

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

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In the Matter of)
)
Petition for Rulemaking to Define)
"Captured" and "New" Subscriber Lines)
for Purposes of Receiving Universal)
Service Support Pursuant to)
47 C.F.R. § 54.307 et seq.)

RM No. 10522

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

REPLY COMMENTS OF THE RURAL CELLULAR ASSOCIATION

The Rural Cellular Association ("RCA"),¹ hereby submits these reply comments in response to the Commission's invitation to comment on the Petition for Expedited Rulemaking filed by the National Telecommunications Cooperative Association ("NTCA").² In its petition, NTCA seeks revision of the definitions "captured subscriber lines" and "new subscriber lines" for purposes of calculating high-cost universal service support for eligible telecommunications carriers ("ETCs").³ RCA opposes the NTCA Petition.

¹ RCA is an association representing the interests of small and rural wireless licensees providing commercial services to subscribers throughout the nation. Its member companies provide service in more than 135 rural and small metropolitan markets where approximately 14.6 million people reside. RCA was formed in 1993 to address the distinctive issues facing rural wireless service providers.

² *Consumer and Government Affairs Bureau, Reference Information Center, Petitions for Rulemaking Filed*, Report No. 10522 (rel. Aug. 8, 2002); *Petition for Rulemaking to Define "Captured" and "New" Subscriber Lines for Purposes of Receiving Universal Service Support Pursuant to § 54.307 et seq.*, Order, RM No. 10522 (rel. Sept. 9, 2002).

³ See National Telecommunications Cooperative Association Petition for Expedited Rulemaking (filed July 26, 2002) (hereinafter, "NTCA Petition").

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RCA agrees with the many parties filing comments criticizing the NTCA Petition.⁴

Consistent with its history of promoting the advancement of universal wireless service in the areas served by rural wireless carriers,⁵ RCA submits that adoption of the NTCA position would inhibit the achievement of this goal. NTCA's proposed rule revisions are arbitrary and would be impossible to implement. Moreover, the "first to serve" concept devalues technological advances, and further jeopardizes universal access to a variety of technologies and services by rekindling the counterproductive approach that support should be limited to the specific cost of the facilities to provide only one service line to a particular customer. NTCA's petition also seeks to resurrect the discredited "subtract from the incumbent rule" as a misguided tactic by which it attempt to restrict the availability of USF to competitive carriers. This policy has already been found to be contrary to public interest. Accordingly, the petition should be dismissed.

I. NTCA's Proposed Rule Changes are Ambiguous and Contrary to the Commission's Policy of Competitive Neutrality

In its petition, NTCA seeks to eliminate support to "duplicative" competitive ETCs by proposing changes to the Commission's rules that would provide universal support only to the

⁴ See, e.g., Opposition of the Cellular Telecommunications & Internet Association ("CTIA's Comments") at 1; Comments of Sprint Corporation ("Sprint's Comments") at 2; Comments of the Alliance of Rural CMRS Carriers ("Alliance's Comments") at 2; Comments of the Rural Independent Competitive Alliance at 2-3.

⁵ See, e.g., Comments of RCA in CC Docket No. 96-45, filed November 5, 2001 at 2-3 (RCA advocating the expansion of universal service eligible recipients to include an additional category of ETC, specifically a rural wireless ETC, and that rural wireless ETCs be eligible for universal service funding for essential wireless services such as enhanced 911 and CALEA capabilities).

first carrier that serves the customer when a customer receives service from more than one carrier.⁶ As demonstrated by several commenters, serious flaws exist in this “first to serve” approach.⁷ First, this approach would be difficult, if not impossible, to administer due to the ambiguous nature of the term “first carrier.” For example, in the scenario where a subscriber disconnects service from the incumbent local exchange carrier (“ILEC”) to connect service with a competitive carrier (wireless or wireline) and then subsequently disconnects service with the competitor and establishes service with the ILEC, how does one distinguish which carrier provided service “first?” Determining the “first to serve” becomes even more difficult when a person moves into a new area and initiates service with the ILEC and a wireless provider on the same day.

A second major flaw with the “first to serve” concept is that it discourages technological advances, and is contrary to the Commission’s goals of competitive neutrality. In fulfilling its statutory obligations under Section 254(b)(7) of the Communications Act of 1934, as amended,⁸ the Commission ruled:

Universal service support mechanisms and rules should be competitively neutral . . . [C]ompetitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another and neither

⁶ See NTCA Petition at iv.

