

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

APR 14 2003

In the Matter of)
Federal-State Joint Board on Universal Service)
TO: The Commission)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket No. 96-45

COMMENTS OF SMALL RURAL ILEC GROUP

The Small Rural ILEC Group (the "Rural Group") submits its comments with respect to the Notice of Proposed Rulemaking (Federal-State Joint Board on Universal Service), CC Docket No. 96-45, FCC 03-13, released February 25, 2003, and associated Recommended Decision (Federal-State Joint Board on Universal Service), CC Docket No. 96-45, FCC 02J-1, released July 10, 2002, by the Federal-State Joint Board on Universal Service ("Joint Board").

The Rural Group supports the addition of "equal access to interexchange service" ("equal access service") to the list of supported services for rural, insular and high cost areas in Section 54.101 of the Commission's Rules. Inclusion of equal access service as a supported service. (1) satisfies the essentiality, subscription, deployment and public interest criteria of Section 254(c)(1) of the Communications Act; (2) is wholly consistent with the provisions of Section 332(c)(8) of the Act; and (3) promotes competition and competitive neutrality in both the local service and long distance toll service markets.

Composition of Small Rural ILEC Group

The Rural Group is comprised of Midstate Communications, Inc. ("Midstate"); Santel Communications Cooperative, Inc. ("Santel"); Penasco Valley Telephone Cooperative, Inc. ("Penasco"); and Interstate Telcom Consulting, Inc. ("Interstate").

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Midstate is a South Dakota rural telephone cooperative owned by approximately 3,800 members that provides local exchange service to 10 telephone exchanges (approximately 4,995 access lines) in and around Kimball, South Dakota.

Santel is a South Dakota rural telephone cooperative owned by approximately 4,300 members that provides local exchange service to 10 telephone exchanges (approximately 5,000 access lines) in and around Woonsocket, South Dakota.

Penasco is a New Mexico rural telephone cooperative owned by approximately 2,700 members that provides local exchange service to 6 telephone exchanges (approximately 3,400 access lines) in and around Artesia, New Mexico.

Midstate, Santel and Penasco have long provided equal access service to their local exchange customers.

Interstate is a telecommunications consulting firm located in Hector, Minnesota, which provides a variety of telecommunications consulting services' to rural telephone companies. Interstate's rural telephone company clients range in size from 40 access lines to 25,000 access lines, and are located primarily in the states of Minnesota, Wisconsin, Michigan, Iowa, South Dakota, Ohio and Montana. The list of 49 rural telephone company clients that Interstate is representing in this proceeding is attached as Exhibit 1.

Equal Access Satisfies The Section 254(c)(1) Criteria

Equal access service permits a consumer to access the presubscribed long distance carrier of the consumer's own choice **by** dialing 1+ the telephone number. In addition to

¹ These services include cost separation studies, revenue forecasting, access tariff development, depreciation studies, continuing property record, traffic engineering and analysis, Carrier Access Billing System (CABS) billing and reviews, long distance consulting, National Exchange Carrier Association

the inherent benefits of consumer choice, the provision of equal access service by originating carriers increases the service, quality and pricing options available to their customers with respect to long distance toll services. It accomplishes this, inter alia, by enabling and promoting competition among multiple long distance toll service providers.

Section 254(c)(1) of the Communications Act recognizes that Universal Service is an evolving level of telecommunications services that the Commission shall establish periodically, taking into account advances in telecommunications and information technologies and services. It orders both the Joint Board and the Commission to consider the extent to which services supported by federal universal services mechanisms: (A) are essential to education, public health, or public safety; (B) have, through the operation of market choices by consumers, been subscribed to by a substantial majority of residential consumers; (C) are being deployed in public telecommunications networks by telecommunications carriers; and (D) are consistent with the public interest, convenience and necessity. 47 U.S.C. Sec. 254(c)(1).

The Rural Group believes that equal access service satisfies all four of these Section 254(c)(1) criteria, and therefore should be added to the list of supported services in Section 54.101 of the Rules.

