

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

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
ALLTEL Communications, Inc. Petition for)	
Designation as an Eligible Telecommunications)	
Carrier In the State of Alabama)	
)	
ALLTEL Communications, Inc. Petition for)	
Designation as an Eligible Telecommunications)	
Carrier In the State of Virginia)	
)	

SPRINT REPLY COMMENTS

Sprint Corporation, on behalf of its local, long-distance, and wireless divisions (“Sprint”), submits these reply comments in support of ALLTEL’s petitions, and in response to the opposing comments filed by Verizon and the Alabama Rural Local Exchange Carriers.

Summary

Verizon is wrong to contend that granting eligible telecommunications carrier (“ETC”) designation to competitive wireless entrants such as ALLTEL would undermine the access charge reform plan established by the *CALLS Order*.¹ Rather, the portability of universal service funds from incumbent local exchange carriers (“ILECs”) to competitive ETCs is an integral part of that plan. The Commission should reject Verizon’s and the Alabama Rural ILECs’ anti-competitive arguments, which in effect take the position that, because those

¹ Verizon Opposition to ALLTEL Virginia ETC Application (“Verizon Opposition”) at 2-8; *Access Charge Reform*, Sixth Report and Order, 15 FCC Rcd 12969 (2000) (“*CALLS Order*”), *aff’d in part and rev’d in part sub nom. Texas Office of Public Utility Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001), *on remand*, FCC 03-164 (released June 10, 2003) (“*CALLS Remand Order*”).

companies dislike various aspects of the current universal service rules and have argued in a pending proceeding that the rules be changed, therefore the Commission should disregard the existing rules and either defer or reject ALLTEL's designation petitions.² Rather, as the Commission has recognized, "excessive delay in the designation of competing providers may hinder the development of competition and the availability of service in many high-cost areas," and therefore the Commission made a public commitment to resolve ETC petitions within six months or less after they are filed.³ The Commission should abide by that commitment, and should expeditiously grant ALLTEL's petitions.

1. **The CALLS Access Charge Reform Plan Anticipated, and Is Not Undermined By, The Designation of Competitive ETCs That Are Eligible To Receive Portable Support.**

Verizon mistakenly asserts that the *CALLS Order* access charge reform plan did not anticipate, and will be undermined by, designation of competitive ETCs that will be eligible to receive Interstate Access Support universal service funds. To the contrary, in the *CALLS Order*, the Commission fully anticipated the portability of Interstate Access Support funds from ILECs to competitive ETCs. Indeed, the Order specifically cited the consistency of funding portability with the emergence of competition as a key benefit of the plan.⁴ Moreover, Verizon itself endorsed the portability of this fund during the Commission's deliberations (to be precise,

² Verizon Opposition at 8-10; Alabama Rural ILECs Opposition at 19-23.

³ *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscriberhip in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order, 15 FCC Rcd 12208, ¶ 94 (2000). *See also id.* ("We therefore commit to resolve within six months of their filing at this Commission designation requests for services provided on non-tribal lands that are properly before us pursuant to section 214(e)(6).").

⁴ *See, e.g., CALLS Order*, 15 FCC Rcd at ¶¶ 42, 196, 210.

Verizon's predecessors, Bell Atlantic and GTE, which along with Sprint were included in the coalition that proposed the CALLS plan):

The CALLS plan further promotes competition through the establishment of a portable \$650 million rural and high cost universal service fund. For the first time, *entrants will be able to compete for and receive support that previously went only to the incumbent LEC through implicit support*. All eligible telecommunications carriers will receive universal service support when they win and serve a customer in a more costly rural area. The 1996 Act envisioned that consumers in all parts of the country would be able to have a choice of telecommunications provider. The CALLS plan brings that vision a significant step closer to reality.⁵

Verizon now contradicts this earlier advocacy in favor of the portable fund established by the CALLS plan, and argues that the Commission should not have made the CALLS universal service fund portable from ILECs to competitive ETCs.⁶ Verizon's arguments are misplaced. Wireless carriers and other competitive ETCs face higher costs in providing service in sparsely populated areas, just as ILECs do, and providing non-portable, implicit subsidies to ILECs but not to their competitors would establish a barrier to entry, in violation of the 1996 Act:

[P]ortability is not only consistent with [the statutory requirement of] predictability, but also is *dictated* by the principles of competitive neutrality and the statutory command [of] . . . 47 U.S.C. § 254(e).⁷

⁵ Comments of the Coalition for Affordable Local and Long Distance Service (CALLS), CC Docket Nos. 94-1, 96-45, 96-262, and 99-249, at 10 (filed Nov. 12, 1999) (emphasis added).

⁶ See, e.g., Verizon Opposition at 6 ("CALLS-based interstate access support was designed to compensate local exchange carriers for interstate portions of the loop costs. Wireless carriers and CLECs do not have access charges regulated by the ILEC price cap regime that was under review in CALLS. Moreover, wireless carriers do not have loops, and thus do not have the loop costs this fund was designed to support. Nevertheless, under the Commission's portability rules, they are provided the same level of per-line support as the local exchange carrier.")

