Western Wireless Proposal for Universal Service Reform

to the Federal-State Joint Board on Universal Service

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I. Introduction

A. A Competitive Universal Service System Benefits Consumers

Consistent with the Act, the FCC and State Commissions have implemented a competitive universal service system, recognizing that rural consumers will benefit from competition.

- Competition preserves and advances universal service by:
  - i. making service available in previously unserved or underserved areas (e.g., Pine Ridge Indian reservation); and
  - ii. providing consumers with new services, access to technological and service innovations, and better pricing and customer service (e.g., areas where wireless carriers compete with wireline carriers).
- Portability allows the marketplace to determine the services and service providers that best meet the needs of consumers.
- A competitive universal service system simply creates a level playing field for carriers to compete based upon their service offerings. In the absence of a competitive universal service system, rural consumers would remain captive customers of de facto monopoly incumbent local exchange carriers.

B. A Competitive Universal Service System is Required By Law

- The 5th Circuit held, "portability is not only consistent with [the statutory requirement of] predictability, but also is dictated by the principles of competitive neutrality and ... 47 U.S.C. § 254(e)." *Alenco Communications* v. FCC, 201 F.3d 608, 622 (5th Cir. 2000).
- "[T]he program must treat all market participants equally – for example, subsidies must be portable –- so that the market, and not local or federal government regulators, determines who shall compete for and deliver services to customers. Again, this [portability] principle is made necessary not only by the economic realities of competitive markets but also by statute." [*Id.*, 201 F.3d at 616.]

C. The Core Principles of a Competitive Universal Service System

The core principles include:

1. Services and rates in rural areas that are affordable and reasonably comparable to urban areas,
2. Access to advanced telecommunications and information services, and
3. Competitive and technological neutrality.

   To implement this third principle consistently with the Act and with years of regulatory and judicial precedent, the Joint Board's Recommendation must incorporate the following features:

   a. portability of support,
   b. non-discrimination in implementation, and
   c. transparency.

II. Western Wireless Proposal for Universal Service Reform

A. Transition to a Sustainable Funding Mechanism

1. Overview of Western Wireless Proposal

- Move CETCs to a new funding system, based on forward-looking cost, effective in 2006 (at the end of the RTF five-year period).
- Gradually transition rural ILECs to the same forward-looking cost-based system, beginning in 2006 for larger companies and in areas where a CETC is receiving funding, and in later years for smaller ILECs and other study areas.

2. Rationale for Proposal

- Accuracy and Efficiency. Forward-looking costs more accurately measure the factors that drive economic decision-making. Rate-of-return based support inhibits incentives for efficiency; a system based on forward-looking costs rewards carriers that provide quality service at lower cost.
- Avoid Accounting Depredations. A system based on forward-looking cost eliminates the incentives and opportunities for misallocating costs, cross-subsidization, and other accounting malfeasance to increase support levels.
- Competitive Neutrality. Eliminates pro-ILEC bias of current system, which provides full historical cost recovery and guaranteed return on investment for ILECs, but per-line support with no investment guarantees for CETCs.
- Portability. Portability (*i.e.*, identical support per-connection for all ETCs) is mandated by the 1996 Act , as the courts have held (see above), and is necessary to facilitate competition on a level playing field, such that the universal service system does not provide artificial advantages or disadvantages to high-cost or low-cost ETCs.
- Avoids Need for CETC Embedded Cost Studies. Because wireless carriers and other CETCs use very different technologies and network architectures from ILECs, the existing embedded cost rules cannot be applied to them. It would be quite difficult for regulators to develop a new and unprecedented set of embedded cost rules and procedures for CETCs, and implementing such rules would be extremely burdensome for competitive carriers to implement. Most fundamentally, it would make no sense to extend the obsolete system of rate-of-return regulation to new entrants; rather, ROR regulation should be phased out for rural ILECs.

3. Develop Model

a. Revise the Synthesis Model platform and inputs to be suitable for application to areas served by rural ILECs
   - The FCC's *RTF Order* [¶¶170-77] recognized that this is feasible and desirable.
   - Consider using competitively-neutral geographic units (*e.g.*, counties) rather than ILEC-centric geographic units (*e.g.*, wire centers).

b. Develop inputs for calculating costs based upon the most efficient cost of providing universal service, such as wireless, and basing support on the least cost technology.
   - In an August 1998 ex parte filed in Docket No. 96-45 by Western Wireless, we showed basing support for all carriers on the cost of the most efficient technology could save the fund as much as 48%.

4. Develop Formula to Derive Support Amounts From the Model

a. **Tier One Support** would be based on a simple comparison of the cost of service in each area with a national benchmark (such as the $31 benchmark currently used in determining support for non-rural carriers).
b. **Tier Two Support** (like the Model-Based Fund today) would be designed to provide funding to the highest-cost states that have the least ability to generate needed intrastate funding based on the divergence between the statewide average cost and the national average, while at the same time ensuring that the most rural areas are eligible for federal universal service funding.
c. **Rate Rebalancing** –- To create inducements to eliminate implicit subsidies, the level of universal service support available to a carrier would be based upon whether a carrier's retail rates are at or above an "affordability" benchmark

5. Transition Plan

New system of universal service funding based on forward-looking costs: in—

- 2006 (end of RTF 5-year period): apply to:
  - CETCs,
  - non-rural ILECs,
  - rural ILECs with >100,000 lines in all affiliated study areas nationwide or >30,000 lines in all affiliated study areas statewide,
  - all areas where a CETC receives support.
- 2008: ILECs with >50,000 lines nationwide or >15,000 lines statewide
- 2010: ILECs with >20,000 lines nationwide or >5,000 lines statewide
- 2012: all ETCs

6. Safety Net Support

a. If a carrier can prove that, in its particular circumstances, the amount of support is not sufficient, an additional safety net or supplemental mechanism is available for a limited period of time
b. Specific criteria for such supplemental support would be adopted

B. Scope of Support

1. Overview of Western Wireless Proposal.

a. Consider imposing study area funding caps, pending the development and implementation of a forward-looking cost methodology.
b. Determine wireless customer locations based on place of primary use.

