

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

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

COMMENTS OF THE RURAL INDEPENDENT COMPETITIVE ALLIANCE

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SUMMARY

Consistent with the purposes of the Telecommunications Act of 1996, the 80 rural CLEC members of RICA have successfully brought facilities-based, competitive, high quality service to previously under-served rural subscribers at reasonable and affordable rates. Unfortunately, the rural CLECs cannot continue to serve these customers and expand to the many remaining areas where large carriers have treated rural subscribers as a telecommunications backwater unless the Joint Board and the Commission properly reform the Universal Service and Access Charge rules.

RICA member rural CLECs are acutely aware of the history of the rural telephone industry—nearly driven to extinction during the 1920s and '30s, but reborn following the Second World War as a result of government policies that provided both sufficient capital and interstate revenue. The rural CLEC industry, itself born after the 1996 Act, remains at serious risk because of inadequate interstate revenues in the form of either access charges or universal service support.

Universal service support originated as a jurisdictional cost allocation methodology designed to maintain the affordability of local rates while allowing local exchange carriers to recover their cost of service, but no more. The 1996 Act provided for universal service support for competitive local exchange carriers as well as incumbents, but retained the concept that the purpose of support is to ensure the availability of quality service at “just, reasonable and affordable rates.” With five years’ experience, it is now clear that the Commission’s rules implementing the Act are inconsistent with these basic objectives.

By mandating that support be “portable,” *i.e.*, not tied to the cost or need of the recipient, and by limiting high cost support to non-rural carriers in only eight states, the rules fail to provide “specific,

predictable and sufficient” support to competitive carriers. They provide little or no support in high cost areas for wireline CLECs, but provide a windfall to some wireless carriers. Rural CLECs’ lack of adequate interstate revenue through universal service support is compounded by the Commission’s decision limiting access charges to benchmarks that are keyed to either the rates of large price cap carriers, or to NECA rates which were significantly reduced by the subsequent MAG decision. That decision shifted substantial interstate access cost recovery to the Universal Service Fund for NECA members, but simply eliminated recovery for rural CLECs. The cumulative result of these decisions is that rural CLECs receive significantly less interstate revenue than a rural ILEC would serving the same area with the same cost.

The original justifications for tying a competitive carrier’s support to the per-line support of the ILECs can now be seen as invalid. The primary rationale, administrative simplicity, is not available when the results are so obviously wrong in providing overcompensation to some and undercompensation to others. Nor can the requirement for certification of compliance with Section 254(e) be a valid excuse for excessive support payment when it is unclear what it means for a carrier to “use” support for the provision, maintenance and upgrading or which accounting and engineering tests should be applied to determine compliance.

The Commission is now faced, on the one hand, with very rapid growth in the support provided to wireless carriers and the prospect of exponential further increases without any basis for presuming that support is needed or justified by the objectives of the Act. On the other hand, the rural CLECs are unable, because of inadequate or non-existent support and access revenues, to meet the demands of large portions of rural America inadequately served by the large incumbent LECs. At the same time,

other universal service issues before the Commission, such as the 10th Circuit remand, the definition of supported services, the expansion of contribution obligations, and the regulatory status of wireline broadband services, must be rationally resolved in harmony with the “portability ” issue.

The 1996 Act is clear that Congress intended to provide universal service support to competitive carriers wherever necessary. The Act is also clear, however, that support must be consistent with the principles and objectives of the Act. The Joint Board and the Commission are therefore obligated to structure the support mechanism so that a rational basis exists between the support provided and the accomplishment of goals related to those principles and objectives. In the case of rural CLECs, the existing rules bear no rational connection to the need of the rural CLEC for support in order to meet the objectives of the Act, because the rules tie the eligibility and the level of support available to factors such as the average cost (as determined by a model) of competing large urban carriers, as well as the average cost of large urban carriers in other states. The Joint Board and the Commission should revise the rules to provide that each carrier, or class of carriers, will be eligible for support based on its need for support to accomplish the Act’s objectives. Rural CLECs are prepared to provide cost support on an embedded or forward-looking basis, but other methods may be appropriate for other types of carriers.

RICA has no quarrel with the concept of eligibility of wireless carriers for universal service support. Wireless mobile service, however, differs from wireline service in many material respects. Wireless offers benefits to the subscriber of mobility, different risks of service interruption and, at present, different pricing options. At the same time, wireless service is subject to less ubiquity of service availability, more frequently dropped calls, less consistent transmission quality, higher probability of

busy hour blocking, lower data speeds, restrictions on use in health care facilities, etc. Given these differences, the Joint Board and the Commission should develop specific universal service objectives for mobile ETCs and a support mechanism consistent with encouraging wireless carriers to meet those objectives. Such mechanism should be appropriate for the technology, regulatory status and industry structure of wireless carriers, provide support where it is need, but not provide a windfall.

A support mechanism that properly reflects the need of a carrier for support in order to comply with the Act's objectives for that carrier's subscribers will necessarily recognize that the provision of the supported services requires the existence of a network and network support capability, not just a line. The support mechanisms for competitive carriers must, therefore, recognize this network necessity just as the ILEC mechanism bases support on the cost of establishing and operating a network. With a network-focused support mechanism, and a recognition that mobile service is a separate universal service objective, the various questions regarding "capture," "primary" and "secondary" lines, second homes, etc. can be largely eliminated from concern.

Neither a "lowest cost" nor auction-based mechanism would provide universal service support in compliance with the procedures, principles and objectives of the Act. It is, first of all, extremely difficult to establish an "apples to apples" cost comparison between carriers of different size, organization and technology deployed. Secondly, as the spectrum auctions have demonstrated, the entity that bids the most (or claims the lowest cost) will usually assume a best case scenario, and then be unable to perform when the best does not materialize. Even if substantial effort were made to develop rigorous "RFPs" and conduct follow up oversight and enforcement, in any given area a large carrier can always underbid a smaller carrier simply to keep the smaller carrier out of competition.

Instead, ETCs should be incented to develop rational business plans that will encourage long term investment.

If the universal service mechanisms are reformed as described above so that distortion of the competitive marketplace is reduced significantly, much of the current controversy over state ETC designations may be resolved. The controversy is less about state commission procedure than it is about the substantive rules the states must apply. One aspect in need of improvement, however, is the clarity of information regarding the disaggregation process. Improvements are needed both in making detail publicly and readily available in order to allow CETCs to determine precisely the boundaries of disaggregation zones, and in principles and procedures to establish when disaggregation is proper and when it is anti-competitive.

