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Ex Parte

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

Re: Federal-State Joint Board on Universal Service, CC Docket No. 96-45

Dear Ms. Dortch:

On Wednesday, August 20, 2003, E. Shakin, J. Dibella and C. Odom met with C. Libertelli of Chairman Powell's office to discuss the federal funding mechanism for supported telecommunications services in high cost areas operated by non-rural LECs.

If you have any questions, please do not hesitate to call me.

Sincerely,

/s/Clint Odom

cc: C. Libertelli

Attachment



Universal Service

Federal funding mechanism for non-rural LECs

Tenth Circuit Remand • CC Docket No. 96-45

On November 2, 1999, the FCC's Ninth Report and Order established a federal funding mechanism to support universal telecommunications services in high cost areas operated by non-rural LECs. Petitioners challenged the sufficiency of this funding mechanism in view of certain statutory principles, such as achieving reasonably comparable rates for basic telephone services in rural and urban areas. On July 31, 2001, the Tenth Circuit Court of Appeals – although declining to decide whether the mechanism provided adequate funding – concluded that the FCC had failed to explain why the funding was sufficient and remanded the order to them.

v The court's findings

The court found that the FCC had failed to:

- Provide a rational basis for its selection of the 135% nationwide average cost benchmark.
- Adequately define “sufficiency” or “reasonably comparable.”
- Adequately induce state mechanisms to support universal service.

v The Joint Board's recommendations

On October 16, 2002, the Joint Board provided positive recommendations to the FCC on each of the issues raised in the court's findings.

t 135% Cost Benchmark

- The Joint Board found that the comparability of average rural and urban rates supported continued use of the 135% cost benchmark.
- The Joint Board relied on a cluster analysis, which determined that the states receiving non-rural high cost support under the current 135% benchmark are states that have substantially higher average costs than other states.
- The Joint Board also used a standard deviation analysis to support its recommendation.
 - Rates were reasonably comparable before the Act was passed. Six years later, rates are within two standard deviations.
 - The 135% Cost Benchmark covers costs within two standard deviations.
- Conclusion – The FCC should generally support this policy decision and should not introduce any further variability into the fund.

t Reasonably Comparable

- The Act requires that urban and rural rates must be reasonably comparable [§254(b)(3)].
- The record in this proceeding demonstrates that rates are reasonably comparable today. The Joint Board relied on a report by the GAO and found that rates are reasonably comparable.
- Conclusion – Revisions to the non-rural high cost mechanism could frustrate another statutory principle that rates should be affordable [§254(b)(1)]. If the fund increases, consumers likely will bear those costs.

t Sufficient

- The Joint Board recommended that sufficiency be defined as enough support to enable states to achieve reasonably comparable rates.
- Conclusion – The statutory principle of sufficiency means that non-rural high cost support should be only as large as necessary to achieve its statutory goal.

t State Inducements

- The Joint Board recommended conditioning receipt of high cost support on a state's certification that it has reasonably comparable urban and rural rates.
- The Joint Board's proposal would expand state's rate certification process to assess whether or not a state's rates were reasonably comparable. If a state's rates are not reasonably comparable, the state could request additional support after a proper showing.
- Conclusion – This mechanism provides a safety net and allows states to address state-specific issues.