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

In the Matter of	)	
Federal State Joint Board on	)	CC Docket No. 98-141
Universal Service.	)	

REPLY 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 Ohio[1], offers these reply comments in response to certain of the comments filed on January 11, 1999 in this docket.[2] The comments were requested in the Federal Communications Commission's Further Notice of Proposed Rulemaking (FNOPR) published in the Federal Register on December 10, 1998.

The OCC argued in initial comments that residential flat rate service (unlimited usage for a set monthly fee) should be supported as a "universal service." OCC at 2-4. None of the comments reviewed by the OCC oppose that view. Noting that not all carriers offer a flat rate service (including some incumbent LECs), the OCC then proposed that, in a high-cost area, if a carrier offered a package of access and a reasonable amount of usage for an affordable rate, that package should be given federal universal service support. *Id.* at 5-7.

[1] See Chapter 4911, Ohio Revised Code.

[2] The comments responded to are those filed by Ameritech; AT&T Corp. (AT&T); Cellular Telecommunications Industry Association (CTIA); National Telephone Cooperative Association (NTCA); SBC Communications Inc. (SBC); Sprint PCS; TDS Telecommunications Corporation (TDS); and United States Telephone Association (USTA).

Some commenters argue that the rates for usage should not be considered in judging universal service support. The reasons given are inadequate. Other commenters erroneously submit that only an average amount of usage should be supported. As shown here and in the OCC's initial comments, the average level of usage is insufficient to use for the package.

The Commission must include usage in the supported package.

At base, Sprint PCS argues (at 11), that the FCC should not "regulate services," in terms of defining what services are to be supported by the federal mechanism. But that view directly conflicts with the mandate of § 254(e), that only services that fall within the definition of universal service should be supported.[3] If one accepted Sprint PCS' view, in a high cost area, given two carriers -- one with flat rate service priced affordably at $20.00 per month, the other with an access charge of $20.00 and a $1.00 per minute usage rate -- both would receive support, and in the same amount.

Sprint PCS correctly notes (at 13) the variety of services other than usage that Sprint PCS provides its customers at no additional cost. These features in Sprint PCS' packages may be of interest to consumers, but they are not those that the Act allows to be supported. (At least not until they are subscribed to by a substantial majority of customers. § 254(c)(1)(b).)[4]

AT&T (at 7) says that if "primary lines" are supported, this would allow the Commission to ignore what services are to supported. First, as noted above, the law does

[3] "After the date on which Commission regulations implementing this section take effect, only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support. A carrier that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services *for which the support is intended*." 47 U.S.C. § 254(e) (emphasis added).

[4] Equally problematic is inclusion of service (i.e., nationwide) that by any reasonable definition would be called *long* distance. Sprint PCS at 13. The FCC has determined that long distance usage is not part of the universal service package. US Order ¶ 77.

not allow this (§ 254(e)). Equally importantly, the definition of a primary line is one that the Commission has not yet been able to answer in this context (and AT&T provides no help).[5] Is a wireline always to be the primary? This would mean that the only wireless services to be supported would be those for which the customer has no wireline. How is this to be determined?[6]

Ameritech (at 5) is opposed to any requirement that a minimum amount of usage be offered in order for a carrier to qualify as an ETC. Ameritech implies that, because any carrier that will offer access to the network will also offer usage, the Act's goal of affordable service is met by merely requiring access. *Id.* Of course, affordable access without affordable usage is no "service" at all; to carry the previous example to an extreme, a carrier that charged $1.00 for access but $100.00 per usage minute should not receive federal universal service support.

Part of Ameritech's concern is apparently that a Commission requirement that some usage be included in a flat-rated charge (i.e., uniform per month) is an "intrusion" into state pricing decisions. *Id.* Of course, the congressional mandate that services be priced affordably and comparably in order to be supported by the federal mechanism is such an "intrusion," whether usage is added to access or not. The OCC's proposal -- that any package of access and a reasonable level of usage that is priced at an affordable rate be eligible for support -- gives carriers and state commissions broad latitude in designing service packages. This is not "forcing all carriers to have the same rate structure" (*id.* at 6); it is designing a minimum total package that should and will receive explicit universal service support.

---

[5] In the June 1, 1998 Memorandum and Order *In the Matter of Tariffs Implementing Access Charge Reform*, CC Docket No. 97-250 (¶¶ 33-39), the Commission basically accepted the ILECs' definitions distinguishing primary residential access lines from "non-primary" access lines, *where the ILEC provides both lines*. This does not solve the problem where a residence has local exchange service from more than one carrier.

[6] See SBC at 8 (problems of identifying the "location" (in a high cost area) of a wireless customer).

USTA argues (at 3) that the level of usage that should be supported should be left up to the states.[7] This obscures the fact that the Act is a federal statute; the FCC must determine a minimum level of usage to be supported by the federal universal service mechanism, in addition to supporting flat rate usage where available.[8]

Sprint PCS states (at 7) that a minimum usage requirement is only needed in a monopoly environment. To the contrary: If there is no minimum usage requirement in an emerging competitive environment, and access alone is supported, this gives the new entrants support without requiring that the usable and useful service package be affordable, which is the central intention of § 254. In that situation, the incumbents (with their carrier of last resort responsibilities and historical flat rate structures) would suffer a disadvantage. Even if the market were fully competitive, supporting only access would incent carriers to do away with the flat rate option, the option clearly preferred by consumers.

