

November 12, 2003

Ex Parte Presentation

The Honorable Kathleen Q. Abernathy
The Honorable Nan Thompson
The Honorable Jonathan S. Adelstein
The Honorable Thomas Dunleavy
The Honorable Billy Jack Gregg
The Honorable Lila A. Jaber
The Honorable Kevin J. Martin
The Honorable Bob Rowe

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

Dear Members of the Federal-State Joint Board on Universal Service:

The Independent Telephone and Telecommunications Alliance (ITTA), the National Telecommunications Cooperative Association (NTCA), the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), the United States Telecom Association (USTA), and the Western Alliance are writing to express our strong and unanimous opposition to a primary line limitation on universal service support for high-cost carriers serving rural and insular areas (high-cost universal service program). We urge the Joint Board members to abandon any such proposal as you develop a recommended decision in the proceeding on high-cost support portability.

A primary line restriction is bad for rural America. It would inhibit investment in rural infrastructure, thereby defeating the underlying purpose of the high-cost universal service program. It is also at odds with the universal service principles in the Telecommunications Act of 1996 (1996 Act, the Act) that call for affordable and “reasonably comparable” services and rates in rural and high-cost areas as well as predictable and sufficient support. In addition, a primary line restriction on support is not competitively neutral as it would disproportionately harm rural incumbent local exchange carriers (ILECs) and their customers. Finally, a primary line policy would be administratively unworkable as it has already proven to be in a previous incarnation.

A PRIMARY LINE LIMITATION ON SUPPORT IMPEDES TELECOMMUNICATIONS NETWORK DEVELOPMENT

A primary line restriction on the high-cost universal service program does not comport with the realities of network design and cost. Networks are not built to fit the exact size of the current subscriber base. Building a network for a rural area involves a relatively long planning horizon and the creation of extra capacity to accommodate future growth in demand. Major components of the costs of a carrier's network are fixed and, within a reasonable range of output, do not go up or down significantly as individual lines are added or disconnected by consumers. For rural ILECs, deployed loops represent a real and recoverable cost regardless of whether or not they are being utilized at a particular point in time. In fact, most states require rural ILECs to maintain their lines to a subscriber, even if the subscriber has discontinued service, so as to be able to "stand ready" to provide service to that consumer within a specified period of time.

If service providers are uncertain of network cost recovery due to a primary line restriction on support, investment in rural network infrastructure will be inhibited. Before rural ILECs and other eligible telecommunications carriers (ETCs) will invest in high-cost infrastructure, they must have a reasonable expectation that they will recover their costs. Section 254(b)(5) of the 1996 Act states that support should be predictable and sufficient. A primary line restriction fails this statutory principle on both counts. Supporting only primary lines would stifle investment, since there would be no certainty as to how much support a carrier would receive and whether that support would be sufficient to recover its costs. Without investment in the network, rural consumers would no longer have access to services that are reasonably comparable to those available in urban areas, contrary to Section 254(b)(3). It does not make any sense to designate multiple ETCs in a rural service area, and then have a policy that curtails support to such an extent that no ETC has the predictable and sufficient funding necessary to recover their costs and encourage network investment. That would simply be a poor allocation of limited resources and defeat the very objectives that the high-cost universal service program is intended to achieve.

A PRIMARY LINE LIMITATION ON SUPPORT IS AT ODDS WITH THE 1996 ACT'S UNIVERSAL SERVICE PRINCIPLE OF AFFORDABLE AND REASONABLY COMPARABLE SERVICES AND RATES

There are some who argue that support for non-primary lines is not essential and that the purpose of the high-cost universal service program is to ensure affordable access to the network for every household, not every line. However, Section 254(b)(3) of the Act calls for rates in rural and high-cost areas that are affordable and reasonably comparable to the rates available in urban areas. Nowhere does the Act limit these objectives to primary lines. The fact is, under a primary line restriction, rates for non-primary lines in high-cost areas would, in some cases, no longer remain affordable, and in most cases would no longer be reasonably comparable to the rates available in urban areas. The Joint Board needs to keep in mind that non-primary lines are often used by rural consumers for information services such as dial-up Internet access and fax machines. These services are

particularly important to remotely located consumers who may be telecommuting to otherwise inaccessible jobs. Affordable and “reasonably comparable” rates for non-primary lines are also essential to small businesses in rural communities and for attracting new businesses to these areas. Thus, a primary line limitation on support has the real potential of hindering employment opportunities and economic development in fragile rural communities. These outcomes are antithetical to the Act’s universal service goals.