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COMMENTS OF THE RURAL INDEPENDENT COMPETITIVE ALLIANCE

The Rural Independent Competitive Alliance (“RICA”) files this response to the Joint Board’s Public Notice of February 7, 2003, FCC 03J-1, 68 Fed. Reg. 10429 (2003), requesting comment on certain rules relating to high-cost universal service support and the designation of Eligible Telecommunications Carriers (“ETCs”). RICA is a national association of approximately 80 competitive local exchange carriers (“CLECs”) operating in rural areas and affiliated with rural incumbent local exchange carriers (“ILECs”).

I. INTRODUCTION: UNIVERSAL SERVICE SUPPORT TO COMPETITIVE CARRIERS DOES NOT MEET ACT REQUIREMENTS

A. State of Rural CLEC Industry

Although the rural ILEC industry began with the expiration of the Bell patents in 1897, only a few of the approximately 15,000 companies operating in the early 20th Century survived the Great

Depression.¹ After the Second World War, Congress acted to address the significant decline in the availability of telephone service in rural areas after 1920 by amending the Rural Electrification Act to provide loans to construction of rural telephone systems.² With the availability of this capital, and the gradual increase in interstate revenue following revisions in jurisdictional separations negotiated between the FCC and state commissions, rural telephone companies evolved the capability to offer state of the art communications in rural areas previously bypassed by the large companies.

With the gradual evolution of competition in urban areas, the large carriers increasingly neglected their rural service areas by failing to invest in current technology, postponing maintenance, and eliminating local contact points, with the result that their subscribers increasingly envied the service provided their neighbors by the rural telephone companies. Following enactment of the 1996 amendments to the Communications Act of 1934, many of these rural telephone companies responded to the long time requests of their neighbors by expanding their service into the large company rural service areas. Typically, they constructed new outside plant and connected it with their modern switching equipment to provide high quality basic as well as advanced services not available from the incumbent. Because of the incumbents' neglect of these areas and the rural telephone companies' reputation for excellent service and local management, the rural CLEC's quickly obtained substantial

¹ Among the difficulties facing early independent telephone companies was the Bell System's strategic use of its control of the long distance network to restrict independent service areas. See, e.g., *In re Oklahoma-Arkansas Tel. Co. v. Southwestern Bell Tel. Co.*, Docket No. 3796, 6 FCC Rep. 809 (1939) *et seq.*

² *Rural Telephones: Hearings Before a Subcomm. of the House Comm. on Agriculture*, 81st Cong., 1st Session (1949); *Rural Telephones: Hearings Before the Senate Comm. on Agriculture and Forestry*, 81st Cong., 1st Session (1949).

market share in the rural exchanges, often in excess of 90%.³ Rural CLECs were thus able to utilize the freedom to compete brought by the Telecommunications Act of 1996 to accomplish the explicit goals of the Act to provide quality services at just, reasonable and affordable rates, access to advanced services, and reasonable comparability between urban and rural rates and services.⁴

Despite their initial success however, the rural CLECs soon found themselves short of revenue because some interexchange carriers (IXCs), principally AT&T, refused to pay the CLECs' tariffed access charges. In February of 2000, RICA requested an emergency order from the Commission to require AT&T to pay the tariffed interstate charges pending resolution of the question of CLEC Access Rates in CC Docket 96-262.⁵ The Commission never responded to RICA's request, per se, but in April 2001 it adopted the Seventh Report and Order in that Docket (hereafter "CLEC Access Charge Reform Order") which established maximum rates that CLECs and rural CLECs could include in FCC tariffs and concluded that IXCs were not free to refuse service to the subscribers of CLECs whose rates met the appropriate benchmarks⁶

³ See, e.g., In re Petition of Mid-Rivers Telephone Cooperative for a Ruling Declaring it an Incumbent Local Exchange Carrier in the Terry, Montana, Telephone exchange, WC Docket No. 02-78. Mid-Rivers filed its petition in February 2002, after supplanting the ILEC as the area's principal provider.

⁴ 47 U.S.C. § 254(b)(1)-(3).

⁵ RICA, Request for Emergency Temporary Relief Enjoining AT&T Corp. from Discontinuing Service Pending Final Decision, CC Docket No. 96-262, Feb. 18, 2000.

⁶ In re Matter of Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers, CC Docket No. 96-262, Seventh Report and Order, 66 Fed. Reg. 27900, *corrected* 66 Fed. Reg. 28774 (2001).

Despite the Commission's clear mandate, RICA members have continued to experience difficulties collecting duly tariffed interstate access charges from the large IXCs. See, Letter

The CLEC Access Charge Reform Order has, unfortunately, not resulted in an adequate or predictable revenue stream which would provide rural CLECs a reasonable chance to continue their provision of significantly improved service, much less expand to other communities. The essence of the problem is that the maximum access revenue available is substantially less than a rural ILEC would recover for providing the same service in the same location at the same cost.⁷

The CLEC Access Charge Reform Order provided a “rural exemption” to the rule that a CLEC’S rates, after a transition period, could not exceed those of the ILEC.⁸ This “rural benchmark” which utilizes the NECA rate levels however is inadequate because it arbitrarily precludes charging the carrier common line rate. Although the CCL is being phased out of the NECA rates, the interstate cost formerly recovered through that charge will now be recovered from a new universal service support mechanism, which will keep the rural ILEC’s whole on a pro forma basis. The rural CLECs whose rates are “benchmarked” to these NECA rates are not kept whole however, but simply lose that portion of their interstate revenue. The practical effect is that the rural ILEC recovers from carriers a portion of its interstate allocated loop cost as interstate revenue, but a rural CLEC cannot.

of Multiple RICA members to FCC Enforcement Bureau Seeking Imposition of Notice of Apparent Liability against AT&T Corp. for Failure to Pay Tariffed Interstate Access Charges (Oct. 15, 2002).

⁷ For rural ILECs, interstate revenue depends on the present cost of providing service if they were operating in the area before 1984, or purchased the property before May 7, 1997, but exchanges purchased after that date only receive universal service support of the seller, except as may be increased by the “safety valve” rules.

⁸ RICA proposed using the NECA rate as a benchmark, with full recognition that even prior to the MAG Order (*infra*, n.11) for high cost rural CLEC those rates produce significantly less revenue than a NECA pool member with similar costs would receive, because the CLEC is not allowed to participate in the NECA pool.

