DOCKET FILE COPY ORIGINAL

DEC 31 2001
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

In the Matter of	)	
	)	
Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers	)	CC Docket No. 00-256
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation	)	CC Docket No. 98-77
	)	
Prescribing the Authorized Rate of Return For Interstate Services of Local Exchange Carriers	)	CC Docket No. 98-166

To: The Commission

PETITION FOR RECONSIDERATION

Richard D. Coit, General Counsel
South Dakota Telecommunications Association
P.O. Box 57
Pierre, SD 57501
(605) 224-7629

Benjamin H. Dickens, Jr.
Mary J. Sisak
Douglas W. Everette
Blooston, Mordkofsky, Dickens,
Duffy & Prendergast
2120 L Street, NW (Suite 300)
Washington, DC 20037
(202) 659-0830

Dated: December 31, 2001

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

In the Matter of	)	
	)	
Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers	)	CC Docket No. 00-256
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation	)	CC Docket No. 98-77
	)	
Prescribing the Authorized Rate of Return For Interstate Services of Local Exchange Carriers	)	CC Docket No. 98-166

To: The Commission

PETITION FOR RECONSIDERATION

The South Dakota Telecommunications Association (SDTA) respectfully requests that the Commission reconsider the Order[1] concerning interstate access charges for incumbent local exchange carriers (ILECs) subject to rate-of-return (ROR) regulation, which has resulted from the trade association filing commonly know as the "MAG" proceeding. Specifically, SDTA requests that the Commission reconsider that aspect of its Order eliminating the carrier common line charge and replacing it with a new universal service support mechanism.

---

[1] Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, FCC 01-304, released November 8, 2001 (Order).

SDTA represents the interests of 33 independent, cooperative and municipal local exchange carriers in the State of South Dakota.[2] All of the SDTA member LECs are "rural telephone companies" as defined in 47 U.S.C. §153(37) and all have been designated as eligible telecommunications carriers (ETCs) within their established "service areas" or "study areas."[3] The SDTA member companies are high cost companies -- 30 mile loop lengths are not uncommon -- and a significant portion of their revenue requirement is recovered through the carrier common line charge. Accordingly, all of the SDTA member companies will be substantially affected by the Commission's decision.

I. Introduction

In the Order, the Commission recognizes the many significant differences between price cap carriers and rate-of-return (ROR) carriers, as well as the wide diversity among ROR carriers, which justify different regulatory treatment. The Commission acknowledges that there are over 1,300 rate-of-return carriers serving less than eight percent of all lines. These ROR carriers are typically small, rural telephone companies that have relatively few access lines; they generally have higher operating and equipment costs than price cap carriers due to lower subscriber density, smaller exchanges, and limited economies of scale; and they rely more heavily on revenues from interstate access charges and universal service support. Thus, ROR carriers are less able to absorb any misjudgment on the part of the Commission concerning the recovery of interstate costs and universal service.

---

[2] A list of the SDTA member companies is attached hereto.

[3] 47 U.S.C. § 214(e)(5) provides that "[I]n the case of an area served by a rural telephone company, 'service area' means such company's "study area" unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under Section 410(c), establish a different definition of service area for such company."

Notwithstanding the Commission's acknowledgement of cost differences between rural and urban carriers approaching in some cases a 100 to 1 ratio[4] for local loops, the Commission essentially imposes the same treatment on ROR carriers as it did on price cap carriers in the negotiated CALLS settlement.[5] Thus, in the Order, the Commission finds that the Carrier Common Line (CCL) charge should be removed from the common line rate structure, under the economic theory that it is an "implicit subsidy."[6] It is replaced with CALLS level Subscriber Line Charges (SLCs) and a new universal support mechanism, Interstate Common Line Support (ICLS).

The Petitioners respectfully submit that the Order's decision to eliminate all common line charges to interexchange carriers as a "subsidy" is arbitrary and capricious, contrary to existing precedent and otherwise unlawful. These points are discussed below.

II. The Elimination of Common Line Charges Is Arbitrary And Capricious

It is well settled that "arbitrary and capricious" action entails a lack of rationality in an agency's decision making,"[7] In Citizens to Preserve Overton Park, Inc. v. Volpe, the Supreme Court held that a court considering whether an agency's decision was arbitrary and capricious must determine "whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment."[8] Later, in Motor Vehicle Mfrs. Ass'n v. State Farm Mut.