A PRIMARY LINE LIMITATION ON SUPPORT IS NOT COMPETITIVELY NEUTRAL

In addition, a primary line limitation on support is not competitively neutral as it would disproportionately harm rural ILECs and their customers. This is because most wireless carriers have only constructed facilities in town and along the major highways of a rural study area and any universal service support they receive may be used to “edge-out” into the less densely populated areas (although it should be noted that the current rules do not require them to use the support for this purpose). Therefore, if a primary line limitation on support were adopted, it would not significantly harm wireless carriers since, in most cases, they were already able to successfully serve their existing customers without any support prior to their designation as an ETC. What a primary line policy may do to wireless ETCs is cause them to scale back their buildout into the more sparsely populated areas. However, this would not harm their existing customers.

Rural ILECs, on the other hand, have already entered into a social compact with regulators and have made the investment to ubiquitously serve their entire study area, including the most remotely located, highest-cost customers. This otherwise uneconomic investment was made with the expectation that universal service support would allow for full cost recovery and the ability to charge affordable and “reasonably comparable” rates. If rural ILECs were to suddenly lose a significant amount of support as a result of a primary line limitation, the cash flow necessary to cover their capital obligations would be reduced, which would make financing harder to obtain in the future. This would lead to cutbacks in network investment, which would adversely affect the ability of ILEC customers to gain access to modern and advanced services that are comparable to those available in urban areas.

A PRIMARY LINE LIMITATION ON SUPPORT IS ADMINISTRATIVELY UNWORKABLE

Finally, it is not mere speculation to say that a primary line limitation on support would create significant administrative and enforcement problems that would be extremely difficult, if not impossible, to overcome. The Joint Board correctly noted in its portability Public Notice (para. 29) that “the Commission has previously acknowledged the administrative difficulties associated with applying different primary and non-primary residential [Subscriber Line Charge] SLC rates.” Specifically, in the CALLS Access Charge Reform Order, the FCC stated that eliminating the primary/non-primary line distinction “will go a long way to eliminate the customer confusion that now exists” and “eliminate the costs associated with administering this distinction, which are ultimately

borne by customers.”¹ The Commission also declined to adopt a primary/non-primary line distinction in the MAG Plan Second Report and Order, taking into consideration that the administrative burdens would be even greater for small rate-of-return carriers than for price cap carriers.²

With regard to the primary/non-primary line distinction for SLCs, surely some savvy consumers “gamed” the system in order to avoid the dollar or two difference between the two rates. Imagine the abuse of the rules that would occur when consumers living in high-cost areas saw a rate difference of \$20, \$50, or even \$100 or more between a supported primary line and an unsupported non-primary line. Even if this abuse could somehow be minimized through carrier enforcement, having carriers pry into the private living arrangements of their customers raises significant privacy concerns. For rural ILECs, not only would this be costly and administratively onerous, it would also destroy the goodwill they have established with their customers.

Moreover, the Joint Board was correct in its portability Public Notice (para. 29) to suggest that the problems of limiting support to primary lines may be magnified in a multi-carrier environment. In particular, it is likely that a new type of “slamming” would arise. Under a system where only the primary line receives critical universal service support, some carriers may be driven to switch consumers’ choice of primary line provider without their knowledge. Thus, the Joint Board would be importing the problems faced in the long distance market into the market for local service.

In conclusion, it is understandable that the Joint Board is concerned with the size and growth of the Universal Service Fund and seeks ways to contain it. However, first and foremost, the Joint Board must ensure that the measures it recommends to sustain the high-cost universal service program would not inadvertently defeat its fundamental statutory objectives of encouraging infrastructure investment in high-cost areas and making available affordable and “reasonably comparable” services and rates to rural consumers. A policy that limits support to primary lines would have such a result and must therefore be rejected.

¹ *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers*, CC Docket Nos. 96-262 and 94-1, Sixth Report and Order, *Low-Volume Long Distance Users*, CC Docket No. 99-249, Report and Order, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Eleventh Report and Order, 15 FCC Rcd 12962, 13002, para. 100 (2000).

² *Multi-Association Group (MAG) Plan Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Second Report and Order and Further Notice of Proposed Rulemaking, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifteenth Report and Order, *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation*, CC Docket No. 98-97, Report and Order, *Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, CC Docket No. 98-166, Report and Order, 16 FCC Rcd 19613, 19636, para. 47 (2001).

Sincerely,

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