

**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

BELLSOUTH COMMENTS

BELLSOUTH CORPORATION

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Date: May 5, 2003

BellSouth Comments
CC Docket No. 96-45
May 5, 2003
Doc. No. 489249

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BELLSOUTH COMMENTS

BellSouth Corporation, on behalf of itself and its wholly owned subsidiaries (“BellSouth”), hereby submits its comments on the *Public Notice* in the above-captioned proceeding.¹

I. INTRODUCTION AND SUMMARY

On February 7, 2003, the Federal-State Joint Board released a *Public Notice* seeking comment on the Commission’s rules regarding high-cost universal service support and the process for designating eligible telecommunications carriers (“ETCs”). BellSouth believes it wise for the Commission to review its rules given the passage of time since the rules were first adopted in 1997, the simultaneous efforts in related universal service proceedings, and the increasing number of competitive ETCs qualifying for high-cost support.

As demonstrated more fully herein, BellSouth recommends that the Commission retain some of the existing regulations governing high-cost support and modify others. One of the most

¹ *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) (“*Public Notice*”).

important changes that the Commission and states can make to keep the size of the federal high-cost fund within reasonable limits, while still satisfying the statutory objective of ensuring that consumers in all regions have access to telecommunications and information services at reasonably comparable rates² is to establish a more rigorous public interest standard for the ETC designation process.

Specifically, the Commission should adopt a set of minimum requirements that carriers seeking ETC status in both rural and non-rural areas must satisfy in order to meet the public interest standard of Section 214(e).³ States should use these requirements as guidelines to assist them in evaluating whether or not it serves the public interest to designate multiple ETCs. Of course, state commissions would be free to adopt additional requirements beyond those established by the Commission. Strengthening the eligibility requirements for obtaining ETC status is a critical step in ensuring that the universal service fund remains “specific, predictable and sufficient,”⁴ as required by Section 254.

While BellSouth supports the enhancement described above, it also urges the Commission to retain some of the existing regulations governing the high-cost fund and slightly modify a few others. First, the Commission should continue to calculate support based on the incumbent LECs’ costs. Second, the Commission should not impose a cap on the high-cost fund. Third, the Commission should modify the support received by ETC carriers that use unbundled network elements. Finally, the Commission should require wireless carriers seeking ETC status to demonstrate that they are providing a signal to a customer’s billing address. This showing can

² 47 U.S.C. § 254(b)(3).

³ 47 U.S.C. §§ 214(e)(2) and (6).

⁴ 47 U.S.C. § 254(b)(5).

be made by requiring the customer to certify that service at the billing address is available, working, and adequate.

II. THE COMMISSION AND THE STATES SHOULD ADOPT A MORE STRINGENT PUBLIC INTEREST ANALYSIS FOR DESIGNATING ETCs IN BOTH RURAL AND NON-RURAL AREAS.

Clearly, it is necessary to inject some discipline into the ETC designation process at both the federal and state level in order to preserve the viability of the high-cost fund. One of the most efficient ways to accomplish this objective is to establish a framework for the public interest analyses required by Sections 214(e)(2) and (6). Specifically, the Commission should establish qualification requirements to guide itself and the states when considering the public interest as mandated by statute.

Section 214(e) of the Act requires the Commission and the states to find that the public interest is served when designating a carrier as an ETC in both rural and non-rural areas. To date, increased competition typically has been the sole criterion for finding that this standard has been met.⁵ As a result, the number of multiple ETCs operating in an area served by an incumbent LEC and drawing from the high-cost fund is steadily increasing.

Rubber-stamping of ETC applications by the Commission and the states without the appropriate level of scrutiny is detrimental to the sufficiency and survival of the high-cost universal service fund. Therefore, it is critical that the Commission establish and apply a set of

⁵ See, e.g., *In the Matter of Federal-State Joint Board on Universal Service, Corr Wireless Communications, LLC Petition for Designation as an Eligible Telecommunications Carrier*, CC Docket No. 96-45, *Memorandum Opinion and Order*, 17 FCC Rcd 21435, 21437-38, 21440, ¶¶ 7, 12 (2002); *In the Matter of Federal-State Joint Board on Universal Service, Pine Belt Cellular, Inc. and Pine Belt PCS, Inc. Petition for Designation as an Eligible Telecommunications Carrier*, CC Docket No. 96-45, *Memorandum Opinion and Order*, 17 FCC Rcd 9589, 9592, ¶ 8 (2002).

minimum requirements that a carrier must satisfy in order to obtain ETC status. States will be able to use these standards as guidelines when considering whether the designation of a carrier as an ETC is in the public interest. Moreover, states would have the discretion to adopt additional requirements for obtaining ETC status.

