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VIA FEDERAL EXPRESS

Ms. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20024

Re: CC Docket No. 96-45

Dear Ms. Salas:

Enclosed are an original and five copies of the Comments of the Nebraska Rural Independent Companies on the Comments of The Federal-State Joint Board on Universal Service for filing in the above-referenced docket. Please return a file-stamped copy to the undersigned in the self-addressed, stamped envelope.

Very truly yours,

Craig W. Strong

Craig W. Strong

CWS\nm
Enclosures
cc: Ms. Sue Vanicek (w/ Encl.)
Ms. Sheryl Todd (w/ Encl.)
Paul M. Schudel, Esq. (w/ Encl.)

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	

Comments of the
Nebraska Rural Independent Companies

Introduction

The Nebraska Rural Independent Companies (the "Companies"),[1] by their attorneys, respectfully submit these comments pursuant to a Public Notice released August 21, 2001,[2] whereby the Federal-State Joint Board on Universal Service (the "Joint Board") invited comment on its review of the definition of universal service.

The Companies serve rural, high-cost areas in Nebraska and have a very real interest in the definition of services deemed eligible for universal service support as the Companies derive a substantial portion of their total revenues from such support. The Companies do not take issue with the current listing of core services eligible for support, but advocate a more pro-consumer definition of some of those services – namely equal access to interexchange carriers and unlimited local usage in the definition of single-party service. The changes proposed by the Companies to the list of services eligible for support would provide benefits for consumers, but

[1] Companies submitting these collective comments include: Arlington Telephone Company, The Blair Telephone Company, Cambridge Telephone Company, Clarks Telecommunications Co., Consolidated Telephone Company, Consolidated Telco, Inc., Curtis Telephone Co., Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Company, Inc., Hooper Telephone Company, K&M Telephone Company, Inc., NebCom, Inc., Nebraska Central Telephone Company, Northeast Nebraska Telephone Co., Pierce Telephone Co., Rock County Telephone Company, Southeast Nebraska Telephone Co., Stanton Telephone Co., Inc. and Three River Telco.

[2] *See Federal-State Joint Board on Universal Service Seeks Comment on Review of the Definition of Universal Service*, CC Docket No. 96-45, Public Notice, FCC 01-J-1 (rel. August 21, 2001).

would not increase funding requirements, as the proposed services are provided by many eligible telecommunications carriers today.

The Definition of the Supported Service "Access to Interexchange Service" Should be Expanded to be "Equal Access to Interexchange Service."

One of the core services supported by universal service support mechanisms, as defined by the Commission, is "access to interexchange service."[3] Although the Commission has previously declined to include equal access to interexchange service among the services supported by universal service support mechanisms, the Companies believe that equal access should indeed be included for the sake of competitive neutrality as well as consumer choice.

The Commission had previously declined to require equal access to interexchange services, because it found that 47 U.S.C. Section 332(c)(8) prohibited such a requirement.[4] However, the Commission did not cite this section in its entirety, and recognized that it does indeed have the authority to order an equal access requirement if it is found to be in the public interest. The entire section reads as follows:

> A person engaged in the provision of commercial mobile services, insofar as such person is so engaged, shall not be required to provide equal access to common carriers for the provision of telephone toll services. *If the Commission determines that subscribers to such services are denied access to the provider of telephone toll services of the subscribers' choice, and that such denial is contrary to the public interest, convenience, and necessity, then the Commission shall prescribe regulation to afford subscribers unblocked access to the provider of telephone toll services of the subscribers' choice through the use of a carrier identification code assigned to such provider or other mechanism.* The requirements for unblocking shall not apply to mobile satellite services unless the Commission finds it to be in the public interest to apply such requirements to such services. (emphasis added)

The Commission further based its decision not to require equal access to interexchange services as a supported service because it had not yet determined that any commercial mobile

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[3] *Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, Report and Order, FCC 97-157 (rel. May 8, 1997) ("*First Report and Order*") at para. 61.

[4] *Id.* at para. 78.

radio service ("CMRS") provider is a local exchange carrier ("LEC") subject to dialing parity requirements under Section 251(b)(3) of the Telecommunications Act of 1996, as amended (the "Act").[5] However, while the Commission would be required to enforce LECs to provide dialing parity under the Act, the mere absence of a finding that CMRS carriers are LECs does not prohibit the Commission from requiring CMRS carriers to provide equal access on other grounds, namely those outlined in 47 U.S.C. Section 332(c)(8). Furthermore, while the Commission found with regard to policy that ". . . supporting equal access would undercut local competition and reduce consumer choice. . . ."[6] other regulatory authorities have examined this issue and reached different conclusions.

