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

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

To: The Commission

**COMMENTS OF
DOBSON COMMUNICATIONS CORPORATION
ON SUPPORTED SERVICES RECOMMENDED DECISION**

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April 14, 2003

TABLE OF CONTENTS

SUMMARY	ii
INTRODUCTION	2
DISCUSSION	4
I. THE COMMISSION MUST REJECT THE PROPOSED SERVICES BECAUSE THEY FAIL TO SATISFY THE REQUIREMENTS OF SECTION 254(c) AND THE PRINCIPLE OF COMPETITIVE NEUTRALITY	4
Advanced or High-Speed Services	6
Modifying Voice Grade Access Bandwidth	8
Soft Dial Tone or Warm Line Services.....	9
Toll or Expanded Area Service	10
Prepaid Calling Plans	11
Unlimited Local Usage	12
Payphone Lines	12
Braille TTY and Two Line Voice Carry Over.....	13
Transport Costs	13
Rural Wireless ETC Category	13
Technical and Service Quality Standards	14
N11 Codes.....	14
II. ADDING EQUAL ACCESS TO THE LIST OF SUPPORTED SERVICES WOULD BE CONTRARY TO LAW AND SOUND PUBLIC POLICY	15
CONCLUSION	20

SUMMARY

Dobson Communications Corporation (“Dobson”) urges the Commission to retain, without modification, the current list of services that are supported by the Federal universal service support mechanisms, and to specifically reject the addition of equal access as a supported service. Dobson believes that the ability of wireless carriers to obtain Eligible Telecommunications Carrier (“ETC”) status serves an important public interest goal of fostering increased competition for the benefit of rural consumers. Accordingly, in considering the statutory criteria set forth in Section 254(c) of the Communications Act and the universal service principles in Section 254(b) (including the principle of competitive neutrality), Dobson supports the rejection of all of the additional services considered by the Federal-State Joint Board on Universal Service (“Joint Board”), including equal access, and urges the Commission to do the same.

Specifically, Dobson urges the Commission to reject all of the proposed services considered by the Joint Board for the following reasons:

- **Advanced or High-Speed Services** – This proposal fails to satisfy Section 254(c) because it is not essential to education, public health or public safety. Internet resources are readily accessible through alternative means and advanced or high-speed services are not subscribed to by a majority of residential customers. Adding these services would violate competitive neutrality since wireless carriers are not currently capable of providing these services at the speeds defined by the Commission. Finally, adoption of these proposed services would unnecessarily impose significant costs on carriers and subscribers.
- **Modifying Voice Grade Access Bandwidth** – This proposal is neither essential to education, public health or public safety, nor in the public interest since no benefit is realized by the proposed modification. This proposed service also cannot be implemented in a competitively neutral manner since most wireless technologies are unable to provide the proposed bandwidth.
- **Soft Dial Tone or Warm Line Services** – It is not in the public interest to add these services given the complexities of 911 requirements of carriers and various state agencies. This proposal is also violative of competitive neutrality since wireless carriers are technologically incapable of providing these services, particularly with respect to unactivated/non-initialized phones.
- **Toll or Expanded Area Service** – No record could satisfy the Section 254(c) requirements for the addition of this service. Further, this service is unnecessary since, as a result of competitive entry by wireless carriers, rural subscribers will have more choices with regard to expanded service areas, such as avoiding landline toll charges for intrastate calls.
- **Prepaid Calling Plans** – No evidence currently supports the addition of this proposed service.
- **Unlimited Local Usage** – Consumers need not have the ability to make an unlimited number of calls for purposes of education, public health or public safety. Also, this proposal would give a competitive advantage to wireline carriers whose costs are not affected by the amount of usage, while wireless carriers must respond more immediately with expansion of infrastructure to match increasing traffic volume. The number of local

minutes to be offered to consumers should be determined by the market, not by regulation.

