

GVNW Consulting, Inc.
Comments in CC Docket No. 96-45
And CC Docket No. 96-262
July 23, 1999

**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)	
)	
Access Charge Reform)	CC Docket No. 96-262

COMMENTS OF GVNW CONSULTING, INC.

GVNW Consulting, Inc. (GVNW) is a management consulting firm which provides a full range of consulting services to independent telephone companies. These comments are being provided in response to the Commission's Order and Further Notice of Proposed Rulemaking released May 28, 1999 in the above referenced proceeding.

We recognize that the instant order is geared toward non-rural LECs for the Universal Service related matters, and to Price Cap LECs for the Access related matters. Rural LECs and Rate of Return LECs, however, are subject to the Part 69 Access Charge Rules for interstate tariff filings, and for settlements through the National Exchange Carrier Association's pools. We offer these comments in the context that the Commission will reconcile the Part 69 rules to certain orders and rules referenced in the instant order.

Carrier Recovery of Universal Service Contributions

In paragraph 79 of the instant order, the Commission quoted from its First Report and Order, "Therefore, the Commission decided to permit, but not to require, incumbent LECs whose interstate rates are under the Commission's jurisdiction to recover their

contributions to the universal service support mechanisms from their interstate access and interexchange customers.”¹

The Part 69 Rules have not yet been modified to reflect this order. The Commission has ordered that the contribution to the Universal Service Fund is to be recorded in Account 6540 of the Uniform System of Accounts, Part 32.² The Part 69 rules for assigning the costs in Account 6540 do not match up with the Commission’s Orders to allow LECs to recover this contribution from its access and interexchange customers. Under the current Part 69 rules, Account 6540 is assigned to the interexchange category as follows:

“Plant Non Specific Operations Expenses in Account 6540 shall be assigned to the interexchange category”³

Rural LECs typically do not have interstate interexchange customers, so to comply with the Commission’s Orders in the Universal Service proceeding, Part 69.401(e) needs to be changed to allow for the assignment of the contribution to interstate access.

There is also some confusion as to what the Commission intended for its Part 69 Access Charge allocation procedures related to Account 6540 being included as part of the Big 3 Expenses as defined in Part 69.2(e). As indicated earlier, the Commission determined in RAO letter 27 that the contribution to the Universal Service fund is to be recorded in Account 6540. Part 69 rules require that expenses recorded in Account 6540 be included in the Big 3 expense factor development. Some parties believe it was the

¹ FCC 99-119, *In the Matter of Federal-State Joint Board on Universal Service and Access Charge Reform*, released May 28, 1999. Paragraph 79.

² See Responsible Accounting Officer Letter (RAO) number 27, released June 10, 1998.

³ Code Of Federal Regulation Title 47 Part 69.401(e).

Commission's intent to exclude the amount in Account 6540 from the Big 3 Expenses. GVNW believes the inclusion of this expense in the Big 3 as currently specified in the Part 69 rules is appropriate. There are some administrative costs associated with filing the FCC form 457 and other administrative costs the LECs incur in complying with the funding of the Federal Universal Service Fund. It is appropriate to either directly assign the administrative costs associated with the contribution to the common line element, or to allow the inclusion of the contribution in the Big 3 Expenses to cause a "dragging" of some of the administrative costs into the common line element. There are currently no provisions in the Part 69 rules for directly assigning Corporate Operations expense to individual elements. We believe the method prescribed in Part 69.409 for Corporate Operations (Big 3 Expense Factors) is a more reasonable approach. We ask the Commission to confirm that the Big 3 Expenses as defined in Part 69.2(e) should continue to include Account 6540. If it was truly the Commission's desire to remove Account 6540 from the Part 69 definition of Big 3 Expense, we ask the Commission to take this opportunity to "clean up" the rules and codify this change.

Reduction in Support to Incumbent Related to Competitive Eligible Carriers Support

The application of the Commission's Part 54 rules need to be clarified and the Part 69 Access Charge rules need to be adjusted if the Commission's Part 54 clarification is consistent with some parties reading of the Universal Service Rules. Specifically, the Part 54 Rules provide for the following in 54.307(a)(4):

“A competitive eligible telecommunications carrier that provides the supported services using neither unbundled network elements purchased pursuant to § 51.307 of this chapter nor wholesale service purchased pursuant to § 251(c)(4)

of the Act will receive the full amount of universal service support previously provided to the ILEC for that customer. ***The amount of universal service support provided to such incumbent local exchange carrier shall be reduced by an amount equal to the amount provided to such competitive eligible telecommunications carrier.*** [Emphasis Added]

It is not clear how the Commission intended to reduce the support to the incumbent LEC.

