DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

RECEIVED
OCT 28 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Columbine Telephone Company, Inc.,)
and Silver Star Telephone Company, Inc.)

CC: 96-45

To: Common Carrier Bureau

REQUEST TO REMOVE UNIVERSAL SERVICE CAP

Columbine Telephone Company, Inc. (Columbine) and Silver Star Telephone Company, Inc. (Silver Star) (collectively, the "Rural LECs"), by their attorney, respectfully request the Common Carrier Bureau (Bureau) to remove the cap on their universal service support and to calculate their universal service support based on the average cost of their lines as of January 1, 2000. In other words, the Rural LECs request the Bureau to grant them the relief that was granted to the petitioners in Petitions for Waiver and Reconsideration Concerning Sections 36.611, Memorandum Opinion and Order on Reconsideration, AAD 93-93, 95-72, 95-30, 97-21, 97-23, 97-117, 98-44, 98-53, DA 99-1845, para. 16, released Sept. 9, 1999 [hereinafter USF Cap Removal Order].

BACKGROUND

Several years ago, U S WEST and GTE sold dozens of their rural exchanges to small local exchange carriers (LECs). In granting the associated study area waivers, the FCC typically imposed caps on the universal service support to be received by the buyers in those transactions. Recently, the Bureau removed

No. of Copies rec'd 2 cop
List ABCDE

the universal service caps for some of the buyers in states such as Idaho, North Dakota, South Dakota and Vermont.[1]

The Rural LECs participated in an acquisition that was contemporaneous with those addressed in the USF Cap Removal Order. In particular, Columbine purchased Idaho exchanges from U S WEST, and shares a study area with Silver Star.[2] In granting the study area waiver to Columbine and Silver Star, the Bureau imposed a cap on their universal service support, and stated that the LECs could return to the Bureau to ask to have the cap raised, as necessary.[3] These waiver conditions are the same as those that were imposed on the petitioners in the USF Cap Removal Order.[4]

The Rural LECs submit this Request to say "Me Too". They request the Bureau to remove the cap on their universal service support as of January 1, 2000 just as the Bureau removed the caps for other LECs involved in acquisitions in the USF Cap Removal Order.

---

[1] USF Cap Removal Order paras. 2-16.

[2] Petition for Waivers Filed by Columbine Telephone Company, Inc., Memorandum Opinion and Order, 12 FCC Rcd. 3622 (1997) [hereinafter Idaho Waiver Order].

[3] Id. para. 14.

[4] E.g., U S WEST Communications, Inc., Copper Valley Telephone, Inc., Midvale Telephone Exchange, and Table Top Telephone Company, Memorandum Opinion and Order, 10 FCC Rcd. 3373 para. 16 (1995).

I. The Universal Service Cap Has Limited the Rural LECs' Support and Should Be Removed

In the USF Cap Removal Order, the Bureau removed the caps imposed on the petitioners, and stated that "the individual caps placed on the carriers' high cost loop support have served their purpose by preventing the carriers from underestimating the effect the transfer of exchanges would have on the high cost loop support mechanism immediately following the transfer."[5] The Bureau concluded that "limiting the petitioners to the high cost loop support estimated in their original petitions, in perpetuity, is not necessary" and that "limiting the duration of these caps is appropriate."[6]

The same is true in the case at hand for the Rural LECs. If the purpose of the universal service cap was to ensure that the Rural LECs comply with the universal service estimates they made before they acquired the exchanges, the cap has served that purpose. There is no reason to continue to impose the cap on the Rural LECs.

In the USF Cap Removal Order, the Bureau noted that the caps were imposed over three years prior to the January 1, 2000 date on which they would be removed.[7] Although the Idaho Waiver Order was adopted in March 1997[8] (i.e., less than three years before

---

[5] USF Cap Removal Order para. 10.

[6] Id. paras. 9-10.

[7] Id. para. 10.

[8] Idaho Waiver Order, 12 FCC Rcd. at 3622.

January 1, 2000), removal of the cap for the Rural LECs is warranted because the cap has served the Bureau's purpose of limiting their universal service support to their pre-acquisition estimates. There is no factual difference relevant to the purposes of the Communications Act of 1934, as amended, that would warrant disparate treatment for these LECs.[9] The only difference is the timing of the Bureau's release of the its orders, which should not affect the ability of the LECs to receive the universal service support they are due.