⁷ *Alenco Communications, Inc. v. FCC*, 201 F.3d 601, 622 (5th Cir. 2000) (emphasis added). Portability is also compelled by the Act's requirement that all markets be opened to competitive entry, and the long-standing Commission recognition that a regulatory system that grants ILECs significantly more per-line support than competitive ETCs would constitute an unlawful barrier to entry. See *Western Wireless Corp. Petition for Preemption of Statutes and Rules Regarding the Kansas State Universal Service Fund Pursuant to Section 253 of the Communications Act of 1934*, 15 FCC Rcd 16227, 16231,

This is the main reason that Verizon and the other members of the CALLS coalition proposed, and the Commission ordered, that the inefficient, implicit subsidies that formerly were embedded in ILECs' access charges be eliminated and replaced with an explicit and portable support fund.⁸ The CALLS plan also recognizes, as it must, that funding portability is necessary, because a policy of different levels of support to different firms in the market would have the effect of punishing a competitor for being more efficient and rewarding an ILEC for being inefficient. Moreover, Verizon, as successor to two of the proponents – and the greatest beneficiaries – of the CALLS plan, cannot now be heard to object to the portability feature of the universal service fund established as part of that plan. The Commission must reject Verizon's protests against the plan that Verizon's own predecessors originated.

Far from defending the integrity of the CALLS plan, Verizon's anti-competitive arguments would unravel not only the *CALLS Order's* reforms, but price cap regulation itself. Verizon expresses fear that, as competitive ETCs enter and qualify for support, price cap ILECs like Verizon will not be able to recover fully their "fixed" loop costs.⁹ But unlike rate-of-return regulation, the system of price cap regulation does not entitle ILECs to rates that would guarantee recovery of "fixed" costs plus a specified rate of return – and does not assume that such costs are static. Rather, price cap regulation is designed to give ILECs incentives to operate

¶ 10 (2000). See also *Federal-State Joint Board on Universal Service*, First Report and Order, 12 FCC Rcd 8776, 8933, ¶ 289 (1997), *subsequent history omitted*.

⁸ Indeed, Verizon concedes that the Interstate Access Support fund "was designed to be portable." Verizon Opposition at 5.

⁹ *Id.* at 7 ("Of course, a reduction in universal service interstate access support does nothing to reduce the local exchange carriers' loop costs. These costs are fixed, and do not vary when lines or customers are lost. However, because CALLS-based interstate access support is capped, moving this support from the ILEC to the ETC will result in a reduction in CALLS-based support for interstate loop costs. . . . Therefore, allowing new ETC designations to dilute CALLS-based interstate access support will make this support insufficient to compensate for interstate loop costs.")

efficiently (and if possible, to reduce the costs that they incur) by allowing them to retain revenue if subscribership or demand increases, while placing them at risk if subscribership or demand decreases.¹⁰ In other words, the “dilutive” effect that Verizon fears – the loss of universal service or other revenues as competitors enter the market – is not a “problem” at all; it is inherent to the incentive structure of price cap regulation.¹¹

Moreover, the Commission should reject Verizon’s contention that the present magnitude of competitive ETC entry was not anticipated or expected at the time of the *CALLS Order*. Verizon misleadingly implies that the designation of ALLTEL and other competitive ETCs in areas served by non-rural ILECs will lead to “dilution of support” that could become “significant” enough to force ILECs to re-institute inefficient charges on interexchange carriers, and ultimately would cause universal service support to be “insufficient.”¹² Sprint does not disagree with Verizon that competitive ETC entry in non-rural ILEC areas could cause ILECs to lose Interstate Access Support funds, which in turn could increase the Subscriber Line Charge paid by end users and/or access charges paid by interexchange carriers. However, Verizon greatly exaggerates the magnitude of this effect.¹³

¹⁰ See, e.g., *CALLS Remand Order*, ¶ 4; *CALLS Order*, 15 FCC Rcd at ¶ 17; see also *Policy and Rules Concerning Rates for Dominant Carriers*, 5 FCC Rcd 6786 (1990) (“*ILEC Price Cap Order*”), *aff’d sub nom. National Rural Telecom Ass’n v. FCC*, 988 F.2d 174 (D.C. Cir. 1993).

¹¹ To preserve the incentives created by price cap regulation, Sprint would support rule changes to clarify that, to the extent price cap ILECs’ Interstate Access Support funding is reduced, they should not increase access charges paid by long-distance carriers, but instead should be given the option to increase Subscriber Line Charges to recover shortfalls from their end user customers, in the same manner as competitive ETCs must recover any of their “non-supported” costs. See *infra* note 13.

¹² Verizon Opposition at 7-8.