The support for small rural companies is composed primarily of three components: high cost loop support, long term support, and switching support. Following is a brief discussion of each of these components, and the potential problems with the implementation of certain interpretations of the support rules.

High Cost Loop Support

The high cost loop support for small rural local exchange carriers is determined annually through a computation specified in Subpart F of the Part 36 Jurisdictional Separations Rules. If a competitive carrier captures a customer from the incumbent, and the incumbent ceases to serve that customer, the data which is subsequently reported to the National Exchange Carrier Association (NECA) will not include the loop or the costs that have been avoided as a result of not serving that customer. As a result of the loss of the loop and the related avoided costs being included in the "expense adjustment" calculation specified in the Part 36 rules, it is not clear how to reconcile the language in the Part 54 rules indicating the support to ***"incumbent local exchange carrier shall be reduced by an amount equal to the amount provided to such competitive eligible telecommunications carrier"***. It is unlikely the computation following the Part 36 rules will result in an amount exactly equal to the support provided to the competitive eligible telecommunications carrier for a number of reasons. First, the support computation for

the competitive carrier was based on a prior period during which the customer was served by the incumbent. Second, it is unlikely the customer captured by the competitor had costs that were exactly equal to the average costs of the incumbent. Many other changes to the incumbents costs and subscriber loops would make it unlikely that the computation of support would exactly equal the per loop support paid to the competitor. To reconcile this language of reducing the incumbents support by the “amount” of support paid the competitor, some parties could argue that in addition to the impacts related to the loss of the loop and the avoided costs from the support calculation, the full amount of the support paid to the competitor should be applied to reduce the incumbent’s support. GVNW does not believe that enforcing a double impact on the incumbent is consistent with Universal Service goals, nor is it a fair and equitable treatment.

If it was the Commission’s intent to create a double impact on the incumbent LECs for the loss of a customer, there is a problem that needs to be rectified in the Part 69 Rules. Specifically, Part 69.413 provides the following:

Universal service fund expenses

Expenses allocated to the interstate jurisdiction pursuant to §§ 36.631 and 36.641 shall be assigned to the Carrier Common Line Element until March 31, 1989. *Beginning April 1, 1989, such expenses shall be assigned to the Universal Service Fund Element. [Emphasis Added]*

The expense adjustment as computed in Subpart F of the Part 36 separations rules is assigned to the Universal Service Fund Element in the Part 69 Rules. If the Commission determines that the Part 54.307(a)(4) rule requires a reduction in the support paid to the incumbent as a result of the competitive carriers support, the support the incumbent will

receive will not be sufficient to cover the cost assigned to the Universal Service Element, and there currently is no other prescribed recovery mechanism for the cost in the Universal Service element. Absent an adjustment in the rules to permit full recovery, this interpretation would result in a “takings” in violation of the 5th and 14th Amendments to the US Constitution. GVNW has recommended in previous access reform filings that the Universal Service Fund element be removed from the Part 69 rules, and the costs associated with the Universal Service Fund expense adjustment revert to the Common Line element the way it was prior to 1989.

Long Term Support

Long Term Support has been provided to the National Exchange Carrier Association (NECA) Common Line pooling companies as a method of providing explicit support to keep Carrier Common Line per minute rates at a lower level. The primary costs in the common line element are the subscriber costs that are allocated to the interstate jurisdiction through the use of a 25% base allocation factor.

The reduction in support discussed above related to high cost loop support is also a problem for the long term support. If a customer is captured by a competitor, any subscriber costs that are avoided by the incumbent will not be included in the costs to which the 25% allocation factor is applied. Likewise, the minutes of use will not be included in the development of the carrier common line rate filed by the NECA.

It is not logical to impose a secondary impact on NECA pooling companies and their interexchange customers by reducing the long term support payment by an amount equal to the long term support paid to the competitive eligible carrier. These secondary

impacts will only result in a currently explicit support being buried in the implicit support in the carrier common line rates.

Switching Support

Switching support is an external support payment used to reduce the interstate local switching costs in those areas of low density and high costs. Switching costs are allocated to the interstate jurisdiction utilizing the Central Office Equipment (COE) category 3 allocation factor applied to the local switching costs. The COE category 3 factor is developed using the Dial Equipment Minutes (DEM) factor combined with an additive developed from each small LEC's 1996 interstate weighted DEM factor. The category 3 allocation factor assigned to interstate is limited to 85%. Therefore, if the combination of the two components mentioned above exceed 85%, an 85% factor is used rather than the DEM-based computation.

