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SUMMARY

The volume and variety of comments filed in this proceeding only underscore the need for a representative task force along the lines of the "Rural Task Force" created in 1998 to gather information and report back to the Joint Board. Such a task force offers the best a chance to find common ground and resolve these issues in a non-adversarial context.

However, should the Joint Board act now, it should take the following actions.

Wireless Eligible Telecommunications Carriers ("ETCs") should continue to receive support based on wireline carrier costs, should be able to receive USF support for service to all of their high cost service areas, even to those parts which do not cover all of a wireline "study area," and should not be held to "carrier of last resort" ("COLR") responsibilities. Attempts to force wireless ETCs to engage in complex cost accounting, to require them to serve by resale those portions of wireless study areas which their service areas do not cover and to require that they take on COLR responsibilities reflect a failure to grasp the fundamental differences between wireline and wireless carriers. Wireless carriers should not be required to take on all of the burdens of wireline regulation to become ETCs, while receiving none of the benefits of such regulation.

Wireless carriers moreover are not responsible for the large increases in the size of the Universal Service Fund (USF) payments in recent years. Thus, USF

payments to wireless carriers furnish no basis for changing the existing system prior to its anticipated re-examination in 2006.

Various telephone trade associations have sought to question USCC's high cost line count filings in their comments. This is not the appropriate forum for such allegations. And, in any case, USCC stands behind its line counts and will answer any questions about them asked by USAC on the FCC.

Finally, the Joint Board should act to require that better and more accurate exchange and disaggregation zone data be filed with USAC by telephone companies. Such filings would enable wireless ETCs to improve the accuracy of their line count filings, which now require the "superimposition " of wireless customers' addresses on totally inadequate maps filed by telephone companies.

evaluation of these issues by a task force comprised of stakeholders and charged with the duty to find compromise solutions.

As is demonstrated, for example, in the comments filed by rural telephone companies,³ ILECs,⁴ CLECs,⁵ RBOCs,⁶ and wireless carriers,⁷ different types of companies have different and, in some cases, opposed interests, and approach USF issues from radically different standpoints. These differences in approach are a product of the profound structural differences in business organization and regulatory history which have shaped the different types of carrier. There may be common ground to be found among the contending sides, and it would serve the public interest to find it. However, that cannot be done in this type of adversarial context, where all sides perceive their future prosperity and survival to be at stake and make filings accordingly.

A careful consideration of the issues by a representative task force in a non-adversarial context, perhaps in conjunction with the group recently assembled in a closed-door meeting convened by Senator Conrad Burns,⁸ offers a better hope for a rational outcome than a decision reached in this highly contentious proceeding.

³ See, e.g. Comments of Nebraska Rural Independent Companies ("NRIC"), Rural Independent Competitive Alliance ("RICA") and National Telecommunications Cooperative Association ("NTCA").

⁴ See, e.g. Comments of ACS of Fairbanks, Inc. ("ACS").

⁵ See, e.g. Comments of General Communication, Inc. ("GCI").

⁶ See, e.g. Comments of Verizon, Inc. ("Verizon").

⁷ See, e.g. Comments of Cellular Telecommunications and Internet Association ("CTIA"), Western Wireless and Nextel Communications, Inc. ("Nextel").

⁸ See "Industry Groups Take First Steps Toward Consensus on USF Issues," TR Daily, May 20, 2003, pp.7-9.

II. Wireless ETC Support Based on Wireline Carrier "Costs" Should Be Retained

Various wireline carriers and their trade associations have filed comments decrying competitive ETCs receiving the same "per line" high cost support as ILECs, based on ILEC "costs."⁹ Competitive ETCs, they argue, if they receive support at all, should receive it based on their own costs. However, the Joint Board and the Commission should disregard these self-serving claims.

This argument overlooks the basic "apples and oranges" aspect of wireline/wireless comparisons. As has been noted by USCC previously, wireline carriers are inhabitants of the regulated universe, where the measurement, manipulation and explanation to regulators of their "costs" is crucial to a carrier's financial wellbeing.

