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August 1, 2003

Ex Parte

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Federal-State Joint Board on Universal Service Request for 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, FCC 03J-1

Dear Ms. Dortch:

The recent growth in petitions seeking ETC status in non-rural areas threatens to unravel the CALLS plan, and thus increase charges for all wireline customers.¹ To prevent this result, the Joint Board should recommend that high cost support be made "portable" only if the competitive ETC wins the ILEC's *customer* (rather than just some of the customer's *lines*). In other words, support should be portable to a competitive ETC only when the sole supported service network connection is being provided by a competitive ETC. Such a change would help preserve CALLS-based support for its intended use, as well as limit growth of the high cost fund.

Background on CALLS-Based Interstate Access Support

Before CALLS, non-rural ILECs were forced to recover interstate loop costs through three separate charges – the subscriber line charge ("SLC"), primary interexchange carrier charge ("PICC"), and carrier common line charge ("CCL"). These charges either were assessed directly on end user customers, or were assessed to interexchange carriers, who passed them on to customers in the form of line item charges or higher long distance rates. *See* CALLS Order, ¶¶ 64-65. The CALLS Order eliminated this inefficient

¹ "CALLS" stands for the Coalition for Affordable Local and Long Distance Services, a group of local exchange companies and interexchange carriers who presented a proposal to the Commission for reforming interstate access charges. *See Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long Distance Users, Federal-State Joint Board on Universal Service*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962, ¶¶ 1-3 & n.1 (2000) ("CALLS Order"), *aff'd in part, rev'd and remanded in part sub nom. Texas Office of Public Utility Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001).

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system by increasing the cap of the SLC, and establishing \$650 million per year in explicit universal service interstate access support to recover those specific amounts that previously were recovered through access charges. *Id.*, ¶¶ 31-32.²

The Commission recently reaffirmed that the market inefficiencies created by the pre-CALLS regime increased costs to residential consumers. CALLS Remand Order, ¶¶ 6-7, 32. Thus, by removing these inefficiencies, CALLS access reform has resulted in significant benefits to customers, in the form of lower rates.

Because of CALLS-based universal service support, price cap carriers have begun eliminating the CCL and PICC charges from interstate access bills. For example, Verizon recently removed all remaining PICC and CCL charges from its tariffs for the Verizon East territories.³ After those charges have been eliminated, carriers also will be able to deaverage the SLC so that customers in low cost areas are not subsidizing high cost SLCs. CALLS Order, ¶ 73. In addition, by moving from a system of implicit support for interstate loops to explicit universal service support, the CALLS Order largely resolved “nearly two decades of contentions debate of complex issues stemming from the breakup of AT&T in 1984.”⁴

When the Commission established CALLS-based support, it was capped at \$650 million per year. At the time, the Commission believed that amount would be sufficient to replace “a *specific amount* of access charges” that had previously been used to recover portions of the interstate loop costs of the carriers that were subject to the CALLS plan. CALLS Order, ¶ 185 (emphasis added). Realizing the importance of maintaining an adequate level of CALLS-based support, the Commission recently rejected attempts to reduce the \$650 million size of the fund. CALLS Remand Order, ¶ 32.

Why Application of the Current Portability Rules Threatens CALLS

The otherwise successful reform of the interstate access regime that was implemented through the CALLS Order now is threatened by the application of the current rules requiring that high-cost support generally be made “portable” to all ETCs.

CALLS support is different from most other high-cost support, because it was designed to replace implicit subsidies formerly recovered through ILEC access charges. Wireless and CLEC ETCs did not have access charges that were reformed by CALLS, are not subject to the CALLS plan and did not have interstate loop costs that were explicitly the subject of the support contemplated by the CALLS plan. Indeed, wireless carriers do not even have loops. *See* CALLS Order, ¶ 209; *see also* 47 C.F.R. §§ 54.307, 54.309.

² *See also Access Charge Reform, Price Cap Performance Review for LECs, Low-Volume Long Distance Users, Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-262, 94-1, 99-249, 96-45, Order on Remand, FCC 03-164, ¶¶ 8-10 (rel. July 10, 2003) (“CALLS Remand Order”).