Further, the rural benchmark may only be used by rural CLECs competing with non-rural ILECs.⁹ Many rural CLECs were established to compete in exchanges then served by GTE, at the time the largest ILEC in the country. Most of the GTE carriers were non-rural telephone companies. Many of these GTE service areas were subsequently sold to what became new-mid-sized companies which are treated as rural telephone companies under section 3(37) of the Act. As a result, although in all respects they may have identical cost and service characteristics to a rural ILEC competing with a Regional Bell Operating Company (“RBOC”), these rural CLECs are relegated to significantly lower interstate access rates, solely because the regulatory status of the ILEC with which they compete changed after the CLEC began service.¹⁰

Ironically, where a rural telephone company has been able to purchase the exchange from the large ILEC, the Commission has readily granted the necessary waivers to allow the rural telephone company to integrate the purchased exchange into its existing rate structure.¹¹ To do so, however, it must spend whatever the seller demands to purchase facilities that in most cases have net negative

⁹ 47 C.F.R. § 61.26(e).

¹⁰ These issues are raised in RICA’s Petition for Reconsideration of the CLEC Access Reform Order which has been pending before the Commission since June 2001. RICA, *In re Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, Petition for Reconsideration And/or Clarification (2001). Also pending is an appeal filed by AT&T, *AT&T Corp. v. FCC*, No. 01-1244 (D.C. Cir. filed May 31, 2001).

¹¹ The purchasing ILEC is, however, constrained by the Commission’s “parent trap” rule to the universal service support received by the seller, plus any “safety valve” additions allowed under the rules adopted in Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC Docket Nos. 96-45, 00-256 (“MAG Order”), ¶ 91 et seq., 66 Fed. Reg. 30080 (2001). Specifically, see 47 C.F.R. § 54.305.

salvage value. The rules thus work to encourage waste of capital resources, and the sale represents a windfall to the selling large ILEC which has usually depreciated the plant fully.¹²

As mentioned above, among the most important factors in the success of American rural telephone companies were the federal-state jurisdictional separations factors which allowed recovery of a substantial portion of total costs from interstate sources. Beginning in 1982, these factors have evolved into today's universal service fund, which for rural ILECs in high cost areas constitutes a significant component of their overall cost recovery. The result has been a financially stable industry which continues to provide world-class service at reasonable rates.¹³ For rural CLECs however, even though they may serve adjoining areas with comparable cost and demographic characteristics, the FCC's rules severely restrict or preclude most of them from receiving "specific, predictable and sufficient" universal service support.

B. Support to Competitive Carriers

1. Origin of Universal Service as a cost recovery mechanism

Universal Service Support evolved out of the Commission's jurisdictional separations rules in the context of a decision to establish a single interstate allocator for non-traffic sensitive costs for all ILECs, and identifiable "additional interstate allocation" for carriers whose high costs would otherwise

¹² When buying a "hole" in the doughnut, the purchaser has little bargaining position because the exchange is uniquely valuable to the purchaser which operates in the surrounding rural area. Purchase is also very difficult for individual small ILECs because the large carriers typically want to sell a large number of exchanges at once to minimize transaction costs.

¹³ This description of the rural telephone industry remains accurate early in 2003. Whether this situation is able to continue depends, to a significant degree, on the proper resolution of this and related universal service and access charge proceedings.

require excessive local service rates.¹⁴ For example, a rural telephone company with a 65% allocation of its non-traffic sensitive cost to the interstate jurisdiction might have concluded the transition period with a 25% “gross” allocation to interstate and a 40% additional interstate allocation. Because the additional interstate allocation reduces cost the rural ILEC allocates to the intrastate jurisdiction by an identical amount there is no “subsidy” in that the carrier recovers only its total cost. The rules serve only to identify the portions of total cost that are recovered from the interstate jurisdiction, and within the interstate jurisdiction establish the rate structure rules for recovery of that interstate allocation.¹⁵

2. Support for competitive carriers under the 1996 Telecommunications Act

Building on the Commission’s USF rules, the 1996 Act established, for the first time, detailed statutory principles to be achieved by the mechanism to support universal service. The Act required the Commission to make certain changes in universal service rules, the most significant of which were intended to implement the new concept that multiple carriers could receive universal service support in the same area. In order to ensure that support was properly provided, the Commission was required to establish a list of supported services that carriers would be required to offer (and advertise their availability), while state commissions were asked to determine whether carriers met the criteria, and, if

¹⁴ See, *In re MTS and WATS Market Structure*, CC Docket No. 78-72, Phase I, FCC 82-579, 48 Fed. Reg. 10319, 53 RR2d 479 (1983), *aff’d* 737 F2d 10905, 56 RR2d 326 (D.C.Cir. 1984), *cert. denied* 469 U.S. 1227 (1985). The origins of universal service support are described in greater detail in RICA’s January 2003 white paper, “Critical Universal Service and Access Issues,” a copy of which is appended to these Comments.

¹⁵ 47 C.F.R. §§ 36.601, 69.01, *et seq.* See, *Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), Universal Service in Rural America: A Congressional Mandate at Risk* (Jan. 2003), pp. 7-8 (“OPASTCO White Paper”).

so, to designate them as ETCs.¹⁶ Instead of just interexchange carriers, all interstate carriers are required to contribute to the universal service fund. The Commission was given 15 months to adopt implementing rules.

C. FCC Rules Implementing Sections 254 and 214(e)

1. Different rules for rural/non rural ILECs

The original USF rules provided a larger percentage of additional interstate allocation to smaller carriers. This distinction was enhanced in rules adopting the 1986 “Unity” agreement. The distinction between large and small carriers has now been revised to reflect the 1996 Act’s definition of “rural” and “non-rural” telephone companies.¹⁷ Rural telephone companies continue to determine their USF high cost loop support eligibility based upon the extent to which their embedded costs exceed the national average.¹⁸ Non-rural carriers first determine their cost based upon a computer model adopted by the Commission which purports to compute the forward-looking cost of serving their area. Where the average cost for non-rural companies in a state is 135% or more of the national average, non-rural companies in that state are eligible for support.¹⁹ The result of the state wide average provision is that

¹⁶ 47 U.S.C. §§ 214(e), 254. Section 214(e) was amended in 1997 to give the FCC authority to designate eligible carriers in those cases where the state commission lacked jurisdiction over the carrier.

¹⁷ As a result of this change in criteria, some carriers which were formerly subject to the large carrier rules, now have rural telephone company status, since the definition of rural telephone company includes an alternative (47 U.S.C. § 153(37)(d)) that does not limit the number of access lines so long as no more than 15% are in communities of under 50,000 population.

¹⁸ See 47 C.F.R. §§ 36.603-605, 54.301, 54.305, 54.307.