- **Payphone Lines** This proposal fails to meet the requirements of Section 254(c). It also violates the principle of competitive neutrality since most wireless carriers do not provide payphone service as it is not related to the type of services they provide.
- **Braille TTY and Two Line Voice Carry Over** – Braille TTY is not a telecommunications service and therefore cannot be supported. Two Line Voice Carry Over is not essential as alternatives, such as traditional relay services, are available, and would also not be subscribed to by a substantial majority of residential customers.
- **Transport Costs** – The record is inadequate to support the addition of this service and it must therefore be rejected.
- **Rural Wireless ETC Category** – The Commission is constrained by Sections 254 and 214 to require service providers to offer all of the supported services set forth in Section 54.101(a) of the Commission's rules.
- **Technical and Service Quality Standards** – This proposal must be rejected because competition, not regulation, should ensure the provision of high quality service.
- **N11 Codes** – Other than 911, N11 calls do not satisfy the essential service requirement in Section 254(c) and need not be an ETC-specific requirement.
- **Equal Access** – Addition of this requirement would be contrary to both Section 332 and Section 254, and would disserve the public interest by decreasing competition and its attendant benefits. CMRS carriers already offer pricing plans that include long distance service as part of a bundled service offering, and as ILECs continue to obtain authority to offer long distance services, they are migrating to offering similar rate packages. Thus, as regulatory and competitive changes continue to evolve, the distinction between local and long distance service becomes more and more blurred, making the concept of equal access an anachronism. Requiring equal access would also unnecessarily impose substantial costs of implementation that would be borne by wireless carriers only, while the LECs would profit from provisioning the necessary trunks. Thus, not only would perpetuating the concept of equal access in the ETC context be contrary to competitive trends at both the wireless and wireline levels, adoption of an equal access requirement would negatively impact the entry of CMRS carriers into rural areas in a most non-competitively neutral manner. The fact that ETCs will receive support based on the rural ILECs' costs, including the costs of equal access, does not provide a basis for the Commission to use its decision to base support amounts on rural ILECs' book costs as a tool to extend such monopoly regulation to non-dominant ETCs.

The ability of CMRS carriers to obtain ETC status in rural or high-cost areas results in the introduction of new or newly-competitive services in such areas. In order to preserve this benefit for consumers, the Commission should not add supported services as such additions will substantially increase the cost of universal service and possibly eliminate competitors from rural markets to the detriment of consumers. For these reasons, the Commission should not modify the current list of supported services.

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COMMENTS OF DOBSON COMMUNICATIONS CORPORATION ON SUPPORTED SERVICES RECOMMENDED DECISION

Dobson Communications Corporation (“Dobson”) hereby submits its comments regarding the above-captioned *Notice of Proposed Rulemaking*,¹ which seeks comment on the Federal-State Joint Board’s (“Joint Board”) Recommended Decision regarding the definition of “supported services” for Universal Service Fund (“USF”) purposes.² In the *Recommended Decision*, the Joint Board determined not to adopt any changes to the current list of services that are supported by the Federal universal service support mechanisms, but was unable to reach consensus on whether to add equal access as a supported service. As discussed below, Dobson urges the Commission to retain, without modification, the current list of services that are supported by the Federal universal service support mechanisms, and to specifically reject the addition of equal access as a supported service.

¹ *Federal-State Joint Board on Universal Service*, CC Docket 96-45, *Notice of Proposed Rulemaking*, FCC 03-13 (rel. Feb. 25, 2003) (“*NPRM*”).

² *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Recommended Decision*, 17 F.C.C.R. 14,095 (July 10, 2002) (“*Recommended Decision*”).

INTRODUCTION

Dobson, through its various subsidiaries and affiliates, is licensed to provide wireless telecommunications service in portions of seventeen states stretching from Alaska to New York, in predominantly rural and suburban areas. Dobson presents these comments as a carrier that is well-positioned to provide competitive wireless-based telecommunications services to rural areas and also as a substantial contributor to the universal service fund. As such, Dobson concurs with the Joint Board's recognition that adding services that cannot readily be provided by current networks will either substantially increase the burden of universal service, eliminate competitors from rural markets (to the detriment of consumers), or both.³

Dobson urges the Commission not to allow any carriers to leverage the inequities in the existing universal service system for further competitive advantage in this proceeding. It is telling to consider the differing reaction, for example, of rural ILECs and other eligible carriers to proposals to add supported services that cannot currently be provided on their networks. The rural ILECs supported the addition of broadband services, even though it would require substantial upgrades to their networks, because currently the rural ILECs' cost of providing the supported services defines the level of support in their territories.⁴ By contrast, other carriers without this incumbent advantage oppose the addition of services their networks will not support because such addition would effectively preclude them from participating in the universal service program.⁵

³ See, e.g., *Recommended Decision* at 14,100-01 (advanced services), 14,122-27 (equal access).

⁴ See *Id.* at 14,098-99, 14,100-01.

⁵ See *Id.* at 14,123.

In this regard, Dobson believes that the ability of wireless carriers, like Dobson, to obtain Eligible Telecommunications Carrier (“ETC”) status in these areas serves an important public interest goal of fostering increased competition for the benefit of rural consumers. Accordingly, in considering the statutory criteria set forth in Section 254(c) of the Communications Act⁶ and the universal service principles in Section 254(b)⁷ (including the principle of competitive neutrality), Dobson wholeheartedly agrees with the Joint Board’s specific consideration of “the impact of adding a service to carriers’ eligibility for ETC status when determining its recommendations”⁸ regarding whether a potential service should be added.

