

JUL -5 2001

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. <u>96-45</u>
Universal Service	)	
	)	
Multi-Association Group (MAG) Plan	)	CC Docket No. 00-256
for Regulation of Interstate Services	)	
of Non-Price Cap Incumbent Local	)	
Exchange Carriers and	)	
Interexchange Carriers	)	

**PETITION FOR RECONSIDERATION  
OF THE COMPETITIVE UNIVERSAL SERVICE COALITION**

**COMPETITIVE UNIVERSAL  
SERVICE COALITION**

Association for Local Telecommunications Services  
 Competitive Telecommunications Association  
 Dobson Communications Corporation  
 Nucentrix Broadband Networks, Inc.  
 Personal Communications Industry Association  
 Smith Bagley, Inc.  
 U.S. Cellular Corporation  
 Verizon Wireless  
 VoiceStream Wireless Corporation  
 Western Wireless Corporation  
 Wireless Communications Association

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## TABLE OF CONTENTS

INTRODUCTION AND SUMMARY.....	2
I. As the RTF Recommended, The Commission Should Improve the Portability and Transparency of Rural Universal Service Funding.....	3
II. The Commission Should Adopt More Pro-Competitive Rules on Geographic Disaggregation of Rural Study Areas.....	7
CONCLUSION.....	13

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**PETITION FOR RECONSIDERATION  
OF THE COMPETITIVE UNIVERSAL SERVICE COALITION**

The Competitive Universal Service Coalition, (“CUSC”), 1/ by its attorneys, respectfully submits this petition for reconsideration of the Commission’s Fourteenth Report & Order (“*Order*”) 2/ relating to the recommendations of the Rural Task Force (“RTF”) in the above-captioned proceedings.

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1/ The Competitive Universal Service Coalition includes the following companies and associations: Association for Local Telecommunications Services; Competitive Telecommunications Association; Dobson Communications Corporation; Nucentrix Broadband Networks, Inc., Personal Communications Industry Association; Smith Bagley, Inc.; U.S. Cellular Corporation; Verizon Wireless; VoiceStream Wireless Corporation; Western Wireless Corporation; and the Wireless Communications Association.

2/ *Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report & Order and Twenty-Second Order on Reconsideration in CC Docket No. 96-45 and Report & Order in CC Docket No. 00-256, FCC 01-157 (rel. May 23, 2001) (“*Order*”).

## INTRODUCTION AND SUMMARY

CUSC urges the Commission to reconsider the *Order* in two principal respects. First, the *Order* failed to address one of the RTF's most important recommendations: to improve the portability of rural universal service support and to make the universal service system more transparent to facilitate competitive entry. The Commission should remedy this most unfortunate oversight, as discussed below.

Second, the Commission should reconsider its decision to adopt the RTF's recommendations regarding geographic disaggregation and targeting of high-cost universal service support without modifying those rules to be more pro-competitive. As they currently stand, these rules create too great an opportunity for an incumbent carrier to manipulate the disaggregation and targeting of support in an anti-competitive manner.

CUSC urges the Commission to reconsider its decision and establish study area disaggregation rules that are structured to promote, not impede, fair competition. Given the impending deadlines for rural incumbent local exchange carriers to select one of the "options" provided by the *Order*, it is critically important that reconsideration of these rules proceed in a timely and expeditious manner.

**I. AS THE RTF RECOMMENDED, THE COMMISSION SHOULD IMPROVE THE PORTABILITY AND TRANSPARENCY OF RURAL UNIVERSAL SERVICE FUNDING**

Among the most important RTF recommendations were that the Commission should adopt additional measures to make the funding structure more competitively neutral, portable, and transparent. Specifically, the RTF recommended that the Commission:

- Continue to adhere to the principle that all universal service support be portable among all eligible telecommunications carriers (“ETCs”), including competitive ETCs as well as incumbent local exchange carriers (“ILECs”); 3/
- Reduce the time lag between the dates that competitive ETCs report their lines and receive support with respect to those lines; 4/
- Establish a more competitively neutral system of reporting revenue and receiving support that would treat incumbent carriers and competitive entrants equally; 5/ and
- Ensure that the per-line amount of funding available in each geographic area is readily available and easily identifiable. 6/

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3/ *Rural Task Force Recommendation to the Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, rel. Sept. 29, 2000 (“RTF Recommendation”) at 16, 37-39; *Mission Statement, Objectives and Principles for Developing a Recommendation*, Rural Task Force Principles for Developing Recommendations (Dec. 12, 1998) at [www.wutc.wa.gov/rtf](http://www.wutc.wa.gov/rtf).

