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**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
THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER
ADVOCATES
ON THE RECOMMENDED DECISION
OF THE FEDERAL-STATE JOINT BOARD ON UNIVERSAL SERVICE**

I. INTRODUCTION

The Federal Communications Commission (“Commission”) seeks comment¹ on issues raised by the Recommended Decision (“RD”) of the Federal-State Joint Board on Universal Service (“Joint Board”) regarding the eligible telecommunications carrier (“ETC”) designation process required by 47 U.S.C. § 214(e)(2).² The Commission also seeks comment on issues surrounding the Joint Board’s recommendation that federal high cost support be limited to a single connection to the network for each customer.³

¹ *Notice of Proposed Rulemaking*, FCC 04-127 (rel. June 8, 2004) (“*NPRM*”).

² FCC 04J-1 (rel. February 27, 2004).

³ The RD “punted” the issue of the basis of support to the Commission’s “Rural/Non-Rural Review Proceeding.” RD at ¶ 4, 98. The Commission has recently referred those issues back to the Joint Board. Order, FCC 04-125 (rel. June 28, 2004).

The National Association of State Utility Consumer Advocates (“NASUCA”)⁴ comments herein on these issues.⁵ The support for single lines issue has engendered the most controversy; NASUCA will address it first.

As previously discussed,⁶ NASUCA’s perspective is both as representatives of those who are intended to benefit from universal service support and as representatives of those who pay the support. From that perspective, the main task of the Commission here is to ensure that the support directives of § 254 are implemented properly and efficiently, and are consistent with the statutory principle of sufficiency. As the Commission has previously held, “the principle of sufficiency encompasses the idea that the amount of support should be only as large as necessary to achieve the relevant statutory goal.”⁷ As explained below, removing support from non-primary lines ensures that support is sufficient, and rationalizes the ETC designation process. These goals are also achieved through a rigorous ETC designation process. Further, both measures ensure that services that are not eligible for support do not receive support.

⁴ NASUCA is a voluntary, national association of 44 consumer advocates in 42 states and the District of Columbia, organized in 1979. NASUCA’s members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. *See, e.g.*, Ohio Rev. Code Chapter 4911; 71 Pa. Cons. Stat. Ann. § 309-4(a); Md. Pub. Util. Code Ann. § 2-205(b); Minn. Stat. Ann. Subdiv. 6; D.C. Code Ann. § 34-804(d). Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (*e.g.*, the state Attorney General’s office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

⁵ The Commission also seeks comment on two relatively minor procedural matters. NASUCA reserves any comment on these matters for reply.

⁶ *See, e.g.*, NASUCA *ex parte* (March 31, 2004).

⁷ *See, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order on Remand, 18 FCC Rcd 22559 (2003) at ¶37.

II. The federal high-cost program should support only a single line per customer.

The key question of the Commission's inquiry is whether high-cost support should be limited to a single connection that provides a subscriber access to the public telephone network (sometimes referred to as the customer's "primary line").⁸

NASUCA's unequivocal answer to the question is, "Yes."

A. The purpose of high-cost support is to ensure basic access in all regions of the nation.

Section 254(b)(3) of the Act requires that "Consumers in all regions of the Nation, including low-income consumers and those in rural, insular and high-cost areas, should have **access** to telecommunications and information services, including interexchange services and advanced services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas." (Emphasis added.) Section 254(c) states that "Universal service is an evolving level of telecommunications services that the Commission shall establish periodically under this section, taking into account advances in telecommunications and information technologies and services."

In 1997 the Commission established the list of services that are currently included in the definition of "universal service."⁹ These services are set forth in 47 C.F.R. §54.101(a). The supported services encompass the list of telecommunications,

⁸ *NPRM*, ¶ 3.

⁹ The Commission has subsequently reconsidered the list of services included in the definition of "universal service" in 2003, and adopted no changes to the list. See, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 18 Rcd 15090 (2003) ("*Definitions Order*").

information and advanced services that ETCs are currently required to offer under Section 214(e)(1) of the Act.

