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ORIGINAL

November 4, 2003

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EX PARTE - VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary, Federal Communications Commission
445 Twelfth St, SW
Washington, DC 20554

Re: Written ex parte presentation in CC Docket No. 96-45

Dear Ms. Dortch:

Montana Independent Telecommunications Systems (MITS) represents telecommunications companies whose service areas span the state of Montana as well as parts of North Dakota, Wyoming and Nevada. MITS has been an active participant in the Montana Universal Service Task Force (MUST),[1] which has filed extensive comments in this docket.[2] MUST's comments have focused in part, on the notion that high cost Universal Service Fund (USF) support received by competitive Eligible Telecommunications Carriers (CETCs) should be based on the costs of the recipient CETC or class of CETC, rather than on the costs of the incumbent ETC against which the CETC competes, as current rules permit. Recent data released by the Universal Service Administrative Company (USAC) support MUST's argument, and we write to bring these data to the Commission's attention. This written ex parte is being filed electronically in accordance with Commission Rules.

Summary

USAC data clearly indicate that unless changes to the rules under which wireless carriers are designated as Eligible Telecommunications Carriers (ETCs) are implemented quickly, the amount required to adequately fund the high cost portion of the USF will increase at an exorbitant rate. This increase in the funding requirements could jeopardize the sustainability of the fund and result in widespread deterioration of service quality in high cost areas and possibly

[1] MUST is a group of rural telecommunications providers concerned about the preservation of true universal service in rural America. The companies include Montana Independent Telecommunications Systems (MITS), Valley Telecommunications, Inc., Triangle Telephone Cooperative Association, Inc., Project Telephone Company, Inc., Northern Telephone Cooperative, Inc., Nemont Telephone Cooperative, Inc., InterBel Telephone Cooperative, Inc., Central Montana Communications, Inc., 3 Rivers Telephone Cooperative, Blackfoot Telephone Cooperative and C. C. Communications. MITS' General Counsel, Mike Strand, also represents MUST and is the drafter of MUST's comments in this docket.

[2] For example, see comments filed on April 14, 2003, May 5, 2003, and June 3, 2003.

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create areas where service is simply unavailable (since the business climate in those regions makes the provision of telecommunications service uneconomic without subsidization). Today's high cost portion of the USF is the result of decades of evolutionary debate and policy setting and should not be unraveled or compromised in an attempt to force uneconomic competition to areas where even the incumbent providers would not survive without subsidization.

A Look at the Data

USAC's data regarding projected support in the Fourth Quarter of 2003 (4Q 2003) show that wireless CETC reception of universal service support has been steadily increasing and is poised to skyrocket. As you are aware, USAC prepares information every three months on all Eligible Telecommunications Carriers (ETCs) scheduled to receive high cost universal service support in the following quarter. **Chart 1** appended to this letter, demonstrates that in the case of already-designated CETCs, projected support levels for 4Q 2003 remain largely unchanged from 3Q 2003. Of all CETCs, both wireless and wireline, wireless CETCs are projected to receive the great majority of CETC support—more than $173 million (annualized) in 51 study areas. Wireline CETCs, in contrast, are projected to receive an annualized $6 million in 57 study areas. (See "20034Q" column),

USAC also prepares information of projected support in study areas where carriers have sought, but not yet received CETC designation. In the case of carriers not yet designated CETCs, wireline CETC support is expected to continue to remain virtually unchanged. Wireless support, however, is set to explode.

Pursuant to USACs' data, wireless carriers have sought but not yet received ETC designation in 45 additional study areas (compared with the pending designation of a single wireline carrier in only one additional study area). Considering the relative ease with which wireless carriers have obtained ETC designation, it is not unreasonable to expect that many, if not all these carriers will receive the requested designation. If all such carriers are designated and receive the full complement of universal service support in 4Q 2003, wireless CETCs will receive an additional projected $71 million (annualized), while wireline carriers will receive only an additional projected $269,000 (annualized) of support. Such would result in wireless CETCs receiving more than 97% of all CETC projected high cost support. $245 million of CETC support would go to wireless CETCs annually, with only $6.7 million to wireline CETC . (See "20034Q-all" column.)