In Application No. C-1889, *In the Matter of GCC License Corporation Seeking Designation as an Eligible Telecommunications Carrier (ETC) That May Receive Universal Service Support*, before the Nebraska Public Service Commission (the "NPSC"), the NPSC has required GCC License Corporation ("Western Wireless") to provide equal access as a condition of its ETC status. This was done to ensure parity and competitive neutrality among ETCs eligible for Nebraska Universal Service Fund ("NUSF") support. The NPSC found that "equal access is in the public interest of consumers and promotes our competitive goals."[7] The NPSC added that it had previously ". . . made it a requirement that all local exchange carriers provide intraLATA dialing parity in the state of Nebraska" and that ". . .customer choice is imperative."[8] The NPSC is in the process of codifying the equal access requirement for all ETCs, by proposing

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[5] *Id.* at para. 79.

[6] *Ibid.*

[7] *In the Matter of GCC License Corporation Seeking Designation as an Eligible Telecommunications Carrier (ETC) That May Receive Universal Service Support*, before the Nebraska Public Service Commission, Application No. C-1889, Order Approving Advertising Plan (*"Advertising Plan Order"*) entered October 4, 2001, at p. 3.

[8] *Ibid.*

equal access to interexchange services as a supported service under the Nebraska Universal Service Fund.[9]

In reaching the decision to order a wireless carrier seeking ETC designation to offer equal access to interexchange service, the NPSC was complying with the policy intent of Nebraska law, which directs ". . . a level playing field for all carriers that receive support from the Fund through its provision that wireless carriers who receive support from the Fund are subject to the same orders and authority of the Commission as wireline carriers."[10] Thus, state law orders symmetrical regulation for all carriers to receive support from the NUSF. In addition to complying with state law, the authority of the NPSC to order such a requirement for the receipt of state support funds is recognized by the Commission.[11]

The Commission did not adopt an equal access requirement initially because it declared that doing so ". . . would undermine Congress's overriding goals in adopting the 1996 Act"[12], which it viewed as being to promote competition.[13] However, this decision was issued over four years ago. The decision was issued before competitors to incumbent LECs were applying for ETC status, and most states had not yet addressed such issues. In the meantime, states are now establishing universal service policies, and are considering the ramifications of issues such as requiring equal access in an environment where competitors have sought and obtained ETC status. This is an appropriate time to reexamine this decision in light of findings such as those in

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[9] *See In the Matter of the Commission, on its own Motion, Seeking to Establish Title 291, Chapter 10, Nebraska Universal Service Fund Rules and Regulations, in Accordance with the Provisions of Neb. Rev. Stat. Section 86-1404 et seq.*, Rule and Regulation No. 150, Order Proposing Revisions to the Previously Proposed Amendments and Setting Comment Date, entered October 30, 2001, at p. 18.

[10] Laws 2000, LB 389, Introducer's Statement of Intent.

[11] *See First Report and Order* at para. 136.

[12] *First Report and Order* at para. 79.

[13] *Ibid.* A footnote to this quote explains the goals as "to provide for a pro-competitive, de-regulatory national policy framework."

Nebraska, that "equal access is in the public interest of consumers and promotes our competitive goals"[14] and that this requirement should be applied equally to all ETCs. Therefore, the Joint Board should recommend to the Commission that the definition of supported services for "access to interexchange services" be changed to "equal access to interexchange services." In conjunction with the recommendation, the Joint Board should request that the Commission open a proceeding to address the issue of choice of provider of telephone toll services for commercial mobile service subscribers to institute such a change.

The Commission Should Adopt a Definition of "Single-Party Service" that Includes Unlimited Local Usage for a Flat Fee.

In its implementation of Section 254 of the Telecommunications Act of 1996, as amended (the "Act"), the Commission recognized, in agreement with the Joint Board, that "in order for consumers in rural, insular, and high cost areas to realize the full benefits of affordable voice grade access, *usage of, and not merely access to*, the local network should be supported."[15] The Commission has asked for comment on local usage requirements on at least two occasions.[16] The Companies encourage the Joint Board to recommend to the Commission that it act to set a requirement for local usage as a supported service, and that the requirement should be unlimited local usage at a flat fee. This recommendation is based on the best interests of consumers and on competitive neutrality under the current universal service support mechanism.