Essential to education, health or safety. Equal access service is essential for education, public health and public safety, particularly for residents of high-cost rural areas who often must make long distance toll calls to reach schools, medical and emergency services, and government offices (local, regional, state and federal). By enabling multiple long distance toll carriers to compete on an even playing field in rural

(NECA) reporting, average schedule settlements, access service requests (ASRs), AOCN services, circuit provisioning, business plans and exchange acquisition assistance.

areas, equal access service helps to increase the quality and reduce the rates of the long distance toll calls needed to reach these educational, health and safety authorities.

Moreover, in the post-September 11, 2001 world, equal access service has become even more essential to rural residents. Because the facilities of a single interexchange carrier may be destroyed, disabled or disrupted by a physical or cyber attack, multiple providers of long distance toll services are necessary to enable rural residents to communicate rapidly and reliably with federal, state and regional authorities in the event of an actual or potential terrorist attack. In addition, in the event of an incident, rural residents need to be able rapidly and reliably to contact or be contacted by concerned relatives, friends and associates in other areas. These rapid and reliable communications capabilities (as well as any subsequent recovery operations) require access to multiple long distance toll carriers. In other words, public health and safety considerations should discourage the connection of most or all of the wireline and/or wireless customers in a rural area to the outside world by a single interexchange carrier whose facilities may be knocked out of service at a critical time.

Subscribed to by a substantial majority of residential consumers. As the Joint Board recognized, virtually all wireline local exchange carriers have provided equal access service to their customers since the mid-1990s (Recommended Decision, par. 78). Almost all of the more than 100 million residential wireline service customers in the United States have equal access service with respect to both interLATA and intraLATA toll services. These rural and non-rural residential customers expect equal access service to be included as a part of their basic, universally available telecommunications service. Id. at par.79.

Dealoved in public networks. Again, virtually all wireline local exchange carriers have provided equal access service to their customers since the mid-1990s. These include all of the large and mid-sized local exchange carriers, and the vast majority of small local exchange carriers (with the exception of a handful of small rural telephone companies in remote locations that have never been requested to provide equal access).'

Public interest benefits. Equal access service enables and encourages competition between multiple providers of long distance toll service. Particularly with respect to residential and small business customers, the interLATA and intraLATA toll service competition engendered by equal access service results in increased service options, increased service quality, greater reliability, lower rates, and more rate plan options. In other words, equal access service substantially increases both consumer choice and consumer welfare

**Inclusion of Equal Access as a Supported Universal Service
Is Wholly Consistent With Section 332(c)(8) of the Act**

Section 332(c)(8) of the Communications Act states that "[a] person engaged in the provision of commercial mobile services, insofar as such person is so engaged, shall not be required to provide equal access to common carriers for the provision of telephone toll services."

Four members of the Joint Board correctly concluded that the inclusion of equal access service in the definition of supported Universal Services does not in any manner require any commercial mobile service carrier to provide equal access as part of its

² As indicated in Footnote 169 of the Joint ~~Board's~~ Recommended Decision, a reasonable and equitable waiver process can be established to permit Eligible Telecommunications Carrier designees and applicants not presently offering equal access service to delay their addition of the service (without becoming ineligible for universal service support) until such time as they receive a bona fide request for equal access service from a customer or interexchange carrier.

obligations as a common carrier. Recommended Decision, par. 76. Inclusion of equal access as a supported service means only that commercial mobile service carriers that voluntarily request ETC designation must accept and satisfy their ETC service obligations (including provision of equal access service) before they can receive and enjoy portable universal service dollars. Neither this Commission nor any state commission will have any power to require any commercial mobile service carrier to provide equal access service. Rather, the decision remains solely and entirely in the hands of individual commercial mobile service carriers, which can forego or relinquish ETC designation if they are unwilling to provide equal access service or satisfy any of the other conditions of ETC status. This is no different from the fact that commercial mobile service and other carriers may not normally be required by federal or state authorities to advertise their services throughout specified areas, but must do so in order to receive ETC designation and universal service support.

Hence, Section 332(c)(8) of the Act does not directly or indirectly prohibit or preclude the inclusion of equal access service in the list of supported Universal Services in Section 54.101 of the Rules.

**Equal Access Promotes Competition and Competitive Neutrality
in Both Local Service and Long Distance Toll Service Markets**

In addition to producing the consumer choice and consumer welfare benefits described above, the inclusion of equal access service as a supported universal service will promote more level competitive playing fields in both the local service market and the long distance toll service market.