Given the thrust of the Act, especially as modified by the Telecommunications Act of 1996, that competition can bring consumers benefits that exceed those of regulation,⁹ the principle of competitive neutrality is especially relevant since the adoption of a number of the proposed services would effectively bar wireless service providers from qualifying for ETC status, thereby prohibiting consumers from reaping the substantial benefits of wireless-based sources of competition. Upon consideration of the relevant criteria, Dobson believes that none of the proposed services should be added to the current list of supported services, and addresses below each proposed service in turn. Finally, Dobson explains why the Commission should adopt the recommendation of those members of the Joint Board who oppose adding equal access as a supported service.

⁶ 47 U.S.C. § 254(c)(1).

⁷ 47 U.S.C. § 254(b).

⁸ *Recommended Decision* at 14,098.

⁹ *See, e.g.*, S. Rep. No. 104-23, at 1-2 (1995). (“The purposes of the bill are to revise the Communications Act of 1934 (the 1934 Act) to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition, and for other purposes.”).

DISCUSSION

I. THE COMMISSION MUST REJECT THE PROPOSED SERVICES BECAUSE THEY FAIL TO SATISFY THE REQUIREMENTS OF SECTION 254(c) AND THE PRINCIPLE OF COMPETITIVE NEUTRALITY.

In reaching its decision as to whether to recommend adding any proposed services to the definition of supported services, the Joint Board considered whether: (1) a proposed service satisfied the criteria set forth in Section 254(c) of the Communications Act; and (2) whether the addition of a proposed service would violate the universal service principles in section 254(b), including the principle of competitive neutrality. In its *Recommended Decision*, the Joint Board analyzed the proposed services in light of these criteria and concluded that, with the exception of a divided opinion on the issue of equal access, none of the proposed services warranted addition to the list of supported services.¹⁰ Dobson supports these conclusions not to add any additional services and urges the Commission to reject all of the proposed services considered by the Joint Board.

The Joint Board found (with the exception of the disagreement on equal access) that none of the proposed services sufficiently satisfy the criteria set forth in Section 254(c). As explained in more detail below, Dobson fully agrees with the Joint Board's conclusions. Accordingly, the Commission must and can reject these additional services on the basis of Section 254(c) alone.

In adopting the principle of competitive neutrality,¹¹ the Commission explained that competitive neutrality "should include technological neutrality . . . [which] will allow the marketplace to direct the advancement of technology and all citizens to benefit from such

¹⁰ *Recommended Decision* at 14,095.

¹¹ The Commission stated that "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." Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report and Order*, 12 F.C.C.R. 8776, 8801 (1997) ("*First Report and Order*").

development.”¹² Dobson firmly believes that consumers in rural areas, too, should reap the benefits that only a competitive market can provide.

The continued ability of wireless carriers to obtain ETC status is crucial to the development and deployment of service in rural areas. A major barrier to achieving this was a regulatory system that made universal service funds available only to the incumbent wireline carriers. The current universal service support system, however, allows wireless carriers to receive support to serve high cost areas and therefore compete on a more level playing field with ILECs. Rural consumers benefit from the competition by receiving service in areas that were previously unserved or underserved, as well as by gaining access to new and innovative services, a greater range of service choices (including next-generation technology), incentives for the incumbent carrier to upgrade its facilities and improve its customer service, and lower rates. Dobson contends that the Commission’s goals of promoting service to rural areas can best be achieved by retaining a system that permits wireless carriers to compete with rural ILECs.

Yet, as a result of the technological nature and historical development of mobile telecommunications services, wireless provider deployment of a number of the proposed services analyzed and rejected by the Joint Board would be prohibitively expensive, technically difficult or even impossible, and simply unnecessary. In the interests of competitive neutrality, these proposals must be rejected by the Commission because the addition of these services would bar wireless carriers from obtaining ETC status simply because of the technology utilized. Since the Commission has appropriately stated previously that this kind of discrimination is prohibited, it must reject services that violate the principle of competitive neutrality.

¹² *First Report and Order*, 12 F.C.C.R. at 8802.

In order to continue to promote competition in rural areas, the Commission must retain a core definition of supported services that does not violate its goal of competitive neutrality. As explained in detail below, the Joint Board correctly rejected a number of proposed services on these grounds and Dobson urges the Commission to reject those proposed services on the same basis. The Commission also must consider the statutory principles for evaluating services and remain mindful of the added financial burden that new services can create for all carriers, and ultimately consumers. In addition to this general discussion, Dobson offers the following specific information regarding the *Recommended Decision*.

Advanced or High-Speed Services. Dobson supports the Joint Board's decision not to add advanced or high-speed services, as defined by the Commission,¹³ to the list of supported services because these services do not satisfy the statutory criteria. Dobson agrees with the Joint Board's conclusion that this proposal cannot be considered "essential to education, public health, or public safety," as required by Section 254(c)(1).¹⁴ Internet resources are readily accessible through alternative means (*e.g.*, voice telephone or dial-up connections to the Internet) and, for those consumers seeking access to advanced telecommunications services, access is available at schools and libraries.¹⁵ Dobson also concurs with the Joint Board's conclusion that advanced and high-speed services are not subscribed to by a substantial majority of residential customers.¹⁶ Although subscribership to advanced and high-speed services is growing, these proposed services are not subscribed to on a level that satisfies the statutory criteria. As of June 30, 2002,

¹³ See *Recommended Decision* at 14,098 n.19.

