

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	

**COMMENTS OF
THE ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF
SMALL TELECOMMUNICATIONS COMPANIES**

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SUMMARY

OPASTCO is in agreement with those Joint Board members that support adding equal access to interexchange service to the list of services supported by the USF. Equal access satisfies the definitional criteria set forth in section 254(c)(1) of the 1996 Act, and section 332(c)(8) of the Act presents no obstacle to the inclusion of equal access in the list of supported services. In addition, given the significant growth in the ETC designations of CMRS providers over the past several years, now is the time for the Commission to begin establishing regulatory parity for all carriers that seek to receive limited high-cost support.

Adding equal access to the universal service definition is not inconsistent with section 332(c)(8) of the Act. A general exemption from a regulatory requirement cannot be equated to conditions that attach only to carriers that voluntarily seek the ETC designation. In 2002, the Utah Supreme Court made a similar finding when it ruled that pricing conditions established for the receipt of state universal service support do not equate to rate regulation in violation of section 332 of the Act, since state universal service funding is sought voluntarily. Any CMRS provider that is unwilling or unable to provide the services supported by the voluntary high-cost program has the option of not seeking ETC status and avoiding the responsibilities such designation entails.

Contrary to the arguments put forth by the opposing Joint Board members, the inclusion of equal access in the definition would serve the public interest. To begin with, there is nothing to indicate that adding equal access to the definition would reduce competition from CMRS providers in rural and high-cost areas. Most CMRS providers that seek ETC designation in rural areas have already deployed infrastructure and have been successfully providing service without the aid of universal service support. CMRS

providers could still continue to offer service in rural areas without the ETC designation, if they chose, and not be required to provide equal access.

Moreover, the Act's goal of promoting competition is not limited to just local service; it applies to all segments of the industry, including interexchange service. Consumers living in rural and high-cost areas should be able to receive unfettered access to the competitive long distance market regardless of who they choose as their local service provider. It is impossible to rationalize how the designation of multiple ETCs within a local service area is in the public interest, yet equal access to interexchange service is not.

There is nothing to indicate that expanding the definition to include equal access would prevent CMRS providers from continuing to provide benefits to consumers such as bundles of any-distance minutes. Nevertheless, when a CMRS provider is designated as an ETC, it is holding itself out as a substitute for the services offered by a LEC. The fact that Congress required all LECs to provide dialing parity demonstrates that equal access is in the public interest, and therefore all ETCs should be required to provide it.

It should not be assumed that a LEC will always be present to provide equal access. Section 214(e)(4) of the Act requires state commissions to allow any carrier – including the ILEC – to relinquish their ETC designation in any area served by more than one ETC. Were a CMRS provider to become the only ETC in a service area, without equal access as part of the universal service definition, consumers would not even have the option of receiving equal access to interexchange service.

In rural areas, equal access is critical to facilitating long distance service options and rates that are reasonably comparable to those available in urban areas. Rural

consumers tend to have fewer long distance providers to choose from and less attractive calling plans and rates available to them than their urban counterparts. Consequently, adding equal access to the definition is essential to ensuring that rural Americans receive the full benefits of competition and choices in the interexchange services market.

The small number of rural carriers that have yet to receive a bona fide request for equal access from a competing IXC should be handled through a reasonable waiver process to ensure that such carriers do not become ineligible for support. In addition, CMRS providers that have already received the ETC designation should have a reasonable timeframe in which to comply with the equal access requirement. However, carriers that have not yet received ETC status, or that have not yet begun receiving support, should not be permitted to draw from the Fund until they have complied with the new requirement.

Finally, due to the rapid growth in high-cost support being received by wireless ETCs, it is important to establish fair and equal rules for all ETCs at this time. The Joint Board has recently issued a Public Notice that seeks comment on the rules relating to high-cost support in study areas in which a CETC is providing service. Due to the complexity of these issues, however, it will take some time before they are ultimately resolved by the Commission. If a CMRS provider chooses to seek ETC status, receive universal service support, and offer services that are designed to substitute for a LEC's services, then it too should be capable of providing equal access. Requiring all carriers that wish to draw from the limited pool of universal service funds to provide equal access would help to prevent uneconomic competitive entry that is motivated solely by the prospect of high-cost support.