¹⁹ 47 C.F.R. § 54.309. Thirty two states and the District of Columbia have only one non-rural ILEC. Two states have four non-rural ILECs, one have three, the rest have two, as does Puerto

non-rural telephone companies are eligible for support in only eight states (Alabama, Kentucky, Maine, Mississippi, Montana, Vermont, West Virginia, Wyoming).²⁰

2. Support for CETCs

The 1996 Act includes six principles upon which universal service policies are to be based, and provides that the Joint Board and the Commission may adopt additional principles. In its 1997 implementing order, the Commission adopted “competitive neutrality” as a seventh principle. The Commission explained that by competitive neutrality it meant that universal service rules and mechanisms should not unfairly advantage or disadvantage one provider over another and not unfairly favor or disfavor one technology over another.²¹

The Commission resolved the question of how to determine support for competitive (non-incumbent) ETCs (“CETCs”) by deciding that such carriers would, upon designation, be eligible to receive the same support as the ILEC, on a per-line basis, without either demonstrating their embedded

Rico.

²⁰ Universal Service Administrative Company (USAC), Appendix HC2. The Commission is considering substantial questions regarding whether the model support meets the requirements of the Act. *See*, Public Notice, Comment Sought on the Recommended Decision of the Federal-State Joint Board on Universal Service Regarding the Non-rural High-cost Support Mechanism, CC Docket No. 96-45, Pleading Cycle Established, DA 02-2976, 67 Fed. Reg. 71121 (2002), *seeking comment on* Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Recommended Decision*, FCC 02J-2, 17 FCC Rcd 20716 (2002). The Joint Board issued its Recommended Decision in response to a remand of the Ninth Report and Order from the U.S. Court of Appeals for the Tenth Circuit. *In re* Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Ninth Report and Order and Eighteenth Order on Reconsideration*, 14 FCC Rcd 20432 (1999), *remanded Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001).

²¹ *In re* Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, FCC 97-157, 12 FCC Rcd 8776, 8801 (1997) (“First Report and Order”).

cost or determining their forward-looking cost pursuant to the model.²² The result is that ILECs only receive support where there is a factual basis for determining that they have significantly above average costs of providing service. Conversely, because CETCs receive support only if their ILEC competitors do, support is based entirely on the ILEC's costs, and there is no consideration at all is given to determining whether such support is sufficient, inadequate, or excessive with respect to the CETC's ability to offer services and rates consistent with the statutory goals.

D. Rapid Growth of Support for Wireless ETCs

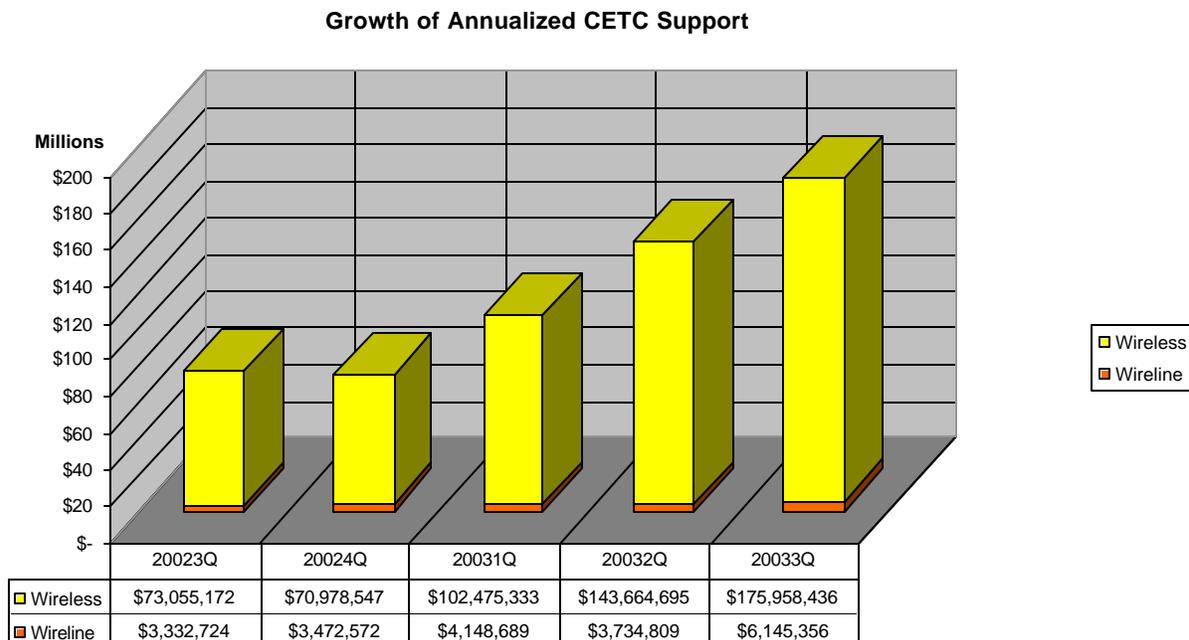
At first, only a few CLECs obtained ETC designation because the ILEC with which they competed often was eligible for little or no USF. With the adoption of model based support in 1999, which provided significant increases in support to BellSouth in Mississippi and Alabama,²³ several wireless carriers in those states obtained ETC designation and currently are projected to receive support payments of approximately \$2.8 million per month, or 23% of the monthly support for CETC. Western Wireless initially filed for ETC designation in several western states for a service which was in essence a wireless local loop. More recently, WW has apparently decided to claim USF support for all its customers, fixed and mobile alike, and has become the leading non-incumbent recipient of high cost support, receiving approximately \$3.5 million per month, or approximately 28% of the support to CETCs²⁴ Given the wide deployment of wireless services in the 48 states in which either rural and/or

²² First Report and Order, ¶ 311 *et seq.*, codified at 47 C.F.R. § 54.307.

²³ BellSouth's Alabama and Mississippi study areas will receive approximately 54% of the High Cost Model support to non-rural carriers in 2003. USAC, App. HC1, HC2, 2Q 2003.

²⁴ USAC, App. HC1, 2Q 2003. *See*, Salomon Smith Barney, Multi-Company Note, Wireless Services, Jan. 21, 2003. United States Cellular and Smith Barney together receive another

non-rural carriers receive high cost support²⁵, the potential growth in the fund could be very significant, with estimates as high as an additional \$2 Billion.²⁶ The following chart illustrates the growth of CETC support and the proportion projected to be paid to wireless ETCs over the last five quarters.²⁷



31% of the CETC support. The top five recipients out of 69 listed by USAC receive 85% of the CETC support.

²⁵ ILECs in Delaware and Rhode Island (and the District of Columbia) receive no high cost support. USAC, App. HC2, 3Q 2003.

²⁶ McLean & Brown, “One Year Later - One Year Closer, The Coming Train Wreck in Universal Service Funding,” www.mcleanbrown.com (Jan 18, 2003) at 4.

²⁷ USAC, App. HC1 for respective quarters.

