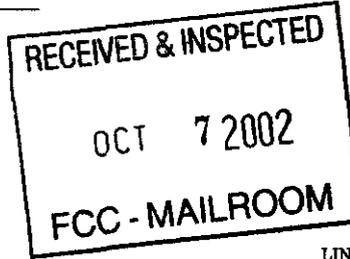


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VIA FEDERAL EXPRESS

Marlene H. Dortch, Secretary
Federal Communications Commission
9300 East Hampton Drive
Capitol Heights, MD 20743

Re: RM 10522

Dear Ms. Dortch:

Enclosed please find an original and five copies of the Reply Comments of The Nebraska Rural Independent Companies for filing in the above-referenced docket. In addition, I have enclosed a further copy of these comments, together with a self-addressed, stamped envelope. Please return a file-stamped copy of such comments to me in the enclosed envelope.

Copies of the comments are being provided to the below referenced persons in diskette form. Please do not hesitate to contact the undersigned in the event any questions arise in conjunction with this filing.

Very truly yours,

PMS/dh
Enclosures

cc: Ms. Sheryl Todd (via Federal Express, 1 diskette copy)
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
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Marlene H. Dortch, Secretary
October 4, 2002
Page 2

Qualex International (via Federal Express, 1 diskette copy)
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Ms. Sue Vanicek (w/o encl.)

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

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

**REPLY COMMENTS OF
THE NEBRASKA RURAL INDEPENDENT COMPANIES**

The Nebraska Rural Independent Companies¹ (the "Nebraska Companies"), respectfully submit their reply comments in the above captioned proceeding seeking comment on the National Telecommunications Cooperative Association's ("NTCA") Petition for Expedited Rulemaking ("Petition"). The Petition requests that the Federal Communications Commission ("Commission") establish definitions for the terms "captured" and "new" subscriber lines in Section 54.307 of the Commission's rules.

The Nebraska Companies believe that the current universal service support mechanism may not be producing the intended results. The comments filed in this proceeding indicate that the universal service principles contained in the Telecommunications Act of 1996 (the "Act") are misunderstood and misconstrued by some parties. For example, the Alliance of Rural CMRS Carriers assert that "[b]oth Congress and the Commission fully understand that a central goal of the universal service

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., 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, Stanton Telephone Co., Inc. and Three River Telco.

program is to foster consumer choice in our nation's rural areas. . . ."² Similarly, Smith Bagley, Inc., indicates that portability of support is necessary ". . .to ensure competitive choices for consumers, in furtherance of the universal service goals set forth by Congress."³ However, Section 254(b) of the Act, which contains universal service principles, does not mention competitive choices as a guiding principle for universal service policies. In fact, floor debates which led up to the passage of the Act illustrate that providing competitive choices was not the congressional intent of Section 254. The intent behind the universal service section of the Act was to maintain what was already present—available and affordable telephone service for all rural Americans. As Senator Byron Dorgan expressed "[t]hat is why the protection of universal service is the most important provision in this legislation. S. 652 contains provisions that make it clear that universal service must be maintained and that citizens in rural areas deserve the same benefits and access to high quality telecommunications services as everyone else."⁴ Likewise, Senator Larry Pressler stated "[t]he need to *preserve* widely available and reasonably priced telephone service is one of the fundamental concerns addressed in The Telecommunications Competition and Deregulation Act of 1995."⁵ (emphasis added) Representative Henry Bonilla also noted "[i]t is essential that our rural residents *continue* to have equal and affordable phone service."⁶ (emphasis supplied)

² Comments of the Alliance of Rural CMRS Carriers, filed Sept. 23, 2002 ("*Rural CMRS Carriers' Comments*") at 11.

³ See Comments of Smith Bagley, Inc. filed Sept. 23, 2002 ("*Smith Bagley Comments*") at 8.

⁴ June 8, 1995 Senate Floor Debate, at S 7951.

⁵ June 7, 1995 Senate Floor Debate, at S 7886.

⁶ Aug. 4, 1995, House Floor Debate, at H 8497.

While the necessity of maintaining universal service was enunciated by the legislators, they also voiced concern about the unintended consequences of competition in rural areas. Senator Tom Daschle indicated that “[w]hile the overall goal of this legislation is to increase competition, *the universal service section and other pieces recognize the fact that competition will not work everywhere.* This is especially true in rural areas like South Dakota.”⁷ (emphasis added) Senator Dorgan likewise noted, “[a] one-size-fits-all approach to competition in the local exchange may have destructive implications. . . .in smaller, rural markets, competition may result in high prices and other problems. The fact is that *in some markets; namely, high-cost rural areas, competition may not serve the public interest.* If left to market forces alone, many small rural markets would be left without service.”⁸ (emphasis added) These statements, in combination with the statements in the paragraph above, indicate that especially for rural areas, Congress’ primary intent in fashioning universal service policy was to maintain universal service, not to ensure competitive choices for consumers. Thus, Congress viewed the purpose of universal service funding as the maintenance of available and affordable service in rural America, and not the creation of “artificial competition” in places where it would not be otherwise economically viable.

