

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Joint Board) CC Docket No. 96-45
Second Recommended Decision) DA 98-2410

REPLY COMMENTS OF GVNW CONSULTING, INC.

A. Introduction

GVNW Consulting, Inc. (GVNW) is a management consulting firm which provides financial and regulatory consulting services to independent telephone companies. These reply comments focus on the impact that the issues raised in the comments may have on small LECs and, ultimately, on the provision of universal service throughout rural America.

We are pleased that the Commission is addressing the challenges we face with respect to universal service for all Americans. We believe that the deployment of comparable telecommunications capability to rural Americans will require a different set of regulatory parameters. Our reply comments will set forth the reasons why we believe this to be the case.

We concur with the following quote¹ related to universal service funding:

Without this funding, many parts of the rural West will be relegated to the 'Information Dirt Road'. In America, we build roads, deliver the mail, and provide electricity to all parts of our nation. Now, the FCC has the opportunity to ensure that quality phone service is available to everyone, regardless of where they happen to live or do business.

¹ Attributed to Greg Walcher, President of Club 20, a rural economic affairs group. November 23, 1998 US West Press Release.

SUMMARY OF COMMENTS:

1. The Joint Board recommendations with respect to “comparable” rates and services and “sufficient” support are properly focused for rural LECs.

2. The combination of federal support and state support must be “sufficient” to meet the tenets of the Act.

3. Any “hold harmless” provision should mean that carriers, as well as states, are held harmless for at least their current level of support. Holding only states harmless is inadequate to protect the customers of individual carriers.

4. The “hold harmless” provisions should include both implicit and explicit support levels.

5. Any assumption that the federal fund is self-limited by the current funding levels does not reconcile with the tenets of the Telecommunications Act.

6. The Joint Board properly stated that its proxy decisions for non-rural companies should not be precedential for rural LECs.

I. THE JOINT BOARD RECOMMENDATIONS WITH RESPECT TO “COMPARABLE” RATES AND SERVICES AND “SUFFICIENT” SUPPORT ARE PROPERLY FOCUSED FOR RURAL LECs.

We agree with the other commenters who share the opinion that the Joint Board was on target in rejecting the arbitrary 25% federal ceiling on the necessary support to provide federally defined universal service. With its recommendation, the Joint Board places in the proper context the debate as to the sufficiency of federal support and the comparability of urban and rural rates.²

We concur with the comments of the Rural Telephone Coalition that state:

The Joint Board was correct to recognize that the federal urban/rural comparability requirement of Section 254(b)(3) of the Act applies across state lines as well as within a state’s borders and must be implemented through a nationwide mechanism. Only through a singular, nationwide definition of comparability and a nationwide support mechanism can it be ensured that, for example, high cost customers in Wyoming, with a small urban customer base from which to derive internal support, will have rates reasonably comparable to subscribers in a state such as New York with a sizable metropolitan populace.³

II. THE COMBINATION OF FEDERAL SUPPORT AND STATE SUPPORT MUST BE “SUFFICIENT” TO MEET THE TENETS OF THE ACT.

With the passage of the Telecommunications Act of 1996 (TA 96), the law of the land as reflected in Section 254(b)(5) of the Act requires that federal and state support should be “specific, predictable, and sufficient . . . to preserve and advance universal service.” One of the key criteria in this process will be whether reasonable benchmark levels are set for rural customers. If benchmark levels are not set reasonably, it could well result in rural consumers being denied the comparable rates that Congress mandated. In fact, at paragraph 40 in its Second Recommended Decision, the Joint Board even recognized that in order to actually achieve

² Second Recommended Decision (SRD), paras. 4, 17.

³ Rural Telephone Coalition comments at page 8.

uniform comparability⁴, some high cost rural states may require additional federal support beyond their current support levels.

Previously, we were concerned with certain proposals made in this regard. For example, the FCC's proposal in its Report to Congress, which would have permitted additional federal support only if a state committed to converting its implicit support mechanisms to explicit mechanisms.⁵ The Joint Board has hit the mark by declining to tie the amount of federal support a state receives on actions the state may or may not take regarding its universal service mechanisms.⁶ We remain concerned about the Joint Board's preliminary conclusion that the amount of support a state receives should be based on a yet-to-be-determined methodology for estimating how much that state can reasonably provide for itself.⁷

Whether the Congressional mandate for reasonable rates will be achieved will be to a large part determined by the benchmark levels that will be set in future proceedings.

III. ANY "HOLD HARMLESS" PROVISION SHOULD MEAN THAT CARRIERS, AS WELL AS STATES, ARE HELD HARMLESS FOR AT LEAST THEIR CURRENT LEVEL OF SUPPORT. HOLDING ONLY STATES HARMLESS IS INADEQUATE TO PROTECT THE CUSTOMERS OF INDIVIDUAL CARRIERS.