The statute authorizes the Commission to establish ETC qualifications for both rural and non-rural areas as part of the public interest standard. Besides ensuring that carriers seeking ETC status meet the minimum statutory requirements of (1) offering services that are supported by the federal universal service support mechanisms and (2) advertising the availability of such services,⁶ the Commission also must find that an ETC designation is in the public interest. This public interest test applies to both rural and non-rural areas. Section 214(e)(6) provides that “[u]pon request and *consistent with the public interest, convenience and necessity,*” the Commission shall designate more than one common carrier as an ETC in a non-rural area.⁷ Similarly, when considering whether to designate a carrier as an ETC in an area served by a rural carrier, the Commission must “find that the designation is in the public interest.”⁸

States are subject to the same statutory mandate pursuant to Section 214(e)(2).⁹ As Commissioner Adelstein points out:

States are required, under the law, to ensure that carriers requesting eligible telecommunications carrier (ETC) status make such designations only if they serve the public interest, convenience and necessity. That applies in areas served by both non-rural and rural carriers, in addition to a more rigorous public

⁶ 47 U.S.C. § 214(e)(1).

⁷ 47 U.S.C. § 214(e)(6) (emphasis added).

⁸ *Id.*

⁹ 47 U.S.C. § 214(e)(2).

interest determination for areas served by rural carriers, before granting ETC status.¹⁰

Thus, the Commission and the states should use this proceeding as an opportunity to create a well-defined public interest standard that satisfies the multiple roles of ensuring that qualified carriers obtain ETC status, the fund size remains reasonable and sufficient, and consumers are not harmed.

The public interest analysis conducted by the Commission and the states must consist of more than a cursory review and must be based on more than the promotion of competition. While competition may certainly be one factor considered in any public interest analysis, it should not be the only one, as has typically been the case to date.¹¹ When evaluating whether the public interest is served, the Commission and the states must consider the costs and benefits associated with designating multiple ETCs in a given area. These agencies must determine whether supporting multiple ETCs truly benefits consumers. If the result is decreased investment in capital infrastructure and an incumbent that is unable to sustain financial viability, the answer is no. Commissioner Adelstein appropriately recognizes the value of a cost-benefit analysis as part of the designation process. He states:

¹⁰ Remarks of Jonathan S. Adelstein, Commissioner, Federal Communications Commission, Before the National Association of Regulatory Utility Commissioners at 2-3 (Feb. 25, 2003) (“Remarks of Commissioner Adelstein”).

¹¹ See, e.g., *In the Matter of Federal-State Joint Board on Universal Service, Corr Wireless Communications, LLC Petition for Designation as an Eligible Telecommunications Carrier*, CC Docket No. 96-45, *Memorandum Opinion and Order*, 17 FCC Rcd 21435, 21437-38, 21440, ¶¶ 7, 12 (2002); *In the Matter of Federal-State Joint Board on Universal Service, Pine Belt Cellular, Inc. and Pine Belt PCS, Inc. Petition for Designation as an Eligible Telecommunications Carrier*, CC Docket No. 96-45, *Memorandum Opinion and Order*, 17 FCC Rcd 9589, 9592, ¶ 8 (2002).

At the very least, we must ask whether granting ETC status to a competitive carrier will bring benefits to a community that it does not already have and what effect it will have on the overall size of the fund, and thus on the consumers' bills. So a threshold question is, does the benefit to the consumer outweigh the ultimate burden on the consumer? Although our decisions regarding access to funding must be competitively and thus technologically neutral, we cannot be neutral when it comes to the protection of the public interest. And I'm concerned that we haven't been careful enough in ensuring that end users are not ultimately paying extra for forced or artificial competition.¹²

Thus, the ETC designation process should require a showing that the benefits of supporting multiple carriers in a high-cost area exceed the costs.