---

4 See Order, para. 45, and n. 140.

5 Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, CC Docket Nos. 96-262 and 94-1, Sixth Report and Order, Low-Volume Long-Distance Users, CC Docket No. 99-249, Report and Order, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Eleventh Report and Order, 15 FCC Rcd 12962 (Interstate Access Support Order), aff'd in part, rev'd in part, and remanded in part, Texas Office of Public Util. Counsel et al. v. FCC, No. 00-60434 (5th Cir. September 10, 2001).

6 Order, paras. 61-68.

7 Columbia Broad. Sys., Inc. v. FCC, 454 F.2d 1018, 1028 (D.C. Cir. 1971).

8 Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 416 (1971).

Auto. Ins. Co., the Supreme Court reiterated that an agency is charged under the "arbitrary and capricious" standard with the duty of examining the relevant data and articulating a satisfactory explanation for its action, including a rational connection between the facts found and the choice made.[9] It stated that an agency would be found to have acted in and "arbitrary and capricious" manner if it "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise."[10]

The Order's decision to proceed on the basis that the common line revenue category should be recovered through universal service funding, and the decision to shift rural ILECs' CCL revenues to competitors by use of a portability mechanism, cannot pass muster under this standard. It is not rational for an agency to adopt an experiment that will vitally affect the quality and affordability of telecommunications service in thousands of rural communities when: (a) it has no articulated idea as to what subset of loop costs contain the "subsidy;" and (b) when the evidence before it suggests that the remedy selected by the Commission will cause a subsidy itself.

A. The Entire Category of CCL Costs Is Not An Implicit Subsidy

The Order proceeds on the basis that the entire common line revenue category, not already recovered through the increased SLCs, should be recovered through universal service funding.[11] The basis for this decision is the characterization of the CCL charge as "implicit

---

[9] Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29 (1983).

[10] Id. at 43. See also Wold Communications, Inc. v. FCC, 735 F.2d 1465, 1476 (D.C. Cir. 1984)(proper inquiry under the arbitrary and capricious standard is whether a reasonable person, considering the matter on the agency's table, could arrive at the judgment the agency made); Celcom Communications Corp. v. FCC, 789 F.2d 67, 71 (D.C. Cir. 1986) (remand for FCC failure to articulate ruling with sufficient clarity or specificity to permit meaningful review).

[11] Order at para. 67.

support" or "subsidy," which is described as implicit support flows between end-user customers in the long-distance market.[12] The Order also draws support from the Commission's prior decision to eliminate CCL charges from the rate structure of price cap carriers.[13]

The characterization of the CCL related costs as a "subsidy" is a critical one, since it underpins the Order's shift of the related cost recovery to the universal service fund. But, where is the Order supported by any evidence on this point? The Order's recognition that rural loop costs approach 100 times more than the loop costs in urban areas certainly cuts the other way. Indeed, no attempt is made to identify what subset of loop costs contain the "subsidy" that occupies the Commission, versus loop cost recovery that would not be subject to the universal service funding. Instead, the Commission relies upon its "expertise and informed judgement."[14]

Assuming arguendo that the long distance funds flows among customers are a "subsidy" that reaches back into access charges levied by a different group of carriers (i.e., rural ILECs), it cannot be said that the entire non-traffic sensitive (NTS) category is so. The U.S. Court of Appeals for the District of Columbia Circuit rejected a related argument by MCI when the Commission adopted a flat separations allocator for these non-traffic sensitive costs.[15] Importantly, the Court noted the fact that 'no purely economic method of allocation' exists for these costs[16] and discussed MCI's use of the related facilitates in rejecting an argument that

---

12 Id. at paras. 61-62, n. 192.

13 Id. at para. 68.

14 Id. at para. 130.

15 Rural Telephone Coalition v. FCC, 838 F. 2d 1307, 1315 (D.C. Cir., 1988).

16 Id. at 1314 (quoting, MCI Telecommunications Corp. v. FCC, 675 F.2d 408, 416 (D.C. Cir. 1982). In MCI, the Court, addressed the problem of allocating the non-traffic sensitive costs among interstate services stating: "[N]o Commission choice among the various FDC [fully distributed cost] methods could be justified solely on economic criteria; elements of fairness and other noneconomic values enter the analysis of the choice to be made." Id. (footnote omitted)(emphasis in original).

requiring MCI to pay for such NTS costs effected a confiscation.[17] The truth of the matter is that these amounts have long been allocated to the interstate jurisdiction as a cost.[18] Their characterization as a "subsidy" instead of "support," as the Commission recently characterized those costs in adopting the Rural Task Force recommendation,[19] is more about semantics of the common cost subject than the result of some new, unarticulated analysis demonstrating Smith to be incorrect.[20]

It is respectfully submitted that the Commission's decision cannot stand in its present form, and must be reconsidered. The Commission's expert judgement must be supported by some evidence and coherent explanation of its decision.[21] Those factors are absent here, and if it does not reopen the record to secure the evidence currently missing, it must retreat from the decision to make all rural company CCL revenues recoverable through a portable universal service fund.