E. The Present Rules Produce a Significant Disparity Between Support Available to a Rural Carrier If it Buys or Overbuilds an Adjacent Under-served Area.

Among economically irrational incentives flowing from the present access and universal service rules is the significant disparity in interstate revenues which are available to a rural telephone company improving service in under served areas, depending upon whether it buys the areas from the incumbent as an ILEC or overbuilds the area as a facilities based CLEC. If the incumbent in the under served area decides to sell to the rural ILEC, it will usually be able to insist on a “market” price set in comparison to much larger sales to holding companies, even though the “book” value of the area is often minimal, or even has a net negative salvage. Upon receiving the appropriate rule waivers, the rural ILEC will be able to integrate the area into its existing study area and begin recovering access through the NECA pools, or by filing its own cost-based access tariff. Although its USF support will still be limited by the “parent trap” rule, there is at least an opportunity to utilize the “safety-valve” rules and receive USF support in recognition of its investment in replacing the obsolete plant it inherited from the seller.²⁸

If instead of purchasing the area at a price well in excess of the value of the assets, the rural ILEC simply establishes itself as a CLEC in the area, overbuilds the existing obsolete outside plant and routes traffic through its existing switching and trunking facilities, its cost per subscriber will be less, but its losses in access revenue and USF support as a result of its different status may far outweigh the savings. The net effect is thus simply a waste of society's resources caused by rules which produce different rules based upon how a carrier is allowed to categorize itself, rather than its cost of providing service to the area.

²⁸ 47 C.F.R. § 54.305.

F. The Commission's Multiple Access and USF Proceedings Involve Interrelated Issues That Need to Be Resolved in a Coordinated Manner.

The appropriate solutions to many of the issues raised in response to the questions posed by the Joint Board are both dependent on, and will influence several related proceedings, yet there is no apparent Commission plan to integrate the analysis and resolution of these issues. For example, the extensive debate in comments filed last month over whether equal access should be added to the list of supported services can be properly resolved more rationally if "portability" of support is eliminated in this proceeding.²⁹ Resolution of the 10th Circuit Remand proceeding may change the practical effect of the portability rules.³⁰ The further proceeding relating to contributions may significantly alter the competitive balance between various classes of contributors.³¹ The issue of whether the categories of contributors to USF support should be broadened to include providers of broadband service, voice over Internet protocol, etc. in turn will affect whether the growth in total support payments becomes excessive.³² Further "reform" of access charges, such as the "bill and keep" methods proposed in the

²⁹ In re Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Notice of Proposed Rulemaking, FCC 03-13, 68 Fed. Reg. 12020 (2003).

³⁰ *See, supra.* n. 20.

³¹ *See*, Public Notice, Commission Seeks Comment on Staff Study Regarding Alternative Contribution Methodologies, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, NSD File No. L-00-72, FCC 03-31, 18 FCC Rcd 3006 (2003).

³² In re Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Universal Service Obligations of Broadband Providers, Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review - Review of Computer III and ONA Safeguards and Requirements, CC Docket Nos. 02-33, 95-20, 98-10, Notice of Proposed Rulemaking, FCC 02-42, 67 Fed. Reg. 9232 (2002).

Intercarrier Compensation proceeding could further reduce access revenues for rural CLECs, which might not be replaced with USF support.³³

The foregoing list of interrelated issues being considered is not intended to be exhaustive, but illustrative of the fact that the issues presented cannot be resolved in isolation, or on the assumption that everything else will remain the same.

II. THE SUPPORT METHODOLOGY SHOULD BE REVISED TO BASE SUPPORT ON DEMONSTRATED NEED WITHOUT REGARD TO THE ILEC

A. The Policy Goal of the 1996 Act Is Specific, Predictable and Sufficient Support, Not Portability

The 1996 Act is unambiguous in its requirement that once a non-incumbent carrier has received ETC designation, it is eligible to receive universal service support for which it is otherwise qualified. The Joint Board and the Commission properly rejected suggestions to the contrary when the initial implementation rules were adopted.³⁴ The Act, however, nowhere uses either the term or the concept of “portability.” Portability was the term used in the initial Joint Board recommendation in the context of its proposal that universal service support for rural ILECs be frozen at their then current per-line amounts. The Joint Board stated: “Because we have recommended that frozen support payments be

³³ In re Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Notice of Proposed Rulemaking, FCC 01-132, 66 Fed. Reg. 28410 (2001).

³⁴ In re Federal-State Joint Board on Universal Service, CC Docket No. 96-45, FCC 96J-3, Recommended Decision, 12 FCC Rcd 87, 170 *et seq.* (1996) (corrected version).

computed on the basis of working loops, ILECs will, under our recommendation, automatically lose frozen support payments for loops serving subscribers lost to a competitor.”³⁵

The Joint Board favored this approach because it believed it “will be the easiest way to administer the support mechanism;” that CLECs would be disadvantaged if they were required to use a proxy methodology but the ILEC was not; and that requiring CLECs to perform cost studies would be “problematic” because they are not subject to the Commission’s accounting and jurisdictional rules.³⁶ Further, the Joint Board noted that, in any event, CLECs would be subject to the requirements of Section 254(e) that support be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Finally, the Joint Board rejected the claim that CLECs could be overcompensated if they receive support based on the ILEC cost because it believed the requirement to serve the entire area and advertise would ensure that a CLEC could not “cream skim” the area, and that if the CLECs costs are much lower “this may be an indication of a less than efficient operation of the ILEC.”³⁷

In its decision adopting, with modification, the Joint Board recommendation, the Commission stated: “In order not to discourage competition in high cost areas, we adopt the Joint Board’s recommendation to make carriers’ support payments *portable* to other [ETCs]....”³⁸ The Commission

³⁵ 12 FCC Rcd at 238, ¶ 296.

³⁶ The Joint Board did not discuss the fact that whether or not an entity is required to follow the accounting and separations rules, there is no reason it could not apply those rules to determine its costs, and that application of the rules could be a condition of receiving support.

³⁷ 12 FCC Rcd at 239, ¶ 297.

³⁸ First Report and Order at 8932 (emphasis added).

concluded that dividing the ILEC's support by the number of loops the ILEC serves and making that amount available to all other ETCs in the study area will be the "least burdensome way to administer the support mechanism."³⁹ The Commission rejected arguments that using the ILEC cost is contrary to the Act or the principle of competitive neutrality, repeating the Joint Board's conclusion that even though the CLEC may have different costs, it must still comply with Section 254(e) and because it must serve throughout the area, and cannot "profit by limiting service to low cost areas."

