

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

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

REPLY COMMENTS OF
INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE

Independent Telephone & Telecommunications Alliance (“ITTA”) hereby submits these reply comments in response to comments submitted in the above-referenced proceeding of the Federal-State Joint Board on Universal Service (the “Joint Board”) regarding certain of the Commission’s rules relating to high-cost universal service support in study areas in which a competitive eligible telecommunications carrier (“CETC”) is providing services.¹

I. INTRODUCTION & SUMMARY

ITTA is an organization of thirteen midsize incumbent local exchange carriers (“LECs”) which collectively provide local exchange and exchange access service to over ten million lines in forty states. ITTA’s member companies are integrated providers offering a broad range of services to their customers including interexchange, Internet, broadband, competitive local, and wireless services.

ITTA submits these reply comments to support the comments demonstrating that the current mechanism for designation of CETCs results in state commissions designating CETCs without ensuring that they provide reliable, affordable and comparable service to that

¹ *Federal-State Joint Board on Universal Services 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).

offered by the carrier of last resort.² This over-abundance of CETCs in rural markets will result in a dramatic increase in the overall size of the high-cost fund without any measurable public interest benefit. If reforms are not made to the Commission's rules to define criteria for the designation of ETCs, the future of the high-cost fund will be threatened.

II. THE CURRENT PROCESS FOR DESIGNATING CETCS NEEDS REFORM

A. Growth In The Fund Is Accelerating Because Many States Are Accelerating The Designation Of Additional CETCs.

The amount of universal service support CMRS CETCs are receiving today cannot be viewed as harmless, inconsequential or limited at this point in time. Although wireless carriers are only receiving a small percentage of federal high-cost support today, that amount will grow substantially as larger wireless ETCs inevitably apply for and receive CETC designation. As the National Association of State Utility Consumer Advocates ("NASUCA") points out, the number of CETCs tripled within the last year, and the projection of high-cost support to wireless ETCs increased almost eight-fold in a little over a year.³ Estimates of growth in 2003 and beyond are dramatic. McLean & Brown estimates that "if all wireless providers nationwide were to seek and obtain competitive ETC status, this would add over \$2 [billion] of additional funding requirements."⁴ ACS of Fairbanks, Inc. indicates that, by NECA projections, the overall size of the fund could easily reach \$7.1 billion by 2006, and the federal fund

² See, e.g., Comments of National Association of State Utility Consumer Advocates, CC Docket No. 96-45 (filed May 5, 2003) ("NASUCA Comments"); Comments of CenturyTel, Inc., CC Docket No. 96-45 (filed May 5, 2003) ("CenturyTel Comments"); Comments of Washington Independent Telephone Association, CC Docket No. 96-45 (filed May 5, 2003) ("Washington ITA Comments").

³ See NASUCA Comments at 2, citing data provided by Universal Service Administrative Company ("USAC").

⁴ McLean & Brown, Issue Update – Special Edition, "One Year Later – One Year Closer, The Coming Train Wreck in Universal Service Funding" at 4 (Jan. 18, 2003) (available at http://www.mcleanbrown.com/pubs_frame.html).

contribution rate could reach 11.1% of interstate end-user telecommunications revenues by that year.⁵

Typically, when one wireless provider in a rural market obtains CETC status, other wireless carriers must also seek to obtain funding in order to maintain a competitive position among carriers. On average, rural markets have three or more wireless providers.⁶ Thus, many rural markets are likely to have multiple ETCs, which strains the universal service support system. CenturyTel, Inc. (“CenturyTel”) has provided examples of such rural markets. The Wisconsin Public Service Commission designated a single wireless carrier as a CETC and was immediately faced with having to consider designation of six more CETC applications of wireless carriers.⁷ Likewise, the Colorado Public Utilities Commission (“COPUC”) has already designated one wireless CETC in a rural study area of CenturyTel, and applications for three more CETCs in this area are currently pending.⁸ If the Commission takes no meaningful action in this proceeding to reform the present rules, the signal will be clear and the number of CMRS providers seeking universal service support will likely skyrocket.

B. States Designating Additional CETCs In Rural Areas Have Failed To Articulate The Criteria On Which Such Designations Are Made.

Section 214(e)(2) of the Communications Act of 1934, as amended, (the “Act”) requires an affirmative finding that designations of multiple ETCs in rural areas are in the public interest, as opposed to non-rural areas where the statute affirmatively directs state commissions

⁵ See Comments of ACS of Fairbanks, Inc., CC Docket No. 96-45 at 24 (filed May 5, 2003).

⁶ See CenturyTel Comments at 14.

⁷ CenturyTel Comments at 12, n. 31.

⁸ See Letter from Anthony Marquez, First Assistant Attorney General, State of Colorado, to Marlene H. Dortch, Secretary, FCC, regarding Petition by the Colorado Public Utilities Commission, Pursuant to 47 C.F.R. §54.207(c), for Commission Agreement in Redefining the Service Area of CenturyTel of Eagle, Inc., a Rural Telephone Company, at 1-2 (May 6, 2003).

to designate multiple ETCs.⁹ Contrary to the comments of the Washington Utilities and Transportation Commission (“Washington UTC”),¹⁰ the public interest standard is far from clear. Many states have failed to articulate the criteria by which they find the designation of additional CETCs in rural areas to be in the public interest. For instance, COPUC’s decision granting ETC status to San Isabel Telecom, Inc., merely states that designation of ETC status is in the public interest, without any explanation.¹¹

Moreover, the public interest analysis by some states consists only of a finding that designation of additional ETCs would promote competition. In designating Western Wireless Corp. as an ETC, the Public Utility Commission of Texas (“Texas PUC”) indicated that its action would “ensure that people have competitive opportunities they did not have before.”¹² Additionally, the Washington UTC described its primary consideration in granting US Cellular ETC status the fact that US Cellular’s competitors receive universal service support puts it at a disadvantage without universal service support.¹³ The Washington UTC did not point to any aspect of US Cellular’s application that would advance universal service.¹⁴

⁹ 47 U.S.C. § 214(e)(2).