¹⁴ *Id.* at 14,099-100.

¹⁵ *Id.* at 14,099.

¹⁶ *Id.* at 14,100.

less than 14 million residential customers subscribed to high-speed data services.¹⁷ This does not amount to a substantial majority. Accordingly, this proposal must be rejected under Section 254.

Adding these services would also violate the Commission's goal of competitive neutrality. As the Joint Board notes, wireless carriers are not currently capable of providing advanced or high-speed services.¹⁸ Although wireless providers do offer Internet access services (with the added distinction of mobility), and transmission speeds are improving as technologies evolve, under the current definition of advanced services, the adoption of these services would currently preclude wireless carriers, including Dobson, from obtaining ETC status. This would, in turn, retard the advancement of competition in high-cost areas. As discussed above, rural customers benefit by receiving service from competitors in areas that were previously unserved or underserved, including lower prices and improved services.

Adding advanced or high-speed services is also contrary to the public interest because it would impose significant costs on carriers, and in turn subscribers, to deploy such services.¹⁹ The increased costs, in turn, would result in a significant increase the size of the fund. Indeed, the Joint Board specifically noted that it "continues to believe that the definition of universal service must strike the appropriate balance between ensuring the availability of fundamental telecommunications services to all Americans and maintaining a federal universal service fund of sustainable size."²⁰ Furthermore, the resulting increase in contributions caused by the increase

¹⁷ "Federal Communications Commission Releases Data on High-Speed Services for Internet Access," *News Release*, 2002 FCC Lexis 6607 (rel. Dec. 17, 2002).

¹⁸ *Recommended Decision* at 14,101-02.

¹⁹ *Id.* at 14,100-01.

²⁰ *Id.* at 14,095.

in the fund would have to be passed along to subscribers, at least in part, in the form of larger assessments. Net contributors, such as Dobson, would realize the greatest impact of such a substantial increase, because, unlike the ILECs, Dobson is not reimbursed for its costs. Dobson would be required to pass these additional costs along to its customers. The rural ILECs, however, who are already responsible for the huge increase in the fund size, would be the only beneficiaries of adding advanced or high-speed services since, under the existing embedded-cost mechanism, their costs would be reimbursed.

Modifying Voice Grade Access Bandwidth. Dobson also supports the Joint Board's conclusion to reject the proposal to modify voice grade access bandwidth, because such a modification is neither essential to education, public safety or public health nor in the public interest.²¹ Pursuant to the current list of supported services set forth in Section 54.101(a)(1) of the Commission's rules, carriers are required to provide voice grade access to the public switched network, the bandwidth of which should be, at a minimum, 300-3000 Hz.²² The proposal under consideration is to expand the minimum voice grade access bandwidth to 300-3500 Hz. Dobson fails to see how the addition of 500 Hz of bandwidth to this service, which is already supported, is essential.

The Joint Board found that this proposal would not serve the public interest because it would not necessarily improve dial-up modem speeds.²³ Dobson agrees and urges the Commission to adopt the same conclusion. No public benefit is realized by this proposed modification so it cannot be considered in the public interest. Furthermore, the Joint Board

²¹ *Id.* at 14,104-05.

²² 47 C.F.R. § 54.101(a)(1).

²³ *Recommended Decision* at 14,104.

found that not only could the adoption of this proposal result in a degradation of voice quality, such a modification could be costly, thereby forcing carriers to divert funds from investment in other services that could benefit consumers.²⁴ Therefore, in the absence of satisfying the Section 254 requirements, Dobson urges the Commission to adopt the Joint Board's recommendation and reject the modification of voice grade access bandwidth.

Furthermore, the proposed modification cannot be implemented in a competitively neutral manner. As the Joint Board pointed out, most wireless technologies are unable to provide 300-3500 Hertz of bandwidth.²⁵ Adoption of this proposal would therefore prevent wireless carriers from being able to obtain ETC status, "even though they may be able to provide acceptable voice services."²⁶ Accordingly, because this proposal would discriminate against wireless carriers based on the technology they utilize, the proposal must be rejected.

Soft Dial Tone or Warm Line Services. Dobson concurs with the Joint Board's conclusion that it is not in the public interest to add soft dial tone or warm line services to the core definition of supported services.²⁷ Dobson agrees that, as to wireline carriers, given the complexity of the 911 requirements of carriers and various state agencies, states may be better positioned to implement such programs.²⁸ As to wireless carriers, however, such state involvement in 911 calling requirements is unnecessary and, in any event, preempted by Commission rules.

²⁴ *Id.* at 14,104-05.

²⁵ *Id.* at 14,105.

