

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Federal-State Joint Board on) CC Docket No. 96-45
Universal Service)

COMMENTS OF AT&T WIRELESS SERVICES, INC.

AT&T Wireless Services, Inc. (“AWS”) hereby submits its comments on the *Recommended Decision* of the Federal-State Joint Board on Universal Service (“Joint Board”) regarding the designation of eligible telecommunications carriers (“ETCs”) and the mechanisms for high-cost universal service support.^{1/} AWS urges the Commission to reject the Joint Board’s proposal to limit support to a single connection, so that consumers in rural and high-cost areas are not denied the opportunity to use a wireless ETC. In addition, the Commission should decline to add “equal access” or other onerous and competitively discriminatory requirements to the criteria for obtaining ETC status.

**I. THE COMMISSION SHOULD REJECT THE JOINT-BOARD’S
PRIMARY LINE PROPOSAL**

The Joint Board has failed to explain how its primary line recommendation comports with the Commission’s competitive neutrality requirements. All three “Scope of Support” mechanisms proposed by the Joint Board to implement the primary connection restriction are designed solely to ensure that rural incumbent local exchange carriers (“ILECs”) do not experience any reduction in total support regardless of whether

^{1/} *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Notice of Proposed Rulemaking*, FCC 04-127 (rel. Jun. 8, 2004) (“*NPRM*”) (requesting comment on *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Recommended Decision*, 19 FCC Rcd 4257 (2004) (“*Recommended Decision*”).

they lose lines to competitors.^{2/} They do not even acknowledge, much less attempt to mitigate, the harm that wireless carriers and other competitive ETCs will suffer through adoption of the proposal. Although the Joint Board correctly acknowledges that one of the Scope of Support mechanisms “could be inconsistent with the principle of competitive neutrality,”^{3/} the same is true for any method that provides subsidies to or “holds harmless” one type of carrier but not another.

Nor does AWS believe it is possible to develop an administratively feasible mechanism for distinguishing between “primary” and “secondary” lines. The Commission would be required to adopt complex definitions of primary and non-primary lines and establish some sort of balloting process to allow consumers to choose among the lines they currently have and may have in the future. The balloting design would have to resolve the inherent conflict between providing certainty to carriers by setting a specific period of time in which the support flow would be locked in to a particular line and flexibility to customers by allowing them to revise their choices if they so desire. Further, as a number of carriers point out, limiting the scope of high-cost support would “give rise to consumer gaming and a new type of carrier ‘slamming,’ and intrude on consumer privacy.”^{4/}

These problems are a recipe for substantial consumer dissatisfaction. Under any primary line scenario, consumers would have to predict precisely what their usage on

^{2/} The Scope of Support proposals are called restatement; lump sum; and hold harmless. *Recommended Decision* ¶¶ 73-76. As the Joint Board acknowledges, these mechanisms are intended to provide “some means of preventing or mitigating reductions in the support available to rural carriers.” *See Recommended Decision* ¶ 76. The Joint Board’s reference to “rural carriers” is synonymous with “rural ILECs” and plainly does not encompass all the other carriers, including wireless, that serve rural America.

^{3/} *Recommended Decision* ¶ 74.

^{4/} *Recommended Decision* at n.222.

each line will be for the relevant time period and, to the extent they guess incorrectly, they will experience real financial consequences. There appears to be no way to mitigate the certain confusion that will result from the receipt of ballots that instruct consumers to choose on which line (or future line) they potentially want to pay higher rates. As the Commission and state commissions know, many consumers are still trying to understand the selection process for competitive local exchange carriers (“CLECs”) that was instituted in the wake of the Telecommunications Act of 1996. Picking a line for universal service support would be far more complex than picking a new carrier.

AWS also takes issue with Joint Board’s implication that rural ILECs are the only carriers serving rural consumers and that competitive carriers are somehow “seek[ing] ETC status merely for arbitrage purposes.”^{5/} On a number of occasions the Commission has emphasized the importance of wireless service to rural communities. Again last month, it adopted an order reaffirming “its continuing commitment to ensure that wireless service offerings are available throughout the country, including to those living in rural America.”^{6/} It makes no sense to establish rules to “to promote the rapid and efficient deployment of quality spectrum-based services in rural areas”^{7/} while at the same time effectively eliminating one of the key incentives currently available to wireless

^{5/} *Recommended Decision* ¶ 75.