In contrast, wireless carriers are fully subject to the rigors of the competitive marketplace. This can have its financial disadvantages, which the wireless trade press discusses daily. However, one advantage that free enterprise confers is that wireless carriers have not had to explain and justify, in excruciating detail, to state or federal regulators their decisions about when and how they spend money to serve customers. Nor have they had to invent largely mythical distinctions, such as those between the "intrastate" and "interstate" usage of the same equipment, or perform any of the other dubious financial operations which make ILEC cost accounting a dark and complex art.

⁹ See, e.g., Comments of ACS, pp. 9-10; Fred Williamson and Associates, Inc. ("Williamson"), pp. 22-26; ICORE Companies ("ICORE"), pp. 4-6; CenturyTel, pp. 32-33.

The FCC itself has recognized that "historic" costs are a poor basis for regulation, as it has sought to move wireline carriers to "price cap" regulation and to price ILEC Unbundled Network Elements (UNEs) provided to CLECs based on a Total Element Long Run Incremental ("TELRIC") theoretical "cost model" approach, rather than on individual carrier historic costs.

However, wireline carriers now seek to drag wireless ETCs into this discredited "cost" measurement morass, in the hope of driving down the support they receive or discouraging them from becoming ETCs in the first place.

The current system does rough justice, which is the best that can be hoped for in these circumstances. If wireless ETCs serve customers residing in sparsely populated rural areas already defined as "high cost" by the USF rules, they receive the same level of support as rural wireline companies for those customers. Rural wireless carriers obviously also face relatively higher costs to serve such customers than do their urban counterparts. Arriving at "actual" cost comparisons between rural wireless and wireline companies for this purpose, given the multiple layers of complexity and obfuscation accumulated over decades in wireline cost accounting, is, we submit, impossible and, in any case, would hardly be worth the effort for this purpose. It is far better and far fairer for all ETCs to receive the same support.

As with the argument over wireless "equal access," wireless carriers should not have to take on all the cost accounting burdens of wireline carriers (without receiving the concomitant regulatory benefits) in order to become or remain ETCs.

III. Wireless ETCs Should Be Able to Serve Their Own Service Areas

A recurring argument raised by wireline carriers in this and prior proceedings is that competitive ETCs, including wireless ETCs, should be required to serve the entire "study areas" of wireline carriers, regardless of whether such study areas correspond to the FCC-defined service areas of wireless carriers.¹⁰

The chosen weapon of such carriers in making this argument is Section 214(e)(5) of the Communications Act which specifies that the "service area" of a "rural" carrier, for the purposes of defining the area that must also be served by ETCs:

"means such company's 'study area' unless and until the Commission and the states, after taking into account recommendations of the Federal-State Joint Board...establish a different definition of service area for such company."

However, it is clear, even from the comments of CenturyTel and other wireline carriers, that this provision was intended to protect rural LECs from "cream skimming" by wireline CLECs, who might choose to serve only lower cost portions of a rural ILEC study area but receive "averaged" support.

However, the service areas of wireless ETCs were defined by the FCC years ago and are often imperfectly congruent with the "study areas" of rural wireline ETCs, with which they have nothing inherently to do.

The obvious, if cumbersome, solution to this problem is precisely the procedure specified in Section 214(e)(5), namely a "redefinition" of the "service area" of rural LECs for the limited and harmless (to the LECs) purpose of permitting

¹⁰ See, e.g. CenturyTel Comments pp. 25-31; OPASTCO Comments, pp. 48-50.

wireless ETCs to receive support for portions of their service areas which do not entirely cover the "study area" of a rural LEC.

Despite the fact that such redefinition petitions have nothing to do with "cream skimming,"¹¹ they have been consistently opposed by telephone companies, often preventing wireless ETCs from receiving support for many customers in high cost areas.

In response to wireless arguments about the unfairness of this tactic, it is sometimes blandly asserted that wireless ETCs may provide service in areas outside their own service areas by means of "resale."¹² However, this point ignores the extreme difficulty of establishing a wireless resale operation on a profitable basis even in heavily populated urban areas. If the national wireless carriers have been unable to make resale work as a business model anywhere in the U.S., the chances of resale working for a rural wireless carrier in high cost areas are essentially nil. This argument is thus not seriously intended, except as an anti-competitive smokescreen.

