

From: Sieradzki, David L.
Sent: Wednesday, June 12, 2002 8:18 PM
To: 'kabernat@fcc.gov'; 'mcopps@fcc.gov'; 'kmartin@fcc.gov'; Thompson, Nanette (E-mail); 'ljaber@psc.state.fl.us'; 'thomas_dunleavy@dps.state.ny.us'; Rowe, Bob (E-mail); Gregg, Billy Jack (E-mail); Brill, Matthew (E-mail); Goldstein, Jordan (E-mail); Gonzalez, Dan (E-mail); 'gfoglema@psc.state.fl.us'; 'ddowds@psc.state.fl.us'; 'carl_johnson@dps.state.ny.us'; Lee, Mike (E-mail); Bluhm, Peter (E-mail); 'lorraine_kenyon@rca.state.ak.us'; 'joel.shifman@state.me.us'; 'cbolle@puc.state.nv.us'; 'Peter.Pescosolido@po.state.ct.us'; 'jpursley@mail.state.ne.us'; 'mnewmeyer@psc.state.al.us'; 'larry.stevens@iub.state.ia.us'; Brad Ramsay (E-mail); 'jgilmore@urc.state.in.us'; 'pmcclelland@paoca.org'; 'bmeisenh@mail.state.mo.us'; 'poucher.earl@leg.state.fl.us'; Carol Matthey (E-mail); Schroder, Katherine (E-mail); Sharon Webber (E-mail); Einhorn, Eric (E-mail); Anita Cheng (E-mail); 'wscher@fcc.gov'; 'btrumont@fcc.gov'; 'bryan.clopton@fcc.gov'; 'pgarnett@fcc.gov'; 'gguice@fcc.gov'; 'dlawhsu@fcc.gov'; Katie King (E-mail); 'gwaldau@fcc.gov'; 'dwalton@fcc.gov'; 'gseigel@fcc.gov'; Kyle Dixon (E-mail)
Cc: Farquhar, Michele C.; DeJordy, Gene (E-mail); Mark Rubin (E-mail); Keller, Chuck (E-mail)
Subject: CUSC on Equal Access

On behalf of the Competitive Universal Service Coalition, I and several others have been meeting with many of you over the past couple of weeks regarding universal service proceedings before the Joint Board. This note is to follow up on these conversations, specifically to provide important information regarding equal access. (I thought that, rather than leave anyone out, I'd try to send this to all Joint Board members and staffers.)

>>> You should be aware that, as far as we can tell, **rural ILECs currently recover NO equal access costs through the high-cost universal service funds** they receive. Therefore, equal access-related costs are already excluded from portable funds that go to competitive ETCs. The policy conclusion to draw from this is that there is absolutely no basis for restricting portability of high-cost support funds.

* * * * *

Below, I provide: (1) a detailed explanation for how we reach this conclusion, and (2) some additional policy implications to consider.

1. The Basis for Our Analysis.

Rural ILECs receive four categories of high-cost support funding: one relating to switching costs (Local Switching Support, § 54.301 of the FCC's rules), and three relating to loop or common line costs (Long Term Support - § 54.303, High-Cost Loop Support - §§ 36.601 et seq, and MAG/Interstate Common Line Support - §§ 54.901 et seq). Equal access costs relate exclusively to specified upgrades to switching capabilities (see the definition of "equal access costs" in the glossary of Part 36 App.). Therefore, the only category of universal service funding that could possibly be relevant to equal access is Local Switching Support.

The rules governing Local Switching Support (§ 54.301(b) and (c)) include a detailed list of the investment and expense accounts used in calculating support amounts. But none of those accounts should include any equal access costs, because, prior to calculating support amounts, "equal access investment is first segregated from all other amounts in the primary accounts." § 36.191(b); see also § 36.421(b). This means that the universal service fund apparently provides NO support based on the embedded costs of implementing equal access.

Moreover, most of the rural ILECs completely finished recovering their equal access conversion costs long ago. They received a special waiver to recover equal access operating expenses during the year that they were incurred, rather than having to spread out such recovery over an 8 year period. *NECA Waiver Order*, 3 FCC Rcd 6042 (1988). And (potentially with miniscule exceptions) they would have finished several years ago the process of depreciating (and recovering) any equal access-related capital investments, given the length of time since most of the rural ILECs implemented equal access. This means that, with very limited exceptions, the

rural ILECs' rate bases either include no equal access costs, or are mostly finished with depreciating and recovering these costs. But the point is that even those rural ILECs that may still have equal access costs in their rate bases do not recover any such costs through high-cost universal service support mechanisms.

2. Additional Policy Implications

As we have discussed in the past, imposing an equal access mandate on wireless carriers would be extremely counter-productive and anti-competitive, and would run counter to the Congressional policy established in section 332(c)(8) of the Act. Such a mandate would impose direct costs on wireless carriers of upgrading their mobile switching centers, billing systems, and customer service systems to enable tracking, changing, and adding customer selections of long-distance carriers. It would also impose costs on wireless carriers for establishing new connections at ILEC access tandems. In addition, wireless carriers would lose the ability to negotiate favorable discounts with long-distance carriers that can be passed on to wireless customers.

Most seriously, there is no need to impose an equal access requirement on non-dominant competitive entrants. Such a requirement would unnecessarily impede the process of breaking down barriers between local and long-distance rate structures, which is leading to new package offerings that benefit consumers. In the emerging competitive universal service environment, consumers should have the right to decide whether they want to buy local service from an ILEC (including benefits such as equal access) or from an alternative carrier that may offer a different set of benefits (*i.e.*, mobility, calling plans with large "local" calling areas, or combinations of local and long distance minutes, and so on).

If you have any questions, please feel free to contact me. I will file this e-mail message as an ex parte in CC Docket No 96-45; given the overlap of issues, I'm also submitting it in 00-256 (MAG) and 02-39 (equal access NOI). Finally, in case you haven't seen it, I'm also attaching a copy of the two-page briefing sheet we have been using for Joint Board presentations.

--David Sieradzki
Hogan & Hartson, LLP
Counsel for the Competitive Universal Service Coalition
tel: 202-637-6462
fax: 202-637-5910
DLSieradzki@hhlaw.com



CUSC Talking Pts
for Joint Boa...