Consistent with the wording of the Act, the Commission's current definition of supported services under Section 254(c) sets forth the basic **access** to the public switched telephone network that every customer can expect: voice grade **access**; local usage; touch tone; single-party service; **access** to emergency services; **access** to operator services; **access** to interexchange service; **access** to directory assistance; and toll limitation service.¹⁰ Also consistent with the requirements of the Act, the Joint Board's primary line recommendation requires that customers in all regions of the Nation, including those in rural and high-cost areas, have **access** to the telecommunications services included in the definition of "universal service."

Supporting a single line to each household ensures that all consumers have access not only to basic services, but also to interexchange, information and advanced services, all of which can be provided over a single line.¹¹ Multiple connections per household or business are not "essential to education, health, or public safety" or the other statutory factors set forth in 47 U.S.C. §254 (c)(1)(A)–(D)), and should therefore not be subject to

¹⁰ See, 47 C.F.R. §54.101(a)(1)-(9).

¹¹ This fact has been repeatedly recognized by the Commission. In *Rural Task Force Order*, the Commission acknowledged: "The public switched telephone network is not a single-use network. Modern network infrastructure can provide access not only to voice services, but also to data, graphics, video, and other services." *Rural Task Force Order*, 16 FCC Rcd at 11322, ¶ 200. In the *Computer III Remand*, the Commission stated: "With the addition of certain electronics to the telephone line, carriers can transform the copper loop that already provides voice service into a conduit for high-speed traffic." *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Universal Service of Broadband Providers, Computer III Further Remand Proceedings*, CC Docket Nos. 02-33, 95-20, 98-10, 17 FCC Rcd 3019 (2002) at ¶ 11 n. 19.

public support that burdens all customers.¹² Although it is essential that rural areas of this nation continue to receive adequate support for essential telecommunications services, under § 254 of the Telecommunications Act of 1996 (“1996 Act”) it is not essential to the accomplishment of this goal that all lines be supported.

There is no suggestion in the 1996 Act that all lines of all ETC’s are to be supported, nor is there any requirement that an unlimited number of wireless and non-primary lines be supported. Moreover, there is no legislative history that even implies that support for multiple lines per household is required to comply with the Act.¹³ Even though Section 254(b)(3) of the Act requires access to comparable services at comparable rates, the Commission has never read this requirement to require the same number of providers or the same type of access in every region of the country.

Section 254 of the Act requires that all Americans have access to the public switched telephone network, and all of the telecommunications, information and enhanced services that are available through the PSTN. Providing support to the primary lines for each household, as recommended by the Joint Board, ensures that this statutory goal is met.

¹² Given the number of wireless subscribers, it might be argued that wireless service meets the test of § 254(c)(1)(B) -- being subscribed to by a substantial majority of customers. As the Commission noted in the *Triennial Review Order*, however, wireless service is most appropriately characterized as a supplement to wireline service. *In the Matter of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338 et al., Report and Order and Order on Remand, FCC 03-36 (rel. August 21, 2003) (“*Triennial Review Order*”), ¶ 445. The correct consideration under § 254(c)(1) is, therefore, not the over 165 million wireless access lines (according to the Cellular Telecommunications and Internet Association; see <http://www.wow-com.com/>, accessed July 21, 2004) -- most of which are used as supplements to wireline service -- but the 3-5% of wireless subscribers who have made the competitive choice and use their wireless phones exclusively. *Triennial Review Order*, ¶ 445. This is no substantial majority.

¹³ In fact, the Legislative history of the Act clearly indicates that Congress expected the introduction of competition into the telecommunications industry to reduce the cost of universal service, not increase it. See, S. Rep. No. 23, 104th Cong., 1st Sess. 26.

In the *First Report and Order* the Commission recognized that support for multiple lines “may be inconsistent with the goals of universal service” but nevertheless decided to support those multiple lines.¹⁴ The Commission should use this opportunity to reverse its earlier mistake and to return to a system that is consistent with the goals of universal service. Universal service support should be used to provide access to supported services under Section 254(c), but not to artificially promote competition for those services. Universal service support that provides such access through support for a primary line to each household will be sufficient for the statutory purposes.¹⁵ There is no other single alternative to the current system that will be more effective in controlling the size and growth of the universal service fund, while fulfilling the core universal service goal of ensuring that a connection to the public switched network is available to every household and business.

B. Supporting only a single line per customer is essential for the future of universal service support in telecommunications.

