

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

In the Matter of )  
 )  
Petition for Rulemaking to Define “Captured” and “New” ) RM No. 10522  
Subscriber Lines For Purposes of Receiving Universal )  
Service Support Pursuant to 47 C.F.R. § 54.307 et seq. )

**Reply Comments of the  
Public Service Commission of Wisconsin**

This proceeding was opened to address the July 26, 2002, petition for rulemaking by the National Telecommunications Cooperative Association (“NTCA”) requesting that the Federal Communications Commission (“FCC”) define “captured” and “new” subscriber lines for purposes of determining federal universal service support. On September 9, 2002, the FCC released an *Order* extending comment and reply comment dates to September 23, 2002, and October 7, 2002, respectively. Several parties filed comments. The Public Service Commission of Wisconsin (Wisconsin Commission) respectfully submits these Reply Comments.

**The NTCA Petition**

The NTCA petition addresses the manner in which competitive eligible telecommunications carriers (“CETCs”) are being compensated under the federal universal service high-cost fund. The NTCA petition notes:

The current rules provide, among other things, that a CETC shall receive support when it “captures” an ILEC’s subscriber lines or serves new subscriber lines in the ILEC’s service area.”<sup>1</sup> The rule, however, does not define what is a “captured” or “new” subscriber line. As a result, it appears that CETCs are reporting loop counts to the Universal Service Administrative Company (USAC) and receiving support for all customers they serve in all study areas where they are designated. Neither the Commission’s rules nor other public information disseminated by USAC provide any guidance that would enable the public or providers to determine whether the federally supported services are already being

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<sup>1</sup> 47 C.F.R. § 54.307(a) [Emphasis added].

provided to alleged “new” or “captured” customers. Consequently, CETCs, particularly wireless CETCs who rely on billing addresses to report loop counts, can use this loophole in the rule to collect millions of dollars in duplicative high-cost support and Interstate Common Line Support (ICLS) for customers who have not disconnected their wireline service and continue to receive the federally supported services from the ILEC or other carriers.

An expedited rulemaking is needed to prevent further erosion of high-cost support funding. Congress and the Commission never intended that multiple carriers each receive support for providing services in rural and high-cost areas to the same customer at the same time. Unfortunately, the Part 54 rules that provide support for “captured” and “new” subscriber are not clear. As a result, support to duplicative CETC lines continue to grow at an alarming pace that cries for a resolution of these issues. There is no accounting to distinguish what CETC lines have been “captured” from other providers. The ambiguity in the term “new” is also creating confusion. In some service area zones, wireless CETC lines exceed the number of lines served by the ILEC and in certain very high cost zones wireless carriers are seeking total annual support far in excess of the support received by the ILEC. It is not apparent that these excessive line counts (which are in fact billing addresses) represent service to customers that do not now or did not previously receive the federally supported services from the ILEC.

NTCA Petition at pp. 2-3.

NTCA urges an expedited FCC rulemaking to “prevent the erosion of universal service by closing this loophole that is the result of a lack of definition for “captured” and “new” customers.

### **Comments Filed**

Not surprisingly, the NTCA proposal has garnered both support and opposition.<sup>2</sup> Those supporting the NTCA position, note that the current way the federal universal service fund is being administered fails to reflect the intentions of supporting only captured and new lines of the CETCs:

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<sup>2</sup> Those generally in support of the NTCA goals include the New York State Telecommunications Association, the Texas Statewide Telephone Cooperative, the Minnesota Independent Coalition, and CenturyTel. Among those filing in opposition to the positions taken by NTCA are the Cellular Telecommunications & Internet Association, the Rural Telecommunications Group, the Alliance of Rural CMRS Carriers, Sprint Corporation, and the Washington Utilities and Transportation Commission.

Providing support to all CMRS lines is inconsistent with the current Rules. Rule 54.307(a) establishes the basic criteria for support of CETC lines, and limits support to CETC lines meeting set criteria and, by implication, excludes other lines from receiving support. Rule 54.307(a) reads in part:

A competitive eligible telecommunications carrier shall receive universal service support **to the extent** that the competitive eligible telecommunications carrier **captures** the subscriber lines of an independent local exchange carrier (LEC) or services **new subscriber lines** in the incumbent LEC's service area. (Emphasis added)<sup>3</sup>

On the other hand, parties opposed to NTCA argue that the rules are being properly applied:

The Commission should reject NTCA's suggested definitions for "new" or "captured" lines. As an initial matter, NTCA is wrong to suggest that these terms have never been defined or addressed by the Commission.