^{6/} News Release, *FCC Adopts Measures To Increase Rural Investment and Facilitate Deployment of Spectrum-Based Services in Rural Areas*, WT Docket Nos. 02-381, 01-14, 03-202 (July 8, 2004).

^{7/} *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum-Based Services, 2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services, Increasing Flexibility To Promote Access to and the Efficient and Intensive Use of Spectrum and the Widespread Deployment of Wireless Services, and To Facilitate Capital Formation*, WT Docket Nos. 02-381, 01-14, 03-202, *Notice of Proposed Rulemaking*, 18 FCC Rcd. 20802, ¶ 1 (rel. Oct. 6, 2003).

carriers to expand into sparsely populated and high-cost communities. Because its adoption would violate the Commission's competitive neutrality directive and undermine wireless carriers' efforts to serve rural consumers, AWS strongly urges the Commission to reject the Joint Board's primary line proposal.

II. THE COMMISSION SHOULD NOT EXPAND THE REQUIREMENTS FOR OBTAINING ETC STATUS

Although AWS is not necessarily opposed to the Commission establishing permissive guidelines for states to consider when designating ETCs in areas served by a rural carrier, it notes that the Commission recently adopted extensive guidelines in its *Highland Cellular* and *Virginia Cellular* decisions.^{8/} Before adding even more factors to the already complicated ETC process, it would be prudent to allow a sufficient period of time to determine whether the existing criteria are having the desired effect. AWS strongly disagrees with the Joint Board's suggestion that the existing process is not rigorous enough. Indeed, wireless carriers seeking ETC status today have met with substantial delay and obstruction, frequently failing to obtain regulatory approval of their ETC applications within the six-month period previously established by the Commission.

More importantly, however, many of the requirements suggested by the Joint Board appear designed to disqualify competitive carriers from obtaining support as opposed to offering meaningful public interest standards. For example, the Joint Board proposes that the Commission encourage state commissions to require competitive ETCs to provide equal access under certain conditions notwithstanding that the

^{8/} *Federal-State Joint Board on Universal Service, Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, *Memorandum Opinion and Order*, FCC 03-338 (re1. April 12, 2004); *Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, *Memorandum Opinion and Order*, FCC 03-338 (re1. January 22, 2004).

Communications Act specifically prohibits the imposition of equal access requirements on commercial mobile radio service (“CMRS”) providers. Such a proposal also ignores the fact that CMRS providers’ “bucket” rate plans do not distinguish between local and long distance connections and therefore do not readily lend themselves to application of an equal access requirement. Similarly, there is no statutory or policy basis for forcing CMRS carriers to comply with state requirements that otherwise would be considered rate or entry regulation in violation of Section 332(c) of the Communications Act. Attempts to compel competitive wireless carriers to emulate the ILECs’ wireline regulatory scheme in order to obtain USF support violates the Commission’s policy of competitive neutrality and unfairly burdens wireless carriers. Again, the net result of such regulatory gerrymandering could be to deny consumers the choice of a wireless ETC.

Finally, AWS agrees with the Joint Board that any per-line support benchmark would be arbitrary.^{9/} Rather than limit competitive entry based on figures derived from the total embedded costs of rural ILECs, it is time for the Commission to modify fundamentally its existing approach for distributing universal service funds to all carriers. In particular, the Commission should give serious consideration to Western Wireless’ proposal to cap high-cost support in an area upon competitive ETC entry and allocate the support among the ETCs based on market share.^{10/} Although a regime of this sort may have to be phased in to allow rural ILECs to adjust their business plans and practices, there is no evidence that rural ILECs or rural consumers would suffer any harm from its implementation.

^{9/} See *Recommended Decision* ¶ 44.

^{10/} See *Recommended Decision* ¶ 71.

CONCLUSION

For the foregoing reasons, AWS respectfully urges the Commission to reject the Joint Board's primary line proposal and other recommendations that would limit wireless carriers' ability to obtain universal service support.

Respectfully submitted,

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