The law directs that the Commission must not only maintain universal service, but must “preserve and advance” universal service. 47 U.S.C. § 254(b). In order to advance universal service, however, the Commission must first take measures to preserve it. This demands review of all aspects of the operation of the high-cost support mechanism to ensure that the fund is providing sufficient support for customers.¹⁶ This necessarily

¹⁴ First Report and Order, 12 FCC Rcd 8776, 8829, ¶¶ 95-96 (1997).

¹⁵ See RD, ¶ 64.

¹⁶ “The Act only promises universal service, and that is a goal that requires sufficient funding of *customers*, not *providers*. . . . The purpose of universal service is to benefit the customer, not the carrier. ‘Sufficient’ funding of the customer’s right to adequate telephone service can be achieved regardless of which carrier ultimately receives the subsidy.” *Alenco v. FCC*, 201 F.3d 608, 620-621 (5th Cir. 2000) (emphasis in original).

involves determination that the fund is supporting only services and carriers that actually need support.

As the Joint Board noted, “Currently, the support flowing to a high-cost area increases automatically when a competitive ETC is designated, according to the number of connections it serves.”¹⁷ Limiting support to a single line per customer, whether wireline or wireless, will eliminate the current support provided under the federal program for multiple networks and multiple lines per customer. Wirelines beyond a single connection would no longer be supported; equally, at most a single wireless connection per customer would be supported. Limiting support to a single line per customer would prevent the costly and inappropriate situation of a household with multiple connections from multiple carriers, all of which receive federal high-cost support.

The current support for non-primary lines is substantial. In 2003, NASUCA estimated that \$293 million (10%) of the support going to incumbent local exchange carrier (“ILEC”) ETCs was for non-primary lines.¹⁸ And NASUCA estimated that \$43 million of the support going to wireless ETCs (that is, all but 4% of the total wireless support) was for non-primary connections that complement the ILECs’ lines.¹⁹ Together, this represented \$336 million (10.5%) of the then-current \$3.2 billion high cost fund.

On the assumption that penetration of wireline second lines has continued to decline, the wireline amount might now be somewhat less than NASUCA estimated in

¹⁷ RD, ¶ 67.

¹⁸ See NASUCA Reply Comments (May 16, 2003) at 17-18.

¹⁹ Id.

2003 (perhaps \$275 million). Yet in the year 2003, wireless carriers received over \$120 million in high-cost funding, compared to the \$45 million in NASUCA’s May 2003 estimate. Eliminating all but 4% of \$120 million would save the fund almost \$115 million, for a total savings to the fund of \$390 million, an amount representing more than 12% of 2003 total high cost funding. The projection for 2004 is that wireless ETCs will receive almost \$230 million in high-cost funding (see chart below). As the percentage of the high cost fund received by wireless ETCs increases, so does the savings from limiting support to a single line per customer.

USAC recently began placing on its website information showing the portions of the high cost fund attributable to ILECs and competitive ETCs (“CETCs”), and then showing the division between wireless and wireline CETCs.²⁰ The following table combines this information:

CETC and TOTAL HIGH COST FUNDING (\$000)					
Year	CETC Funding	Total High Cost Funding	CETC Funding as % of Total	Wireless ETC Funding	Wireless ETC Funding as % of Total
1999	\$535	\$1,723,665	0.03%	\$535	0.03%
2000	\$1,494	\$2,516,760	0.06%	\$1,494	0.06%
2001	\$20,179	\$2,603,381	0.78%	\$16,050	0.62%
2002	\$47,483	\$2,982,000	1.59%	\$44,853	1.50%
2003	\$131,451	\$3,279,107	4.01%	\$126,696	3.86%
2004 (Q1-2 annualized)	\$238,594	\$3,380,316	7.06%	\$229,083	6.78%