Clearly, consumers would benefit from the adoption of unlimited local usage at a flat fee as the required amount of usage to be provided in order to be eligible to receive universal service support. Many consumers receive unlimited local usage at a flat fee today, and adopting a

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[14] *Advertising Plan Order* at p. 3.

[15] *First Report and Order* at para. 65 (emphasis added).

[16] *See Federal-State Joint Board on Universal Service Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, CC Dockets No. 96-45 and 97-160, FCC 97-256 (rel. July 18, 1997) and *Federal State Joint Board on Universal Service*, CC Docket No. 96-45, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking (*"Universal Service FNPRM"*) FCC 98-278 (rel. Oct. 26, 1998).

standard with less usage would put them in a position of having less usage supported than that to which they have become accustomed.

As mentioned with regard to recommending an equal access requirement, it is important to maintain competitive neutrality and equivalency of service among all ETCs. In Nebraska, telecommunications companies must offer at least one flat-rate, unlimited usage option to their customers.[17] Furthermore, companies seeking support funding from the NUSF must comply with local rate targets, which are stated in terms of flat-rate monthly charges, and include unlimited usage.[18] Therefore, as provided for in these requirements in Nebraska, all ETCs should be required to provide unlimited local usage at a flat-fee, in order to maintain competitive neutrality between providers, and to allow consumers access to the same level of local usage regardless of their provider.

The Commission has noted that carriers have different cost structures for providing local usage, depending on the technology used.[19] For wireline carriers, a significant portion of the cost of local service is the cost of installing the dedicated facility (local loop).[20] For mobile wireless providers, however, the dedicated costs of providing local service are quite low, with the largest portion of the cost of providing mobile wireless service being in the cost of shared facilities, such as towers.[21] The Commission has stated that ". . .establishing a very high level of local usage would give a competitive advantage to wireline carriers, and establishing a very low level of

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[17] *See* Neb. Rev. Stat. Section 86-803(10).

[18] *See In the Matter of the Application of the Nebraska Public Service Commission, on its own Motion, Seeking to Conduct an Investigation into Intrastate Access Charge Reform*, Application No. C-1628, Findings and Conclusions, entered January 13, 1999 at p. 6. Due to the statutory provision cited previously, the flat-rate plan that is being offered as a supported universal service includes unlimited usage.

[19] *See Universal Service FNPRM* at para. 47.

[20] *Ibid.*

[21] *Id.* at para. 48.

local usage would give a competitive advantage to mobile wireless carriers."[22] This statement might be valid if each ETC received support based on its own cost of providing service. However, the current federal universal service rules state that "[a] competitive eligible telecommunications carrier shall receive support for each line it serves in a particular wire center based on the support the incumbent LEC would receive for each such line."[23] Thus, competitive ETCs, including mobile wireless and fixed wireless carriers, receive support based on the ILEC's costs, even though the Commission has admitted that different technologies have different cost characteristics and cost structures.[24] In order to maintain competitive neutrality under the current universal service support mechanism, an unlimited local usage requirement should be adopted. Because the majority of ILEC's costs are dedicated and therefore they can offer unlimited usage at a flat rate, other providers should be required to provide the same amount of usage at a flat rate as well.

Conclusion

The Companies urge the Joint Board to recommend to the Commission that the definition of the supported service "access to interexchange service" be modified to include "equal access to interexchange service" and that a requirement be adopted to provide unlimited local usage as part of the single-party service definition. Adopting these definitions would be beneficial to consumers. Given that the current universal service support mechanism is based on incumbent LECs' costs, the adoption of these definitions will not increase the support requirement, as many LECs already offer the supported services as recommended for modification.

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[22] *Id.* at para. 49.

[23] 47 C.F.R. Section 54.307(a)(1).

[24] *See Universal Service FNPRM* at para. 47.

Dated this 2nd day of November, 2001.

Respectfully submitted,

Arlington Telephone Company,
The Blair Telephone Company,
Cambridge Telephone Company,
Clarks Telecommunications Co.,
Consolidated Telephone Company,
Consolidated Telco, Inc.,
Curtis Telephone Co.,
Eastern Nebraska Telephone Company,
Great Plains Communications, Inc.,
Hartington Telecommunications Co., Inc.,
Hershey Cooperative Telephone Company, Inc.,
Hooper Telephone Company,
K&M Telephone Company, Inc.,
NebCom, Inc.,
Nebraska Central Telephone Company,
Northeast Nebraska Telephone Co.,
Pierce Telephone Co.,
Rock County Telephone Company,
Southeast Nebraska Telephone Co.,
Stanton Telephone Co., Inc. and
Three River Telco (the "Companies")

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