If it serves the public interest to have wireless ETCs, there is no good reason why they should not be able to receive support, where warranted, throughout their service areas.

¹¹ Since wireless ETCs receive support only for customers residing in areas defined as "high cost" by ILEC-oriented measurements, it is hard to see how "cream skimming" could ever be involved, as any attempt at it would be self-defeating, especially in light of the creation of "disaggregation zones."

¹² See, e.g., CenturyTel Comments, p. 26.

IV. Wireless Carriers Cannot Be "Carriers of Last Resort"

One of the points frequently made against allowing wireless carriers to become ETCs is that such carriers do not bear the state-imposed responsibilities of "carriers of last resort" (COLRs), which are allegedly borne by rural LECs. Thus, it is said, wireless ETCs not receive the high cost support which ILECs receive in part to meet their COLR responsibilities.¹³

However, as with analogous wireline arguments about equal access, wireline "costs," and wireline service area definitions, this argument reflects an attempt to misapply wireline concepts to wireless carriers.

Unlike local telephone companies, wireless carriers are not now and have never been monopolies, with a guaranteed "rate of return." They must compete with up to six other mobile service providers in addition to the local telephone company. They are not subject to maximum coverage requirements, though they will build cells anywhere such cells are economically viable (a calculation which changes with the availability of USF support). They have no customers other than those people who voluntarily contract with them, whose patronage they must constantly strive to retain in a ferociously competitive environment.

What could "COLR" requirements possibly mean in that context? Wireless ETCs must offer Lifeline and Link Up service but that is obviously not the same as a state-imposed requirement to serve specific customers in remote areas (while being able to make special "charges" to such customers for those connections).

¹³ See, e.g. ACS Comments, pp. 23-25; ICORE Comments, pp. 15-16.

It is one of the most basic aspects of wireless regulation that the states have no jurisdiction over wireless service areas or the technical requirements of wireless services. The states cannot tell carriers where to place cell sites or what service quality they must provide. The regulation of such requirements was pre-empted by the FCC in 1981 and has been unquestioned since then.¹⁴ Imposing state "COLR" requirements on wireless carriers would destroy that basic structure. Again, the price of wireless ETC designation cannot and should not be the abolition of all other aspects of present wireless regulation. This is especially the case since the public interest is served by allowing wireless carriers to become ETCs. They should not have to endure regulatory "punishment" to do so.

V. Wireless Carriers Are Not Responsible For The Increases in the USF

In our Comments (p.6), USCC noted that competitive ETCs had received only \$14 million of the \$803 million in high cost support disbursed in the third quarter of 2002, or 1.8 percent of total high cost support. That low percentage indicated that there would not be any fundamental threat posed to the USF prior to 2006.

Though wireline carriers have pointed out in their comments that that percentage has increased since last year¹⁵ there is still no reason to believe that payouts to wireless ETCs will threaten the solvency of the high cost fund or the USF generally in the foreseeable future, and certainly not before 2006.¹⁶

¹⁴ See In the Matter of An Inquiry Into The Use of Bands 825-845 MHz and 870-890 MHz For Cellular Communications Systems; and Amendment of parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems, Report and Order, 86 FCC 2d 469, 504-505 (1981).

¹⁵ See e.g. Comments of NRIC, p. 6; Verizon Comments, pp.1-6.

¹⁶ As of the second quarter of 2003 wireless ETCs were evidently receiving \$37 million in high cost payments (approximately \$168 million on an "annualized" basis) (Verizon Comments, p.2), a number still very far from the projected \$2 billion in annual high cost payments to ETCs frequently predicted

However, with respect to USF cost issues, the relevant point to remember is that the considerable growth in the high cost fund over the past three years has resulted not from payments to competitive ETCs, but rather from vastly increased payments to ILECs as a consequence of their ever greater reliance on the USF for supporting wireline costs.

Sprint states the essential facts succinctly. Of the increase in high cost disbursements, from \$1.72 billion in 1999 to \$2.76 billion in 2002, fully \$988 million of that increase was paid to incumbent LECs.¹⁷

Those stark numbers underscore the distortions inherent in viewing all USF payments to ILECs as justified, necessary and in the public interest while regarding payments to competitive ETCs for serving high cost areas, however small in amount or percentage, as illegitimate and a source of "crisis."

