

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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In the Matter of)
)
Federal-State Joint Board on)
Universal Service:)
Promoting Deployment and)
Subscribership in Unserved)
and Underserved Areas, Including)
Tribal and Insular Areas)

CC Docket No. 96-45

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS OF AMSC SUBSIDIARY CORPORATION

AMSC Subsidiary Corporation (“AMSC”) hereby comments on the Commission's Further Notice of Proposed Rulemaking (“*FNPRM*”) in the above-referenced proceeding concerning the promotion of deployment and subscribership of telecommunications services in unserved and underserved areas, including tribal and insular areas. AMSC urges the Commission to modify its rules to support the development of telecommunications infrastructure for rural health care providers in tribal lands, and to clarify that the appropriate “urban rates” for supported Mobile Satellite Services received by rural health care providers are the rates at which urban health care providers receive telecommunications services serving an equivalent health care function. The Commission should also make clear that carriers that charge for local service based on usage can be eligible for high cost area support.

Background

AMSC's MSS System and Service to Tribal Lands. The Commission authorized AMSC in 1989 to construct, launch, and operate the first dedicated U.S. Mobile Satellite System (“MSS”), as the culmination of a licensing process that began with the filing of applications in

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1985.^{1/} The first AMSC satellite was launched in 1995, and AMSC's SKYCELL Satellite Telephone Service began early in 1996. AMSC's satellite communications system covers the entire continental United States, including Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands. AMSC's system provides voice and data communications services to people who live, work, or travel in rural and remote areas of the U.S. unserved by terrestrial technologies. AMSC's MSS system provides seamless coverage throughout these areas, without any natural service area borders or divisions. As the Commission itself has stated repeatedly, the public interest benefits from AMSC's system are quite significant, offering the ability to meet rural public safety needs and provide emergency communications to any area during emergencies and natural disasters.^{2/}

AMSC believes that it and other satellite carriers can make an important contribution in areas, such as tribal regions, which are largely underserved, rural, and economically isolated.^{3/} Satellite systems can uniquely provide seamless coverage in such areas, including those situated in geographically extreme terrain, with minimal need for deployment or buildout of costly facilities and infrastructure.^{4/}

^{1/} Memorandum Opinion, Order and Authorization, 4 FCC Rcd 6041 (1989) (AMSC Authorization Order"); Final Decision on Remand, 7 FCC Rcd 266 (1992); *aff'd sub nom.* Aeronautical Radio, Inc. v. FCC, 983, F.2d 275 (D.C. Cir. 1993).

^{2/} Notice of Proposed Rulemaking, Establishing Rules and Policies for the Use of Spectrum for Mobile Satellite Service in the Upper and Lower L-band, IB Docket No. 96-132, 11 FCC Rcd 11675, paras. 6-7, 16 (June 18, 1996).

^{3/} See Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band, IB Docket No. 99-81, Notice of Proposed Rulemaking, para. 95 (rel. March 25, 1999).

^{4/} In allocating spectrum for AMSC's system, the Commission found that the use of satellite technology offered a unique capability to meet the needs of rural and remote

(continued...)

AMSC is currently working with Native Americans to provide critical emergency telecommunications services to their communities. AMSC is providing dispatch service to police forces within the Navajo Nation, and it has installed public satellite pay phones in isolated communities in Arizona, allowing business owners, residents, and tourists to communicate with urban centers. AMSC is now anxious to expand its service offerings to tribal areas and is in a position to offer immediately critical emergency communications services to Native Americans throughout the United States, without regard to terrain and without the need to deploy costly infrastructure or incur any marginal cost other than the installation of terminals.^{5/}

At present, the primary obstacle to AMSC's provision of MSS in tribal areas is the inability of Native American tribal authorities and residents to afford AMSC's equipment and services. Accordingly, AMSC intends to seek Universal Service Funding ("USF") support for the emergency services it hopes to provide in these areas. To expedite its receipt of USF support for these critical emergency communications services, AMSC on November 24, 1999 filed an Emergency Petition requesting that the Commission clarify or waive certain of its USF rules. Specifically, AMSC asked the Commission either to issue a preliminary order that the USF rural health care program will support the leasing of AMSC's MSS terminals or, to waive

^{4/} (...continued)
areas for emergency and public safety communications. Notice of Proposed Rulemaking, Establishing Rules and Policies for the Use of Spectrum for Mobile Satellite Service in the Upper and Lower L-band, IB Docket No. 96-132, 11 FCC Rcd 11675, at paras. 21-23 (1996).