B. The Current "Portability" Rules Do Not Meet the Statutory Objectives and Are Not Competitively Neutral.

Reexamination of the rationale of the Joint Board and the Commission, in the context of five years' experience and the current situation necessarily leads to the conclusion that "portable" support is no longer legally or practically sustainable. The "portability" rule is seriously flawed in both its analysis and factual predicates. As a result of these flaws, "portability" results in inadequate support for rural CLECs, and excessive support for wireless ETCs.

Support for rural CLECs is often inadequate for several reasons. When competing in a few exchanges of a large ILEC, the ILEC may receive no support in those exchanges because: (a) although the ILEC's cost in the exchange is high, its study area average cost is not; (b) although the ILEC's cost in the exchange is high, the state average cost of non-rural ILECs does not exceed 135% of the national average (which is the case in 42 states; (c) the "cascade" rules may not allocate support to the exchange, because other exchanges in the study area have higher cost; or (d) although the cost of new

³⁹ First Report and Order at 8933.

facilities constructed by the CLEC is high, the ILEC has made no investment in the rural areas for many years and has largely depreciated the plant ⁴⁰

Conversely, a wireless carrier receiving the per-line support of the ILEC may well have materially lower per-subscriber costs than is presumed by the amount of support received by the ILEC and thereby recover a windfall. The windfall can then be brought within Section 254(e) simply by increasing management compensation. The fact that the wireless carrier's cost is less than the ILECs is not evidence that the ILEC is inefficient, because the two services are not equivalent in many respects.

The primary justification for "portability" is that it is believed to be administratively less burdensome than determining the need for support of individual CETCs or even classes of CETCs. Administrative ease can certainly be a valid criterion for choosing between alternatives which all achieve the goals of a program. It is arbitrary and capricious, however, to adopt a rule on the basis of administrative simplicity when the result is a material failure to achieve the statutory objectives.⁴¹

The ILEC support computation is valid because it reasonably utilizes each carrier's cost of service to determine whether an additional allocation of that carrier's cost to the interstate jurisdiction is necessary to allow it to charge reasonable local services rates.⁴² This is at least true for both cost study and average schedule rural ILECs. Even though there are substantial questions regarding the

⁴⁰ Actual depreciation experienced by the ILEC does not affect model support directly.

⁴¹ See, *City of Brookings Municipal Telephone Co. v. FCC*, 822 F.2d 1153 (D.C. Cir. 1987).

⁴² See, *In re MTS and WATS Market Structure*, supra n. 14; *Rural Tel. Coalition v. FCC*, 64 RR2d 731 (D.C. Cir. 1988).

compliance of the non-rural ILEC system which are currently being reviewed,⁴³ the rules at least attempt to replicate the cost which an efficient carrier would experience in serving its study area.

The invalidity of the “portability” rule is particularly apparent in that its integral concept of providing support on a “per line” basis is fundamentally flawed because it ignores the fact that to achieve the Act’s objectives, carriers need support for networks, which are a necessary precondition for the existence of a line. The original USF, DEM weighting and Long Term Support mechanisms were based on the recognition that a carrier’s need for support depends upon its total cost, and these concepts remain fundamental to ILEC support.⁴⁴ The necessity of providing support to a network was made more critical by the 1996 Act which added the concept that USF recipients must provide and advertise the supported services throughout their service area.⁴⁵

Per line “portability” leads to particularly invalid support payments when the CETC is a wireless carriers. The result is to equate wireless subscribers with LEC loops, even though the definition of loop in the Commission’s rules is plainly not applicable to the facilities of wireless carriers.⁴⁶ Even if this aspect of the rule were to be corrected to substitute “wireless subscribers” for “loops,” the

⁴³ See, supra, n. 20; In re Federal-State Joint Board) CC Docket No. 96-45 On Universal Service, Comments of the Rural Independent Competitive Alliance (Dec. 20, 2002).

⁴⁴ See, e.g. 47 C.F.R. § 36.621 (“Study Area Total Unseparated Loop Cost”). The mechanism did compare cost “per line” to determine eligibility, but the additional expense amount relates to the network cost.

⁴⁵ 47 U.S.C. § 214(e)(1) It is significant that the Commission did not accept the Joint Board’s recommendation that “per line” support should be frozen. First Report and Order, ¶ 300.

⁴⁶ 47 C.F.R. §§ 36.152(1), 36.153, 36.611(h), 54.307(b) (“for universal service support purposes, working loops are defined as exchange line C&WF loops used jointly for exchange and message telecommunications services...”)

fundamental problem with tying support for wireless carriers to a particular ILEC's support is that a wireless subscriber uses wireless service in an unpredictable pattern which often "roams" across the boundaries of many different ILECs with different "per line" USF support amounts. The Commission's decision to use the subscriber's billing address as a proxy for the subscriber's usage pattern⁴⁷ is entirely without factual support and in many cases mostly, or entirely wrong.⁴⁸

Although recognizing that the portability rule may overcompensate some carriers, the Joint Board and the Commission rely on Section 254(e)'s requirement that support be provided only for the provision of the supported services and suggest that if the CETCs costs are lower, the ILEC must be inefficient. Assuming, *arguendo*, that the Section 254(e) requirement is actually enforced, it must mean that the recipient that receives excess support must go out and find some additional place to spend money, and therefore become as "inefficient" as the ILEC. This nonsensical approach is avoided, however, if the support for the CETC is appropriate for it and not some other carrier.

Section 254(e) is not self-executing, however, nor is it even self-evident what it means to certify that funds have only been used for a specific purpose in the context of a multi-funded, multi-service enterprise. The Commission has provided little guidance as to what the section means, nor provided standards nor administrative mechanisms to enforce it beyond requiring certification.⁴⁹ The section's

⁴⁷ 47 C.F.R. § 54.307(b).

⁴⁸ MAG Order, ¶¶ 180-84.

⁴⁹ *See*, 47 C.F.R. §§ 54.313-14. The Commission declined to establish "elaborate rules for compliance with Section 254(e)," instead leaving it up to the states to "take the appropriate steps to account for the receipt of federal high-cost support and ensure that the federal support is being applied in a manner consistent with section 254." The Commission suggested briefly only two "illustrative, not exhaustive" requirements that states might want to impose to ensure compliance. In re Federal-State

purpose and intent are clear enough, however; it was adopted at a time when all USF was directly tied to costs that had previously been recorded on the books of the ILECs as much as two years before payment was received. What Section 254(e) means in the context of unregulated suppliers of multiple services is not self-evident. Corporations receive funds from many sources and spend money on many different objects in order to provide multiple services. No carrier provides only the supported services.

C. Support Should Be Based upon the Need to Allow the Specific ETC to Provide Quality Services at Just, Reasonable and Affordable Rates.