³ *See* Letter from Richard T. Ellis, Verizon, to Marlene H. Dortch, FCC, Transmittal No. 327 (filed June 16, 2003).

⁴ *FCC Reduces Access Charges by \$3.2 Billion; Reductions Total \$6.4 Billion Since 1996 Telecommunications Act*, News Release, CC Docket Nos. 96-262, 94-1, 96-45, and 99-249, at 2 (rel. May 31, 2000).

Thus, it would have been reasonable for the Commission to approve a “no portability” rule for CALLS support. Although the Commission specifically held that CALLS support would be portable, *see* CALLS Order, ¶ 209, the language of the order contemplated that “portability” would be used when the competitor’s services were a *replacement* to ILEC support, not *in addition to* ILEC supported lines. *See id.* (“[I]f a competitor serves a customer in a supported study area or UNE zone, the competitor *will receive the incumbent’s support* for that line” (emphasis added)). And the Commission certainly did not anticipate that the portability rules would be applied in a way that would threaten to undermine the CALLS reform.

When the Commission decided to make CALLS support portable, the number of ETC applications in non-rural areas was relatively low: when the CALLS Order was released in May 2000, there were only 9 *total* petitions for ETC status that had been granted or were pending.⁵ However, as the Commission has noted, there recently has been a significant increase in the amount of high-cost support being provided to competitive ETCs.⁶ As of the First Quarter 2003, the number of pending or approved ETC petitions just for *non-rural* areas had risen to 20; by the Third Quarter, USAC projects the number of pending or approved applications for non-rural ETC areas to be more than twice that amount, at 53.⁷

The recent ETC applications, a number of which have been from wireless carriers, typically seek the broadest amount of support available, asking for high cost support “for service offered throughout [the applicant’s] licensed service area in the state. . . .”⁸ Thus, these competitive ETCs report all customers located in a supported study area and receive per-line support for those customers, even if the customer is already receiving supported service from the ILEC. However, because the study area support is capped, and the total line counts are increasing as competitive ETCs file with USAC, the per-line support in those study areas will decrease. Thus, an ILEC with steady line counts will see its CALLS support diluted as the per-line support goes down.

Of course, shifting a portion of universal service support for ILECs to other ETCs in the name of “portability” does nothing to reduce ILECs’ loop costs. These costs are fixed, and do not vary when lines or customers are lost. Therefore, allowing new ETC designations and portability rules to dilute CALLS-based interstate access support provided to ILECs will make this support insufficient to compensate for interstate loop costs.

⁵ USAC did not start to disaggregate this data into rural and non-rural areas until Fourth Quarter 2001.

⁶ *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 17 FCC Rcd 22642, ¶ 4 (2002) (“As competitive ETCs enter new markets and expand services, they are increasingly qualifying for high-cost universal service support.”); *see also* Written Statement of Kathleen Q. Abernathy, Commissioner, FCC, on Preserving and Advancing Universal Service, Before the United States Senate Committee on Commerce, Science, and Transportation, Subcommittee on Communications, at 3 (Apr. 2, 2003) (“[W]hile the share of high-cost support distributed to competitive carriers remains small . . . it is growing quite rapidly.”).

⁷ *See* Universal Service Administrative Company, *Federal Universal Service Support Mechanisms Fund Size Projections for the Third Quarter 2003*, First Quarter Appendices and Third Quarter Appendices, at Appendix HC01, available at: www.universalservice.org/overview/filings/.

⁸ *Wireline Competition Bureau Seeks Comment on Alltel Communications, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Virginia*, Public Notice, 18 FCC Rcd 11336, at 1 (rel. June 3, 2003).

Moreover, under USAC's current interpretation, the Commission's current portability rules allow a customer to receive duplicative high-cost support from more than one carrier. It appears that competitive ETCs have been receiving universal support for customers that are also receiving high-cost supported service from the ILEC.⁹ In other words, instead of making support portable only to competitive ETCs who *replace* ILEC services, it is being made portable to services provided to the customer *in addition to* the ILEC's. Providing this duplicative support to more than one ETC per customer further dilutes CALLS-based support.