Another eligibility requirement should be a demonstration that the carrier seeking ETC status can and will provide to all customers in a designated area service that is comparable to that provided by the carrier of last resort, typically the incumbent. Section 214(e)(4) allows an ETC to relinquish its ETC status in an area served by multiple ETCs upon advance notice to the appropriate commission.¹³ A condition of authority to relinquish ETC status is the ability of the remaining ETC to serve all of the customers served by the relinquishing carrier. This eligibility requirement is important because, given the tenuous state of the telecommunications marketplace and the increased pressure on the high-cost fund, it is possible that more and more incumbents may find themselves unable to continue providing service in some areas due to financial constraints. Adding the qualification described above would ensure that consumers are not harmed, thereby advancing the public interest.

The requirements listed above are not meant to be an exhaustive list. There are undoubtedly other criteria that may and, in fact, should be considered as part of the ETC

¹² Remarks of Commissioner Adelstein at 3.

¹³ 47 U.S.C. § 214(e)(4).

designation process. The ultimate goal is to establish a set of requirements to guide the Commission and the states when evaluating whether an ETC designation will serve the public interest.

Another element to a more stringent public interest analysis is ensuring that waivers of the various universal service regulations are minimized. To date, the Commission has been inclined to grant requests to waive various rules governing high-cost support.¹⁴ Waivers should be the exception, not the rule. Minimizing the number of waivers of the various high-cost support rules for ETCs will contribute to the stabilization of the fund.

III. THE COMMISSION SHOULD CONTINUE TO CALCULATE SUPPORT FOR ETCs BASED ON ILEC COSTS.

Under the Commission's current rules, per-line support for all ETCs (rural and non-rural) is based on ILEC costs.¹⁵ BellSouth urges the Commission to retain this approach. Calculating support based on ILEC costs offers considerable advantages. For non-rural ILECs, these costs reflect the forward-looking costs incurred to build and operate a network throughout a given

¹⁴ See, e.g., *In the Matter of Nemont Telephone Cooperative, Inc. Missouri Valley Communications, Inc. Reservation Telephone Cooperative and Citizens Telecommunications Company of North Dakota, Joint Petition for Waiver of the Study Area Boundary Freeze Codified in the Part 36, Appendix-Glossary of the Commission's Rules, Petition for Waiver of Sections 61.41(c)(2), 69.3(e)(11) and 69.605(c) of the Commission's Rules*, CC Docket No. 96-45, *Order*, 18 FCC Rcd 838 (2003) (waiver of study area boundary freezes); *In the Matter of Federal-State Joint Board on Universal Service, RFB Cellular, Inc. Petitions for Waiver of Sections 54.314(d) and 54.307(c) of the Commission's Rules and Regulations*, CC Docket No. 96-45, *Order*, 17 FCC Rcd 24387 (2002) (waiver of certain filing deadlines); *In the Matter of Federal-State Joint Board on Universal Service; West Virginia Public Service Commission Request for Waiver of State Certification Requirements for High-Cost Universal Service Support For Non-Rural Carriers*, CC Docket No. 96-45, *Order*, 16 FCC Rcd 5784 (2001) (waiver of state certification requirements).

¹⁵ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Report and Order*, 12 FCC Rcd 8776, 8932-34, ¶¶ 286-290, 8944-8945, ¶¶ 311-313 (1997) (“*Universal Service Order*”).

area. Reliance on competitive ETCs' equivalent costs would require these carriers to develop and submit detailed cost studies; however, using actual costs for ETCs would be inconsistent with the current forward-looking cost methodology used to calculate support for incumbent LECs. Moreover, creating a cost proxy model for competitive ETCs has its own challenges. As the Commission acknowledges, "competitive ETCs are not subject to the same regulatory and reporting requirements as incumbent LECs."¹⁶ Thus, cost information for ETCs is not readily available. Consequently, if a competitive ETC's costs were used as the basis for support, the Commission would have to establish a reporting mechanism to ensure proper and accurate cost accounting by ETCs. Accordingly, BellSouth continues to agree with the Commission's prior finding that "the least burdensome way to administer the support mechanism" is by relying on ILEC costs.¹⁷

In addition, the current methodology provides an incentive for both the incumbent and competitive ETCs to operate more efficiently.¹⁸ If a competitive ETC is able to serve a customer's line at a much lower cost than the incumbent, that ETC may be able to charge lower rates thereby winning customers away from the ILEC. The potential loss of customers would motivate the incumbent to conduct its business in a more efficient manner. Because basing per-line support on ILEC costs is a proven and reliable method of calculating support and avoids the difficulties associated with estimating an ETC's costs, the Commission should retain this method.

¹⁶ *Public Notice*, ¶ 18.

¹⁷ *Universal Service Order*, 12 FCC Rcd at 8933, ¶ 288.