¹⁰ See Comments of the Washington UTC, CC Docket No. 96-45 at 20 (filed May 5, 2003).

¹¹ *Application of San Isabel Telecom, Inc. for Designation as an Eligible Telecommunications Carrier*, Docket No. 01A-442T, Decision Granting Motion to Reopen Record, For Waiver of Response Time, and Request for Order, Decision No. C03-0022 at 3 (Colo. PUC, Dec. 30, 2002).

¹² *Application of WWC Texas RSA Limited Partnership for Designation as an Eligible Telecommunications carrier Pursuant To 47 U.S.C. § 214(e) and PUC Subst. R. 26.418*, Order, PUC Docket No. 22289, SOAH Docket No. 473-00-1167 at 2 (TX PUC Oct. 30, 2000).

¹³ See Washington ITA Comments at 18; see also, Washington UTC Comments at 21, listing competition as the sole factor in evaluating whether a designation of multiple ETCs in rural areas is in the public interest.

¹⁴ See Washington ITA Comments at 19.

Promoting competitive entry by itself is insufficient to justify providing high-cost support to multiple ETCs in rural areas.¹⁵ If competition were the only justification required by Section 214(e)(2), Congress would not have bothered to distinguish between non-rural areas, where states “shall” designate multiple ETC, and rural areas, where states “may” do so only if *beforehand* they find that the designation of an additional ETC is in the public interest.¹⁶ The public interest cannot be satisfied merely by distributing high-cost support to any competitive carrier that requests it. “Competition,” especially wireless “competition,” cannot be the sole determinant of whether ETC designation is in the public interest.

C. CETCs Should Be Required to Meet Minimum Criteria for Affordable Local Exchange Service.

ETC eligibility should require carriers to meet certain public interest obligations in exchange for public support.¹⁷ This not only would benefit consumers, consistent with Section 214(e), but also it would help stop uncontrolled growth of the high-cost fund. However, state commissions may not always have the incentive to ensure that universal service is sustainable on a national level because states benefit by the creation of new ETCs, which increases the flow of federal support into the state.¹⁸ Therefore, the Commission must establish mandatory federal guidelines for ETC designation. ITTA urges the Joint Board to recommend that the Commission enumerate criteria for designation of additional CETCs in rural areas.

Congress entrusted the Commission with oversight of the high-cost support mechanism to ensure that support is being used “only for the provision, maintenance, and

¹⁵ See CenturyTel Comments at 18; NASUCA Comments at 9; Washington ITA Comments at 18.

¹⁶ 47 U.S.C. §214(e)(2).

¹⁷ NASUCA Comments at 8.

¹⁸ NASUCA Comments at 8-9.

upgrading of facilities and services for which the support is intended.”¹⁹ The Commission therefore can and should provide state commissions with guidance on the criteria for designating multiple ETCs in rural areas. The Commission should also adopt measures to insure that the state commissions are in fact implementing the FCC’s criteria.

As NASUCA advocates, state commissions should be required to critically evaluate CETC applications to ensure that such carriers actually provide affordable and reliable basic service that is comparable to that of the carrier of last resort.²⁰ Support for wireless and other competitive services can only benefit rural communities if the service is affordable, comparable to the basic local exchange services offered by ILECs, and made available to all customers in a study area. Where the ILEC is required to provide flat-rated local service, CETCs should be required to provide a comparable service at a comparable price, including a reasonable number of local exchange minutes per month, receipt of incoming calls, and any other aspects of basic service the ILEC is required to offer. Some states have already implemented these types of regulations.²¹

CETCs are not using high-cost support for the purposes intended if they are not providing services that are equivalent to those provided by the carrier-of-last-resort in the same area.²² By targeting support to basic access to a telecommunications network, it will be possible

¹⁹ 47 U.S.C. § 254(e).

²⁰ NASUCA Comments at 3.

²¹ *See* CenturyTel Comments at 24.

²² *See, e.g.*, Washington ITA Comments at 20, questioning whether US Cellular has used USF support for the purposes intended.

to reduce the funding needs of the high-cost mechanism while enhancing the level of support for the purpose for which it was intended.²³

D. It Is Irresponsible Not To Critically Evaluate CETC Petitions For Rural Markets; And The Resulting Uncontrolled Growth In The High-Cost Fund Threatens Universal Service In Those Markets.

Indiscriminate designations of multiple ETCs in rural areas, as some states have done, is likely to result in uncontrolled growth of the high-cost fund. Ultimately, the end-user pays more due to increased contributions to the fund. If the current universal service support system is not reformed, overall demand for funding will grow to an unsustainable level. Support payments, already capped, may need to be further curtailed, and many rural carriers could experience serious operating challenges, to the detriment of rural customers. However, the purpose of universal service is to prevent this scenario.

Rather than straining the resources of rural customers, steps should be taken to direct more high-cost support to areas that need it most, both rural and non-rural, as advocated by NASUCA and the Washington ITA. For instance, as Washington ITA proposes, state commissions should consider the potential impact of each individual ETC in each service area, taking into account differences among rural markets.²⁴ Only vigilant administration of the fund will ensure that universal service will be preserved and advanced in a competitive environment.

²³ NASUCA Comments at 14.

²⁴ See Washington ITA Comments at 23.

III. CONCLUSION

For the foregoing reasons, the Independent Telephone & Telecommunications Alliance respectfully requests that the Joint Board make recommendations to the Commission that are consistent with these reply comments.

Respectfully submitted,

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