B. The Commission's Decision To Subsidize Competitors Is Arbitrary And Unlawful

The Order's decision to make all rural ILECs' CCL revenues portable to competitors is remarkable in its irrationality. It will cause a massive cross-subsidy, both from contributors to the universal service fund, and from rural ILECs themselves, to non-incumbent competitors. If the Commission's policies change concerning individual ILEC caps on universal service or the

---

17 Rural Telephone Coalition v. FCC at 1314.

18 Smith v. Illinois Bell Telephone Co., 282 U.S. 133, 75 L. Ed. 255, 51 S. Ct. 65 (1930).

19 Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Fourteenth Report and Order and Twenty-Second Order on Reconsideration, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC Docket No. 00-256, Report and Order, 16 FCC Rcd 11244, at para. 13 (released May 23, 2001) (Rural Task Force Order).

20 Smith, supra n. 18.

fund as a whole, such cross-subsidy will be exacerbated. The source of this cross-subsidy, of course, is the decision to reward competitors with the cost-based CCL revenue streams of the ILECs, regardless of the competitors' own costs. The core rationale for this decision appears to boil down to two sentences in the Order:

> By converting the CCL charge to explicit support that is portable to competitive carriers, we will enable competitive carriers that provide service at lower costs to pass those savings through to rate-paying end users. To remain competitive, incumbent carriers will have greater incentives to create their own efficiencies and reduce rates. [22]

While there is no record evidence that the "competitors" referred to above will lower local rates to end users -- by virtue of receiving interstate USF revenues wholly divorced from their costs -- there is certainly a sounder basis to conclude that the Commission has created a new subsidy. Attached as Exhibit 1 to this Petition is an ex parte filing made on behalf of Golden West Telecommunications Cooperative, Inc. (Golden West) which identified an approximate 2.5-to-1 cost relationship between Golden West and Western Wireless for "loops" and their wireless equivalent.[23] These concerns have not been addressed by the Commission in either the Western Wireless proceeding or in the instant matter. Such cost differences should be examined, particularly in light of the magnitude of revenues which are at stake. Exhibit 2 summarizes the results of a study by The Martin Group, a South Dakota-based consulting firm, which analyzed the impact of shifting the CCL revenues to the portable ICLS category. The results indicate that the percentage of ILCS to the total interstate access revenues run from 21.6%

---

[21] Texas Office of Public Utility Counsel v. FCC, No. 00-60434 (5th Cir. 2001) (Remand of the Commission's establishment of a $650 million universal service fund was warranted because the Commission failed to articulate the basis for its decision.).

[22] Order, at para. 63 [footnote omitted].

for "NEMO," a Missouri-based ILEC, to a high of 40% for "Sanborn," a South Dakota-based ILEC. The other ILECs whose costs were examined are all South Dakota-based and indicate impacts within this range.

SDTA respectfully submits that all these factors lead to the conclusion that the Order will not pass the test of reasoned decision making required by the Courts. For instance, there is no evidence at all that competitors will pass ILEC-based access revenues to local end-users (or, for that matter, access end-users).[24] Moreover, the Commission's failure to even consider the costs of competitors is plainly wrong where the purported basis of the ICLS exercise is to remedy an "implicit subsidy." Simply put, the substitution of an alleged CCL subsidy (a point SDTA does not concede) for another alleged subsidy is irrational[25] and, as recognized in the Order, is out of step with the Fifth Circuit's recent decision.[26]

V. Conclusion

Based on the foregoing, the Commission should reconsider that aspect of its Order eliminating the carrier common line charge and replacing it with a new universal service support mechanism. The Commission's finding that the existing CCL category is an "implicit subsidy" is wholly without a basis in the record, is contradicted by prior judicial and Commission

---

[23] See, Notice of Ex Parte Presentation CC Docket 96-54, Western Wireless Cooperation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in the State of South Dakota (Declaration Under Penalty of Perjury, p.3).