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I. INTRODUCTION

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits these comments in response to the Federal Communication Commission's (FCC, Commission) Notice of Proposed Rulemaking (NPRM)¹ seeking comment on the Recommended Decision of the Federal-State Joint Board on Universal Service (Joint Board) regarding the definition of services supported by universal service.² OPASTCO is a national trade association representing approximately 500 small telecommunications carriers serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 2.5 million customers. All of OPASTCO's members are rural telephone companies as defined in 47 U.S.C. §153(37). In addition, they are all eligible telecommunications carriers (ETCs) in their service areas. Also, nearly one half of OPASTCO's members provide some type of wireless service.

¹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Notice of Proposed Rulemaking, FCC 03-13 (rel. Feb. 25, 2003).

² *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 17 FCC Rcd 14095 (2002) (Recommended Decision).

OPASTCO is in complete agreement with those Joint Board members that support adding equal access to interexchange service to the list of core services supported by the Universal Service Fund (USF). As the supporting Joint Board members correctly state, equal access satisfies the definitional criteria set forth in section 254(c)(1) of the Communications Act of 1934, as amended (1996 Act, the Act), and section 332(c)(8) of the Act presents no obstacle to the inclusion of equal access in the list of supported services.³ In its comments and reply comments to the Joint Board in the first phase of this proceeding, OPASTCO demonstrated how equal access meets all of the criteria in section 254(c)(1) of the 1996 Act for inclusion as a supported service. We also explained why adding equal access to the definition is not inconsistent with section 332(c)(8) of the Act, which prohibits an equal access requirement on providers of commercial mobile services.⁴ The Joint Board members in support of adding equal access to the definition have also convincingly explained the same.

The Joint Board members in opposition to adding equal access to the definition do not even question whether equal access meets two of the section 254(c)(1) criteria. Specifically, there is no debate that through the operation of market choices by customers, equal access has been subscribed to by a substantial majority of residential subscribers.⁵ Nor is there any question that equal access is being deployed in public

³ Recommended Decision, 17 FCC Rcd 14124, para. 75.

⁴ OPASTCO comments, CC Docket No. 96-45, fil. Nov. 5, 2001; OPASTCO reply comments, CC Docket No. 96-45, fil. Jan. 4, 2002. *See also*, OPASTCO written ex parte presentation, CC Docket No. 96-45, fil. July 8, 2002.

⁵ In a separate statement, Commissioner Abernathy questions whether equal access has been subscribed to by a substantial majority of residential consumers through the operation of market choices by customers. Separate Statement of Commissioner Kathleen Q. Abernathy, 17 FCC Rcd 14134. The Commissioner says that since consumers do not literally “subscribe” to equal access that it is not the kind of service that Congress envisioned as part of the universal service definition. However, this argument is invalidated by the existing list of supported services, none of which are individually subscribed to by consumers. For example, when a consumer subscribes to basic phone service, they do not individually subscribe to single party service, access to emergency services, access to operator services, or access to directory assistance.

telecommunications networks by telecommunications carriers. This is due to the fact that section 251(b)(3) of the 1996 Act requires all local exchange carriers (LECs) – both incumbents and competitive LECs -- to provide dialing parity to competing providers of telephone exchange service and telephone toll service.⁶

Instead, the opposing Joint Board members primarily base their position on two arguments. First, they contend that adding equal access to the definition would be inconsistent with the intent of section 332(c)(8) of the Act. And second, they assert that equal access fails to meet the section 254(c)(1)(D) criterion of being consistent with the public interest. However, these arguments are both highly flawed. As OPASTCO will demonstrate in these comments, adding equal access to the universal service definition would not conflict with the intent of section 332(c)(8) and would very much serve the public interest. Furthermore, given the significant growth in the ETC designations of commercial mobile radio service (CMRS) providers over the past several years, now is the time for wireless carriers to begin to be held to the same obligations as LECs as a condition of receiving universal service support.