The reduction in support discussed above related to high cost loop support and long term support is also a problem for the switch support. If a customer is captured by a competitor, any switching costs that are avoided by the incumbent will not be included in the costs to which the COE category 3 allocation factor is applied. Likewise, the minutes of use will not be included in the development of the switched access rates filed by the NECA or the individual companies.

It is not logical to impose a secondary impact on incumbent companies and their interexchange customers by reducing the switching support payment by an amount equal to the switching support paid to the competitive eligible carrier. This secondary impact

will only result in a currently explicit support being buried in the interstate local switching rates.

Clarification of “Captured Lines”

The wording in Part 54.307(a) seems to imply that the competitive LEC should get support for both lines it captures from the incumbent, and for new customers served by the competitive carrier as follows:

(a) Calculation of support. A competitive eligible telecommunications carrier shall receive universal service support to the extent that the competitive eligible telecommunications carrier captures an incumbent local exchange carrier's (ILEC) subscriber lines or serves new subscriber lines in the ILEC's service area.

It is not clear from the wording in the rule if the term “captures an incumbent local exchange carriers subscriber lines” refers only to situations where the customer abandons the ILEC, or if it also applies to the customer who continues to receive service from the incumbent, but also subscribes to the competitive carrier’s service.

The reporting methodology in Part 54.307(b) does not appear to distinguish between the lines captured from the incumbent and the new lines served by the competitor. This lack of distinction brings into question whether the reduction in support specified in Part 54.307(a)(4) relates only to the customers who have abandoned the ILEC’s service, or does it apply to all support paid to the competitor from the lines reported in 54.307(b)?

Segregation of Support Payment

While the description above portrays the support as being in three components, it is not clear that the reduction specified in the Part 54.307 rule is clearly separable in its application to the time period the amount will be withheld. If the support payment is going to be less than the support requirement, the rules must clearly define who has the responsibility to determine which of the Part 69 elements will contain the shortfall. Will it be the Pool Administrator (NECA), the Universal Service Fund Administrator (USAC), will it be left to the individual LECs discretion, or will the Commission provide procedures to address the specific assignment or allocation?

The definition of Hold-Harmless should be governed by the Act

Any federal regulatory discussion of whether to structure a “hold-harmless” type arrangement on a state-by-state basis or on a carrier specific basis quickly moves to an inclusive discussion for all carriers, both non-rural and rural. In that light, we offer several observations.

We believe that in order to comport with the tenets of the Act that a hold-harmless provision should be crafted on a carrier-by-carrier basis. In Section 254(b)(5), the Act requires that: “There should be specific, predictable, and sufficient Federal and State mechanisms to preserve and advance universal service.” Within its own discussion of various state-by-state approaches, the Commission tacitly acknowledges the possibility that there would not be sufficient funds allocated in a state to prevent carriers from seeing a reduction in explicit support. This would fail to meet the important 254(b)(5) test as to sufficiency.

While we recognize that the Commission must consider the political realities of seeking an efficient fund size, the obligation remains squarely on the shoulders of the Commission and its partners in each of the states to provide sufficient explicit universal service funding to fulfill the tenets of the Telecommunications Act of 1996.

Use of Universal Service Support Funds

Beginning at paragraph 75, the FNPRM discusses Section 254(e) of the 1996 Act that requires that carriers receiving universal service support “shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”

As the Commission seeks to provide this oversight within the proper context of this “deregulatory, pro-competitive” 1996 Act, we offer an observation. To the extent this Commission intends to rely upon the states for assistance in enforcement, it is crucial to remember several things about the current status of state regulation of communications carriers. While many ILECs remain under the scope of state regulatory authority, the ability for many states to regulate the activities of CLECs is at best problematic. For wireless carriers, effective state enforcement may not be possible, in that in a number of jurisdictions there is no state regulatory authority with respect to wireless carriers. We encourage the Commission to craft policies that are competitively neutral in nature.

Conclusion

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In conclusion, we ask the Commission to change the Part 69 allocation procedure for Account 6540 to assign the contribution to the Universal Service Fund to the Common Line element or other specified Access elements. We ask the commission to confirm that Account 6540 should remain in the definition of Big 3 expense. In addition, we ask the Commission to develop hold harmless procedures that comport with Section 254(b)(5) of the Act. Finally, we ask the Commission to clear up the controversy regarding the implementation of its rules for support portability, and coordinate those rules with the Part 69 Access Charge rules.

Respectfully submitted,

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