[24] See, Texas Office of Public Utility Counsel et al v. FCC, 265 F3d 313, 329 (5th Cir. 2001) (reversing and remanding "X-Factor" for agency's failure to demonstrate how it arrived at X-Factor value).

[25] See, Rural Telephone Coalition v. FCC, 828 F.2d at 1313 ("conclusion reached must have a rational connection to the facts found") quoting, AT&T v. FCC, 832 F.2d 1285, 1291 (D.C. Cir. 1987).

[26] Order, at para. 177 (citing COMSAT Corp. v. FCC, 250 F. 3d 931, 938-40) (5th Cir. 2001).

precedent, and is not reasoned decision making. The Commission's decision to make portable rural ILEC CCL revenue streams for the benefit of competitors is likewise irrational. The Order as presently crafted, thus, is arbitrary and capricious and should be reconsidered.

Respectfully submitted,

SOUTH DAKOTA TELECOMMUNICATIONS ASSOCIATION

By Richard D. Coit / BWS
Richard D. Coit, General Counsel

South Dakota Telecommunications Association
P.O. Box 57
Pierre, SD 57501
(605) 224-7629

By
Benjamin H. Dickens, Jr.
Mary J. Sisak
Douglas W. Everette

Blooston, Mordkofsky, Dickens, Duffy & Prendergast
2120 L Street, NW (Suite 300)
Washington, DC 20037
(202) 659-0830

Its Attorneys

Dated: December 31, 2001

Appendix A

Members of the South Dakota Telecommunications Association

1. Armour Independent Telephone Company
2. Baltic Telecom Cooperative
3. Beresford Municipal Telephone Company
4. Bridgewater-Canistota Independent Telephone
5. Swiftel Communications Brook
6. Cheyenne River Sioux Tribe Telephone Authority
7. Dakota Community Telephone
8. East Plains Telecom, Inc. Baltic
9. Faith Municipal Telephone Company
10. Fort Randall Telephone Company
11. Golden West Telecommunications Cooperative
12. Interstate Telecommunications Cooperative
13. James Valley Telecommunications
14. Long Lines
15. Kadoka Telephone Company
16. Kennebec Telephone Company
17. McCook Cooperative Telephone Company
18. Midstate Communications
19. Mt. Rushmore Telephone Company
20. Roberts County Telephone Cooperative
21. RC Communications, Inc.
22. Santel Communications
23. Sioux Valley Telephone Company
24. Splitrock Properties, Inc.
25. Splitrock Telecom. Cooperative
26. Stockholm-Strandburg Telephone Company
27. Sully Buttes Telephone Cooperative
28. Tri-County Telcom, Inc.
29. Union Telephone Company
30. Valley Telecommunications Cooperative
31. West River Cooperative Telephone Company
32. West River Telecommunications Cooperative
33. Western Telephone Company

EXHIBIT 1

EX PARTE OR LATE FILED

ORIGINAL

LAW OFFICES
BLOOSTON, MORDKOFSKY, DICKENS, DUFFY & PRENDERGAST
2120 L STREET, NW
WASHINGTON, DC 20037

(202) 659-0830
FACSIMILE: (202) 828-5568

HAROLD MORDKOFSKY
BENJAMIN H. DICKENS, JR.
JOHN A. PRENDERGAST
GERARD J. DUFFY
RICHARD D. RUBINO
MARY J. SISAK
D. CARY MITCHELL
KATHLEEN A. KAERCHER
MICHAEL B. ADAMS, JR.
DOUGLAS W. EVERETTE

ARTHUR BLOOSTON
1914 – 1999

AFFILIATED SOUTH AMERICAN OFFICES
ESTUDIO JAUREGUI & ASSOCIATES
BUENOS AIRES, ARGENTINA

ORIGINAL

ROBERT M. JACKSON
OF COUNSEL

PERRY W. WOOFTER
LEGISLATIVE CONSULTANT

EUGENE MALISZEWSKYJ
DIRECTOR OF ENGINEERING
PRIVATE RADIO

September 21, 2001

RECEIVED

SEP 21 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

WRITER'S CONTACT INFORMATION
202-828-5510

By Messenger
Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Notice of Ex Parte Presentation*
CC Docket 96-45, Western Wireless Corporation
Petition for Designation as an Eligible Telecommunications
Carrier for the Pine Ridge Reservation in the State of South Dakota