II. ADDING EQUAL ACCESS TO THE UNIVERSAL SERVICE DEFINITION IS NOT INCONSISTENT WITH THE INTENT OF SECTION 332(c)(8) OF THE ACT

The Joint Board members in opposition to adding equal access to the universal service definition argue that doing so is inconsistent with the legislative intent of section 332(c)(8) of the Act. Section 332(c)(8) prohibits a requirement on providers of commercial mobile services to provide equal access to common carriers for the provision

All are features of the overall package. The same applies to equal access. It is a standard and expected service in a basic local service package. If one were to follow the Commissioner's line of reasoning to its logical conclusion, there would be no supported services today.

of telephone toll services. The opposing Joint Board members' discussion suggests that section 332(c)(8) is a general prohibition on any equal access requirement imposed directly on CMRS providers.⁷ However, adding equal access to the universal service definition is not a general requirement imposed on all CMRS providers. Nor is it a requirement that is imposed directly on CMRS providers. As the Joint Board members in support of adding equal access correctly observe:

Section 332(c)(8) prevents the Commission from requiring CMRS carriers to provide equal access simply because the CMRS carriers provide telecommunications services. Including equal access in the definition of supported service does not in any manner require any CMRS carrier to provide equal access as part of its obligations as a common carrier.⁸

It is absurd to equate a general exemption from a regulatory requirement with conditions that attach only to carriers that choose of their own volition to seek ETC designation and universal service support. In 2002, the Utah Supreme Court made such a distinction when it ruled that pricing conditions established for the receipt of state universal service support do not equate to rate regulation in violation of section 332 of the Act.⁹ In support of its decision, the Court noted that:

An ETC becomes subject to the rate regulation requirement only after it chooses to seek state [universal service] funding. Because Utah [rate regulation] becomes applicable only under discrete, voluntary circumstances, the element of restriction or control is absent. It is therefore not rate regulation.¹⁰

Similarly, ETC status is sought voluntarily. Any CMRS provider that is unwilling or unable to provide the services supported by the voluntary high-cost universal service

⁶ The FCC's implementation of section 251(b)(3) required that LECs begin providing toll dialing parity no later than February 8, 1999. 47 C.F.R. §51.211(a).

⁷ Recommended Decision, 17 FCC Rcd 14122, para. 70.

⁸ *Id.*, 17 FCC Rcd 14124-14125, para. 76.

⁹ *WWC Holdings Co. Inc. v. Public Service Commission of Utah, et. al.*, Case No. 20000835, 2002 UT 23 (filed March 5, 2002) (Utah Decision).

¹⁰ Utah Decision, para. 29.

program has the option of not seeking ETC status and avoiding the responsibilities such designation entails.

Of course, ETC designation is attractive because it is what makes a carrier eligible for universal service support. But with that designation and the receipt of support comes the responsibility to provide rural customers with a baseline level of services. The argument that the definition of universal service must not be upgraded unless certain carriers can meet the new standard is a perversion of the pro-consumer foundation on which the national universal service policy rests. Congress felt strongly enough about the importance of equal access to require all LECs – both incumbents and competitive LECs -- to provide it.¹¹ Certainly, it is not inconsistent with Congressional intent to require any carrier that makes a service offering that is designed to substitute for a LEC's services to provide equal access as a condition of high-cost support eligibility.¹²

As stated previously, nearly half of OPASTCO's members offer some type of wireless service and they certainly would not want to be saddled with a general requirement that all CMRS providers become equal access-capable. Adding equal access to the universal service definition does not impose such a requirement on CMRS providers, however. Instead, adding equal access to the definition imposes a requirement on all carriers – including, but not limited to, CMRS providers – that is triggered only as a condition of becoming an ETC. Therefore, adding equal access to the universal service definition is not inconsistent with the intent of section 332(c)(8) of the Act.