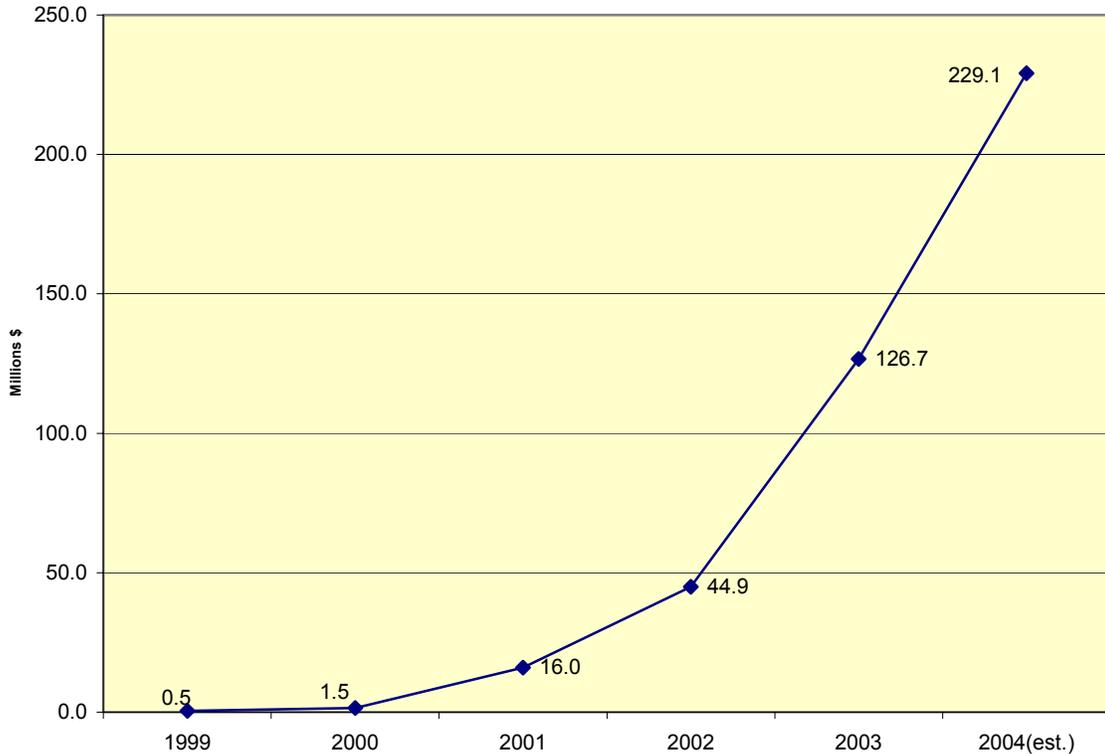
These numbers show that CETCs and especially wireless ETCs are consuming an ever-growing amount of high-cost funds. Wireless ETC support is the fastest growing portion of the high-cost fund. In fact, 66% of the growth of the fund over the last four quarters

²⁰ See <http://www.universalservice.org/hc/whatsnew/072004.asp#072704>.

can be attributed to CETCs. Most of this support is for non-primary or supplemental lines provided by wireless ETCs.

The following chart graphically displays the growth in wireless ETC funding:

**GROWTH IN UNIVERSAL SERVICE SUPPORT FOR WIRELESS CARRIERS
1999-2004**



The future of the fund is at risk if all lines of all ETCs in high-cost areas are supported. The Organization for the Promotion and Advancement of Small Telephone Companies (“OPASTCO”) estimated that if all wireless carriers became ETCs -- a not unlikely possibility given current policies -- the federal universal service fund (“USF”) would increase by \$2 billion in short order.²¹ The wireless ETCs have avoided

²¹ OPASTCO *ex parte* filing (January 28, 2003).

addressing OPASTCO's estimate, which was filed as an *ex parte* in this proceeding more than a year and a half ago.

The addition of \$2 billion to the high-cost fund would represent a further 27% increase in the \$7.368 billion total USF projected for 2007 in the study performed in 2003 by the Staff of the Commission.²² This would result in a concomitant increase in assessments on customers -- under any contribution mechanism²³ -- and would obviously be a matter of significant concern.

The Commission must address this concern by limiting support to a single line for each household. Support for one line, subject to competition for that support, is both efficient and more closely related to the legislative purpose for universal service support. Support for all competitors is wasteful and inconsistent with Congress' intent.