Dear Ms. Salas:

On March 12, 2001, Comments were filed on behalf of Golden West Telecommunications Cooperative, Inc. ("Golden West") in the above-referenced proceeding. In these Comments, Golden West submitted that the Eligible Telecommunications Carrier ("ETC") Petition by Western Wireless Corporation ("Western Wireless") did not meet the public interest requirements of Section 214(e)(6) of the Telecommunications Act of 1996. Specifically, the Comments noted that Western Wireless had not addressed key questions concerning the impact of its ETC designation upon Golden West's remaining subscribers after competitive inroads are made within its subscriber base. See Golden West Comments at 13-15.

Notwithstanding Western Wireless' shortcomings in its evidentiary showing, Golden West has commissioned an analysis of rate impacts upon its remaining customer base if Western Wireless is granted ETC status. This analysis is supplied under penalty of perjury by Robert C. Schoonmaker, Vice President of GVNW Consulting, Inc., and is attached herewith.

Please note that the signature page of the attached Declaration is a facsimile: Golden West will file the original, signed copy of the Declaration Under Penalty of Perjury as a supplement.

No. of Copies rec'd 0+1
List ABCDE

Pursuant to Section 1.1206(b)(1) of the Commission's rules, 47 C.F.R. Section 1.1206(b)(1), an original plus one copy of this letter are being provided to you for inclusion in the public record of the above-referenced proceeding.

Please direct any questions to the undersigned.

Sincerely,

Benjamin H. Dickens, Jr.

cc: Chairman Michael K. Powell
Commissioner Kathleen Q. Abernathy
Commissioner Michael J. Copps
Commissioner Kevin J. Martin
Dorothy Attwood
Andrea Kearney

Attachments

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

In the Matter of	)	
	)	
Federal-State Joint Board on	)	
Universal Service	)	CC Dkt. No. 96-45
	)	
Western Wireless Corporation Petition for	)	
Designation as an Eligible Telecommunications	)	
Carrier for the Pine Ridge Reservation	)	
in South Dakota	)	

DECLARATION UNDER PENALTY OF PERJURY

1. My name is Robert C. Schoonmaker, and I am a principal in the firm of GVNW Consulting at 2270 La Montana Way, Colorado Springs, Colorado 80918. My experience as a telecommunications consultant is detailed as set forth in Exhibit 1 to this Declaration. I have been retained by Golden West Telecommunications Cooperative, Inc. ("Golden West") to address the rate impacts, upon Golden West and its customers, that should be examined if Western Wireless Corporation ("Western Wireless") receives Eligible Telecommunications Carrier ("ETC") status on the Pine Ridge Reservation in South Dakota, as requested in this proceeding.

2. Golden West provides service to nearly 17,000 access lines in 26 exchanges over 16,030 square miles throughout the southwest portion of South Dakota. In comparison, the combined states of Connecticut and New Jersey are only 12,264 square miles with a population of over 11,000,000. Golden West has a customer density of about one customer per square mile. On the Pine Ridge Reservation, Golden West serves approximately 4,538 access lines, or 27% of the Company's total access lines. In addition, Golden West, through an affiliate company, provides Internet service on a local dial up basis throughout its entire service area. Currently about 20% of its customers subscribe to this Internet service. Golden West is estimated to receive approximately $5.25 million in federal high cost support in 2002 consisting of: $3.6 million for the High

Cost Loop Fund ("HCL"), $0.9 million in Local Switching Support ("LSS"), and $0.75 million in Long Term Support ("LTS").

3. Western Wireless has petitioned the Commission for Eligible Telecommunications Carrier ("ETC") status allowing it to qualify for federal USF for wireless services provided to the portion of Golden West's study area on the Pine Ridge Reservation.[1] A grant of this petition would allow Western Wireless to receive universal service support for any customer it serves on the reservation while ignoring the remaining portion of the study area served by Golden West. Designating Western Wireless as an ETC and, therefore, allowing it to receive support will have significant impacts on all of Golden West's subscribers, including those located on the Pine Ridge Reservation. The Commission must consider the potentially harmful effects to Golden West and its customers, as well as the perceived benefits, as it considers this Application.