4/ RTF Recommendation at 38.

5/ *Id.* at 37-38.

6/ *Id.*; *Competition and Universal Service*, Rural Task Force White Paper 5, at 18 (rel. Sept. 2000), available at <http://www.wutc.wa.gov/rtf>.

While the *Order* addressed some of these recommendations, <sup>7/</sup> it overlooked many others, <sup>8/</sup> and failed to respond to the comments of CUSC <sup>9/</sup> and other parties. For example, it did nothing to cure the current lack of transparency in the system, leaving in place a system under which it is extremely difficult to obtain information on how much funding is available per line, per month, in any specific geographic location. Nor did the *Order* do anything to establish a competitively neutral system of reporting and disbursing revenue, leaving in place divergent rules that fail to ensure equal treatment of all ETCs.

These oversights could harm the public interest. While competition in the provision of universal service will be extremely beneficial to consumers in rural areas, as the Commission has repeatedly

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<sup>7/</sup> E.g., *Order*, ¶¶ 134-35.

<sup>8/</sup> See, e.g., *Grand Canyon Air Tour Coalition v. FAA*, 154 F.3d 455, 468 (D.C. Cir. 1998) (“agency must . . . demonstrate the rationality of its decisionmaking process by responding to those comments that are relevant and significant.”); *Professional Pilots Federation v. FAA*, 118 F.3d 758, 763 (D.C. Cir. 1997); *Simpson v. Young*, 854 F.2d 1429, 1434 (D.C. Cir. 1988); *ACLU v. FCC*, 823 F.2d 1554, 1581 (D.C. Cir. 1987).

<sup>9/</sup> See CUSC Reply Comments on RTF Recommendation at 13-14 (discussing need for transparency in ETC revenue reporting and receipt of support); see also Letter from David L. Sieradzki, Counsel for CUSC, to Magalie Roman Salas, Secretary, Federal Communications Commission, April 11, 2001 (transmitting proposed draft rules implementing RTF recommendations regarding, *inter alia*, portability and transparency issues related to competitive ETCs).

recognized, 10/ such competition cannot flourish without policy measures to ensure a universal service funding system that is open to competitive entrants. 11/

On reconsideration, the Commission should remedy the *Order's* failure to address many of the RTF's recommendations regarding competitive neutrality. In particular, CUSC submitted a number of specific suggestions for how to implement the RTF's more general recommendations. Thus, on reconsideration, the Commission should adopt rules providing for:

Greater transparency. CUSC urges the Commission to require USAC to clearly publish and make prominently available on its website, the

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10/ *Order*, ¶ 10 (“the flexible plan for disaggregating and targeting support adopted in this *Order* will facilitate competitive entry into high-cost areas, bringing the benefits of competition to consumers in rural areas”); *Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier In the State of Wyoming*, CC Docket No. 96-45, Memorandum Opinion and Order, 16 FCC Rcd 48, 55, ¶ 17 (CCB 2000) (“*Western Wireless Wyoming ETC Designation*”) (“Designation of competitive ETCs promotes competition and benefits consumers in rural and high-cost areas by increasing customer choice, innovative services, and new technologies”); *cf.*, *Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket No. 96-45, Declaratory Ruling, 15 FCC Rcd 15168, 15181, ¶ 31 (2000) (“*ETC Declaratory Ruling*”) (“competitive neutrality will promote emerging technologies that, over time, may provide competitive alternatives in rural, insular, and high cost areas and thereby benefit rural consumers”) (quoting *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8803, ¶ 50 (1997)).

11/ *ETC Declaratory Ruling*, 15 FCC Rcd at 15173, ¶ 12 (“A new entrant faces a substantial barrier to entry if the [ILEC] is receiving universal service support that is not available to the new entrant for serving customers in high-cost areas.”).

following information: (i) geographic boundaries of wire centers, study areas, 12/ and sub-zones within study areas, and (ii) the total amount of funding available in each specific geographic location. The Commission should also require completion of this task prior to allowing any disbursement of universal service funding. By establishing this requirement and ordering its immediate implementation, the Commission will allow *all* ETCs – not just ILECs – to have full information in a timely manner.

Equality in reporting requirements. CUSC urges the Commission to require that substantive universal service funding information be reported within identical time periods for both competitive ETCs and rural ILECs, just as they are for competitive ETCs and non-rural ILECs. CUSC submitted draft rules that would have achieved this result; the Commission should adopt rules to achieve such a result.