Other Commission precedent also compels removal of the cap. For example, in granting a study area waiver to another LEC, J.B.N. Telephone Company, Inc. (JBN), the Bureau did not impose a cap in perpetuity. The Bureau imposed a cap for only a three-year period.[10] In doing so, the Bureau cited no facts and otherwise provided no justification for limiting the duration of the cap specifically for JBN. Thus, there is no question that the Bureau also must limit the duration of the cap on the Rural LECs.

It is a fundamental principle of administrative law that agencies must treat similarly situated parties alike.[11] The FCC

---

[9] See Melody Music, Inc. v. FCC, 345 F.2d 730, 733 (D.C. Cir. 1965) (requiring FCC to give reasons relevant to the purposes of the Communications Act).

[10] USF Cap Removal Order para. 10 n.22; Petitions for Waivers Filed by J.B.N. Telephone Company, Inc., Memorandum Opinion and Order, 11 FCC Rcd. 8619 para. 12 (1996).

[11] See McElroy Electronics Corp. v. FCC, 990 F.2d 1351, 1365 (D.C. Cir. 1993); Melody Music, 345 F.2d at 733.

therefore must remove the cap on the Rural LECs' universal service support just as it removed the caps of the petitioners in the USF Cap Removal Order and just as it limited the duration of the universal service cap for JBN.

In the event that the FCC does not issue an order granting the Rural LECs' request until after January 1, 2000, the Rural LECs respectfully request the order to be effective as of January 1, 2000. Otherwise, the Rural LECs and their customers would be harmed by the happenstance of the date on which the order is released. A retroactive effective date would be consistent with other Bureau decisions where the effective dates of orders were made retroactive in order to provide sufficient universal service support to rural LECs, and to otherwise reduce the regulatory burdens on small telephone companies.[12]

II. Removal of the Cap Will Support the Rural LECs' Implementation of Network Upgrades

Removal of the universal service cap for the Rural LECs is in the public interest, as it was for the petitioners in the USF Cap Removal Order. There, the Bureau stated:

We also believe that caps of unlimited duration may

---

[12] See, e.g., Petition for Waiver Filed by Vermont Telephone Company, Order on Reconsideration, 14 FCC Rcd. 826 (1998) (granting Vermont Telephone Company an effective date over five months before the release of the original order in order to provide adequate universal service support via DEM weighting); TelAlaska, Inc., Memorandum Opinion and Order, 13 FCC Rcd. 22,729, 22,731, 22,736 (1998) (changing the universal service support available to TelAlaska retroactive to a date prior to when TelAlaska filed its petition).

> hinder petitioners' incentive and ability to extend service to previously unserved areas, as well as to upgrade service to their existing customers. . . . In addition, we believe that lifting the caps on petitioners' high cost support may increase their incentive and ability to extend service to previously unserved areas and upgrade their networks.[13]

Similarly, in the case at hand, removal of the cap for the Rural LECs would support upgrades to subscriber plant including cable and wire facilities and remote switches in order to handle subscriber growth and to add lines for existing subscribers (such as for fax machines or to access the Internet). In sum, removal of the cap for the Rural LECs will enable them to upgrade and expand their networks to benefit their rural customers.

III. The Bureau Should Remove the Universal Service Cap Without Requiring the Rural LECs to Submit Additional Data

The Rural LECs have not provided data to support this Request because the Bureau did not consider any data in deciding to remove the caps of petitioners in the USF Cap Removal Order. Indeed, information about the universal service support that would be received from January 1, 2000 on was not provided by the petitioners referred to in the USF Cap Removal Order as Albion, CTC, Champlain, Midvale, Northland, Table Top and Tularosa.[14]

---

[13] USF Cap Removal Order paras. 9-10 (footnotes omitted).