⁷ See, e.g., Comments of the Rural Telecommunications Group (“RTG’s Comments”) at 3-4; Comments of Smith Bagley, Inc. at 7; CTIA Comments at 3-4; Sprint’s Comments at 3-4.

⁸ 47 U.S.C. § 254(b)(7) (authorizing the Commission to adopt “such other principles as the Joint Board and the Commission determine are necessary and appropriate for the protection of the public interest convenience and necessity and are consistent with this Act”).

unfairly favor nor disfavor one technology over another.⁹

Accordingly, consistent with this principle, support should be available regardless of which carrier serves the customer first or the technology chosen.¹⁰ This principle is violated when additional service offerings are excluded from universal support.¹¹

II. The Underlying Premise of the NTCA Petition Unreasonably Limits the Availability of Funding

The NTCA Petition is based on the false premise that the receipt of universal service support must be based upon an exclusive relationship between a given customer and a single telecommunications service provider for the provision of a single service. No such artificial boundaries currently exist, and acceptance of such an approach is contrary to universal service policy goals.

Under the FCC's current rules, the amount of support received by an ILEC is related to its investment in plant and facilities and the cost of maintaining those facilities. These investments and costs are considered in determining universal service support regardless of whether the plant and facilities are used to provide "primary" line service or "second line" service to a customer, and no consideration is given to any "amount" of service a single customer

⁹ *Federal-State Joint Board on Universal Service, First Report and Order*, 12 FCC Rcd 8776, 8801 (1997).

¹⁰ *See* RTG's Comments at 4.

¹¹ *See* CTIA's Comments at 6 (demonstrating that in addition to violating the principle of competitive neutrality, the "first served" approach would unfairly discriminate against rural and high-cost customers who would not be able to take advantage of many of the innovative communications products offered to customers in urban areas due to the price disparity between "supported" and "unsupported" product offerings).

is receiving.

Under NTCA's proposed "single customer to single carrier" proposal, policy favoring universal availability of a variety of services to high-cost areas would be undermined by the attempt to rekindle the debunked argument that support must be limited to the specific cost of the facilities utilized to provide only a "single line" for a specific use to a particular customer.¹² There is no public interest benefit in this arbitrary reduction of universal service support to all service providers, but rather the probability that the introduction of this arbitrary limitation would thwart the Commission's goals of advancing universal service offerings.

III. The NTCA Petition Resurrects the Discredited "Subtract from Incumbent" Approach, Which Has Been Debated and Decided.

The attempt to introduce the concepts of "new" and "captured" customers is incompatible with the fundamental public policy approach adopted by the FCC. The deliberations leading to the current rules included ILECs, CLECs, wireless carriers, state and federal regulators and consumers. In balancing the public interest elements attendant to implementing a competitively neutral framework, the concept of decreasing universal service support to an incumbent service provider in a high cost area when a competitor enrolls a new customer was rejected based upon the FCC's recognition that costs to the incumbent may remain. Accordingly, under current rules, it is of no consequence whether a customer is "new" or "captured." The NTCA Petition

¹² See CTIA's Comments at 5-6 ("Accordingly, under NTCA's proposed definitions, a multi-line customer could receive support for two or more lines provided by an incumbent LEC, but would lose support for multiple lines if they decided to split lines between an incumbent LEC and a [competitive] ETC").

resurrects this “subtract from the incumbent” rule, while failing to provide any basis for the abrupt change in public policy or factual circumstances which would support this reversal.

IV. Conclusion

Adoption of NTCA’s petition would reverse the progress that have been made by the Commission in its careful crafting of rules to promote universal service through reasonable support mechanisms. The proposed rules are ambiguous, and contrary to the Commission’s policy goals promoting competitive neutrality. Accordingly, the NTCA Petition should be dismissed.

Respectfully submitted,

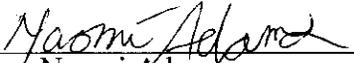
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CERTIFICATE OF SERVICE

I, Naomi Adams do hereby certify that a copy of the foregoing "Reply Comments of the Rural Cellular Association" was served on this 7th day of October 2002, via hand delivery or first class, U.S. Mail, postage prepaid to the following parties:



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