4. In analyzing the rate impact upon Golden West and its customers, as discussed above, I have considered the current USF mechanism, what relationship it is likely to have vis-à-vis Western Wireless' cost, and how Golden West's other key revenue streams would be affected by diverting Golden West's USF revenues to Western Wireless. These points are discussed below.

UNDERLYING COST OF WIRELESS NETWORK AND USE OF USF FUNDING

5. As a rural carrier, USF associated with loop investment is based on the actual cost experienced by Golden West. This funding will be portable and available to Western Wireless if its application is granted. In the event portable USF available to Western Wireless exceeds Western Wireless's actual cost of providing service (even though the quality may be inferior to wireline service), it is likely that USF payments will result in

[1] Section 102(e) requires that Eligible Telecommunications Carriers serve the entire study area of a rural telephone company "unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board (instituted under section 410(c), establish a different definition of service area for such company."

windfall profits for Western Wireless, allowing it to unfairly compete with Golden West because of Golden West's continued obligation as ETC for its entire study area, including the Pine Ridge Reservation, and because the windfall will allow Western Wireless to compete for Golden West's other revenue streams on an uneconomic basis.

6. The costs of Western Wireless should be examined to determine the extent to which they are less than the per-line USF revenues, which are based upon Golden West's own embedded costs, but which Western Wireless would receive under the Commission's rules. This examination should be undertaken to ensure that Western Wireless does not realize USF support in excess of its costs, which can be used unfairly to leverage Western Wireless into Golden West's other sources of revenue, such as local and access services.

7. This is not an idle concern. Although I do not have embedded "loop"-related costs for Western Wireless, I have been able to compare the company's forward-looking costs for the wire centers serving the Pine Ridge Reservation, with the comparable costs reported for Golden West[2]. The results of this inquiry are set forth in Exhibit 2 (attached) and demonstrate that Golden West's forward-looking costs are almost three times those of Western Wireless (annual costs per line of $2, 320.45 vs. $940.75 annual costs per line, respectively). While I do not believe that the use of forward looking costs are valid cost proxies for rural carriers, the roughly 2.5-to-1 cost relationship between Golden West and Western Wireless is a danger signal that the existing USF mechanism may create a revenue pool that is so divorced from Western Wireless' actual costs that it would be able to compete on an uneconomic basis for Golden West's other revenue streams. These cost relationships should be examined in the context of an evidentiary hearing, in my opinion, since the rate impacts on Golden West's remaining customers are so substantial. These impacts are discussed below.

---

[2] See Western Wireless Comments on Model Platform Development in CC docket No. 96-45, CC Docket No. 97-160, DA 98-1587 (August 28, 1998).

RATE IMPACT ON REMAINING CUSTOMERS

8. The erosion of market share that will occur if a competitive ETC is authorized will inevitably cause Golden West to lose local service revenue, access revenue and revenue from other ancillary services. Reduced revenues, without corresponding reductions in expenses, will reduce Golden West's financial viability and may ultimately impact its ability to provide quality telecommunications services at reasonable rate levels. Expense decreases in the same magnitude as revenue decreases are unlikely because of the relatively fixed nature of many of the company's expenses. Golden West's ability to invest in future infrastructure will be reduced, ultimately resulting in a decline in service quality.

9. As Western Wireless captures market share, Golden West will be forced to implement significant rate increases to maintain earnings sufficient to satisfy its obligations. Almost 27% of Golden West's customers are on the Pine Ridge reservation. In estimating Golden West rate impacts, we have assumed that Western Wireless will serve between 35% and 100% of Golden West's customers located on the Pine Ridge reservation. These assumptions, if accurate, would result in a loss of between 10% and 25% of Golden West's total customer base.

10% Loss of Market Share

Assuming a 10% loss of customers, Golden West will lose $552,000 in local service revenue, and $1,025,000 in state access revenues. As a partial offset to this lost revenue, it is estimated that Golden West's USF support will increase by $275,000 and that savings in expenses from serving fewer lines would be $136,000. The net result is an overall reduction in revenues of $1,166,000. This loss of income could only be recovered through an increase in local rates of $6.47 per access line per month, a 60% increase from the current residential rate.

25% Loss of Market Share

Assuming a 25% loss of customers, Golden West will lose $1,380,000 in local service revenue, and $2,562,000 in state access revenues. As a partial offset of lost revenue, it is estimated that Golden West's USF support will increase by $673,000 and that savings in expenses from serving fewer lines would be $340,000. The net result is an overall reduction in revenues of $2,929,000. This loss of income could only be recovered through an increase in local rates of $19.50 per access line per month, a 180% increase from the current residential rate.