Avoid state certification requirements for competitive ETCs. The *Order* adopted a rule that imposes additional barriers to competitive ETCs' ability to obtain funding – a requirement to obtain certification from state commissions that the carrier is complying with Section 254(e) of the Act, even though competitive ETCs are not subject to comprehensive rate regulation by state commissions. On reconsideration, the Commission should

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12/ Similar geographic-based information is compiled for numerous purposes in the Commission's Universal Licensing System and other databases, and CUSC believes that such capabilities can be readily applied in the universal service context.

undo this unnecessary requirement. Instead, competitive ETCs should be permitted to self-certify their own compliance with section 254(e). Self-certification should not be limited to the narrow class of carriers that are not subject to state jurisdiction pursuant to section 214(e)(6), but should extend to all competitive ETCs. Further, CUSC would not object to also allowing ILECs to self-certify their compliance with section 254(e) as well.

By providing greater transparency of funding information, establishing equal reporting requirements for all types of carriers, and eliminating unnecessary state certification requirements for competitive ETCs, the Commission will make the federal universal service system more consistent with the emergence and growth of competition.

## **II. THE COMMISSION SHOULD ADOPT MORE PRO-COMPETITIVE RULES ON GEOGRAPHIC DISAGGREGATION OF RURAL STUDY AREAS**

The RTF appropriately made substantial efforts regarding study area disaggregation. CUSC applauds these efforts, as we generally support efficient and cost-based disaggregation of rural study areas. Unfortunately, however, the RTF did not adequately appreciate the competitive significance of the way in which disaggregation is structured. Rather than remedying the competitive defects of the original proposal, the *Order* adopted it with few modifications. On reconsideration, the Commission should ensure that geographic disaggregation proceeds in a manner that is consistent with competition.

The RTF correctly recognized the competitive significance of geographic disaggregation of rural ILEC study areas. If a rural ILEC's study area is unduly large and federal universal service support is averaged throughout the study area, three undesirable consequences may occur. First, prospective competitors may be unable to enter certain markets within the study area because they are capable of serving part, but not all, of the study area. Second, per-line funding in the higher-than-average portion of the study area may be inadequate, leading prospective competitive entrants to focus their efforts elsewhere and to try to avoid serving that under-funded area. Third, per-line funding in the lower-than-average portion of the study area may be excessive, and may over-stimulate competitive entry.

These three problems are closely linked, but unfortunately the RTF's proposal addressed only the last of the three issues and ignored the other two. As proposed by the RTF and adopted in the *Order*, geographic disaggregation is an effective tool for rural ILECs to deter competitive entry in relatively low-cost portions of their study areas – or for that matter, anywhere else in their study areas. This is possible because rural ILECs are given virtually unfettered ability to redraw study area boundary lines and to decide how much funding should be available in each portion of a study area. At the same time, competitive ETCs have essentially no rights to initiate disaggregation or to have any input regarding the geographic boundaries or amounts of funding in sub-study areas.

The *Order* does little or nothing to ensure that competitive ETCs have a reasonable opportunity to serve consumers in the highest-cost areas of rural ILECs' study areas, where the greatest amount of funding ought to be available. Instead, it gives rural ILECs latitude to direct excessive funds *not* to the geographic areas that need funding the most, but to the areas where competitive entry is least likely, and to direct inadequate amounts of funds to areas where competition is more likely.

More significantly, the *Order* does nothing to remedy the barrier to entry than can be imposed by excessively large rural study areas.

Disaggregation of study areas for funding purposes should have been aligned with disaggregation for purposes of designating competitive entrants as ETCs. Thus, where geographic boundaries are drawn to provide different amounts of funds per-line in separate portions of a study area ("funding disaggregation"), the study area has effectively been separated. In such a situation, competitive entrants should be entitled to seek ETC status in one or more, but not necessarily all, of the separate portions of the study area.

The Commission has ample evidence before it concerning these and other related problems. Since the time the RTF met and issued its recommendations, a number of proceedings should have made it clear that study area boundaries are highly significant and often problematic for

prospective competitive entrants. <sup>13/</sup> The matters raised in these proceedings demonstrate the lack of transparency regarding existing boundaries (*i.e.*, competitive entrants have no way of knowing the current boundaries of study areas). Moreover, these proceedings have made it clear that, without properly structured geographic disaggregation, study area boundaries can be a barrier to entry, making competition difficult or impossible in certain rural areas. This is clearly not in the interest of rural consumers.

