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December 12, 2003

Ex Parte

Ms. Marlene H. Dortch
Secretary
445 12th Street, SW
Washington, DC 20554

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

Dear Ms. Dortch:

Yesterday, Ann Rakestraw, Katherine O'Hara and Clint Odom held a conference call with the Federal-State Joint Board's Federal Staff: Bill Scher, Katie King, Vickie Byrd, and Cara Voth and State Commissioner Designees: Greg Fogleman, Joel Shifman, Larry Stevens, and Carl Johnson.

The attached presentation was the basis of discussion. Should you have any questions, please do not hesitate to contact me.

Sincerely,

/s/Clint Odom

Portability/ETC Process

Presentation Made to Federal-State Joint Board, CC Docket No. 96-45

December 2003

Key Principles

1. **Consumers pay for Universal Service, so there is widespread agreement costs must be controlled:**
   - "We must control the growth of the Universal Service Fund, mindful that consumers ultimately pay for achieving our universal service objectives." Testimony of Chairman Michael Powell, before the United States Senate Committee on Commerce, Science and Transportation (Oct. 30, 2003).
   - "[T]he increasing entry of wireless carriers and other competitors as eligible telecommunications carriers (ETCs) has raised questions about the long-term sustainability of the high-cost support mechanisms." Testimony of Commissioner Kathleen Abernathy, before House Committee on Energy and Commerce, Subcommittee on Telecommunications and the Internet (Sept. 24, 2003)
   - The current portability rules "threaten[ ] to enlarge the fund to an unsupportable size." Testimony of Joint Board member Billy Jack Gregg, before House Committee on Energy and Commerce, Subcommittee on Telecommunications and the Internet (Sept. 24, 2003)

2. **To preserve infrastructure in rural America, the high cost fund should subsidize *networks*, not uneconomic "competition."**
   - The fund cannot afford to subsidize "multiple competitors to serve areas in which the costs are prohibitively expensive for even one carrier." *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).

3. **The Joint Board should not adopt proposals that would lead to inadvertent growth in the fund size or increase regulatory and administrative burdens.**

Solution

- Adopt the Rural Task Force freeze on high cost loop support upon entry of a competitive ETC in rural carrier study areas.
- Eliminate duplicative universal service support by limiting high-cost support to one ETC per customer, rather than only to primary lines.
- Require UNE-based providers to meet the same standard as rural ILECs in order to receive high cost loop support.
- Do not impose additional regulatory requirements, for some carriers that should be eliminated for all carriers, like equal access.

The Joint Board should propose adopting the Rural Task Force freeze

- Without a freeze on per-line high cost loop support, when an ILEC loses lines to an ETC, it would simply re-calculate its support upward to compensate for the "lost" lines.

- Three years ago, the Rural Task Force warned that if rural ILECs were to lose a significant number of lines to competitive ETCs, this could result in excessive growth of the high-cost fund. This is now the case.

  - In 3Q2003, USAC projected $17.9 million in high cost loop support to competitive ETCs; by the first quarter of 2004, that amount is projected to be $31 million. That represents a 73% growth in just 6 months.

Support should be limited to one <u>ETC</u> per customer, rather than one <u>line</u>

- **Many parties oppose any proposal to limit support to only primary lines.**
  - Would create significant administrative problems
- **Unless the FCC also adopts a freeze on the amount of per-line support, a primary line rule actually would only *increase* growth of the fund.**
  - When an ILEC loses support for a line, the high cost formula is recalculated, so the incumbent would receives more support *per line* for the remaining lines. Because both the incumbent and competitive ETCs would get this increased per line amount, in areas where there is more than one ETC, the amount of support would grow as the ILEC lost lines.
- **Limiting support to one ETC per customer is a better way to contain growth of the fund, provide consumers with competitive choice, and ensure continued investment in rural infrastructure.**
  - Would limit dilution of support to carriers of last resort, thus preserving incentives for these carriers to invest in rural infrastructure
  - Could be accomplished with minimal administrative burdens, through customer self certification procedures
  - Competitively neutral, because support could go to either ILEC or competitive ETC

Competitive neutrality should be through less regulation, not more

- The existing rules are *not* competitively neutral, because they burden one class of carriers, and certain technologies, with regulations that do not similarly apply to competitors.
- The Joint Board should recommend removing asymmetrical regulatory burdens that apply to only one class of carriers, or only certain services. For example, the Commission should investigate whether the designation of more than one ETC in a geographic area will trigger a finding that the ILEC is non-dominant, and can be relieved of dominant carrier regulation.
- Competitive neutrality should be accomplished by removing regulatory requirements, not by broadening the scope of outdated regulatory burdens. The Joint Board should not propose the addition of "equal access" restrictions, which should be eliminated in the wireline world.
- Competitive ETCs should not get more support than would be available to the ILEC. UNE-based providers should only get high cost support if the UNE loop costs are higher than the national average. If competitive ETCs' costs are used as a basis for support, the level of support should be capped at the ILEC rate.

CALLS support should be preserved for its intended purpose

- The CALLS Order eliminated an inefficient system by increasing the cap of the SLC, and establishing $650 million per year fund to recover those amounts previously recovered through access charges.
- Because of CALLS, ILECs have been able to eliminate the PICC and CCL charges previously assessed. However, if CALLS support becomes insufficient, carriers will be forced to reinstate these charges.
- Wireless carriers and CLECs 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 CALLS support.
- The Joint Board should adopt the one-ETC-per-customer rule, which will still be competitively neutral, but will limit dilution of CALLS support from its intended purposes.