Turning to the carrier recipients themselves, USAC's data show that, again assuming all current and prospective CETCs receive the full projected complement of support, the top twelve recipients would all be wireless carriers, projected to receive in aggregate almost 93% of total CETC support. Chart 2 appended to this letter shows graphically the percentages of CETC support that the top ten carriers are slated to receive. Western Wireless continues to lead the pack, with more than 21% of all CETC support. Following Western Wireless are RCC (16.9%), US Cellular (15.2%), and Centennial and Cellular South (each at 11.5%). Together, these five carriers are projected to receive more than three quarters of all CETC support. All wireline CETCs, in contrast, are projected to receive less than three percent of all CETC support.

The Definition of Universal Service should be Re-examined

In our view, the current definition of universal service sets the bar far too low due to the Commission's inordinate focus on technological and competitive neutrality at the expense of other long established universal service principles. As more fully described in our previous comments, we support the following:

- ✓ The Commission should establish a standard within the definition of universal service that conforms to most subscribers' expectations with respect to local usage.
- ✓ There should be technical and service quality standards for ETC designation that apply to *all* carriers seeking universal service funds. The service quality bar for ETC designation should be high enough so that customers are ensured of receiving acceptable levels of service quality, regardless of whether they are served by an incumbent ETC or a competitive ETC.
- ✓ A definition of universal service that does not include equal access does a disservice to rural subscribers and is an example of driving the level of universal service to the lowest common denominator. Similarly, exempting one class of ETCs (CMRS carriers) from providing equal access while maintaining the requirement violates the principle of competitive neutrality.

The extremely low threshold of service quality being required of applicants for the purpose of ETC designation (coupled with the perverse incentive to approve as many ETCs as possible) is but one of a number of regulatory policy decisions threatening the high cost USF. Others include:

- ✓ The portability of universal service funding based on the incumbent's costs, resulting in the nonexistence of any rational relationship between the costs incurred by a competitive ETC and the support it receives and the consequent danger of market distortion.
- ✓ The substantial shift of cost recovery to rural end user local rates resulting from aggressive increases in subscriber line charges (and the simultaneous shifting of additional cost recovery to the USF).
- ✓ The promotion of a "bill and keep" regime to replace the current access charge system, which in most cases would cause even greater upward pressure on local rates and eventually on the USF. To the extent further cost recovery is shifted from both interstate and intrastate access to USF, the upward pressure on USF becomes even more unwieldy if this "access reform" portion of USF continues to be portable to competitors.
- ✓ The rather off-hand ways in which many regulators treat the modification of study area boundaries for the purposes for ETC designations as if rural companies operated collections of "mini-networks" that could simply be "lopped off" at any point without damaging the integrity of the remainder of their networks.

Conclusion

The USAC data plainly show that as wireless carriers continue to seek ETC status in increasing numbers, and while CETC support continues to be based upon the costs of the incumbent, wireless CETC support will grow at a rapid pace, placing additional significant

burdens on the Universal Service Fund mechanisms. Again, access "reform" that shifts even more cost recovery to USF and in turn creates even greater demands on USF due to portability places yet more burdens on the Universal Service Mechanisms. To alleviate, if not eliminate, this growing burden, MITS and MUST respectfully submit that it is time for the Commission to modify its Rules such that CETCs receive support based on their own costs. In addition, the Commission should consider establishing a more comprehensive and complete definition of supported services, and ensuring that those providers that are designated CETCs are capable of delivering at a minimum the service quality to which rural subscribers have become accustomed from their incumbent ETC.

One proposal that is certainly worthy of consideration is that made by Commissioner Billy Jack Gregg at the en banc hearing in Denver of the Federal-State Joint Board on Universal Service. Commissioner Gregg suggested that the receipt by the incumbent ETC of a certain per-line amount of high-cost support could serve as prima facie evidence that the incumbent's service area is capable of supporting only a single ETC (Commissioner Gregg suggested a threshold of $30 per line per month). The adoption of such a rule could go a long way toward slowing the explosive projected growth in the USF due to multiple ETC designations by at least taking a significant portion of the areas receiving the highest levels of support "off the table."

Finally, MITS and MUST strongly urge regulators making the ETC designations to take into account whether the technology platform utilized for the provision of universal service can also be used to provide advanced services.

MITS and MUST greatly appreciate the work being done by the Federal-State Joint Board on Universal Service and by the FCC in this very difficult area. Maintaining the viability of our Nation's commitment to universal service requires addressing the both the contribution side of the USF as well as the distribution side of the USF, all the while staying true to the universal service principles clearly delineated by Congress in the Telecommunications Act. While it adds even more complexity to these issues, access reform is also inextricably linked to the viability of the USF and any "solution" that ignores access reform is at best a partial solution. While we do not envy the heavy responsibility your organizations must bear, we certainly stand ready to work diligently with others in the industry and in the regulatory community to resolve these issues in the manner that best serves the interests of the rural end users who are relying on us.