Several commenting parties cite the principle of competitive neutrality as being the basis for the current portability rules.⁹ The principle of competitive neutrality, as adopted by the Commission, states:

⁷ June 9, 1995, Senate Floor Debate, at S 8066.

⁸ June 8, 1995, Senate Floor Debate, at S 7951.

⁹ See Opposition of the Cellular Telecommunications & Internet Association, filed Sept. 23, 2002 (“CTIA Comments”) at 3-4, Comments of the Competitive Universal Service Coalition, filed Sept. 23, 2002 (“CUSC Comments”) at 5-6, Rural CMRS Carriers’ Comments at 12, and Smith Bagley Comments at 5.

Universal service support mechanisms and rules should be competitively neutral. In this context, competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.¹⁰

This principle does not “ensure competitive choices for consumers.”¹¹ Rather, it ensures that the rules “neither unfairly advantage or disadvantage one provider over another.” Furthermore, in aligning universal service rules with universal service principles, the Nebraska Companies note that the Commission has stated that “[c]onsistent with the recommendations of the Joint Board, we find that promotion of any one goal or principle should be tempered by a commitment to ensuring the advance of each of the principles enumerated above.”¹² In any examination of universal service rules, the Commission should examine and maintain a balance between all universal service principles, and not use one principle only to judge whether a universal service rule is appropriate.

The Nebraska Companies disagree with the statements of several commenting parties that the *RTF Order* was adopted for a period of five years and that no changes should be made to any rules regarding rural universal service support for that time period.¹³ For example, the Competitive Universal Service Coalition argues that the Commission adopted the current definition of “customer billing address” in the *RTF Order*, and that it should remain in place for five years. However, in adopting the definition of customer billing address in the *RTF Order*, the Commission stated that

¹⁰ See *The 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 on Universal Service*”) at para. 47.

¹¹ *Smith Bagley Comments* at 8.

¹² *First Report and Order on Universal Service* at para. 52.

¹³ See *CUSC Comments* at 19 and *CTIA Comments* at 2.

“[w]e will continue to monitor the reasonableness of using a customer’s billing address as the surrogate for a mobile wireless customer’s location in a disaggregation zone for universal service purposes. As more mobile wireless carriers are designated as eligible to receive support, we may revisit this approach in the future.”¹⁴ This statement indicates that while the universal service support mechanism for rural carriers adopted in the MAG Order was recommended to last for a period of “no more than five years,”¹⁵ it was not intended that no changes could be made to the rules during that time period. Rather, it appears that the five-year time period was adopted because, as the Commission stated “... it is not possible to determine forward-looking costs for rural carriers at this time, we find that rural carriers should continue to receive support based upon their embedded costs while the five-year plan adopted in this Order is in place.”¹⁶ This statement indicates that a five-year time period is needed to develop forward-looking costs for rural carriers, not that the rules regarding rural universal service support were to remain frozen over the five-year period. While changes can be made to the rules for rural universal service support during the five-year period that the *RTF Order* covers, changes should not be made in a vacuum. Instead, any changes to the rules need to be made in consideration of overall universal service policies and principles.

¹⁴ See *The Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, and *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, Fourteenth Report and Order, Twenty-second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, FCC 01-157 (“*RTF Order*”) (rel. May 23, 2001) at para. 184.

¹⁵ *Id.* at para. 167.

¹⁶ *Id.* at para. 177.

The Nebraska Companies concur with the Organization for the Advancement and Promotion of Small Telephone Companies (“OPASTCO”),¹⁷ and recommend that the issues raised by the Petition should be addressed, but this should occur in a comprehensive manner. As OPASTCO noted in its comments, it appears that Commissioner Abernathy is supportive of a comprehensive proceeding addressing portability rules.¹⁸ She has stated “. . .while rural LECs have raised a legitimate concern about our portability rules. . . . the Commission, with my strong support, intends to address that issue in an upcoming rulemaking proceeding.”¹⁹ The Nebraska Companies recommend that the Commission open such a proceeding, in order to comprehensively address all issues related to universal service support portability, and that the issues raised in the Petition be examined as part of such a proceeding.

In undertaking a review of rules regarding universal service support portability, the Commission must recognize the clear legislative intent embodied in the universal service principles of the Act. Congress did not intend the maintenance of universal service to be sacrificed in the promotion of artificial competition, and universal service rules should reflect that intent.

Dated: October 4, 2002.

¹⁷ See OPASTCO Comments, filed Sept. 9, 2002 at 2.

¹⁸ Ibid.

¹⁹ *The Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, Separate Statement of Kathleen Q. Abernathy, FCC 02J-1 (rel. July 10, 2002) at 37.

Respectfully submitted,

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Blair Telephone Company,
Cambridge Telephone Company,
Clarks Telecommunications Co.,
Consolidated Telephone Company,
Consolidated Telco Inc.,
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 Company,
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