2. ***Rationale for Proposal.*** A funding cap would control the rate of fund growth in a similar manner to a primary line restriction, but avoids the problems of primary line restriction, which would be unlawful and would not preserve and advance universal service. Specifically, a primary line restriction would be:
    a. **Harmful to universal service** and consumers. Consumers in rural areas are entitled to multiple lines just as consumers in urban areas are.
    b. **Anti-competitive and would violate competitive neutrality.** A primary line restriction would preclude funding to wireless ETCs in most circumstances.
    c. **Impossible to implement** in a competitively neutral manner. There is no principled way to distinguish which connection is primary and which is not, and an automatic preference for ILECs would violate the Act.
    d. **Ineffective in controlling growth** of the fund. The vast majority of the growth in the high-cost fund is due to growth in support to rural ILECs, not support to CETCs.

3. ***Study Area Funding Cap***
    a. Once a CETC enters and begins receiving funding, cap the total amount of funding to all ETCs in the area at preceding year's level.
        - This is slightly different from the study area cap considered by the RTF, in which the per-line amount of support is capped.
    b. Each ETC receives support equal to the total support in the study area divided by the number of customer connections reported by the ETC.
    c. Increases in funding to the area would be permitted based on:
        - inflation,
        - increases in population, or households, or business, and
        - increases in the rate of telephone penetration in the area.
    d. Same impact on the growth of the fund as a primary line restriction.

4. ***Require wireless ETCs to determine customer locations using place of primary use rather than using billing address.***
    a. This would be consistent with the Uniform Mobile Sourcing Act definition used to collect sales taxes, and therefore would be easy to implement for wireless ETCs.
    b. This change will more accurately associate customers to the place where they receive their telecommunications services.
    c. To implement this, ILECs would be required to file with USAC, the FCC, and state commissions electronic maps of their study area and wire center boundaries in a generally accepted software format.

C. ETC Designation Process

1. ***Overview of Western Wireless Proposal.***
    a. Clarify the "public interest" standard
    b. Clarify the ubiquitous service standard

c. Clarify the standards for disaggregation/redefinition of service areas

2. ***Rationale for Proposal.*** Addresses concerns about ETC designation procedures, while remaining true to the core principles of competitive universal service and ensuring that consumers in rural areas will continue to benefit from both universal service and competition on a level playing field among multiple providers.

3. ***Clarify the "public interest" standard for designating CETCs in rural telco areas.***
   a. State commissions *may* examine:
      - the benefits of competition to consumers,
      - the introduction of new technologies and services to rural consumers,
      - whether designation will lead to better coverage and higher-quality service, and
      - whether designation would cause any significant adverse impact to consumers.
   b. Presumption of "public interest"
      - Rebuttable presumption that competition is in the public interest.
      - Balance benefit to consumers against harm to consumers
   c. State commissions *may not* consider:
      - Criteria that would subject CETCs to regulations that were designed to control ILEC market power (such as equal access, pricing regulation, certification, tariffing)— would pose a barrier to entry into the market;
      - Regulations geared to ILEC technology (such as quality standards geared to copper loop transmission)— would violate competitive and technological neutrality;
      - Strict numerical quotas (such as "no CETC designation where ILEC support is $30 per month or more")— would be arbitrary and capricious and would violate the Act.

4. ***Clarify an ETC's Obligation To Serve Throughout The Designated Service Area*** *to ensure that both CETCs and ILECs serve customers within the area in which they are designated as ETCs.*
   a. To obtain ETC status (and retain it), CETCs and ILECs must show that they are either—
      - capable of serving consumers throughout the designated service area and will serve such customers upon receiving a bona fide request for service, or
      - will serve such customers via resale.

5. ***Clarify the standards for disaggregating rural ILEC study areas for designation purposes.***
    a. Establish a presumption against disaggregating rural ILEC study areas below the wire center, RSA, or BTA level. In such cases, both FCC and state commission approval would be required.
    b. Establish a presumption in favor of disaggregating rural ILEC study areas at the wire center, RSA, or BTA level. This would recognize the gerrymandered nature of many rural ILEC study areas and the fact that many rural CMRS carriers are licensed at the RSA or BTA level. In such cases, streamlined procedures in the current rules would apply.

D. Verification That ETCs Are Using USF Funds For the Intended Purposes

1. ***Replace State Certification Process with Rigorous, Verifiable and Accountable Certification by All ETCs (ILECs and CETCs).***
    a. All ETCs must file annual detailed certifications, in compliance with specified standards, showing that funds are being used for provision, maintenance, and upgrading of supported services and facilities.
    b. In the case of rate-of-return carriers, periodic independent audits would be used to verify proper classification and reporting of loop counts and network investments, compliance with cost accounting manuals and controls, compliance with affiliate transaction rules, proper booking of costs and recording of interest expenses, and other accounting matters.