²⁶ *Id.*

²⁷ *Id.* at 14,106.

²⁸ *Id.*

Dobson also agrees with the Joint Board that adoption of this proposal would be contrary to competitive neutrality.²⁹ As noted by the Joint Board, soft dial tone or warm line services are generally considered to be wireline services.³⁰ Further, not only are wireless providers “not capable of providing a continuous connection to public safety answering points for all unactivated handsets[,] . . . it is technically infeasible at this time for wireless carriers to develop and implement technical solutions that would provide public safety agencies with a call-back number for calls from non-initialized phones.”³¹ The Joint Board is correct in this regard. In any event, wireless carriers are *already* required to transmit calls from non-initialized handsets to Public Safety Answering Points.³² Therefore, the benefits to customers of soft dial tone or warm line services are largely addressed by the Commission’s Part 20.911 rules. Based on the principle of competitive neutrality, the Commission must reject the addition of this service because it would bar wireless carriers from obtaining ETC status on the basis of the technology utilized.

Toll or Expanded Area Service. The Joint Board found the record insufficient to adopt toll or expanded area service as a supported service. Dobson contends that no record could support the satisfaction of the Section 254(c) criteria for the addition of this service and therefore urges its rejection. Rather than erecting barriers to entry by adopting additional supported services, the FCC should encourage entry of wireless service providers because many carriers in fact already offer service plans that have expanded calling areas, many of which are even

²⁹ *Id.* at 14,108.

³⁰ *Id.*

³¹ *Id.* at 14,108-09.

³² 47 C.F.R. § 20.18(b).

nationwide. Indeed, wireless carriers can often reverse the imbedded and inflexible local calling areas of ILECs and turn what was a toll call into a “local” call.³³ In all states in which Dobson operates and manages, its standard rate plan will provide intrastate long distance services for subscribers as part of the “bucket” of minutes (not to mention interstate long distance as well). On the other hand, these same subscribers using the landline carrier would have to pay intrastate toll charges. The adoption of an additional toll or expanded area service is therefore unnecessary since as a result of competitive entry by wireless carriers, rural subscribers will have more choices with regard to expanded service areas.

Prepaid Calling Plans. In its *Recommended Decision*, the Joint Board determined that it has “insufficient evidence to determine whether . . . to add prepaid calling plans to the definition of supported services.”³⁴ As an initial matter, the fact that the Joint Board received no comments on this particular issue strongly suggests that adding prepaid calling plans is unnecessary. Dobson further submits that no evidence currently supports the addition of this proposed service, and therefore suggests that the Commission reject it. The Joint Board also rejected a related proposal to add a requirement for a prepaid wireless service to qualifying low income consumers lacking access to wireline residential service.³⁵ As a matter of principle, Dobson would not support inclusion of any additional service, such as this one, that would be competitively biased and effectively render any class of carrier ineligible for support.

³³ See Testimony of John Stanton, Chairman and Chief Executive Officer, Western Wireless Corporation, before the Senate Joint Commerce, Sci. and Indian Affairs Subcomm., May 14, 2002 at 2 (Western Wireless entered into an agreement with the Oglala Sioux Tribe to provide, among other things, an expanded local calling area that eliminated all toll charges previously associated with making certain calls on the reservation and to Rapid City.)

³⁴ *Recommended Decision* at 14,111.

³⁵ *Id.*

Unlimited Local Usage. Dobson agrees with the Joint Board that, while carriers are required to provide local usage in order to obtain ETC status,³⁶ unlimited local usage cannot be considered essential because consumers need not have the ability to make an unlimited number of calls for purposes of education, public health or public safety.³⁷ Furthermore, this proposal violates the principle of competitive neutrality, specifically technological neutrality, because it would give a competitive advantage to wireline carriers, most of whom already provide unlimited local usage for a flat fee. Given how wireless pricing plans developed according to the differing cost structures between landline and wireless networks, Dobson concurs with the Joint Board's determination that the number of local minutes to be offered to consumers should be determined by the market and not by regulatory fiat.³⁸

Wireline carriers would be relatively unaffected by an unlimited local usage requirement because, as a result of the technology used to provide wireline service, their costs are not affected by the amount of usage. On the other hand, the costs of wireless carriers increase as usage increases since wireless carriers must respond more immediately with expansion of infrastructure to match increasing traffic volume. As a result of this technological difference, wireless carriers utilize various rate plans to recover costs and remain competitive. Imposing unlimited local usage would thus competitively favor wireline providers and must be rejected.

Payphone Lines. Dobson supports the Joint Board's conclusion that a payphone line requirement fails to meet the statutory requirement set forth in Section 254(c) for the reasons set

³⁶ 47 C.F.R. § 54.101(a)(2).

³⁷ *Recommended Decision* at 14,113.