The purpose of universal service support is not to promote the interests of wireless carriers

CTIA states (at 14) that "to ensure wireless participation in accomplishing universal service objectives, local usage requirements must be minimized." Unfortunately, this places the competitive cart before the universal service horse. The Commission is required to determine the minimum level of universal service to be supported if offered at an affordable rate; that level may not be one that is offered by competitors who -- for their own reasons -- have chosen high usage charges as a price point. CTIA's point (at 15-16)

---

[7] In fact, USTA (*id.*) is reluctant to include any local usage, because of the difficulties in defining an appropriate level. Not including local usage, of course, would allow carriers (ILECs and CLECs) to price usage at levels that would make a usable local service package unaffordable, yet receive federal universal service support. The OCC submits that the Act does not contemplate such a result, despite the difficulty of achieving an effective and equitable resolution of the local usage question.

[8] See OCC Initial Comments at 2-4.

is that "the Commission should not impose the type of basic service package to which all universal service customers must subscribe." Yet that is precisely the task imposed on the Commission by § 254, and carried out in great detail in the US Order and subsequent orders. Sprint PCS's statement (at 8) that the FCC's primary objective should be to facilitate competitive choice in rural areas also ignores the real purpose of § 254: to keep service in high cost areas affordable.

Sprint PCS then notes (at 10) that the Commission must take steps to encourage new entrant licensees to expand their networks into rural areas, in hope that rural prices will "soon" be reasonably comparable to urban areas. There is no indication that Congress in adopting § 254 saw the task of making rates in rural areas affordable and comparable to those in urban areas to be contingent on the existence of competition in the rural areas.[9]

Further, Sprint PCS' statement (at 11) that rural rates need not be reasonably comparable *to the ILEC's* rates in urban areas, implies that if a CMRS provider's rural rates were comparable to *a CMRS provider's* urban rates, this would meet the Act's universal service purpose. This means that for an *average* residential user using 616 minutes (see FNOPR ¶ 52, fn. 104)[10], the minimum price (according to the chart at Sprint PCS page 13) would be $69.99 for access and 600 usage minutes plus $4.00 for the extra minutes, for a total of $73.00.[11] In the first place, this does not meet the Act's further criterion that rates be affordable. Equally importantly, universal service support is for high-cost areas. Even if Sprint's lowest price were affordable, it could receive support for customers taking that service only in areas *where Sprint PCS' cost of service exceeded that price*.

---

[9] See 47 U.S.C. § 214(e)(2) (state commissions may allow only one ETC in rural telephone company areas); see also TDS at 2.

[10] Note that the OCC supports using usage at the mean plus one standard deviation as the standard for support. See OCC at 6-7.

[11] Under Sprint PCS' standard plan, access and 120 minutes are $29.99 plus *$148.80* for 496 "extra minutes" for a total of $178.79. Sprint PCS at 13.

The Commission should not use average levels, or separate wireline and wireless levels.

SBC argues (at 7) that average usage rates should be used. See also NTCA at 6-6. As discussed in the OCC's initial comments, recognizing usage *above* the average (to a standard deviation above the mean) will support the level of service used by a substantial majority of consumers, not just the average. *Cf.* § 254(c)(1)(B).

Sprint PCS supports (at 15-16) using separate wireless and wireline levels, for competitive reasons. Yet it is the level of service that should be supported, not the competitors providing that service. OCC submits that wireline usage (where consumers are not constrained by high prices) should be the standard for both. When -- through the operation of market forces -- wireless providers supply a package that includes the level of usage that "the substantial majority" (§ 254(c)(1)(B)) of customers prefer, then that wireless service should be supported.[12]

Summary

The OCC supports the following statement of NTCA (at 5):

> Even if it is correct that a high level of usage would give an advantage to wireline carriers and a low level would advantage wireless carriers, the Commission is required by the law to determine what rules will most likely result in accomplishing the statutory goals of affordable service and rates that are comparable between rural and urban areas.

Those statutory goals will be met by first, supporting flat rate residential service, and second, supporting an access and usage package that contains the level of use of a substantial majority of residential wireline customers. These goals will not be met if no usage is contained in the package or if a lower level of usage is adopted for wireless

[12] Sprint PCS's suggestion (at 19) that CMRS carriers (unlike ILECs) must receive 100% -- not 25% -- federal funding, is simply another proposal to advantage wireless carriers.

customers. The OCC appreciates the opportunity to make these views known to the Commission.

Respectfully submitted,

ROBERT S. TONGREN
CONSUMERS' COUNSEL

_____

David C. Bergmann
Assistant Consumers' Counsel

Ohio Consumers' Counsel
77 South High Street, 15th Floor
Columbus, Ohio 43266-0550
(614) 466-8574