1. As recently recognized by a large wireless ETC, wireless and wireline carriers have radically different cost structures.⁵⁰ These differences necessarily mean that the correct amount of support to meet the Act's objectives must be determined by some reference to the actual cost structure of the recipient. The need for support can be determined upon cost or some other valid measurement related to the particular CETC, and not the ILEC.⁵¹ This approach eliminates the current problem of excessive fund growth when the ILEC loses lines. Breaking the tie to the ILEC and instead basing support on the cost of constructing and operating a wireless network also reduces the incentives for

Joint Board on Universal Service, CC Docket No. 96-45, Ninth Report & Order and Eighteenth Order on Reconsideration, FCC 99-306, 14 FCC Rcd 20432 (1999) ¶¶ 95-96.

⁵⁰ In re Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Comments of United States Cellular Corporation (Apr. 14, 2003).

⁵¹ The chosen metric must probably continue to be focused on cost, because an “apples to apples” rate comparison is extremely difficult even between ILECs, but apparently impossible between wireline and wireless ETCs.

fraud which is present when subscriber billing address is used as a proxy for the location of subscriber service.

The method of determining need, whether cost or other method, should be appropriate for the technology and level of regulation of the CETC, and should recognize only costs prudently incurred to provide the network needed to offer the supported services. RICA member CETC are prepared to document their cost of service to establish eligibility for support. Because ETC status is voluntary (at least for non-ILECs), carriers which are not willing to demonstrate that support is necessary to achieve the goals of the act, cannot claim any entitlement. RICA recognizes that this argument cuts both ways and that the receipt of support by the ILEC does not demonstrate need for support by a CETC.

Establishing support rules appropriate to the technology and regulatory status of different carriers will allow the Joint Board, the states and the Commission the opportunity to resolve the supported services and ETC issues in a rational manner. Thus if there is a public interest in providing support to make possible the expansion of universally available mobile services at reasonable rates, the support criteria can be developed to achieve that goal. Such properly targeted rules would at the same time avoid the current problem of inflation of the total fund by payments to wireless carriers who may be quite capable of providing service throughout their area at reasonable rates without support.

2. RICA also recognizes that there may be situations in which it is not in the public interest to support multiple carriers no matter what the cost. RICA supports reasonable guidelines for state (and FCC) ETC designation of second ETCs, tied to a reasonable measure of the cost of serving the area. Such guidelines would recognize the need of carriers to construct networks to meet their ETC obligations and would require a finding that supporting a second carrier would cause the ILEC to lose

such efficiency over its entire operation that it could no longer serve its customers at reasonable rates. Such rules are probably only appropriate where the ILEC is a small rural carrier.

3. Either embedded or forward-looking costs can be used to determine need, however the Commission's proxy model should not be required for CETCs competing with non-rural ILECs, because it is not a valid predictor of the cost of serving a particular area.⁵² Rather, each CETC should have the option of conducting its own forward-looking cost study, pursuant to prescribed standards.

D. Line Based Support Is Invalid Because Carriers must Build Networks to Meet ETC Obligations.

Support should be based on the need to construct and operate a network which will allow a carrier to meet its ETC obligations. Measurements of support based on numbers of lines is not a valid tool for measuring network costs, and produces irrational results in both directions. While an ILEC's network costs don't decrease much when it loses a subscriber to a CLEC, neither does its cost increase as the present system implies with results that are not competitively neutral.

RICA recognizes, however, that it may not be in the public interest for USF to support, for example, a network built to serve all the customers in the area, but only serves 5%. New entrants, however, often begin with low penetration, and need support while they are growing.⁵³ This problem

⁵² The Commission's Model has not even been proven valid for RBOC study areas. The Commission has never validated the outputs, only the inputs, and those have problems.

⁵³ *See, In re Mescalero Apache Telecom, Inc., GTE Southwest Incorporated, and Valor Telecommunications of New Mexico, LLC, Joint Petition for Waiver of the Definition of "Study Area" Contained in the Part 36, Appendix-Glossary of the Commission's Rules, Mescalero Apache Telecom, Inc., Waiver of Sections 61.41(c)(2), 69.3(e)(11), 36.611, and 36.612 of the Commission's Rules, CC Docket No. 96-45, DA 01-129, 16 FCC Rcd 3813 (2001).*

might be addressed by establishing minimum penetration requirements, perhaps 25%, to be achieved over time.

E. It Is Not Practical to Determine the “Lowest Cost” Provider

Support should not be based on the costs of the lowest cost provider because of the difficulties of determining whether the cost comparison is apples to apples, i.e., whether the other carriers are providing the same grade of service. For example, wireless carrier subscribers experience significantly higher percentages of blocked and dropped calls, generally offer less bandwidth, less E911 capability and may not offer TRS. If more rigorous service quality rules are adopted which require at least the same performance, then this issue should be reexamined. Even then, if cost were not determined on the same basis, the comparison would be invalid.

F. Auctions Should Not Be Used to Determine Support Levels.⁵⁴

First there is the problem described in E, above, the support bids would not be comparable in the absence of an extensive RFP type document containing detailed performance characteristics. If support is provided at a level only sufficient to fund the listed services, where the only quality requirement is a 3khz signal, telephone service will, over time, be severely degraded to the lowest common denominator, contrary to the objective of the act to promote “quality” service.

⁵⁴ The Act does not permit auctions to be used to determine ETC status. In the area served by non-Rural ILECs, designation is generally required if the applicant shows that it provides the supported services. In rural ILEC areas, the state commission (or the FCC) must make an additional public interest finding, which would not be automatically satisfied by a low bid. Refusal to meet a lower bidder could not be a reason for denying ETC status.

Secondly, the Commission's experience with spectrum auctions demonstrates that some carriers will always bid at whatever level is needed to "win," betting that they will somehow achieve more revenues than any of their competitors rationally believe are available. If the low bidder thus sets the support price for all ETCs the result will likely be that all are put into financial distress or bankruptcy.

Third, it is not practical to establish identical service areas, such as the RSAs and MSAs used in spectrum auctions, so there will be no practical means of validly determining which bid is the lowest.

Fourth, and very significant for small entities such as RICA members, large corporations will always be able to outbid a small company for any particular service area, by bidding for less support than would be needed by any entity in the area, and spreading the loss over a large base.

Finally, by tying support of one ETC to the actions of a competitor, the ability of CETCs to develop rational business plans is destroyed. The result is that support is not "predictable" as required by the Act. In the absence of predictable support, investment in high cost areas will not be made.