At the extreme, Golden West could be faced with a "death spiral" where the loss of customers and corresponding rate increases needed to stay solvent would cause customers to drop off the network entirely, or accept a lower service quality substitute. This would fuel ever-increasing rates, decreasing demand and ultimately, degradation of service quality. Once in a "death spiral", at some point there is a real possibility the Company will become insolvent or be forced to charge rates far in excess of what could be considered reasonable and comparable rates to those available in more urban areas.

CONCLUSION

10. Granting ETC status to Western Wireless on the Pine Ridge Reservation where service is presently provided by Golden West will have numerous negative impacts. These will include:

1) Increased basic local service rates to customers served by Golden West;
2) A decreased ability for Golden West to invest in infrastructure;
3) The eventual degradation of service quality to end users due to inability to maintain existing investment levels; and

4) A reduction in the availability of advanced services due to lower capital investment.

11. In my opinion, Western Wireless' current operational costs are a key factor that should be examined by the Commission and the parties to determine if the USF mechanism will facilitate uneconomic competition by Western Wireless, to the detriment of Golden West and its customers. In my professional experience, evidentiary hearings are the best forum for determining such costs in a contested case. If uneconomic entry by Western Wireless causes rate increases of the magnitude I have projected, or if economic entry by Western Wireless causes such increases because Western Wireless does not propose to serve all of Golden West's service area, the result will not be in the public interest.

Certification

Under the penalty of perjury, I, Robert C. Schoonmaker certify that the above report was prepared under my direction and to the best of my knowledge is true and accurate.

Robert C. Schoonmaker

Robert C. Schoonmaker, Vice President,
GVNW Consulting, Inc.

Date: 21 Sep 2001

EXHIBIT 1:

BACKGROUND AND EXPERIENCE OF ROBERT C. SCHOONMAKER

Current Position:

I am currently a Vice President of GVNW Consulting, Inc., a consulting firm specializing in working with small telephone companies. In my current position, I consult with independent telephone companies and provide financial analysis and management advice in areas of concern to these companies. Specific activities which I perform for client companies include regulatory analysis, consultation on regulatory policy, financial analysis, business planning, rate design and tariff matters, interconnection agreement analysis, and general management consulting.

Educational Background and Experience:

I obtained my Masters of Accountancy degree from Brigham Young University in 1973 and joined GTE Corporation in June of that year. After serving in several positions in the revenue and accounting areas of GTE Service Corporation and General Telephone Company of Illinois, I was appointed Director of Revenue and Earnings of General Telephone Company of Illinois in May, 1977 and continued in that position until March, 1981. In September, 1980, I also assumed the same responsibilities for General Telephone Company of Wisconsin. In March, 1981, I was appointed Director of General Telephone Company of Michigan and in August, 1981 was elected Controller of that company and General Telephone Company of Indiana, Inc. In May, 1982, I was elected

Vice President-Revenue Requirements of General Telephone Company of the Midwest. In July, 1984, I assumed the position of Regional Manager of GVNW Inc./Management (the predecessor company to GVNW Consulting, Inc.) and was later promoted to my present position of Vice President. I have served in this position since that time except for the period between December 1988 and November, 1989 when I left GVNW to serve as Vice President-Finance of Fidelity and Bourbeuse Telephone Companies. In summary, I have had over 25 years of experience in the telecommunications industry working with incumbent local exchange carrier companies.

Previous Testimony:

I have testified on regulatory policy, local competition, rate design, accounting, compensation, tariff, rate of return, interconnection agreements, and separations related issues before the Illinois Commerce Commission, the Public Service Commission of Wisconsin, the Michigan Public Service Commission, the Iowa Utilities Board, the Tennessee Public Service Commission, the New Mexico Public Regulation Commission and the Missouri Public Service Commission. In addition, I have filed written comments on behalf of our firm on a number of issues with the Federal Communications Commission and have testified before the Federal-State Joint Board in CC Docket #96-45 on Universal Service issues.