With respect to the long distance toll service market, equal access service has a proven record of directly and significantly increasing competition. From 1984 to 2000,

the shares of total interstate and intrastate toll service revenues of the primary beneficiaries of equal access service all increased significantly. These included: (a) WorldCom, whose share increased from 3.4% to 20.6%; (b) Sprint, whose share increased from 2.1% to 8.3%; and (c) other long distance carriers, whose aggregate share increased from 2.0% to **28.1%**. During the same period, the market shares of the previously dominant interstate and intrastate toll carriers decreased steadily as a result of the competition facilitated by equal access. AT&T's share of total interstate and intrastate toll service revenues decreased from 68.3% to 34.8%, while that of the Regional Bell Operating Companies decreased from 17.7% to 5.5%. See the Wireline Competition Bureau's Trends in Telephone Service (May 2002), at Table 10.9.

Equal access service precludes competition in the long distance toll service market from being influenced significantly by local exchange and other originating carriers. For example, it prevents consumer choice from being abrogated by decisions of originating carriers to deliver all of their originating long distance toll traffic to a single interexchange carrier in order to maximize their toll resale profits or to generate various marketing advantages. Whereas the Rural Group recognizes that the Commission possesses somewhat limited powers under Section 332(c)(8) of the Act,³ it notes that the size of the commercial mobile service market (and therefore the ability of commercial mobile service providers to affect competition in the long distance toll market) has increased very substantially since Section 338(c)(8) was enacted in 1993 and since the Commission declined to include equal access service as a supported service in 1997.

³ If the Commission determines that subscribers to commercial mobile services are denied access to the telephone toll service providers of their choice and that such denial is **contrary** to the public interest, it **may** prescribe regulations to afford unblocked access through the use of carrier identification codes or other mechanisms. 47 U.S.C. Sec. 332(c)(8) [second sentence].

Specifically, the number of U.S. wireless telephone subscribers increased from 13,067,318 in June of 1993 to 48,705,553 in June of 1997 to 118,397,734 in June of 2001. Trends in Telephone Service (May 2002) at Table 12.2.

With respect to local service markets, the present exclusion of equal access service from the list of supported Universal Services bestows a significant and unwarranted competitive advantage upon wireless ETCs. In its Reuort And Order (Federal-State Joint Board on Universal Service), 12 FCC Rcd 8776 (May 8,1997) at par. 78, the Commission initially declined to include equal access service as a supported service because it "would require a Commercial Mobile Radio Service (CMRS) provider to provide equal access in order to receive universal service support." The Commission proceeded to support its decision by citing: (a) an erroneous interpretation that Section 332(c)(8) of the Act precludes the inclusion of equal access service as a condition of receipt by CMRS carriers of the privileges and benefits of ETC designations that they voluntarily seek (see prior section); and (b) the principles of competitive and technological neutrality.

Competitive and technological neutrality should mean that **all** wireline and wireless carriers operate on the very same level regulatory playing field. It should not be used as a device to tilt this playing field in favor of wireless carriers in order to create artificial "competition" that would not otherwise be generated or sustained by natural market forces. **As** Commissioner Martin has noted in his Separate Statement to the MAG Plan Order,⁴ the Commission's policy of using universal service support as a means of

⁴ *Multi-Association Group (MAG) Plan For Regulation Of Interstate Services Of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and

creating "competition" in high cost areas raises serious questions and concerns

Whereas equal access service produces clear and substantial consumer choice and consumer welfare benefits, it has required wireline carriers (both incumbent and competitive local exchange carriers) to make substantial investments in their loops, switches and interoffice facilities. The costs of these investments are reflected in the loop costs supported by High-Cost Loop Support and Interstate Common Line Support (and also Access Universal Service Support for price-cap carriers), and in the switching costs supported by Local Switching Support (formerly weighted DEM). As a result, wireless ETCs currently receive portable, per-line universal service support that includes the substantial equal access costs incurred by incumbent local exchange carriers. For wireless ETCs, the portion of this per-line support related to equal access costs constitutes an unfair and unwarranted windfall because wireless ETCs currently neither provide equal access service nor incur the costs associated with it. In addition, most of these same wireless ETCs further exploit the different wireline/wireless regulation of equal access by funneling all the toll traffic originated by their customers to a single interexchange carrier in order to generate substantial toll resale profits for themselves or to market service plans that wireline carriers are precluded from offering. Whatever it may be called, the Commission's current policy of imposing substantial equal access costs and obligations upon wireline ETCs, and bestowing windfall universal service support and additional profit and marketing opportunities upon their wireless ETC counterparts, cannot be characterized as "competitive neutrality" or "technological neutrality" under any reasonable definition of those terms.