Please do not hesitate to contact the undersigned with any questions you may have.

Respectfully submitted,

Michael C. Strand
Counsel for MITS and MUST

Attachments

Chart 2: Percent of Total Potential, Projected CETC Support to be Received by Particular Carriers in 4Q 2003

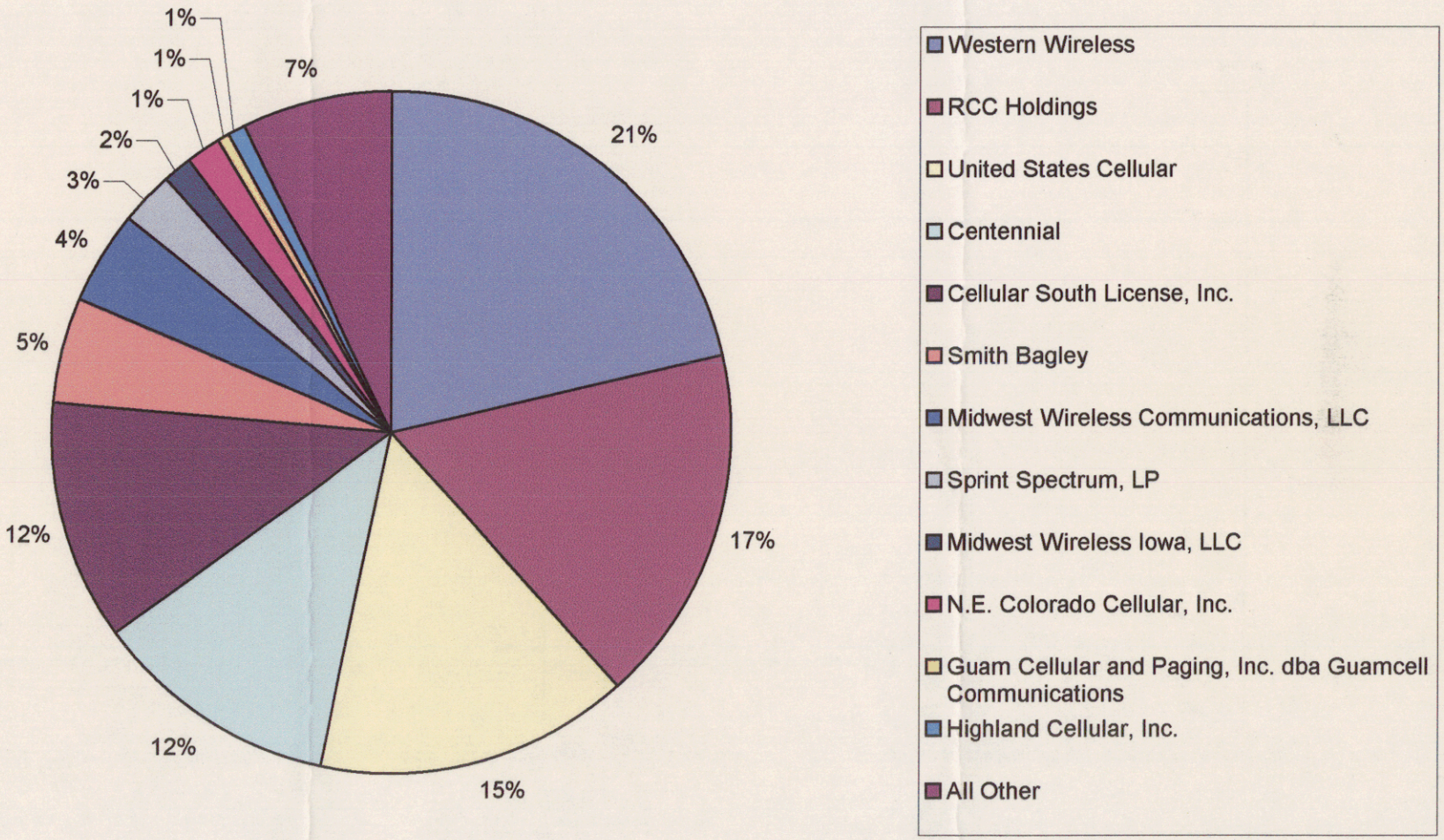