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In giving meaning to these terms, the Commission made it perfectly clear that all ETCs – including ILECs and CETCs alike – are entitled to equal support for each line they serve. Specifically, the Commission explained the current rule (§ 54.307) as follows:

Under the Commission's high-cost universal service mechanisms, a competitive eligible telecommunications carrier will receive the same per-line, high-cost support for lines that it captures from an incumbent carrier, as well as for "new" lines that the competitive eligible telecommunications carrier serves in high-cost areas. Thus, a competitive eligible telecommunications carrier receives support **for each line it serves** based on the support the incumbent exchange carrier would receive for serving that line.<sup>4</sup>

The differing viewpoints of the proponents and opponents of the NCTA petition are clear, and the issues that are raised are much more than mere semantics. Several other parties recognize that there are real issues to be addressed, but that the NTCA petition is premature or too narrow, and thus it should not be ruled upon in isolation.

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<sup>3</sup> Comments of the Minnesota Independent Coalition, September 9, 2002, p. 2.

<sup>4</sup> Comments of the Competitive Universal Service Coalition, September 23, 2002, pp. 4-5.

The Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”) suggests that this NTCA petition be acted on later in conjunction with a broader review of universal service issues:

The Wireline Competition Bureau is presently preparing a Notice, to be released later this year, regarding issues associated with the portability of universal service fund (USF) support. There are a myriad of issues that relate to universal service portability. The interrelationship between the specific definitional questions posed by NTCA and the other issues concerning the portability of USF suggest that they be considered together.<sup>5</sup>

Likewise, though arguing that there are dysfunctions to the current support system, the Rural Independent Competitive Alliance (“RICA”) “urges the Commission to recognize the reality and urgency of the problems identified by NTCA, but to address them in a manner which is equitable and competitively neutral to all ETCs.”

Finally, Verizon comments:

Regardless of the debates on the merits of NTCA’s petition . . . ., one thing is not debatable: the size of the universal service fund is ballooning. To insure that the fund size is not growing unnecessarily, the Commission should initiate a proceeding to investigate ways to ensure that high cost funds are not being used to fund investments that is not in the “public interest” and to close loopholes in the program that invite waste or abuse.<sup>6</sup>

### **Wisconsin Commission Comments**

The underlying aims of the federal universal service program - to get service affordably deployed in high-cost areas, with competitive fairness - remain critical and legitimate public interest goals. The Wisconsin Commission concurs with the Washington Utilities and

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<sup>5</sup> Comments of OPASTCO, September 9, 2002, p. 2.

<sup>6</sup> Comments of Verizon, September 23, 2002, p. 1.

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Transportation Commission's recital of the principles<sup>7</sup> that should guide the FCC in addressing this issue:

- A. Customers in rural areas should have access to reasonably comparable services at reasonably comparable rates.
- B. All carriers that are eligible for support must receive sufficient support.
- C. Universal service mechanisms must be based on, and administered with, competitive and technological neutrality.<sup>8</sup>

There are numerous issues that relate to the existing universal service programs and the portability of support. The NTCA has identified one important issue; however, it should not be and cannot responsibly be addressed without consideration of the broader picture.<sup>9</sup> Accordingly, we support the comments noted above from OPASTCO, RICA, and Verizon, to the extent they recommend that the FCC examine this NTCA issue in the context of a larger, more comprehensive review of how support for rural and high-cost areas is determined, distributed, and funded. Universal service is a key aspect of all telecommunications and regulatory policy in the nation. It must remain a high priority and be examined with diligence and with input from all interested parties.

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<sup>7</sup> Comments of the Washington Utilities and Transportation Commission, September 23, 2002, p. 3.

<sup>8</sup> Of course, the application of competitive and technological neutrality principles should account for the definitions of services covered by the universal service fund.

<sup>9</sup> A very short and incomplete list of other issues would include the treatment of second lines, the cost methods for determining support, the verification process for determining eligible lines, and the consideration of differences that may be needed for the treatment of ILEC, CLEC and CMRS lines.

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**Conclusion**

The Public Service Commission of Wisconsin urges the FCC to consider the issues raised by the NTCA petition, but to do so in a broader proceeding that will examine the myriad of other issues that relate to fair, sufficient, and competitively neutral universal service provisioning throughout the United States.

Dated at Madison, Wisconsin, October 4, 2002

By the Commission:

/s/ Lynda L. Dorr

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Lynda L. Dorr  
Secretary to the Commission

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