

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
The Definition of the Rural Service Area of)
CenturyTel of Eagle, Inc. and Delta County) CC Docket No. 96-45
Tele-Comm, Inc.) DA 03-26
)

**COMMENTS OF
THE NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION**

The National Telecommunications Cooperative Association (NTCA) hereby submits its comments in the above referenced proceeding. NTCA is a not-for-profit association established in 1954. It represents more than 555 rate-of-return regulated rural telecommunications companies. NTCA members are full service telecommunications carriers providing local, wireless, cable, Internet, satellite and long distance services to their communities. All NTCA members are small carriers that are defined as “rural telephone companies” in the Telecommunications Act of 1996.¹ Approximately half of NTCA member companies are organized as cooperatives, and half are small commercial companies. NTCA’s members stand to be adversely affected by any decision that fails to take account of the multiple issues recently referred to the Joint Board before setting a precedent that could undermine the Commission’s effort to address ETC and service area changes comprehensively.

The Commission should not agree to the proposed redrawing of the areas for which additional ETCs must meet the universal service requirements of §214(e)(2). As the record reflects, the Colorado Public Utilities Commission’s (CPUC’s) request virtually guarantees a new entrant ETC designation in the CenturyTel and Delta service areas

despite the fact that the state is obligated not to designate additional ETCs in any rural carrier's study area "[b]efore . . . findi[ng] that the designation is in the public interest."² The state must also obtain a Joint Board recommendation and the FCC's agreement in partitioning into smaller service areas. Further, many of the important policy considerations at issue in this proceeding have been referred to the Joint Board. It is likely that recommendations from the Joint Board will substantially impact the future of ETC designation requests and universal service funding. Given the uncertainty surrounding the issues and the potential for irreparable harm to the rural telephone companies and the universal service fund, action on the CPUC's petition should wait until after the Joint Board issues its recommendations and the Commission has had time to accept or reject them.

I. THE RECORD ADEQUATELY DEMONSTRATES THAT THE CPUC'S REQUEST IS CONTRARY TO THE ACT

The CPUC asks this Commission to concur in its proposal to carve CenturyTel's and Delta's (collectively, the rural ILECs') service areas into wire-center-based service areas. It does so because the rural ILECs allocated their study area support to reflect relative costs at the wire center level. The Commission has already received comment in both proceedings demonstrating that the CPUC request is contrary to the Act, the Joint Board recommendations and this Commission's rules and decisions.

The CPUC's rationale for making federal universal service support available to competing carriers desiring ETC status, without requiring them to provide universal service throughout the rural carrier's study area, is that the action will help and encourage

¹ 47 U.S.C. § 153(37).

² 47 USC§214(e)(2).

competitors. In the case of CenturyTel, the CPUC names specific competitors its actions will aid.³

The CPUC assumption that more competition automatically supports smaller service areas and designations of additional subsidized carriers in rural areas is contrary to the law. Congress deliberately excluded additional designations for rural carrier study areas from the Telecom Act's general pro-competition requirement that states designate additional carriers in non-rural areas to draw federal support. Congress recognized that rural is different and that the costs of adding additional competitors to some rural areas would be greater than the public benefit. Many rural areas cannot support multiple providers. Serving vast terrain with a limited subscriber base is expensive. Introducing subsidized competition into some areas will draw from the already limited resources of rural ILECs. At best, the carriers will be forced to forego necessary upgrades; at worst, all providers serving the territory fail.

Reacting to the fact that competition for competition's sake could harm rural consumers, Congress set a higher bar for competitive entry in rural areas. In areas served by rural telephone companies, ETC designation is preconditioned on a state public interest determination. Also, rural carriers' entire study areas are prescribed as the geographic service area a competitor must serve to qualify for support, absent state and federal agreement.

The CPUC and this Commission, having no ETC designation requests to consider, lack the facts needed to evaluate the effects of the change on the rural ILECs, their customers, and the cost to the public of supporting multiple supported competitors.

³ CPUC CenturyTel Petition, pp. 11-12.

In short, there is no way to determine the public interest of carving the Colorado service areas into wire-center-based service areas.

The CPUC request also fails to consider relevant Joint Board recommendations and this Commission's rules. The Joint Board and Rural Task Force recommended only that the level of disaggregation of support be "considered" in determining whether to certify new ETCs for a service other than a rural carrier's entire study area.⁴ The CPUC reads this as stating that competing ETCs must be enabled to enter areas and receive support at below the study area level to promote competition in the local exchange market. However, the CPUC's presumption ignores that § 214(c) requires: a) a state to make a determination that the public interest will be served by designating a further supported carrier; and b) that an agreement between the state and this Commission and a joint board recommendation is necessary before a service area may be modified.⁵

Further, this Commission has expressly rejected automatically disaggregating a study area for purposes of ETC designation when a rural incumbent carrier study area is disaggregated for purposes of targeting funding.⁶ The FCC held that the statute requires a joint state and federal determination that precludes the Commission from settling the issue in advance with a rule. The CPUC rule at issue here also prejudices the issue contrary to the requirements of §214. A state should not be permitted to avoid the designation and certification process established by law.

⁴ *Federal-State Joint Board on Universal Service Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, 16 FCC Rcd 11244, ¶ 165.

⁵ § 214(e)(5).

⁶ *Federal-State Joint Board on Universal Service Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers Petitions for Reconsideration filed by: Coalition of Rural Telephone Companies Competitive Universal*

II. NO ACTION SHOULD BE TAKEN IN THIS PROCEEDING DUE TO THE UNCERTAINTY SURROUNDING THE RELEVANT ISSUES

Any decision in this proceeding will turn on rules and policies that are being reviewed and will likely be revised by this Commission. There is growing concern about the sustainability of the universal service high cost fund under current rules and policies. The industry has changed since the original rules were put in place and programs or policies that put competition before the public interest are straining the universal service support system.