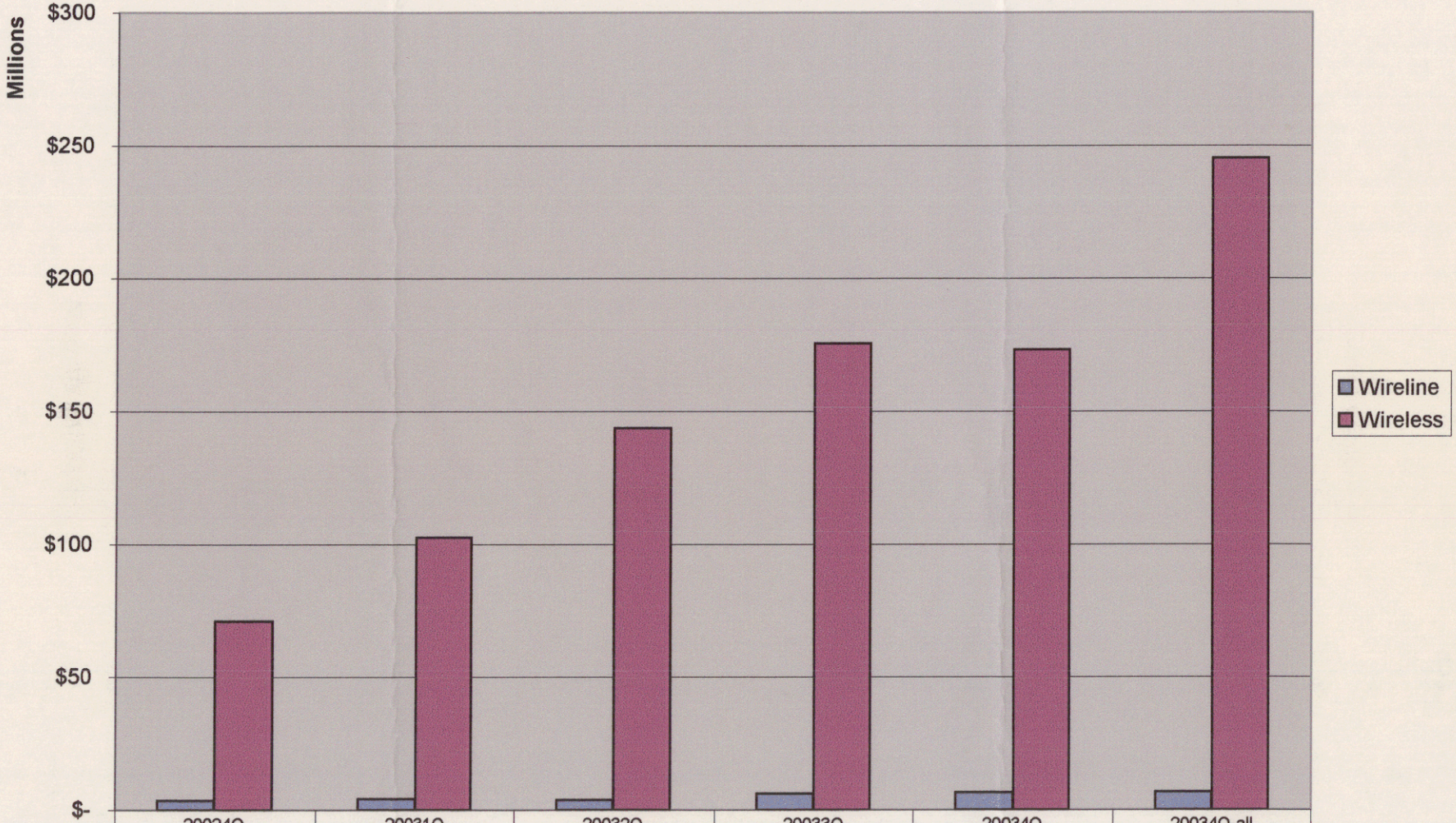


Chart 1: Projected Annualized CETC Support Growth, 2002-2003



	20024Q	20031Q	20032Q	20033Q	20034Q	20034Q-all
Wireline	3472572.101	4148689.118	3734808.84	6145356	6470760	6740748
Wireless	70978547.06	102475332.8	143664694.8	175471092	173115144	245249316