECs, and mobile wireless providers) -- if otherwise qualified as ETCs -- will be eligible for support based on the characteristics of their markets and the services they provide, so long as the package is priced so as to require support. The difference in the levels of support that each company’s price point[s] will generate might provide different benefits for different providers, but that differential is not anti-competitive and, regardless, would likely be lost in the other price distortions that the industry claims are present in this market.

As the Commission has determined, the Act requires that in high-cost areas, single-line residential rates must be supported by federal US support. US Order, ¶ 96. If the Commission determines that non-residential rates are also to be supported (*id.*), flat rate usage and a minimum level of measured or message usage should be supported.

Local calling areas is an issue best left for the states.

The Commission seeks comment “on whether, and how, to account for the differences in the size of local calling areas.” FNOPR ¶ 53. Clearly, a constricted local calling area within a consumer’s community of interest can render unaffordable a reasonable level of usage to that community, due to the higher cost of toll calls. It

appears, however, that determining an appropriate local calling area on a federal level would be an intractable problem. This is a matter better left to the individual states, for consideration in intrastate universal service funding efforts.¹⁸ Yet the local calling area of the incumbent should be treated as a minimum, so as to ensure that the supported rates of wireless carriers or CLECs are “competitive” for consumers.

The consequences of not including usage as a supported service are not in the public interest.

The Commission correctly recognized some of the anti-competitive implications of failing to support usage. FNOPR ¶ 47. That assumes that there will be competition in high-cost areas. Given the current absence of residential competition in such locales, it is equally important to consider the incentive that nonsupport of usage will give to an incumbent in high cost territory: That is, to increase usage rates while receiving federal universal service support. As the Joint Board and the Commission both indicated, affordable access without affordable usage is ... useless. US Order ¶¶65, 66.

Including usage will have a minimal impact on the size of the universal service fund.

Finally, it is important to note that virtually all of the costs that make an exchange “high cost” are non-usage-sensitive. FNOPR ¶ 47. For those carriers that break out a separate usage charge, whether flat rate or message or measured, there is little doubt that the usage component is priced above its cost.¹⁹ Thus although flat rate service and a usage-package service should both be supported, the inclusion of usage will have a minimal effect on the overall level of support. In Ohio, for example, in the first rate case

¹⁸ The OCC has taken the position that -- at a minimum -- the flat rate local calling area should be defined as all contiguous exchanges, school districts, and county seats. This position is based on the notion of local calling area as it has evolved in Ohio. Other states may define things differently.

¹⁹ Especially since flat rate service eliminates measuring and billing costs.

in which a wide range of incremental costs were examined -- in the face of the company's claims that residential service on the whole was subsidized -- the stipulated resolution for the case involved periodic decreases in the usage component of residential service.²⁰ A company witness admitted that usage was priced above cost. For this company, particularly after the reductions over the last four years, usage prices are, in fact, the lowest in the state.²¹

Conclusion

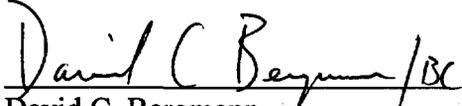
In those locations where support is needed -- a subject not dealt with in this FNOPR -- flat rate service must be supported, when offered by an ETC at supportable rate levels -- another subject not dealt with in this FNOPR. When message or measured rates are offered by an ETC -- whether or not flat rate service is offered by that ETC -- such service should be supported when the combined package of access and a liberal amount of usage is offered at supportable levels. That amount of usage appears to be the mean of wireline usage plus one standard deviation from the mean, or currently 750 minutes or 300 messages per month.

²⁰ In that case, the OCC demonstrated that the claims of subsidy depended almost entirely on the LEC's treatment of loop costs as a cost only of local exchange access, rather than as a shared cost of virtually all telecommunications services.

²¹ Note also that this company is currently earning in the 33% range for return on equity.

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