³⁸ *Id.*

forth in the *Recommended Decision*.³⁹ A payphone requirement is also violative of competitive neutrality. Most wireless carriers, including Dobson, do not provide payphone service because it is not related to the type of services they provide. Therefore, because imposition of this requirement would prohibit such carriers from obtaining ETC status, Dobson urges the Commission to reject this proposal.

Braille TTY and Two Line Voice Carry Over. Dobson agrees that Braille TTY cannot be a supported service as it is customer premises equipment, not a telecommunications service.⁴⁰ With respect to Two Line Voice Carry Over, Dobson also supports the Joint Board's conclusion that this service cannot be considered essential because people who are deaf or hard of hearing can access public safety agencies through traditional relay services using one line.⁴¹ Further, this service would not be subscribed to by a majority of consumers and therefore fails to satisfy Section 254(c). As a result, this proposed service must be rejected.

Transport Costs. In its *Recommended Decision*, the Joint Board found the record to be inadequate to analyze the scope of this issue, the costs of implementation, and the need for an additional support mechanism.⁴² Therefore the Joint Board properly decided not to adopt transport costs as a supported service.⁴³

Rural Wireless ETC Category. Certain commenters request that the Commission create a new rural wireless ETC category, in part, to cover implementation of CALFA and E911

³⁹ *Id.* at 14,114-15.

⁴⁰ *Id.* at 14,116.

⁴¹ *Id.* at 14,117.

⁴² *Id.* at 14,118.

⁴³ *Id.*

solutions.⁴⁴ While Dobson is similarly impacted by the costs of implementing CALEA and E-911 mandates, the Joint Board notes that the FCC is constrained by Sections 254 and 214 to require service providers to offer all of the supported services set forth in Section 54.101(a).⁴⁵

Technical and Service Quality Standards. Dobson concurs with the Joint Board's conclusion to reject federal technical or service quality standards as a condition to receive universal service support.⁴⁶ A principal way of ensuring the provision of high quality service is to foster competition, which will allow customers to choose service based on quality.⁴⁷ Insofar as the Commission determines that there is a need for government-imposed standards, Dobson agrees with the Joint Board's conclusion "that federal technical requirements would largely be duplicative of state efforts"⁴⁸ and that any standards adopted by states must be "competitively neutral, do not act as a barrier to entry, and are not otherwise inconsistent with the federal universal service rules."⁴⁹

N11 Codes. Dobson concurs with the Joint Board's conclusion that other than 911, N11 calls do not satisfy the "essential" service requirement in Section 254(c).⁵⁰ In addition, the

⁴⁴ *Id.* at 14,118-19.

⁴⁵ *Id.* at 14,119.

⁴⁶ *Id.* at 14,120.

⁴⁷ See, e.g., *Federal State Joint-Board on Universal Service, Cellular South License, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout Its Licensed Service Area in the State of Alabama*, CC Docket No. 96-45, *Memorandum Opinion and Order*, DA 02-3317, ¶ 25 (rel. Dec. 4, 2002); *Federal State Joint-Board on Universal Service, RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout Its Licensed Service Area in the State of Alabama*, CC Docket No. 96-45, *Memorandum Opinion and Order*, 17 F.C.C.R. 23,532, 23,540-41 (2002). (In both cases, the Wireline Competition Bureau found that grant of ETC status to these wireless carriers will open the market to competition which, in turn, will "allow customers in rural Alabama to choose service based on pricing, service quality, customer service, and service availability.")

⁴⁸ *Recommended Decision* at 14,120.

⁴⁹ *Id.*

⁵⁰ *Id.* at 14,121.

Commission has already assigned and implemented N11 codes.⁵¹ Therefore, N11 codes need not be an ETC-specific requirement. Dobson therefore urges the Commission to reject this proposed service.

II. ADDING EQUAL ACCESS TO THE LIST OF SUPPORTED SERVICES WOULD BE CONTRARY TO LAW AND SOUND PUBLIC POLICY

The Joint Board was unable to reach agreement on whether to recommend that equal access to interexchange service be added to the list of supported services. Dobson strongly opposes the addition of an equal access requirement. Addition of this requirement would be contrary to both Section 332 and Section 254, and would disserve the public interest by decreasing competition and its attendant benefits.