[14] Champlain Valley Telecom, Inc., and Northland Telephone Company of Vermont, Petitions for Reconsideration, AAD 95-30 (July 15, 1996) ("Champlain" and "Northland"); Table Top Telephone Company, Petition for Waiver, AAD 97-21 (December 23, 1996) ("Table Top"); and Midvale Telephone Exchange, Petition for Waiver, AAD 97-23 (January 16, 1997) ("Midvale"); BEK Communications I, Inc.; CTC Communications, Inc.; Dakota Central

The Bureau, nevertheless, removed the universal service caps for all of the companies that requested it.[15]

In accordance with McElroy Electronics and Melody Music, the Bureau must treat similarly situated parties alike, and should remove the Rural LECs' universal service cap without requiring them to submit factual information that was not required of the petitioners in the USF Cap Removal Order. Indeed, requiring the Rural LECs to provide the data would place an undue financial burden on the Rural LECs and their customers which would need to bear the expense of developing the necessary data. Requiring the Rural LECs to bear that expense would be contrary to the Commission's oft-stated goal of reducing the regulatory burdens on small LECs.[16] Nevertheless, if the Bureau were to decide that

---

Telecom I, Inc.; Dickey Rural Communications, Inc.; Dickey Rural Telephone Cooperative; Gilby Telephone Company; Griggs County Telephone Company; Inter-Community Telephone Company II, Inc.; Moore & Liberty Telephone Company; Northwest Communications Cooperative; Red River Telecom, Inc.; RTC II. Inc.; Turtle Mountain communications, Inc.; US West Communications, Inc.; United Telephone Mutual Aid Cooperative; West River Communications, Inc.; and York Telephone Company, Expedited Request for Elimination or Modification of Waiver Conditions, AAD 97-117 (December 22, 1997) ("CTC"); Tularosa Basin Telephone Company, Expedited, AAD 98-44 (February 27, 1998) ("Tularosa"); Albion Telephone Company; BPS Telephone Company, Inc.; Cambridge Telephone Co., Inc.; Fremont Telecom; Leaco Rural Telephone Cooperative, Inc.; Midvale Telephone Exchange, Inc.; Rockland Telephone Company, Inc.; South Central Communications, Inc.; Table Top Telephone Co., Inc.; Tularosa Basin Telephone Company, Inc.; United Utilities, Inc.; and West River Telephone Cooperative, Inc., Petition for Expedited Elimination or Modification of Waiver Conditions, AAD 98-53 (April 3, 1998) ("Albion").

[15] USF Cap Removal Order paras. 2-16.

[16] See, e.g., Minburn Telecommunications, Inc., Memorandum Opinion and Order, DA 99-1809, released Sept. 3, 1999 ("the

it needs more information from the Rural LECs, they respectfully ask the Bureau to give them the opportunity to submit the data, and to provide a reasonable amount of time to respond to the data request.

CONCLUSION

For the foregoing reasons, Columbine and Silver Star respectfully request the Bureau to remove the cap on their universal service support and to calculate their universal service support based on the average cost of their lines as of January 1, 2000 -- just as the Bureau did for the petitioners in the USF Cap Removal Order. If the Bureau were to decide that it needs additional information concerning this Request, the Rural LECs respectfully request the Bureau to give them an opportunity to submit the necessary data, as discussed above. Finally, in the event that the FCC does not issue an order granting the Rural LECs' request until after January 1, 2000, the Rural LECs

---

Commission has always been sensitive to the administrative burdens imposed on small telephone companies by the application of its rules"); Telephone Number Portability, Second Memorandum Opinion and Order on Reconsideration, 13 FCC Rcd. 21,204, 21,235 (1998) (noting that the Commission had reduced the burdens on small and rural telephone companies).

respectfully request that any order removing their cap be effective as of January 1, 2000.

Respectfully submitted,

COLUMBINE TELEPHONE COMPANY, INC., AND SILVER STAR TELEPHONE COMPANY, INC.

By Susan J Bahr

Susan J. Bahr
Law Offices of Susan Bahr, PC
P.O. Box 86089
Montgomery Village, MD 20886-6089
Phone: (301) 258-8947
Fax: (301) 208-8682

Their Attorney

October 22, 1999

CERTIFICATE OF SERVICE

I, Susan J. Bahr, Law Offices of Susan Bahr, PC, certify that on this 22nd day of October 1999, I have caused to be sent via the U.S. Postal Service, first class mail, postage prepaid, a copy of the foregoing Request to:

Phil Roselli
U S WEST Communications, Inc.
Suite 5100
1801 California Street
Denver, CO 80202

Kathleen Kaercher
OPASTCO
Suite 700
21 Dupont Circle, NW
Washington, DC 20036

Richard Askoff
National Exchange Carrier
Association, Inc.
100 South Jefferson Road
Whippany, NJ 07981

Lawrence Sarjeant
United States Telephone
Association
1401 H Street, N.W., Suite 600
Washington, DC 20005

Susan J Bahr

Susan J. Bahr