¹¹ 47 U.S.C. §251(b)(3).

¹² Congress clearly foresaw the day when wireless carriers would engage in direct competition with traditional wireline local carriers. This is why the 1996 Act's definition of a "local exchange carrier" provides the Commission with the authority to find that the provision of commercial mobile service, in certain instances, should be included in the LEC definition. 47 U.S.C. §153(26).

III. THE INCLUSION OF EQUAL ACCESS IN THE UNIVERSAL SERVICE DEFINITION WOULD SERVE THE PUBLIC INTEREST

A. There is nothing to indicate that adding equal access to the universal service definition would have an adverse impact on competition in rural and high-cost areas

The Joint Board members opposing the addition of equal access to the universal service definition begin their “public interest” argument by stating that the addition of equal access would likely reduce competition in rural and high-cost areas.¹³ However, these Joint Board members do not provide any basis for their assertion. There is nothing to indicate that adding equal access to the universal service definition would reduce competition from CMRS providers in rural and high-cost areas.

Most CMRS providers that seek ETC designation in rural areas have already established a presence in those areas before doing so, and have an existing customer base for which they are able to receive support as soon as they are designated. Indeed, the opposing Joint Board members note that CMRS providers may provide a lower cost source of local competition in rural service areas.¹⁴ This lower cost has allowed CMRS providers to build infrastructure along highways and successfully offer service in rural towns without the aid of universal service support. In fact, the FCC’s Seventh CMRS Competition Report states that rural markets have an average of slightly more than three CMRS providers.¹⁵

Adding equal access to the universal service definition would only require CMRS providers to offer equal access if they sought ETC status. They could still continue to

¹³ Recommended Decision, 17 FCC Rcd 14123, para. 71.

¹⁴ *Id.*

¹⁵ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Seventh Report*, 17 FCC Rcd 12985, 13023 (2002).

offer service in rural areas without the ETC designation, if they chose, and not be required to provide equal access. As the Joint Board members in support of adding equal access accurately state:

Nothing in our recommendation today, however, will alter the legal framework within which the wireless industry has grown and wireless calling plans have been allowed to flourish. Nor does the recommendation impact the existing prohibitions on requiring wireless carriers to provide equal access simply because they provide telecommunications services. All that would be changed under our ruling would be the requirements under which any carrier – including wireless carriers – would qualify to draw from the explicit subsidies provided by the universal service fund.¹⁶

Thus, “contrary to the assertions of some, including equal access in the definition... will not result in a reduction in the number of carriers offering service in rural areas. Properly targeted universal service support should provide the appropriate incentives to all carriers to serve rural and high cost areas.”¹⁷

Furthermore, it is improper for the opposing Joint Board members to automatically assume that supporting competition in rural service areas will always be in the public interest, since Congress did not assume so. Section 214(e)(2) of the Act does not require state commissions and the FCC to designate additional ETCs in rural telephone company service areas as it does for all other areas. It also requires that before designating an additional ETC in a rural service area, the state commission or FCC find that the designation is in the public interest. This demonstrates Congress’s recognition that financially supporting multiple carriers in a rural service area would not always be in the best interest of the consumers living in these areas. Both federal and state regulators should seek to avoid the assumption that local competition will always need to be artificially “jump-started” in rural service areas using limited federal high-cost support.

¹⁶ *Id.*, 17 FCC Rcd 14126, para. 81.