Exhibit 2

Golden West
Forward Looking Cost from Wireless Filing
Pine Ridge Reservation Exchanges

clli	Lines	Total Wireless Cost/Month	Total Wireline Cost/Month	Total Wireless Cost	Total Wireline Cost
BFLGSDXA	215	101.31	274.63	21,782	59,045
INTRSDXA	125	161.4	303.23	20,175	37,904
KYLESDXA	620	78.19	253.35	48,478	157,077
MARTSDXA	896	62.24	119.2	55,767	106,803
OLRCSDXA	175	130.49	283.42	22,836	49,599
PNRGSDXA	1084	69.34	177.05	75,165	191,922
Total	3115	78.40	193.37	244,202	602,350
Annual Cost/Line		$ 940.75	$ 2,320.45		

EXHIBIT 2

Common Line Projected Impact of MAG Order
Source: Year 2000 Interstate Cost Study

Description	Total	Sully	Valley	Sanborn	G. West	NEMO
Pre-MAG						
Total CL Rev Req	$6,824,199	$1,679,133	$636,372	$669,487	$2,735,610	$1,103,597
Less SLC Rev @ $3.50/$6.00	$2,200,792	$554,432	$172,059	$229,593	$853,954	$390,754
Less LTS Rev	$1,895,184	$517,008	$102,456	$161,028	$738,912	$375,780
Net CCL Rev Req	$2,728,223	$607,693	$361,857	$278,866	$1,142,744	$337,063
Post-MAG						
Total CL Rev Req	$6,824,199	$1,679,133	$636,372	$669,487	$2,735,610	$1,103,597
Plus 30% of Local Switching	$1,249,002	$252,911	$109,190	$169,951	$417,566	$299,384
Plus 42% of Transport	$1,586,237	$433,090	$138,977	$170,914	$494,114	$349,142
Adjusted Total CL Rev Req	$9,659,438	$2,365,134	$884,539	$1,010,352	$3,647,290	$1,752,123
Less SLC Rev @ $6.50/$9.20	$3,898,196	$981,698	$306,745	$412,169	$1,486,912	$710,672
Less LTS Rev	$1,895,184	$517,008	$102,456	$161,028	$738,912	$375,780
Net ICLS Rev Req	$3,866,058	$866,428	$475,338	$437,155	$1,421,466	$665,671
Total Interstate Access Rev Req	$14,807,566	$3,707,394	$1,351,481	$1,093,895	$5,577,526	$3,077,270
Total Company Revenue Req	$47,537,846	$12,300,858	$4,524,875	$3,411,869	$18,928,011	$8,372,233
% ICLS to Total Interstate Access	26.1%	23.4%	35.2%	40.0%	25.5%	21.6%
% ICLS to Total Revenue	8.1%	7.0%	10.5%	12.8%	7.5%	8.0%

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

In the Matter of	)	
	)	
Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers	)	CC Docket No. 00-256
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation	)	CC Docket No. 98-77
	)	
Prescribing the Authorized Rate of Return For Interstate Services of Local Exchange Carriers	)	CC Docket No. 98-166

DECLARATION UNDER PENALTY OF PERJURY

1. My name is Don Lee, and I am a senior consultant with The Martin Group, a South Dakota-based telecommunications consulting, engineering and data processing firm at 1515 North Sanborn Blvd., Mitchell South Dakota 57301. I have been retained by the South Dakota Telecommunications Association to address the rate impact of shifting CCL revenues to ICLS.

2. Exhibit 2 accurately summarizes the results of a study by The Martin Group, which analyzed the impact of shifting the CCL revenues to the portable ICLS category.

Under penalty of perjury, I certify that this Declaration was prepared under my direction, and that it is true and accurate to the best of my knowledge, information and belief.

Don Lee

Don Lee
The Martin Group

12-27-01

Date

CERTIFICATE OF SERVICE

I, Douglas W. Everette, hereby certify that I am an attorney with the law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, and that copies of the foregoing "Petition for Reconsideration" were served by first class U.S. mail or hand delivery on this 31st day of December, 2001, to the persons listed below:

Magalie Roman Salas
Federal Communications Commission
Portals II, TW-A325
445 12th Street, SW
Washington, D.C. 20554

Chairman Michael K. Powell
Federal Communications Commission
445 12th Street SW – Room 8-B201
Washington, DC 20554

Commissioner Kathleen Q. Abernathy
Federal Communications Commission
445 12th Street SW – Room 8-A204
Washington, DC 20554

Commissioner Michael J. Copps
Federal Communications Commission
445 12th Street SW – Room 8-A302
Washington, DC 20554

Commissioner Kevin J. Martin
Federal Communications Commission
445 12th Street SW – Room 8-C302
Washington, DC 20554

Douglas W. Everette