C. The Commission should follow the Joint Board's recommendations.

Based on the potential for excessive growth of the fund, it is time for the Commission to hearken to the Joint Board's recommendation:

We believe that limiting the scope of high-cost support to a single connection to the public telephone network would be more consistent with the goals of section 254 than the current system. Supporting a single connection to the public telephone network fulfills the goal of "reasonably comparable" access to all regions of the Nation. Section 254(b)(3)'s objective is that consumers in rural areas have access to rates and services, including advanced services, that are reasonably comparable to those available in urban areas. Supporting a single connection provides access to all of the services included in the definition of universal service under

²² Wireline Competition Bureau Staff Study of Alternative Contribution Methodologies, CC Docket 96-45, et al., "Commission Seeks Comment on Staff Study Regarding Alternative Contribution Methodologies," Public Notice, FCC 03-31 (rel. February 25, 2003) ("Staff Study").

²³ See NASUCA Comments (June 3, 2003) at 4.

section 254(c), because each ETC is required to provide all of the supported services.²⁴

This recommendation echoes that made by the Joint Board in 1996 in its very first

Recommended Decision:

We find that support for designated services provided to residential customers should be limited to those services carried on a single connection to a subscriber's principal residence. We find that supporting one connection per residence is consistent with section 254(b)(3), which states that access to services for low income consumers and those in rural, insular and high cost areas should be reasonably comparable to that available in urban areas. We conclude that support for a single residential connection will permit a household complete access to telecommunications and information services. All supported services, including access to emergency services, would be available to a household by providing support for this residential connection. The Joint Board, however, declines at this time to provide support for other residential connections beyond the primary residential connection. Support for a second connection is not necessary for a household to have the required "access" to telecommunications and information services.... Accordingly, we conclude that eligible carriers should receive support for designated services carried on the initial connection to a customer's primary residence.²⁵

In 1997, the Commission declined to accept the Joint Board's recommendations. Yet in doing so, the Commission stated, "We are also mindful that overly expansive universal service support mechanisms potentially could harm all consumers by increasing the expense of telecommunications services for all."²⁶ The Commission's fears of an "overly expansive" support mechanism have now been realized as a result of the current mechanism that supports multiple lines from multiple carriers for a single household or an individual consumer.

²⁴ RD, ¶ 62.

²⁵ Recommended Decision, 12 FCC Rcd 87 (1996), ¶ 90.

²⁶ Report and Order, 12 FCC Rcd 8776 (1997), ¶ 95.

Restricting support to primary lines will ensure basic access to everyone, but end excessive support to multiple lines in multiple networks. Restricting support to primary lines is the most effective mechanism capable of limiting the amount of support to ETCs in rural areas.²⁷ With a primary line restriction, the high cost fund will grow in the future only as investment grows or primary lines grow.

D. Restricting federal support to primary lines will not harm consumers or carriers in rural areas.

To the extent that the universal service fund is kept in check by eliminating support for non-primary lines, all customers who pay into the fund benefit. Many in the industry have alleged, however, that restricting support to a single connection per customer will harm consumers in rural areas. This is supposedly due to the impact of the loss of support currently received by incumbent carriers serving in rural areas.

The incumbent carriers may indeed lose support.²⁸ The loss of support will come in two forms: First, loss of support for the carrier's own non-primary lines, and second, loss of support as competing carriers take the incumbent's primary lines.

With regard to the first point, the number of non-primary residential lines has been on the decline for years and continues to shrink. Further, the transition mechanisms discussed below will ameliorate this problem for rural carriers.

With regard to the loss of ILEC lines to other carriers, there will be no loss of support to an incumbent rural carrier unless a state certifies an additional ETC in the

²⁷ Other means -- including basing support for more carriers on forward-looking costs -- will be addressed in the "Rural/Nonrural Review Proceeding." See footnote 3, *supra*.

²⁸ See below for discussion of transition mechanisms.

carrier's service area.²⁹ The presence of an additional carrier or carriers will itself create competitive pressure to keep rates low. Further, it should be clear that the alternative, under current rules, is that carriers **do not** lose support as other carriers enter and take their lines. Retention of the current rules will only needlessly increase the fund as described above and, as described below, transform universal service support from a benefit to consumers into a revenue preservation mechanism for carriers.

Many have argued that limiting support to primary lines will automatically or inevitably raise the price of second wirelines in rural areas, resulting in second line prices that are no longer reasonably comparable in price to urban second lines. These arguments overlook a number of key factors.

First, second line service has minimal incremental cost, as discussed in the next section. And second, the rates for second lines remain subject to the jurisdiction of state ratemaking and universal service efforts.

