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

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| In the Matter of | ) | |
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| Federal-State Joint Board on Universal Service | ) | CC Docket No. 96-45 |
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# PETITION FOR RECONSIDERATION AND/OR CLARIFICATION OF THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

The Personal Communications Industry Association ("PCIA")[1] hereby requests that the Commission reconsider and/or clarify certain aspects of its decision in the Ninth Report & Order and Eighteenth Order on Reconsideration in the above-captioned docket concerning the implementation of high-cost universal service support for non-rural carriers.[2] Reconsideration and/or clarification are necessary to enable wireless carriers to obtain high-cost support once they become eligible telecommunications carriers (ETCs), and to determine whether high-cost support will be available in areas that wireless carriers may wish to serve.

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[1] PCIA is an international trade association established to represent the interests of both the commercial and private mobile radio service communications industries and the fixed broadband wireless industry. PCIA's Federation of Councils includes: the Paging and Messaging Alliance, the PCS Alliance, the Site Owners and Managers Alliance, the Private Systems Users Alliance, the Mobile Wireless Communications Alliance, and the Wireless Broadband Alliance. As the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 MHz and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of FCC licensees.

[2] *In the Matter of Federal-State Joint Board on Universal Service* (Ninth Report and Order and Eighteenth Order on Reconsideration), CC Docket No. 96-45 (rel. Oct. 21, 1999), 64 Fed. Reg. 67416 (Dec. 1, 1999) ("*Order*").

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In the *Order*, the Commission states that wireless carriers are eligible for high cost support to the extent that they are ETCs.[3] However, the *Order* and rules concerning the implementation of high-cost support are written in the context of wireline carriers and it is not clear how some of these provisions would be applied to wireless carriers. Accordingly, reconsideration and/or clarification is necessary with respect to the issues detailed below.

First, PCIA asks the Commission to reconsider the requirement, with respect to wireless carriers, that states account for the receipt of federal high-cost support and certify that the support is being applied in a manner consistent with Section 254 of the Act.[4] In the performance of this duty, the Commission indicates that states could adjust intrastate rates or otherwise direct carriers to use the federal support to replace implicit intrastate universal service support to high-cost rural areas. The Commission further indicates that states "that lack direct authority over rates in their jurisdictions" would still be able to make this certification (and revoke it, in the event a state determines that a carrier has not complied with Section 254(e)).[5]

Pursuant to Section 332(c)(3) of the Act, states have no authority to regulate rates of wireless carriers. It is directly contrary to this section, therefore, for the Commission to attempt to give states the authority to review and approve wireless carrier rates in the name of universal service. Rather, PCIA urges the Commission to reconsider this aspect

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[3] *Order* at ¶¶ 89-90.

[4] This requirement is a result of the Commission's decision to provide federal universal service high-cost support in the form of carrier revenue, "to be accounted for by the states in their ratemaking process." *See Order* at ¶ 95. The Commission concluded that this is an appropriate mechanism by which to ensure that non-rural carriers comply with Section 254(e), because states have authority to regulate the use of such support through their jurisdiction over wireline carriers' intrastate rates. However, this is not the case with wireless carriers.

of its *Order* and allow wireless carriers to self-certify that they will use federal high-cost support in accordance with the statute. In addition, any certification or requirements should only be imposed at the federal level to ensure uniformity in the application of such requirements. Under a system of state certification, wireless carriers, whose service areas often cross state boundaries, would face multiple reviews by different states of the same practices and rates and states could potentially reach different conclusions as to whether those practices and rates are in compliance with Section 254.

At a minimum, the Commission should clarify that the states cannot adjust intrastate rates for wireless carriers. In addition, since states cannot rate regulate wireless carriers, there can be no "implicit intrastate universal service support to high-cost areas" in wireless carrier rates. The Commission also should clarify that this language in the *Order* was not intended to apply to wireless carriers.

Second, the rules provide that competitive ETCs shall receive universal service support to the extent that the competitive ETC captures the subscriber lines of an incumbent local exchange carrier (ILEC) or serves new subscriber lines in the ILEC's service area. Wireless carriers, however, do not have subscriber "lines" in the traditional sense of the word and their service areas do not correspond to ILEC service areas. Accordingly, PCIA requests clarification of what it means, in the context of a wireless carrier, to "capture the subscriber lines of an ILEC or to serve new subscriber lines in the ILEC's service area."

Where an existing wireline customer discontinues all wireline service in favor of wireless service, it is clear that the wireless carrier has "captured" the wireline customer.

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[5] *See Order* at ¶ 97. Specifically, the Commission suggests that in those states, carriers may formulate plans to ensure compliance with Section 254(e), and present those plans to the state. *Id.*

A customer, however, could use a wireless service as a replacement or alternative to purchasing an additional line, which also would amount to the ETC "capturing" the subscriber lines of an ILEC or serving a new subscriber line. The Commission should therefore clarify (after soliciting public comment on this issue) how to define captured and new subscriber "lines" in the wireless context.

Third, the Commission must clarify how it will be determined whether a wireless carrier is providing service to a customer within a particular ILEC's service area and wire center. As discussed above, an ETC can obtain high-cost support if it captures the subscriber lines of an ILEC or serves new subscriber lines in the ILEC's service area. In addition, the rules provide that high cost support for non-rural carriers will be targeted to ILEC wire centers. Wireless service, however, is not provided based on ILEC service areas and wire centers. Therefore, it is not clear how to determine which ILEC wire center would be used to determine the amount of support for any particular wireless customer.

Although a wireless carrier's service area does not conform to ILEC service areas or wire centers, the address for a wireless customer can be associated with a wire center, like the address of a wireline customer. In fact, in the context of wireless service to a non-prepay customer, the customer's address is the most accurate surrogate for the ILEC wire center. Accordingly, the amount of support provided for non-prepay wireless customers should be based on the wire center associated with the customer's address.[6] The customer's phone number is not an appropriate surrogate because wireless carriers typically obtain NXXs in wire centers located closest to a carrier's tandem, which tend to

[6] The wireless carrier does not necessarily know the address of a prepay customers and, therefore, it may not be possible to determine support for these customers based on address.

be more densely-populated wire centers, even though the wireless carrier may actually use those NXXs to serve higher-cost outlying areas.

In the context of prepay service, this issue is further complicated by the fact that prepay customers' phone numbers do not always have verifiable addresses, and a prepay customer's phone number is sometimes the only known association with the customer. Furthermore, the only geographic association that a prepay customer's phone number has is with the wire center within which its NXX was issued. As explained above, however, that wire center may not correspond to the geographic area in which the phone is being used and, just as with wireline carriers, the wireless carriers incur substantially higher costs to provide service to rural areas. PCIA therefore urges the Commission to clarify how to determine whether a wireless carrier is providing service to a customer within a particular ILEC's service area and wire center.

Finally, the rules require a competitive ETC to report the number of working loops it serves in the service area of a non-rural telephone company and the number of working loops it serves in each wire center in the service area to receive non-rural support. "Working loops" are defined as "the number of working Exchange Line C&WF loops used jointly for exchange and message telecommunications service, including C&WF subscriber lines associated with pay telephones in C&WF Category 1, but excluding WATS closed end access and TWX service."[7] PCIA requests that the Commission clarify or, as necessary, reconsider this requirement with respect to wireless carriers and find that a "working loop" for a wireless carrier is designated by a working phone number.

Based on the foregoing, PCIA respectfully requests that the Commission reconsider and/or clarify its *Order* as discussed herein.

Respectfully submitted,

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[7] 47 C.F.R. § 36.611(h).