^{5/} AMSC seeks to work with Native American tribes, rural public safety organizations, and the Rural Health Care Division of the Universal Service Administrative Company to deliver a satellite-based emergency communications service that is available immediately.

the rules that currently preclude such support. In addition, AMSC's petition asked the Commission to clarify how the "urban rate" would be determined in calculating the discount applicable to the provision of emergency communications service on Native American lands.

The Commission's FNPRM. In its FNPRM, the Commission addresses a variety of issues that may limit telecommunications deployment and subscribership in the unserved or underserved regions of the United States, including tribal lands and insular areas. The Commission seeks comment on, among other things, possible impediments to increased deployment and penetration in unserved, tribal, and insular areas. With respect to tribal lands, the Commission seeks comment on issues that may be affecting the availability of universal service in tribal areas, including those relating to jurisdiction, eligibility criteria for telecommunications carriers, and potential obstacles to the provision of satellite and wireless services in these areas.

Discussion

AMSC believes that certain modifications to and clarifications of the Commission's current universal service framework would likely encourage the provision of telecommunications services in tribal areas by satellite and other telecommunications service providers. In particular, AMSC urges the Commission to (i) support the development of telecommunications infrastructure for rural health care providers in tribal lands; (ii) clarify how support for rural health care providers' purchase of emergency-911 MSS would be calculated; (iii) establish that it will determine whether MSS providers and other satellite operators have met the Commission's USF eligibility criteria in a given tribal area; and (iv) make clear that carriers that charge for local service based on usage can be eligible for high cost area support.

I. Rural Health Care Program

Nowhere is the shortage of crucial telecommunications services on tribal lands more evident than in the case of emergency and public safety communications. The lack of access to these communications services by Native Americans puts their very lives at risk. AMSC believes that it and other MSS providers can play an important role in filling this critical need, if they are able to receive sufficient support from the Commission's USF rural health care program ("RHCP"). To achieve this result, the Commission must take the following actions with respect to the RHCP.

A. Telecommunications Infrastructure

In the *FNPRM*, the Commission asks whether and to what extent improvements to the telecommunications networks required to meet the telecommunications needs of rural health care providers should be supported by the federal universal service mechanism.^{6/} The shortage of crucial emergency services in tribal lands appears in large part due to a lack of sufficient telecommunications equipment, and AMSC believes that the Commission should amend its RHCP framework to allow support for tribal health care providers' purchase of MSS terminals and other equipment that could be used to receive such services on a cost-effective basis. Without such support, tribal authorities are unlikely to be able to implement rapid, efficient solutions -- including AMSC's immediately-available emergency communications system -- to these crucial public safety concerns.

^{6/} See Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, Further Notice of Proposed Rulemaking, 64 Fed. Reg. 52738 (1999), CC Docket No. 96-45, paras. 134-139 (rel. Sept. 3, 1999).

B. Urban/Rural Rate

Under the RHCP program, eligible health care providers can receive supported telecommunications services at rates that are “reasonably comparable to rates charged for similar services in urban areas in that state” (the “urban rate”). Accordingly, for purposes of providing emergency services, carriers seeking USF support under the RHCP mechanism must determine both a rate for a “similar” service and identify the applicable urban area, which is the nearest city of 50,000 or more in the state.

The Commission should now clarify the rates at which rural health care providers are entitled to receive MSS that is supportable under the RHCP. AMSC believes that the appropriate “urban rates” for such services are the rates at which health care providers in urban areas receive telecommunications services that serve an equivalent health care function. With this clarification, rural health care providers (such as those in tribal areas) would be entitled to obtain emergency, 911-type services at zero cost, since in urban areas, call boxes allow immediate access to police, fire, and medical services at the push of a button, and payphones permit free calls to be made to emergency 911 service. In this scenario, the rural health care provider would receive a subsidy covering the full per minute charge for a call over AMSC’s MSS system.