B. The 1996 Act seeks to promote competition in all segments of the telecommunications industry, including long distance

The Joint Board members opposed to adding equal access to the universal service definition are inconsistent in their argument regarding the relevance of promoting competition. First, they assert that adding equal access would not serve the public interest because it would likely reduce competition in rural and high-cost areas.¹⁸ Yet, two paragraphs later, they brush aside the fact that limiting consumers' choice of interexchange carriers (IXCs) constitutes a barrier to long distance competition by stating that the lack of an equal access requirement does not impair universal service.¹⁹ How is it that (supposedly) reducing *local* competition is not in the public interest, but producing a barrier to *long distance* competition is? Why is it that enhancing competition in the long distance market is not the task of this universal service proceeding, but doing so in the local market is? As Commissioner Copps astutely asks in his separate statement, "if universal service is about connecting all Americans, is it the consumer or the carrier who decides on the services and the identity of the provider that the consumer can access through that connection?"²⁰

The fact is, the Act's goal of promoting competition is not limited to just local service; it applies to all segments of the industry, including interexchange service. Consumers living in rural and high-cost areas should be able to receive unfettered access

¹⁷ *Id.*, 17 FCC Rcd 14127, para. 85.

¹⁸ *Id.*, 17 FCC Rcd 14123, para. 71.

¹⁹ *Id.*, 17 FCC Rcd 14124, para. 73. Commissioner Abernathy's separate statement demonstrates this same inconsistency. The Commissioner states that enhancing competition in the interexchange market is entirely distinct from the task of preserving and advancing universal service. Separate Statement of Commissioner Kathleen Q. Abernathy, 17 FCC Rcd 14133. Yet one of the Commissioner's primary reasons for opposing the addition of equal access to the universal service definition is her assertion that it would deter competitive entry in high-cost areas and undercut the core procompetitive goals of the 1996 Act. *Id.*, 17 FCC Rcd 14132.

²⁰ Separate Statement of Commissioner Michael J. Copps, 17 FCC Rcd 14153.

to the competitive long distance market regardless of their choice of local service provider, and therefore all carriers eligible for limited universal service funding should be obligated to provide such access. It is impossible to rationalize how the designation of multiple ETCs within a local service area is consistent with the public interest, yet equal access to interexchange service is not.

C. Congress did not find that consumer benefits such as bundles of any-distance minutes outweigh the consumer benefits of equal access

Next, the opposing Joint Board members argue that CMRS may provide benefits to consumers, such as buckets of minutes that may be used for local or long distance calling, that outweigh the lack of 1+ dialing to a presubscribed IXC.²¹ But as Commissioner Copps points out in his separate statement, there is no indication that expanding the definition to include equal access would prevent CMRS providers from continuing to provide these bucket of minutes plans.²² Regardless, Congress did not find that these other benefits outweighed the importance of equal access when it mandated that all LECs provide it in section 251(b)(3) of the Act.

When a CMRS provider is designated as an ETC, it is no longer merely acting as a compliment to wireline local exchange service. It is holding itself out as a substitute for the services offered by a LEC. The fact that Congress required all LECs to provide dialing parity illustrates beyond a shadow of a doubt that equal access is in the public interest. Therefore, equal access should be supported by universal service and all ETCs, regardless of their technology platform, should be required to provide it.

²¹ Recommended Decision, 17 FCC Rcd 14123, para. 71.

²² Separate Statement of Commissioner Michael J. Copps, 17 FCC Rcd 14153.

D. In an area served by more than one ETC, it is wrong to assume that a LEC will always be present to provide equal access

The opposing Joint Board members contend that excluding equal access from the universal service definition would not jeopardize consumers' continued access to their presubscribed IXC of choice, since LECs are required to provide it.²³ This is a very disappointing statement because it fails to recognize the true meaning of the ETC designation.

The opposing Joint Board members are making the assumption that when a CMRS provider is designated as an ETC, a LEC ETC will continue to serve the area indefinitely. But Congress did not make this same assumption. Because Congress assumed that all ETCs would be able to provide a baseline level of service, it required state commissions to allow any carrier – including the ILEC – to relinquish their ETC designation in any area served by more than one ETC.²⁴ Thus, any additional carrier that is granted ETC status, including a CMRS provider, could at some point in time be the only local service provider in the area if the ILEC decided to relinquish its designation.