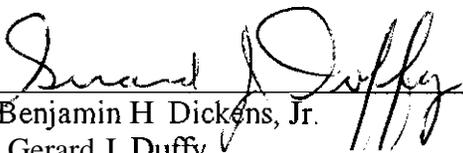
Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 11244 (rel. Nov. 8,2001) (*MAG Plan Order*).

Lest there be any confusion here, the Rural Group is not asking the Commission to impose equal access service obligations upon commercial mobile service carriers. Rather, it is merely noting that inclusion of equal access service as a supported universal service -- which is mandated by the Section 254(c)(1) criteria -- has the additional advantage of rendering the Commission's universal service and ETC rules more "competitively neutral" with respect to wireline and wireless ETCs.

Conclusion

The Rural Group vigorously supports the addition of equal access service to the list of supported services in Section 54.101 of the Rules. Equal access service fully satisfies all four of the criteria in Section 254(c)(1) of the Act for inclusion as a supported service. Inclusion is wholly consistent with Section 332(c)(8) of the Act. Finally, inclusion has the additional advantage of promoting competition and competitive neutrality in both the local service and long distance toll service markets.

Respectfully submitted,
THE SMALL RURAL ILEC GROUP

By 
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INTERSTATE TELCOM CONSULTING, INC. • CLIENTS

COMPANY NAME

3 RIVERS TELEPHONE COOP.
AMERY TELCOM INC.
ARROWHEAD COMMUNICATIONS CORP.
BAYLAND TELEPHONE, INC.
BERGEN TELEPHONE COMPANY
BRUCE TELEPHONE CO., INC.
CHEQUAMEGON COMMUNICATIONS COOP., INC.
CHIBARDUN TELEPHONE COOP., INC.
CITIZENS TELEPHONE COOP., INC.
COCHRANE COOPERATIVE TELEPHONE CO.
COON VALLEY FARMERS TEL. CO., INC.
DELAVAN TELEPHONE COMPANY
EAGLE VALLEY TELEPHONE COMPANY
FARMERS IND. TELEPHONE COMPANY
FARMERS **MUTUAL** TELEPHONE CO. (OKOLONA)
FELTON TELEPHONE CO., INC.
GRANADA TELEPHONE COMPANY
HAGER TELECOM INC.
HARMONY TELEPHONE COMPANY
HOME TELEPHONE COMPANY
INDIANHEAD TELEPHONE COMPANY
LAKEFIELD TELEPHONE COMPANY
LAVALLE TELEPHONE COOP., INC.
LEMONWEIR VALLEY TELEPHONE CO.
LORETEL SYSTEMS, INC.
LOST NATION-ELWOOD TELEPHONE CO.
MABEL COOP. TELEPHONE COMPANY
MADELIA TELEPHONE COMPANY
MANAWA TELEPHONE CO., INC.
MARQUETTE-ADAMS TELEPHONE COOP., INC.
MINBURN TELECOMMUNICATIONS, INC.
MINNESOTA VALLEY TELEPHONE CO., INC.
MOSINEE TELEPHONE COMPANY
NELSON TELEPHONE COOPERATIVE
NIAGARA TELEPHONE COMPANY
NORTHERN TELEPHONE COMPANY
PINE ISLAND TELEPHONE COMPANY
RICHLAND-GRANT TELEPHONE COOP., INC.
SHARON TELEPHONE COMPANY
SIREN TELEPHONE CO., INC.
SLEEPY EYE TELEPHONE CO.
SOMERSET TELEPHONE CO., INC.
SPRING GROVE COOP. TELEPHONE CO.
STATE LONG DISTANCE TELEPHONE COMPANY
TRI-COUNTY TELCOM, INC.
TRI-COUNTY TELEPHONE COOP., INC.
WILDERNESS VALLEY TELEPHONE CO.
WINTHROP TELEPHONE COMPANY
WITTENBERG TELEPHONE COMPANY