Section 332(c)(8) of the Communications Act specifically states that CMRS carriers “shall not be required to provide equal access.”⁵² If the FCC were to add equal access to the list of supported services, CMRS carriers would have to provide such access in order to be eligible for universal service support, in violation of Section 332(c)(8) and contrary to Congressional intent. As noted by Commissioner Abernathy, “denying or revoking a CMRS carrier’s ETC designation for its failure to provide equal access seems tantamount to imposing a ‘requirement’

⁵¹ See *Use of N11 Codes and Other Abbreviated Dialing Arrangements*, CC Docket No. 92-105, *First Report and Order and Further Notice of Proposed Rulemaking*, 12 F.C.C.R. 5572 (1997) (requiring implementation of 611 for repair and 811 for business office services, assigning 311 for access to non-emergency police and other government services and reserving 711 for future implementation of access to Telecommunications Relay Services); *Petition by the United States Department of Transportation for Assignment of an Abbreviated Dialing Code (N11) to Access Intelligent Transportation System (ITS) Services Nationwide, Request by the Alliance of Information and Referral Systems, United Way of America, United Way 211 (Atlanta, Georgia), United Way of Connecticut, Florida Alliance of Information and Referral Services, Inc., and Texas I&R Network for Assignment of 211 Dialing Code, The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, CC Docket No. 92-105, *Third Report and Order and Order on Reconsideration*, 15 F.C.C.R. 16,753 (2000) (assigning 511 for access to traveler information services and 211 for access to community information and referral services); *The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, CC Docket No. 92-105, *Second Report and Order*, 15 F.C.C.R. 15,188 (2000) (requiring all telecommunications carriers to implement 711 for access to all relay services); *Implementation of 911 Act*, CC Docket No. 92-105, *Fourth Report and Order and Third Notice of Proposed Rulemaking*, 15 F.C.C.R. 17,079 (2000) (designating 911 as the universal emergency telephone number).

⁵² 47 U.S.C. § 332(c)(8).

on the carrier.”⁵³ The FCC’s previous decision on this issue also supports the conclusion that including equal access within the definition of universal service “would be contrary to the mandate of [S]ection 332(c)(8).”⁵⁴

In addition, equal access fails to satisfy the criteria in Section 254(c). First, access to interexchange services is already on the list of supported services. Thus, an equal access requirement is not “essential” to education, public health, or public safety because consumers already can call public health and safety or educational organizations located outside of their calling areas.⁵⁵ A choice of long distance carriers certainly is not necessary to insure such a call can be made.⁵⁶

Equal access also is not a service “subscribed to by a substantial majority of residential consumers” or “deployed by telecommunications carriers in public telecommunications networks.” In fact, equal access is not a service at all, but a legal mandate imposed on ILECs at the time of divestiture to guard against anti-competitive behavior. Because equal access is a legal mandate, it is difficult to determine if a substantial majority of residential consumers would subscribe to it under free market conditions, or if it would be voluntarily deployed by carriers. As Commissioner Abernathy noted, to the extent that the provision of equal access has been left to the free market – in the wireless industry – it has neither been subscribed to by a substantial

⁵³ *Recommended Decision* at 14,132, Separate Statement of Comm’r Abernathy.

⁵⁴ *First Report and Order*, 12 F.C.C.R. at 8819.

⁵⁵ Proponents of inclusion argue that although dial-around may provide an alternative to equal access, these services may not be readily accessible on wireless phones at all times. *See Recommended Decision* at 14,125. Wireless subscribers can access long distance services via 800 numbers. In any event, it is unclear why access to other IXCs is needed when CMRS carriers generally provide long distance at no additional charge.

⁵⁶ As a result, the statement that equal access “is an essential lifeline in emergency conditions,” *Recommended Decision* at 14,125 n.164, is simply wrong.

majority of residential consumers, nor deployed by carriers.⁵⁷ In fact, the bundled rate calling plans offered by wireless companies are very popular with subscribers.⁵⁸ Thus, the second and third factors under Section 254(c) do not support imposing an equal access requirement.

Perhaps most importantly, consideration of the final factor under Section 254(c) – consistency with the public interest, convenience, and necessity – weighs against mandating this requirement. As noted above, the equal access requirement was imposed on wireline carriers to address competitive concerns in the interexchange market at the time of divestiture. This requirement has nothing to do with promoting the universal availability of basic telephone services.⁵⁹ To the contrary, the FCC previously found that adding equal access to the list of supported services would “undercut local competition and reduce consumer choice, and thus, would undermine one of Congress’s overriding goals in adopting the 1996 Act.”⁶⁰ Those on the Joint Board in favor of adding equal access state that equal access “will promote competition, and lead to lower prices and better services.”⁶¹ However, this position seems to ignore the fact that consumers have already benefited from the competition driving the wireless industry, which has resulted in lower prices and service improvements, notwithstanding the fact that wireless carriers are not required to offer equal access.

⁵⁷ *Recommended Decision* at 14,134, Separate Statement of Comm’r Abernathy.

⁵⁸ See Shelley Emling, *Future Seems Dim for Long Distance; Wireless Plans, Phone Cards, Net All Factors*, Atlanta Journal-Constitution, March 30, 2003 (Traditional landline long distance phone service is being displaced by wireless carriers offering bundled local and long distance minutes.).

⁵⁹ The Commission has already concluded in the *First Report and Order* that competitive neutrality does not require CMRS carriers to provide equal access merely because incumbent LECs provide it. See *Recommended Decision* at 14,123 (citing *First Report and Order*, 12 F.C.C.R. at 8819-20).