The FCC itself has recognized this in previous ETC designation orders:

...Congress expressed a specific intent to preserve and advance universal service in rural areas as competition emerges. Specifically, we believe that Congress sought to ensure that consumers in areas served by rural telephone companies continue to be adequately served should the incumbent telephone company seek to relinquish its ETC designation under section 214(e)(4).²⁵

²³ Recommended Decision, 17 FCC Rcd 14123, para. 71. Commissioner Abernathy's separate statement adopts the same argument: "And if a wireless subscriber seeks to use the services of a particular IXC, she can presubscribe to that IXC over her landline phone..." Separate Statement of Commissioner Kathleen Q. Abernathy, 17 FCC Rcd 14134.

²⁴ 47 U.S.C. §214(e)(4).

²⁵ See, for example, *Federal-State Joint Board on Universal Service, Guam Cellular and Paging, Inc. d/b/a/ Guamcell Communications Petition for Designation as an Eligible Telecommunications Carrier In the Territory of Guam*, CC Docket No. 96-45, Memorandum Opinion and Order, 17 FCC Rcd 1502, 1508-1509, para. 16 (2002).

Were a CMRS provider to become the only ETC in a service area, without equal access as part of the universal service definition, consumers would not even have the option of receiving equal access to interexchange service. Instead, customers would be forced to either use the IXC of the CMRS provider's choosing or reach their presubscribed IXC on a dial-around basis. This is not what Congress intended and is most definitely not in the public interest.

E. In rural areas, equal access is critical to facilitating long distance service options and rates that are reasonably comparable to the service options and rates that are available in urban areas

The opposing Joint Board members state that they do not believe that the public interest would be served by adding equal access to the definition merely because LECs are required to provide it.²⁶ But, Congress would not have required all LECs to provide equal access if it did not believe that it was consistent with the public interest, convenience, and necessity. Providing customers with equal access to the toll carriers of their choosing is pro-competitive, which is one of the underlying purposes of the 1996 Act. As the Joint Board members in support of adding equal access state, "...requiring equal access will empower individual consumers and enhance customer choice. This in turn will promote competition, and lead to lower prices and better services."²⁷

The opposing Joint Board members are incorrect when they assert that the absence of an equal access requirement for all ETCs does not impair universal service.²⁸ One of the universal service principles Congress adopted in the 1996 Act is that consumers in rural and high-cost areas should have access to telecommunications

²⁶ Recommended Decision, 17 FCC Rcd 14123, para. 72.

²⁷ *Id.*, 17 FCC Rcd 14126, para. 80. The supporting Joint Board members also note that the Commission previously affirmed in 1994 that "equal access promotes the important objectives of customer choice and enhances competition in the interexchange market." *Id.* (citation excluded).

services, *including interexchange services*, that are reasonably comparable to those services provided in urban areas and at reasonably comparable rates.²⁹ Urban areas, by their very nature, attract the largest number of long distance providers. Thus, urban consumers have the widest selection of calling plans and the lowest rates available to them. On the other hand, rural areas are not as lucrative to serve and therefore rural consumers tend to have fewer long distance providers to choose from and less attractive calling plans and rates available to them. This is confirmed by a recent study conducted by the National Exchange Carrier Association (NECA).³⁰ The NECA study found that only 57 percent of rural customers have access to long distance discount plans. And, while average long distance rates dropped from \$0.14 in 1994 to \$0.09 per minute in 2000, many rural customers were paying between \$0.185 and \$0.35 in 2002. Consequently, adding equal access to the universal service definition is essential to facilitating long distance service options and rates in rural areas that are reasonably comparable to what is available in urban areas.

Equal access is also critical in rural service areas because smaller calling scopes necessitate a higher percentage of toll calls compared to urban areas.³¹ Often, calls to medical and emergency services, schools, and local government offices are toll calls in rural service areas.³² In the Rate-of-Return Access Charge Reform Order, the FCC stated

²⁸ *Id.*, 17 FCC Rcd 14124, para. 73.