If the Commission were to conclude instead that the relevant “similar service” for AMSC and other MSS providers is always **urban MSS**, eligible health care providers will never receive a subsidy when using an MSS provider’s service, since the cost of MSS is the same in rural and urban areas. Users of terrestrial wireless systems, meanwhile, would receive significant subsidies, reflecting the higher costs of such systems in rural areas. As a result, these operators would gain a substantial competitive advantage, making immaterial the relative cost-effectiveness of MSS systems.

AMSC also requests clarification as to the definition of “state” as applied to a Native American land, which most often encompasses one or more states, when determining the applicable urban rate. In the case of emergency, 911-type services, where the urban rate should be zero throughout the United States, AMSC should not be required to identify an “urban area.”

II. High Cost Area Program

The Commission can also address the shortage of telecommunications services in tribal lands through its high cost area support program. In order for this program to reach its full potential, however, the Commission must move forward in a truly technology-neutral fashion and permit satellite and wireless providers to receive high cost area support for their services, which, as stated above, represent the most cost-efficient means of alleviating the telecommunications shortage in such remote areas. Accordingly, the Commission should take the steps described below.

A. Jurisdiction Over Carrier Eligibility

Under Section 214(e)(6) of the Communications Act, if a carrier provides service that is not subject to state jurisdiction, the Commission has authority to determine whether that carrier can become eligible for high cost area support. The Commission now seeks comment on the appropriate division of jurisdictional responsibility, between itself, the states, and tribal authorities, in the determination of USF carrier eligibility in tribal lands.

AMSC believes that the Commission pursuant to Section 214(e)(6) should establish that it will determine whether MSS providers and other satellite operators have met the Commission’s USF eligibility criteria in a given tribal area. It is the Commission, not the states, that plays the primary role in the regulation of U.S. satellite carriers, and the Commission that should have responsibility for determining how significant a role these

satellite providers should have in the federally driven effort to improve the quality and availability of crucial telecommunications services in Native American lands.

B. Eligibility for USF Support - Local Usage Requirement

In a separate rulemaking in the ongoing USF proceeding, the Commission is currently considering whether carriers will have to provide a minimum amount of local usage to customers in order to gain eligibility for high cost area support.^{7/} Satellite and wireless carriers have higher usage-based costs than typical wireline providers, and, as a result, these providers typically charge for service based on usage, without providing an unlimited amount of local service for a set monthly fee. A decision to impose a local usage requirement would thereby distort competition in tribal lands and other remote areas in favor of wireline carriers and deter the provision satellite and wireless services in these areas. In order to avoid this outcome, the Commission should reconfirm the neutrality of its universal service framework by explicitly establishing that carriers that utilize usage-based, rather than flat-rate, billing for local traffic can become eligible for federal universal support.

If the Commission decides to impose a local usage requirement, it should at least be flexible in implementing this requirement.^{8/} Rather than requiring carriers to provide an

^{7/} See Federal-State Joint Board on Universal Service, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-45 (October 26, 1998).

^{8/} As described above, AMSC's usage-based costs are unrelated to the distance covered by a call transmitted over its seamless national system, and disparate treatment of some inappropriately defined category of "local" MSS traffic would be an unsound approach to regulating AMSC's MSS system. If the Commission decides nonetheless to impose a local usage requirement on all CMRS providers, including MSS operators, the Commission should at least be flexible in implementing this requirement, and permit MSS providers to define what constitutes a "local" call over their systems. Such flexibility would be consistent with the universal service principles of competitive and technological neutrality.

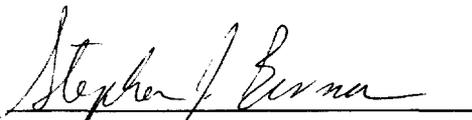
unlimited amount of local service for a flat fee, the Commission should permit carriers to simply offer a minimum number of local calling minutes or local calls at a discounted rate that it deems affordable. Under this policy, the number of minutes or calls required by the Commission should be minimal, in order to avoid creating a barrier to entry by satellite and wireless providers in remote tribal areas. Any local usage requirement should be consistent with the Commission's universal service principle of competitive and technological neutrality.

Conclusion

AMSC supports the Commission's effort to find a solution to the shortage of critical telecommunications services in Native American tribal lands, and, for the foregoing reasons, AMSC urges the Commission to modify and clarify its USF rules in the manner described in these comments.

Respectfully submitted,

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