⁶⁰ *First Report and Order*, 12 F.C.C.R. at 8820.

⁶¹ *Recommended Decision* at 14,126.

Indeed, driven by competitive market forces, CMRS carriers offer new rate structures and pricing plans, often including long distance service as part of a bundled service offering. In fact, as ILECs continue to obtain authority to offer long distance services, they are migrating to offering rate packages bundling local and long distance calling, much like the wireless industry.⁶² Thus, as regulatory and competitive changes continue to evolve, the distinction between local and long distance service becomes more and more blurred, making the concept of equal access an anachronism.

As stated by Commissioner Thompson, universal service programs should encourage deployment of new technologies and services, such as those provided by wireless carriers, which may provide service at a lower cost than the existing network, thereby increasing the efficiency and long-term viability of the universal service fund.⁶³ Requiring equal access, however, might deter entry by CMRS carriers by imposing substantial additional costs on them, thereby reducing competition. In the meantime, consumers would not receive any benefit to offset this loss.⁶⁴ And if the ILECs are moving toward CMRS-like pricing plans, it is difficult to decipher who at all stands to benefit from adding equal access to the list of supported services – certainly not the consumers that the universal service program was designed to benefit.⁶⁵ Not only would perpetuating the concept of equal access in the ETC context be contrary to competitive trends at

⁶² Similarly, long distance providers are beginning to penetrate the market for local phone service and are offering bundled local and long distance calling packages.

⁶³ See *Recommended Decision* at 14,136, Separate Statement of Comm'r Thompson.

⁶⁴ Given that most CMRS carriers often bundle long distance minutes at no extra charge, it seems unlikely that consumers would choose to pay extra to access a different interexchange carrier. See *Recommended Decision* at 14,134-35, Separate Statement of Comm'r Abernathy.

⁶⁵ Significantly, no interexchange carrier supports adding of equal access to the list of supported services. *Recommended Decision* at 14,124 n.158.

both the wireless and wireline levels, adoption of an equal access requirement would negatively impact the entry of CMRS carriers into rural areas.

In order to provide equal access, Dobson would have to incur substantial costs in purchasing and installing new software and hardware, and implementing required translations. Dobson would also have to make wholesale changes to its customer billing systems to account for long distance charges on a per customer, per carrier basis, and pass these charges through. Not surprisingly, the fact that ILECs support the additional of equal access is very self-serving, since the most efficient route for Dobson to establish the new trunk groups it would require is to terminate at the LEC (as opposed to establishing a different trunk to every single long distance carrier). Clearly, the LECs would profit from the provisioning of these trunks.

Moreover, the principle of competitive neutrality does not require the addition of an equal access requirement to the list of supported services. As discussed above, the Commission has stated that “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.”⁶⁶ This principle is intended to ensure that universal service policy is not “biased toward any particular technologies.”⁶⁷ Since wireline carriers already provide equal access as a result of non-USF-related rules, adding equal access would solely impact wireless carriers. There could not be a clearer example of how the principle of competitive neutrality, so often elevated by the Joint Board with respect to other proposed services, would be thoroughly compromised. Just like their wireline counterparts, CMRS carriers must comply with a host of non-USF-related rules. All of these rules affect the cost of

⁶⁶ *First Report and Order*, 12 F.C.C.R. at 8801.

⁶⁷ *Id.* at 8820.

providing service, yet they do not reflect bias because they were not imposed in the universal service context. Thus, the principle of competitive neutrality mandates that equal access not become a supported service.

One of the principal arguments advanced by those on the Joint Board who support adding equal access is that all ETCs will receive support based on the rural ILECs' costs.⁶⁸ The argument follows that because these costs include the cost of providing equal access, wireless ETCs will receive compensation for a service they do not provide.⁶⁹ This argument, however, fails to address the fact that equal access is a legal mandate imposed on ILECs to prevent against competitive abuses by these monopoly providers. The Commission must not use its decision to base support amounts on rural ILECs' book costs as a tool to extend such monopoly regulation to non-dominant ETCs. As discussed above, such a requirement would deter competitive entry and further entrench the monopoly position of rural ILECs – at the expense of the rural consumer.

CONCLUSION

The ability of CMRS carriers to obtain ETC status in rural or high-cost areas results in the introduction of new or newly-competitive services in such areas. In order to preserve this benefit for consumers, the FCC should not add supported services. Such additions will substantially increase the cost of universal service and possibly eliminate competitors from rural markets to the detriment of consumers. In other words, the list of supported services must remain competitively and technologically neutral. Equal access, in particular, is unnecessarily burdensome, given how wireless pricing is structured – with expanded local calling areas and

⁶⁸ *Recommended Decision* at 14,126.

⁶⁹ *Id.*

attractive long distance packages. For these reasons, the Commission should not modify the current list of supported services.

Respectfully submitted,

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April 14, 2003