²⁹ 47 U.S.C. §254(b)(3).

³⁰ *Trends In Telecommunications Cost Recovery: The Impact on Rural America*, National Exchange Carrier Association (Sept. 2002), p. 3.

³¹ A comparison of the average local and toll revenue sources between rural and non-rural carriers shows that 66 percent of the average rural carrier subscriber's bill comes from toll charges compared to only 53 percent for the average non-rural carrier customer. *See*, Rural Task Force White Paper 2, *The Rural Difference* (Jan. 2000), p. 42.

³² This highlights how equal access meets the section 254(c)(1)(A) criterion of being "essential to education, public health, or public safety." Equal access "avoids the inconvenience of 10-XXXX dialing and...is an essential lifeline in emergency conditions..." Recommended Decision, 17 FCC Rcd 14125, para. 76, fn. 164.

that it sought to ensure that rural Americans receive the benefits of competition and choices in the interexchange services market.³³ However, this goal will not be fulfilled to the greatest extent possible, until *all* ETCs are required to provide customers with a real choice among toll providers.

F. LECs that have yet to receive a bona fide request for equal access should be exempted through a waiver process and existing wireless ETCs should have a reasonable timeframe in which to comply with the equal access requirement

Finally, the opposing Joint Board members note that some LECs serving remote rural areas do not currently provide equal access and that if it were added to the definition, these LECs would be ineligible for support, unless they provided it.³⁴ But, as the Joint Board members supporting the addition of equal access correctly explain, this small group of rural carriers have never implemented equal access only because they have yet to receive a bona fide request for such access from a competing IXC.³⁵ OPASTCO agrees with the supporting Joint Board members that these limited situations can and should be handled by a reasonable waiver process to ensure that such carriers do not inadvertently become ineligible for support.³⁶

In addition, OPASTCO agrees with the supporting Joint Board members that, in the interest of fairness, CMRS providers that have already received the ETC designation should have a reasonable timeframe in which to comply with the equal access

³³ *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, Second Report and Order and Further Notice of Proposed Rulemaking, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifteenth Report and Order, *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation*, CC Docket No. 98-77, Report and Order, *Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, CC Docket No. 98-166, Report and Order, 16 FCC Rcd 19613, 19691, 19694, paras. 182, 190 (2001).

³⁴ Recommended Decision, 17 FCC Rcd 14123, para. 71.

³⁵ *Id.*, 17 FCC Rcd 14125, para. 78, fn. 169.

³⁶ *Id.*

requirement.³⁷ As the supporting Joint Board members state, these wireless carriers will be aided in complying with the equal access requirement by the substantial amounts of money they are receiving from the USF.³⁸ On the other hand, carriers that have not yet received ETC status, or that have not yet begun receiving support, should not be allowed to draw from the Fund until they have complied with the new requirement.³⁹

IV. THE RAPID GROWTH IN UNIVERSAL SERVICE SUPPORT RECEIVED BY WIRELESS ETCS DEMANDS THAT THE COMMISSION BEGIN NOW TO ESTABLISH REGULATORY PARITY FOR ALL ETCS

OPASTCO strongly agrees with the Joint Board members in support of adding equal access to the definition that it is important to establish fair and equal rules for all ETCS at this time.⁴⁰ The supporting Joint Board members note that in the first quarter of 2002, three wireless carriers received a combined annualized support level of \$15.3 million.⁴¹ Only two quarters later, with many more CMRS providers having obtained ETC status, their annualized support level had more than quadrupled to \$64.4 million.⁴² Today, less than one year since the release of the Joint Board's Recommended Decision, wireless carriers' annualized support level has more than doubled to approximately \$140 million.⁴³ If support going to wireless ETCS continues to grow at this accelerated rate, it will eventually overwhelm the ability of the USF to continue supporting the provision of affordable high-quality service – or in some cases, any service – to customers living in high-cost areas of the nation.