On November 8, 2002 the Commission requested the Federal-State Joint Board on Universal Service to review many of the Commission's rules relating to the high-cost universal service support mechanisms.⁷ The Joint Board will be examining high-cost support levels in study areas with competitive ETCs, support for second lines and the process for designating competitive ETCs.⁸ The Joint Board will be reviewing the methodology for calculating support for ETCs in competitive study areas and considering whether the Act's goals would be served if support were limited to a single connection to the end-user, whether provided by the incumbent or the competitive ETC.⁹ Specific to competition in rural areas, the Commission asked the Joint Board to consider whether it is advisable to establish federal processing guidelines for ETC applications and to what extent the FCC should provide additional guidance on the impact of the disaggregation of support on the designation of a service area other than the ILEC's study area.¹⁰

Service Coalition, Illinois Commerce Commission, National Telephone Cooperative Association, Order on Reconsideration, FCC 02-171, ¶17 (June 13, 2002).

⁷ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 02-307(rel. Nov. 8, 2002) (Portability Proceeding).

⁸ Portability Proceeding, ¶ 1.

⁹ *Id.*, ¶¶ 5-9.

¹⁰ *Id.* ¶ 10.

In recognition of the strain being placed on the universal service fund, at least three of the FCC's Commissioners are questioning the apparent policy of using universal service support to create competition in high cost areas. Just last week at NTCA's annual meeting in Phoenix, Arizona, Commissioner Adelstein stated, "Universal service is the bedrock of American telecommunications policy . . ." ¹¹ and that state commissioners play a "key role" in determining if a competitor is eligible for support. He stated, "[The states] need to take great care in doing this – greater care. . . than some have in the recent past." ¹² The Commissioner went on to offer his recommendations to state regulators:

I'm encouraging state commissioners to carefully consider the public interest when making their eligibility determinations, as is required by the Act. Specifically, states must make sure that the new market entrants receiving universal service meet all the obligations required by the Act. These include providing service throughout the service area and advertising its availability. They also need to consider whether the new service proposed is an enhancement or an upgrade to already existing or currently available service. ¹³

Commissioner Adelstein addressed the concerns of a ballooning universal service fund and the need to balance competition against the public good, stating, "The public interest also demands that regulators seriously consider whether a market can support more than one carrier with universal service. If not, then new designations shouldn't be given as a matter of course just because it appears they meet other qualifications." ¹⁴

Commissioner Adelstein's remarks echo earlier statements of Commissioner Martin. In a separate statement to the Order adopting the MAG plan, the Commissioner questioned "the Commission's policy . . . of using universal service support as a means of

¹¹ "Adelstein, "Rural America and the Promise of Tomorrow," NTCA Annual Meeting & Expo, Phoenix, Arizona (February 3, 2003).

¹² *Id.*

¹³ *Id.*

creating ‘competition’ in high cost areas.”¹⁵ Commissioner Martin recognized that subsidizing multiple competitors in an area that cannot support it “may make it difficult for any one carrier to achieve the economies of scale necessary to serve all of the customers in a rural area, leading to inefficient and/or stranded investment and a ballooning universal service fund.”¹⁶

The Chairman of the Commission set the tone for the Joint Board referral when he challenged the former Commission’s “pro-competitor industrial policy.”¹⁷

Clearly, a change of universal service funding policies is imminent. A decision in favor of the CPUC would fly in the face of recognized shortfalls in the current system. It is inappropriate for the Bureau, using its delegated authority, to make decisions based on standards that the Commission is in the process of reviewing and revising.

Knowing that the ETC designation process is likely to be altered and that universal service funding may become more difficult to come by, there is danger that there is an incentive for carriers to obtain ETC designations and support quickly, before changes to the system are adopted. Carriers will come to depend on the windfall support, making it difficult to stop payment at a future date. Even if the support is stopped at a later date, immediate harm to the universal service fund and the consumers of this country could not be avoided. USAC data indicates that the annualized amount of high-cost funding going to wireless providers with approved status from the fourth quarter of

¹⁴ *Id.*

¹⁵ Separate Statement of Commissioner Kevin J. Martin in *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers Federal-State Joint Board on Universal Service Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, 16 FCC Rcd 19613 (2001).

¹⁶ *Id.*

2001 through the first quarter of 2003 would increase by \$95.5 million.¹⁸ This potential explosion in the universal service fund cannot be ignored. There is also immediate harm to the rural ILECs and the customers they serve. Rural ILECs will be forced to trim already narrow budgets so that they may deal with the adverse affects of subsidized competition when it will be later be revealed that subsidizing that competition was never in the public's interest. The Commission must protect the public by postponing decisions on requests such as the one presented by the CPUC until the majority of the outstanding issues are settled.

¹⁷ Speech by Michael K. Powell at the Goldman Sachs Communicopia XI Conference, New York, NY (Oct. 2, 2002).

¹⁸ See USAC HC01 Reports for 4Q01 through 1Q03.

III. CONCLUSION

The petition of the CPUC is contrary to law, policy and current FCC rules. The disaggregation plan of the PUC promotes competition at the expense of the public interest and should not be condoned by this Commission.

Also given the fact that existing policies and rules that may directly impact the outcome of this proceeding are being re-examined, the Commission should defer any action until the issues are finally decided.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Rita H. Bolden, certify that a copy of the foregoing Comments of the National Telecommunications Cooperative Association, CC Docket No. 96-45, DA 03-26, was served on this 6th day of February 2003 by first-class, U.S. Mail, postage prepaid, to the following persons:

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