¹⁸ *See id.* at 8945, ¶ 313.

IV. THE COMMISSION SHOULD NOT CAP THE HIGH COST UNIVERSAL SERVICE SUPPORT FUND.

BellSouth objects to a cap on the overall high-cost support fund. Section 254 does not contemplate a cap. Rather, one of the principal objectives of Section 254 is to create “specific, predictable and sufficient” mechanisms “to preserve and advance universal service.” Imposing an artificial limit on the level of universal service support available to eligible ETCs could result in a mechanism that does not meet the statutory goal of sufficiency. If the number of competitive ETCs continues to grow (as is expected) and a cap is implemented, there will be more carriers drawing from a finite pool. The end result could be to deprive consumers of affordable service in direct violation of the Act.

This risk increases in light of the current growth in the high-cost fund. It is a very real possibility that the future growth of the fund will vastly exceed the past growth as more and larger wireless carriers become eligible to draw from the high-cost fund as ETCs. Thus far, only small wireless carriers have sought support.¹⁹ In light of the above, the Commission should not impose a cap on the high-cost fund.

¹⁹ See, e.g., *In the Matter of Federal-State Joint Board on Universal Service, Farmers Cellular Telephone, Inc. Petition for Designation as an Eligible Telecommunications Carrier*, CC Docket No. 96-45, *Memorandum Opinion and Order*, DA 03-754 (rel. Mar. 12, 2003); *In the Matter of 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*, 17 FCC Rcd 24493 (2002); *In the Matter of 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*, 177 FCC Rcd 23532 (2002).

V. THE COMMISSION SHOULD MODIFY THE METHODOLOGY FOR CALCULATING SUPPORT FOR ETCs USING UNBUNDLED NETWORK ELEMENTS.

The Commission seeks input on its rules governing the calculation of high-cost support for competitive ETCs utilizing unbundled network elements (“UNEs”).²⁰ Under the Commission’s current rules, a competitive ETC that provides supported services utilizing UNEs receives the lesser of the UNE price or the per-line support amount available to the incumbent LEC.²¹ As the Commission points out, “[s]ome competitive UNE-based ETCs serving high-cost areas may receive support equal to the full price of the UNEs they purchase from the incumbent LEC.”²²

BellSouth recommends the following modification to the current rule. The competitive ETC should receive only 76% of the difference between the UNE price and the statewide average forward-looking costs or what the incumbent receives, whichever is less. For incumbent LECs, the forward-looking support mechanism provides support for 76% of statewide average costs above a nationwide average cost benchmark of 135%.²³ The Commission adopted this calculation to ensure that the recovery mechanism took into account the Commission’s separations rules and the division of cost recovery responsibility set forth in those rules.²⁴ Thus, incumbents do not receive the full amount of the difference between their costs and the national

²⁰ *Public Notice*, ¶ 21.

²¹ 47 C.F.R. § 54.307(a)(2).

²² *Public Notice*, ¶ 21.

²³ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 14 FCC Rcd 20432, 20465, 20467-68, ¶¶ 58, 63, *Ninth Report and Order and Eighteenth Order on Reconsideration* (1999), *remanded*, *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001)

²⁴ *Id.* at 20467-68, ¶ 63.

average. They are only entitled to 76%. The same should be true for ETCs. Such an approach would be consistent with the Commission's goal of "competitive neutrality."

VI. THE COMMISSION SHOULD ADOPT A CUSTOMER CERTIFICATION REQUIREMENT FOR WIRELESS CARRIERS SEEKING ETC STATUS.

The Commission should slightly modify its current approach to determining the location of a line served by a wireless provider.²⁵ Today, wireless providers use the customer's "billing address" to identify the service of that customer.²⁶ The wireless provider should be required to demonstrate that it, in fact, is providing a signal to the customer at the customer's billing address. This demonstration could take the form of a customer certification that service at the billing address is available, working, and adequate. These customer certifications should be retained by the carrier for potential audits by the Universal Service Administrative Company ("USAC").

VII. CONCLUSION

For all of the foregoing reasons, BellSouth urges the Commission to take the actions requested herein.

²⁵ See *Public Notice*, ¶ 25.

²⁶ 47 C.F.R. § 54.307(b).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that I have this 5th day of 2003 served the following parties to this action with a copy of the foregoing **BELLSOUTH COMMENTS** by electronic filing addressed to the parties listed below.

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