Thus, on reconsideration the Commission should make certain pro-competitive modifications to the RTF's proposals. First, as discussed above, the Commission's rules should provide that whenever a rural ILEC study area is disaggregated for purposes of different amounts of funding in separate sub-zones, the study area should automatically be disaggregated for purposes of ETC designation as well. <sup>14/</sup> The Commission only went as far as

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<sup>13/</sup> See, *e.g.*, *Western Wireless Wyoming ETC Designation*, 16 FCC Rcd at 57-59, ¶¶ 23-24; *Western Wireless Reply Comments in Western Wireless Corporation Petition For Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota*, CC Docket No. 96-45, filed March 26, 2001, at 33-41; *Smith Bagley, Inc., Petitions to Redefine the Service Area of Table Top Telephone Company on Tribal Lands within the State of Arizona*, CC Docket No. 96-45, Public Notice, DA 01-814 (rel. Apr. 2, 2001); *Smith Bagley, Inc., Petitions for Agreement to Redefine the Service Areas of Navajo Communications Company, Citizens Communications Company of the White Mountains, and Century Tel of the Southwest, Inc., on Tribal Lands within the State of Arizona*, CC Docket No. 96-45, Public Notice, DA 01-409 (rel. Feb. 15, 2001).

<sup>14/</sup> The FCC should also make it clear that once disaggregation occurs, a competitive carrier's boundaries need not be congruent with the ILEC's, provided the competitive carrier, (a) proposes to serve all of the area in a wire center for which it is licensed, or (b) the state does not find the competitive

to indicate that funding disaggregation should be “considered” or “taken into account” in the context of disaggregation for ETC designation purposes. <sup>15/</sup> It should have required parallel funding disaggregation and entry disaggregation.

Second, the Commission's rules enable rural ILECs to select from a range of options regarding disaggregation. This policy is blatantly discriminatory and violates the principle of competitive neutrality. Instead, the Commission should allow competitive ETCs to have the same right as ILECs to initiate study area disaggregation. Moreover, ILECs should not be allowed to “opt out” of disaggregation (“Path 1”) if any other party objects. To the contrary, the Commission should issue an order mandating wire center disaggregation no later than six months after a prospective competitor applies for it.

Third, while CUSC does not object to a streamlined, carrier-initiated mode of disaggregation (“Path 3”), the Commission must adopt strict and specific rules governing how the amounts of funding in each sub-zone are to be calculated in order to ensure that the relative amounts are cost-

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carrier to have engaged in cream skimming. ILECs should not be permitted to oppose an ETC application simply because company boundaries are not congruent.

<sup>15/</sup> *Order*, ¶ 164.

justified. <sup>16/</sup> Moreover, because cost information disaggregated below the wire center level is not generally available to anyone other than ILECs, the self-certified path for disaggregation must not be available for plans that propose to split up wire centers. Rather, the Commission's rules should ensure that proponents submit such plans for approval by a state public utility commission and/or the Commission itself prior to implementation.

Finally, CUSC strongly urges the Commission to complete its reconsideration of the geographic disaggregation rules in an expeditious and timely manner. The rural ILECs have nine months from the effective date of the *Order* to select one of the disaggregation “paths” outlined in the *Order* and the resulting rules. As a result, CUSC urges the Commission to complete its reconsideration of the instant proceeding and make modifications to its rules *prior to and well in advance of this deadline*. Doing so would provide certainty and clarity for all carriers, whether they currently receive universal service support, plan to, or are considering the matter.

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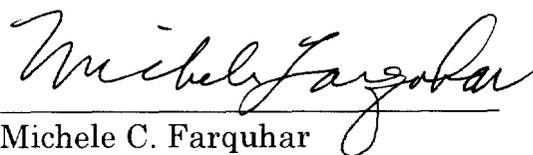
<sup>16/</sup> Cf., Order, ¶¶ 151-54; 47 C.F.R. § 54.315(e) (adopted in *Order* at Appendix A).

## CONCLUSION

In conclusion, the Commission should reconsider the *Order* as outlined above. The Commission should modify its rules to ensure that study area disaggregation and other aspects of the rural universal service rules are structured fairly and properly to promote, not hinder, fair competition among all telecommunications carriers.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Venita Otey, hereby certify that on this 5th day of July, 2001, a copy of the foregoing Petition for Reconsideration were delivered by hand to the following parties:

  
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