¹³ In fact, Sprint calculates that, even if wireless carriers and other competitive ETCs were to double the amount of Interstate Access Support that they currently receive (from \$21.77 million, using 3Q03 USAC figures, to \$43.54 million annually), ILECs could avoid any increases to the Presubscribed Interexchange Carrier Charge (“PICC”) and Carrier Common Line (“CCL”) charges paid by long

In addition, even if one were to accept Verizon's premise that competitive ETCs' receipt of portable Interstate Access Support funds could cause certain ILEC rates to increase, the appropriate remedy would not be to deny ETC applications or shut down competition. Rather, as the five-year duration of the CALLS plan draws to an end, the Commission should reform its high-cost universal service and access charge rules so as to eliminate inefficiencies that interfere with competition and harm consumers. Thus, the Commission should seriously consider eliminating the economically inefficient caps on the Subscriber Line Charges paid by end users, so that implicit subsidies can be entirely eliminated, as the Act requires.¹⁴ The Commission should also work to reform and modernize the high-cost universal service mechanisms for both rural and non-rural ILECs in a manner that would be truly competitively-neutral and that would not be linked to other ILEC rate levels, as the Interstate Access Support fund is today. If the Commission has the choice between solving a problem using anti-competitive policy options (e.g., denying competitive ETC applications, as Verizon suggests) or competitively neutral

distance carriers if the cap on Subscriber Line Charges paid by end users were raised by a very modest amount, an overall average for price cap carriers of six tenths of one cent. Verizon's Subscriber Line Charges would increase by an average of just over one cent per month. This is hardly a "significant" amount, and cannot be characterized as threatening the "affordability" of service. (Sprint's analysis is based on data from the price cap ILECs' Tariff Review Plans filed with the FCC on June 16, 2003.)

^{14/} As the Commission has repeatedly conceded, the cap constraining the Subscriber Line Charges paid by end users (currently \$6.50 for residential and single-line business users) is economically inefficient, because it prevents the ILECs from recovering the non-traffic sensitive costs of loops from end users in the manner those costs are incurred, and thereby implicitly subsidizes end user rates. See, e.g., *CALLS Remand Order*, ¶ 2; *CALLS Order*, 15 FCC Rcd at ¶ 12; *Access Charge Reform*, First Report and Order, 12 FCC Rcd 15982, 15992-93, ¶ 24 (1997). And reviewing courts have held on numerous occasions that the Act prohibits the Commission from maintaining implicit subsidies. See, e.g., *Comsat Corp. v. FCC*, 250 F.3d 931, 939-40 (9th Cir. 2001); *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 425 (5th Cir. 1999); *Alenco*, 201 F.3d at 623.

options (e.g., the universal service solutions discussed above), the Commission is obligated to select options that have the least negative effect on competition.¹⁵

2. **ALLTEL's ETC Applications Must Be Addressed Pursuant to the Existing Rules, and Verizon's and the Alabama Rural ILECs' Objections to Those Rules Are Irrelevant To This Proceeding.**

The Commission should adhere to its precedents and disregard this and other irrelevant arguments raised by Verizon and the Alabama Rural ILECs generally opposing existing rules that facilitate competition in the universal service arena.¹⁶ These parties' broad objections to the existing rules have no place in adjudicatory proceedings concerning the merits of an individual carrier's ETC applications. The only rules under which the Commission may lawfully operate today are those on the books today. Verizon and the Alabama Rural ILECs leap to the unwarranted assumption that their anti-competitive arguments will prevail in the Joint Board proceeding, and on that basis ask the Commission to defer or reject ALLTEL's ETC applications. But potential rule changes will be addressed in the pending Joint Board proceeding on competitive universal service, and cannot lawfully be considered in individual ETC

¹⁵ Cf. 47 U.S.C. § 604 (requiring agencies to include in final rulemakings "a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected"); *Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services (Second Computer Inquiry)*, Sixth Report and Order, 99 FCC 2d 1066, ¶ 28 (1985) (considering several proposed options and choosing the alternative "which will have the least long-time negative impact on competition in the communications industry and . . . will best promote competitive goals").

¹⁶ Verizon Opposition at 8-10; Alabama Rural ILECs Opposition at 19-23. For example, Verizon opposes the rule that enables all eligible carriers – ILECs and competitive ETCs alike – to receive support for each connection they provide. Verizon Opposition at 9-10. The Alabama Rural ILECs also oppose this rule, as well as the rule enabling wireless carriers to receive support on the same basis as ILECs, and other rules. Alabama Rural ILECs Opposition at 22. Sprint and other parties have shown that these anti-competitive arguments are baseless in their comments and reply comments in the pending Joint Board proceeding.

designation proceedings. On this basis, the Wireline Competition Bureau has correctly granted other ETC applications notwithstanding virtually identical objections presented by the same Alabama Rural ILECs and other ILEC representatives: "We recognize that these parties raise important issues regarding high-cost support. We find, however, that these concerns are beyond the scope of this Order, which designates a particular carrier as an ETC."¹⁷

Conclusion

The Commission should reject Verizon's and the Alabama Rural ILECs' arguments for denying or deferring ALLTEL's ETC petitions, and instead should grant ALLTEL's petitions expeditiously.

Respectfully submitted,

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¹⁷ *Federal-State Joint Board on Universal Service; Cellular South License, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout Its Licensed Service Area in the State of Alabama*, 17 FCC Rcd 24393, ¶ 32 (Wireline Comp. Bur. 2002); *Federal-State Joint Board on Universal Service; RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout Its Licensed Service Area in the State of Alabama*, 17 FCC Rcd 23532, ¶ 32 (Wireline Comp. Bur. 2002).