Assuming, *arguendo*, that these problems with auctions could be resolved, the FCC would necessarily remain responsible for conducting the auctions, because the function replaced by the auctions would be the setting of support levels, for which the FCC remains charged under the Act. At the same time, however, the statutory role of the state commissions to designate ETCs would be eliminated. Therefore, it appears that legislation would be required to use an auction based system.

G. UNE Payments Are a Cost of Service

Payments to ILECs for UNEs are a legitimate cost of providing supported services and should be included with all other appropriate costs in determining a CETC's support amount. Note that the support received by the ILEC is not involved in this determination.

H. A Primary Line/Secondary Line/Second Residence Rule Is Unworkable

A network focused support system avoids much of the intractable problems involved in determining whether, or which, line is a "second" line. There is no practical, non-arbitrary way to determine which of multiple subscriber services are "first" or "primary." If the choice is left to the subscriber, the inevitable result will be a variety of "bribes" to the subscriber, with the same adverse financial results as the IXC industry experienced with paying customers to switch. Nor is it practical to determine whether subscribers have multiple residences.

III. THE MAJOR ISSUES INVOLVING THE STRUCTURE AND ELIGIBILITY FOR UNIVERSAL SERVICE SUPPORT MUST BE RESOLVED BEFORE ESTABLISHING RULES FOR STATE COMMISSION ETC DESIGNATION.

A. A Substantial Amount of the Current Controversy Can Be Eliminated by Revising the USF Rules to Tie Support Amounts to ETC Costs.

As described in section I B, above, the present rule providing support based on the per-line support received by the ILEC has produced a very rapid growth in payments to wireless ETCs for mobile services without regard (or knowledge) of whether there is any need to provide such support in order for quality service to be available at just, reasonable and affordable rates. Rural ILECs have expressed the concern that this system grossly distorts competition by providing a windfall to their

competitors, and have called for state commissions to conduct more comprehensive examinations of the factors relevant to the public interest determinations required for second ETCs in rural telephone company areas.⁵⁵

RICA members believe that they can demonstrate the public interest in providing support for their service in high cost areas, and do not object to such inquiries. Nevertheless, if the rules are revised to provide true competitive neutrality by tying support to need, much of this concern will be eliminated, or at least substantially mitigated. Other than recognizing that public interest determinations necessarily involve a cost/benefit analysis, RICA will reserve further comment pending review of specific proposals which are filed in response to the Joint Board's inquiry.

B. The Transparency of the Disaggregation Process Needs Substantial Improvement.

Recognizing that because under the existing rules ILEC support is based on study area averages, the system of providing CETC support based on the ILEC's support expressed as a per line amount creates opportunities for "cream-skimming," the Commission established procedures for ILECs to disaggregate their support.⁵⁶ Carriers were initially required to select one of three disaggregation paths (with the first being no disaggregation) by May 2002. To the extent carriers opted to disaggregate, the procedure was to take place, in most instances, at the state commission level, with reporting back to USAC and the Commission. RICA does not challenge that basic decision, but

⁵⁵ See, OPASTCO White Paper; *See also*, In re Petition for Rulemaking to Define "Captured" and "New" Subscriber Lines for Purposes of Receiving Universal Service Support Pursuant to 47 C.F.R. § 54.307 et seq., RM No. 10522, Order (revising filing dates), DA 02-2214, 17 FCC Rcd 16794 (2002).

⁵⁶ 47 C.F.R. § 54.315.

believes that more transparency and guidelines are needed in the process in order to control purely anti-competitive disaggregation plans which have no relationship to legitimate cream-skimming concerns, but are designed to target specific competitors, regardless of the cost of service.

Currently, the USAC website is the principal source of disaggregation information⁵⁷ and it does not begin to provide sufficient information for competitive ETCs to understand either how disaggregation has been implemented or evaluate whether it has been properly done. The USAC website currently provides state-by-state charts,⁵⁸ which indicate only which disaggregation path carriers have selected. Much of the data appear not to have been updated within the last year. USAC also makes available carrier-provided maps, of inconsistent value, that purport to show carrier-specific disaggregation zones. Notably absent from USAC's website is information such as state commission (or FCC) orders granting disaggregation, levels of support per disaggregation zone, and whether any state commissions currently are considering disaggregation petitions. In sum, the data available at the USAC website provide insufficient guidance to competitive LECs to determine whether disaggregation is occurring, to what degree, or where.

⁵⁷ Some state commission may maintain such information, either online or not.

⁵⁸ The URL is <http://www.universalservice.org/hc/disaggregation/checklist.asp>. USAC posted third quarter 2003 projections late in the day on May 5, 2003. The new data contain additional information on disaggregation. RICA will comment further on this new information in reply comments.

IV. CONCLUSION

The need for reform of the Universal Service rules regarding competitive ETCs is both urgent and critical. The system is “broke” and must be fixed because it does not relate eligibility or amounts of support to the need for support of individual carriers or even classes of carriers. The use of support payments to the ILEC fails to comply with the Act both because the ILEC’s costs have no relation to the CETC’s costs and because the current system of providing support to non-rural ILECs leaves large areas of rural America without support. The lack of a rational basis for tying support for CETCs to the ILEC support means that some CETCs, such as RICA member rural CLECs, are systematically denied necessary support, while others, such as many wireless mobile carriers, are receiving a rapidly growing level of support that threatens the integrity of the fund.

The solution is straightforward. The Joint Board and the Commission must adopt rules that provide support based on the need of each carrier or class of carriers for support. Support should be determined by mechanisms that are appropriate for the objectives, technology and level of regulation of those carriers—no more and no less. The present system may be relatively easy to administer, but ease of administration fails to justify materially wrong results. Nor can the Joint Board and Commission rely on Section 254(e) to be self executing, because no effective definition, standards or enforcement mechanisms have been published. Rather, the various classes of ETCs should be obligated to come forth with appropriate proposals for public comment as a condition of receiving support. RICA members are prepared, for example, to provide either embedded or forward-looking costs studies. At the same time, RICA recognizes that other carriers, such as wireless mobile carriers, should have options to develop alternative mechanisms.

Adoption of a cost- or need-based system should recognize the principle that an ETC must deploy a network to meet its ubiquitous service obligations. Per line calculations do not adequately recognize the need for investments that are not customer specific. In addition, it is not administratively feasible to determine which of multiple lines from multiple ETCs is a “primary” line, whether multiple customers at the same location are part of the same household, or whether a customer has a second home somewhere. A network based approach essentially eliminates these questions.

RICA urges the Joint Board to move quickly to develop a recommendation consistent with these comments in order to rectify the serious problems before there is a general meltdown of universal service support. The Joint Board should urge the Commission to resolve the many separate pending universal service and access charge reform issues in a coordinated manner.

Respectfully submitted,

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