The recent growth in ETC petitions in non-rural areas threatens to siphon off more and more of the \$650 million CALLS-based support from its intended use. Without "explicit and sufficient" universal service support, *see* 47 U.S.C. § 254(e), the CALLS reform will unravel. To recover these costs, carriers thus will be forced to reinstate the same customer-based charges the CALLS Order was designed to reduce or eliminate. As the Commission recently reaffirmed, reinstating these charges will lead to market inefficiencies in recovering the costs, ultimately resulting in higher prices for residential telecommunications customers. *See* CALLS Remand Order, ¶¶ 6-7, 32.

To Preserve CALLS, Make Support Portable Based on Customers, Not Lines

Although the threat to CALLS-related support is unique, there is one change in the portability rules that can both help preserve CALLS support and control growth of the high cost fund. This can be done through amending the portability rules so that a customer is not receiving high-cost supported services from more than one carrier.

In particular, the Joint Board should recommend that the Commission clarify that competitive ETCs will receive high cost support (including CALLS-related support) only for *customers* that are new or have been captured from the ILEC. That is, support should be portable only when the sole supported service network connection is being provided by a competitive ETC. Under this reform, competitive ETCs would not be able to receive support (as they are today) for additional *lines* to a customer that is already receiving high-cost supported services from the ILEC.¹⁰

This solution makes sense in response to the global high-cost issue because, as more than one Commissioner has recognized, there are serious questions about the wisdom of using ratepayer dollars to subsidize "multiple competitors to serve areas in which the costs are prohibitively expensive for even one carrier."¹¹ Moreover, the default rule would be that the support goes to the ILEC that incurs the costs for

⁹ *See Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support and the ETC Designation Process*, Verizon Comments, CC Docket No. 96-45, at 4-7 (filed May 5, 2003) ("Verizon Comments").

¹⁰ Verizon has suggested this be accomplished through a clarification of the language in the rules regarding when a competitive ETC serves "new" and "capture[d]" lines from an ILEC. *See* 47 C.F.R. § 54.307(a); *see also* Verizon Comments, at 4-7.

¹¹ *Multi-Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Separate Statement of Commissioner Kevin J. Martin, 16 FCC Rcd 19613, 19746 (2001). *See also* Jonathan S. Adelstein, Commissioner, FCC, Remarks before the National Association of Regulatory Utility Commissioners (Feb. 25, 2003), *available at* hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-231648A1.pdf.

which CALLS and other high cost support was designed to compensate. Thus, allowing portability only when the customer only receives services from the competitive ETC would limit the dilution of support to the carrier of last resort. This is important to preserve incentives for these carriers to make the facilities-based investments necessary to ensure that the infrastructure to provide these basic services exists, especially in rural America.

Such a rule also preserves portability, because it allows competitive ETCs to receive high cost support when they have won the customer. Because the rule would allow support to go to either the competitive ETC or the ILEC, depending on who wins the customer, it addresses commenters' concerns that support in rural areas be "competitively neutral."

Limiting funding to only one ETC per customer is preferable to limiting funding to only one line. As an initial matter, a rule that would limit support to only one line, regardless of whether provided by the ILEC or the competitive ETC, would further reduce support to the rural ILEC carriers of last resort. In addition, the one-ETC-per-customer rule would be much easier to administer: In order to obtain portable support, the Commission should require the competitive ETC to obtain a certification from the customer that it is relying solely on competitive ETC service for network connectivity. Similar self-certification procedures are currently being used to verify eligibility for Lifeline service.¹²

The issues related to portability are complex, and commenters have raised several proposals for modifying the current rules. Until a solution to these problems is reached, the Joint Board should recommend that the Commission refrain from acting on pending petitions for ETC status.

Sincerely,



cc: Kathleen Q. Abernathy
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¹² See *Federal-State Joint Board on Universal Service*, Recommended Decision Regarding Lifeline and Link-Up, CC Docket No. 96-45, FCC 03J-2, ¶ 32 (rel. Apr. 2, 2003).

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