We concur with the Joint Board commitment that states will not receive less high cost assistance under the new federal mechanism than they presently receive.⁸ We submit that this

⁴ As noted at paragraphs 15 and 18 of the SRD, until the FCC more narrowly defines comparability beyond a "fair range" of urban/rural rates, the sufficiency of the definition and the resulting support cannot be fully evaluated. The Joint Board further stated at paragraph 48 that until it resolves other pending policy decisions and obtains more precise cost data, it is not possible to define in dollars the amount of support required by the comparability standard.

⁵ Report to Congress, para. 227.

⁶ Second Recommended Decision, paras. 26, 36.

⁷ Second Recommended Decision, paras. 44-45.

⁸ *Id.*, paras. 51-53.

safety net should be extended to individual carriers as well. A “hold harmless” provision, properly crafted, could serve to prevent customer rate shock should the new federal mechanism result in some carriers receiving less support than they do now.

IV. THE “HOLD HARMLESS” PROVISIONS SHOULD INCLUDE BOTH IMPLICIT AND EXPLICIT SUPPORT LEVELS.

We echo others concern with the Joint Board’s interpretation of the Commission’s commitment to be limited only to explicit support mechanisms.⁹ Limiting such a hold harmless safety net (to only explicit funding) may be problematic for some carriers if implicit support continues to be removed and is not replaced, dollar for dollar, in the high cost fund. As Commissioner Furchtgott-Roth pointed out in his dissent, the Commission’s remarks in its Report to Congress regarding a hold harmless policy indicate that its commitment applied to both explicit and implicit support mechanisms.¹⁰ Specifically, the Commission stated:

[W]e conclude that a strict, across the board rule that provides 25% of unseparated high cost support to the larger LECs might provide some States with less total interstate support than is currently provided through **aggregate implicit and explicit federal subsidies**. The Commission will work to ensure that states do not receive less funding as we implement the high cost mechanisms under the 1996 Act.¹¹

V. ANY ASSUMPTION THAT THE FEDERAL FUND IS SELF-LIMITED BY THE CURRENT FUNDING LEVELS DOES NOT RECONCILE WITH THE TENETS OF THE TELECOMMUNICATIONS ACT.

While it is reasonable for the Joint Board to strive to maintain federal universal service funding at a level that does not overburden any particular group, we agree with Commissioner

⁹ *Id.*, para. 53.

¹⁰ *Id.*, Furchtgott-Roth, p. 12.

¹¹ *Federal State Joint Board on Universal Service*, CC Docket No. 96-45, April 10, 1998, Report to Congress,

Ness' statement at the October 30, 1998 open meeting of the Joint Board. At that meeting, in response to debate about funding levels not exceeding current explicit support, Commissioner Ness observed that *"to the extent that the shift from implicit to explicit continues forward, it is hard to imagine how the federal fund could fail to grow beyond its current size."*

We expect that the courts will not find it lawful for the Joint Board or the Commission to treat preventing significant growth of the federal fund over its current level as an independent test of a suitable federal mechanism. The Joint Board is flirting with adopting this test here and should exercise extreme caution to apply the statutory sufficiency standard — not a fund size test — when at a later date it considers a rural ILEC support mechanism. We concur with the Rural Telephone Coalition comments:

The RTC believes that any cap on fund size imposed by the Commission and applied to deny support that would otherwise be payable under the applicable support mechanism would represent unreasonable discrimination against the affected customers and would be unable to pass judicial muster...The ultimate legal standard for universal service decisions is whether customers will enjoy the rate and service benefits set forth in Section 254, not whether the Commission or competitors find the support mechanism congenial to new entry in rural areas.

VI. THE JOINT BOARD PROPERLY STATED THAT ITS PROXY DECISIONS FOR NON-RURAL COMPANIES SHOULD NOT BE PRECEDENTIAL FOR RURAL LECs.

We agree with the portion of the Second Recommended Decision that stated that it is not intended to create *"any precedent for any potential revisions to support mechanisms for rural carriers,"* and at paragraph 30 where it is stated that:

The model platform that the Commission adopted in October was designed to estimate non-rural carriers' cost. Pursuant to the Joint Board's recommendation, the Commission has provided that the determination of the appropriate manner in which a model should be applied to rural carriers, if at all, will take into account

FCC 98-67, para. 197 (emphasis added) (Report to Congress).

*the recommendation of the Joint Board, after the Joint Board receives a report from the Rural Task Force.*¹²

Recent regulatory history has proven that decisions affecting larger ILECs are many times later applied to rural LECs, regardless of such statements. For this reason, the Rural Task Force requested that the Joint Board “clearly indicate that recommended actions pertaining to universal service reform for non-rural companies are not precedent for ultimate universal service reform (if any) which may be appropriate for rural companies.”¹³ The Joint Board’s statement that the Rural Task Force is not bound to the adoption of a model provides an equitable starting point for the work of the Rural Task Force, the Joint Board, and the Commission on appropriate mechanisms for rural carriers.

Respectfully submitted

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¹² Second Recommended Decision, para. 30.

¹³ See Rural Task Force Letter to the Joint Board dated November 17, 1998.