³⁷ *Id.*, 17 FCC Rcd 14127, para. 86.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*, 17 FCC Rcd 14126, para. 84.

⁴¹ *Id.*, 17 FCC Rcd 14126-14127, para. 84 (citation excluded).

⁴² *Id.*, 17 FCC Rcd 14127, para. 84 (citation excluded).

⁴³ Universal Service Administrative Company, *Federal Universal Service Support Mechanisms Fund Size Projections for the Second Quarter 2003* (Jan. 31, 2003), Appendix HC1.

OPASTCO is pleased that the Joint Board, per the direction of the Commission, has issued a Public Notice⁴⁴ that seeks comment on the rules relating to high-cost universal service support in study areas in which a CETC is providing services. The Public Notice also invites comment on the system for resolving requests for ETC designations. The issues raised in the Public Notice are complex and the proceeding is only in its infancy. It will understandably take some time – perhaps a year or more - before the issues are ultimately resolved by the Commission. In the meantime, support received by wireless ETCs continues to grow at a considerable pace, in part due to the uneconomic incentives created by the lack of regulatory parity and competitive neutrality in state commission and FCC rules and policies.

Competitive entry that is motivated solely by the prospect of universal service support does not serve the public interest. Instead it unnecessarily swells the Fund and weakens the ability of the incumbent carrier to continue providing ubiquitous, high-quality service at affordable and reasonably comparable rates. If a CMRS provider chooses to seek ETC status, receive universal service funds, and offer services that are designed to substitute for a LEC's services, then it too should be capable of providing equal access. As the supporting Joint Board members explain:

While we encourage all carriers, including wireless carriers, to assume the responsibilities of ETC status, we believe strongly that the rules should now establish equal obligations for all carriers that wish to draw from the limited pool of universal service monies. Establishing fair and consistent ground rules now will provide clear guidance for all carriers, and will prevent the development of unsound business plans based on the prospect of a potential windfall from universal service funding.⁴⁵

⁴⁴ *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support and the ETC Designation Process*, CC Docket No. 96-45, Public Notice, FCC 03J-1 (rel. Feb. 7, 2003).

⁴⁵ Recommended Decision, 17 FCC Rcd 14127, para. 84.

Thus, adding equal access to the universal service definition would begin to establish regulatory parity among all ETCs. In turn, this would encourage competition in high-cost rural areas that is sustainable and not “artificial,” which is a primary goal of Chairman Powell.⁴⁶ In short, “requiring all carriers that wish to draw from the universal service fund to provide the same services will put all carriers on an equal footing and directly benefit customers.”⁴⁷

⁴⁶ “Just as we are aggressive in policing anticompetitive behavior, we should be equally aggressive in developing incentives that push entrants to enter in a manner that offers long-term, sustainable choice and meaningful welfare for consumers.” Remarks of Michael J. Powell at the Goldman Sachs Communicopia XI Conference, New York, NY, Oct. 2, 2002.

⁴⁷ Recommended Decision, 17 FCC Rcd 14127, para. 85.

V. CONCLUSION

The Commission should add equal access to the list of services that are supported by the USF. Adding equal access to the universal service definition meets all of the criteria in section 254(c)(1) of the Act. It is pro-competitive. It establishes regulatory parity among competitors that seek to receive limited universal service funding. And, most importantly, it is in the public interest.

Respectfully submitted,

**THE ORGANIZATION FOR THE
PROMOTION AND ADVANCEMENT OF
SMALL TELECOMMUNICATIONS COMPANIES**

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April 14, 2003

CERTIFICATE OF SERVICE

I, Jeffrey W. Smith, hereby certify that a copy of the comments by the Organization for the Promotion and Advancement of Small Telecommunications Companies was sent by first class United States mail, postage prepaid, on this, the 14th day of April, 2003, to those listed on the attached list.

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