Any fair solution to the problem of future USF funding needs must approach the issue from a different standpoint, which acknowledges the legitimacy and equality of all ETCs. Such an approach would help to determine how the public interest could best be served, not how ILECs can forever be preserved from all marketplace vicissitudes.

with alarm by wireline carriers, citing an estimate by OPASTCO, an interested party (See OPASTCO Comments, pp. 9-11).

¹⁷ Sprint Corporation Comments, p.5.

VI. This Proceeding Is Not The Appropriate Forum To Discuss USCC's USF Line Counts, Which USCC, In Any Case, Stands Behind

In their comments, three wireline trade associations saw fit to challenge the validity of USCC's Washington State USF line counts filed to see high cost support implying that they were inaccurate and/or fraudulent.¹⁸

As those trade associations know perfectly well, this proceeding is not the appropriate forum for such allegations. They are not intended to shed light, only to impugn the reputation of a wireless carrier which dared to file for ETC status against their wishes.

USCC has made its line count filings in entire good faith, attempting, in accordance with the FCC's rules, to match its customers' addresses with the relevant telephone "exchanges" and "disaggregation zones." Such superimpositions are not easy to perform and all wireless carriers have struggled with them. This process has been made even more difficult by the patently inadequate (or non-existent) exchange and disaggregation zone mapping information filed with USAC by telephone companies in Washington and elsewhere. Thus, we would note that in light of that failure to provide adequate information and given the absolute dependence of wireless ETCs on wireline carriers for such information, accusations by such companies that wireless ETCs may have failed to allocate every wireless customer to the correct exchange or disaggregation zone comes with singular ill grace.

¹⁸ See Comments of OPASTCO, pp. 24-26; United States Telephone Association, pp. 16-17; Washington Independent Telephone Association ("WITA"), pp. 10-14.

USCC has previously answered USAC's questions with respect to certain of its Washington State line count filings and would be happy to answer any questions or supply any information requested by USAC or the FCC about its filings.

VII. The Joint Board And FCC Must Act To Require Telephone Companies To File Adequate Information Regarding Their Exchanges and Disaggregation Zones

In our Comments (pp. 17-18), USCC noted the urgent need for the Joint Board and FCC to require wireline carriers to file adequate information about the geographic scope of their exchanges and "disaggregation zones" qualifying for high cost support, a need growing ever greater as more and more wireline carriers "disaggregate" their service areas below the exchange level.

We reiterate that recommendation, and note its pertinence in light of the spurious accusations discussed in the last section. The more and more accurate information about zone boundaries that is placed at wireless ETCs' disposal, the less likely mistakes in customer classification will be. However, when, as is the case at present, exchange maps on file with USAC frequently don't match exchange descriptions at the relevant PUC, or when disaggregation zone "maps" merely depict a rectangle or other shape which wireless carriers have to reproduce and superimpose on their own maps, mistakes are inevitable.

We would also ask the FCC and Joint Board to require that the disaggregation zone maps filed at USAC be accompanied by a verbal description of such zones.

In the 1980s, the FCC defined cellular service area boundaries by convenient county lines but also permitted cellular market "partitions." However, applicants for partition had to file settlement agreements containing verbal descriptions of the partitioned areas, which were (and still are) helpful in understanding the boundaries of such areas. It would make it much easier on all ETCs if disaggregation zone maps, for example, had to be accompanied by a verbal description saying that the zone was bounded on the east, west, north and south, by such and such a highway, line of latitude/longitude, river, or county/city/town boundary.

Such descriptions would give wireless ETCs a fighting chance to get their customer allocations exactly right, and thus serve the public interest while eliminating a cause for ILEC complaint.

CONCLUSION

For the foregoing reasons, and those given in our prior comments, the Joint Board should recommend that the existing structure of high cost universal service funding be retained, at least until the comprehensive review scheduled in 2006, while reforming LEC filing procedures to allow wireless ETCs to make more accurate line count filings.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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