The 1996 Act does not direct that rural rates will be equal to urban rates. Rural rates are supposed to be "reasonably comparable" to urban rates. In the recent Order on Remand, the Commission determined that rural rates for non-rural carriers that are within two standard deviations of the national average urban rate will be deemed reasonably comparable to urban rates.³⁰ Using this standard, rural second line rates that are within two standard deviations of the national urban rate for second lines would also be reasonably comparable to urban second line rates.³¹ There has been no showing that the

²⁹ As discussed below, the standards for designation of ETCs should be raised.

³⁰ Order on Remand, ¶ 38.

³¹ Urban second line rates tend to be equal to primary line rates.

withdrawal of federal support from second lines would produce rural second line rates that exceed this standard.

Some have expressed concerns about specific uses of second lines that allegedly will be problematic if non-primary line support is withdrawn. For example, these parties raise concerns about higher costs for Internet access, data lines or fax lines, which would make it harder to attract telecommuters to an area. Yet as the RD points out, “Section 254(b)(3) encourages access to connectivity, however, not unlimited connections at supported rates.”³² Neither Internet access nor data lines nor fax lines have been designated by the Commission as services to be supported. Moreover, these concerns assume that carriers will seek a rate design that makes a second line more expensive than a primary line. Based on the underlying costs, such a structure would be illogical and contrary to carriers’ incentives to sell second lines.

Others have argued that limiting support to primary lines will limit the growth of wireless service in rural areas. These arguments are also groundless. Wireless carriers have historically served rural areas and built out their networks without federal support (as contrasted to ILECs that have always had such support in one form or another). Moreover, wireless license holders in rural service areas (“RSAs”) have an independent obligation under federal rules to build out their networks within their licensed areas.

Rural wireless customers are not entitled to receive service at rates that are reasonably comparable to urban wireline rates. The valid comparison is to urban wireless rates. There has been no showing that rural wireless customers will pay rates that are not

³² RD, ¶ 63.

reasonably comparable to urban wireless rates if support for second lines is eliminated. Again, there is no requirement that rural rates be *equal to* urban rates.

As the RD points out, “Mobility is not a supported service. Deployment of rural wireless infrastructure is an important policy goal, but the reasonable comparability principle does not justify supporting multiple connections to achieve it.”³³

Some have argued that restricting support to a single line per customer will restrict investment in rural areas. Seen another way, however, the restriction will limit uneconomic investment by carriers gaming the existing system. Further, all ETCs will continue to have an obligation to offer service throughout their service areas.

As painful as it may be for rural carriers to hear, encouraging investment in rural areas is not the primary purpose of the federal high-cost fund. That purpose is for consumers in rural areas to have access to the supported services at rates comparable to those in urban areas. Thus, for example, broadband service and investment will be supported when broadband is added to the definition of supported services.

E. Basing Support on Primary Lines Will Rationalize the ETC Designation Process

As discussed above, the Commission’s current rules allow support for all lines provided by all ETCs in high-cost and rural areas. Moreover, even if an incumbent rural carrier loses lines to a competitive ETC, the overall level of support for that incumbent carrier does not decrease. Ironically (and comically), under current rules the per line support for both the incumbent and the competitive ETC **increases**, placing even more

³³ Id. (footnotes omitted).

burden on the federal high-cost fund. In short, the current high-cost support system is a “no-losers” system.

For many states, this “no losers” aspect of the current system presents a temptation and incentive for the state commission to designate as many ETCs as possible. Under the current system, the more ETCs that are designated in high-cost areas, the more federal USF money flows into a state. Most importantly, an individual state has no responsibility to pay for the higher demand it places on the USF system when it designates multiple ETCs. In fact, under the current system -- which supports all lines of all ETCs -- a state would be acting against its own self-interest if it placed reasonable requirements on new applicants for ETC status, or placed restrictions on the number of ETCs in high-cost areas. Fewer ETCs would mean less federal money flowing into the state.

The only way to counteract this perverse incentive is to amend current rules to limit support to a single line per household. This action will not only reduce the excessive growth in the USF, but will rationalize the ETC designation process in the states. Adoption of the primary line restriction will transform high-cost funding from a “no losers” system into a “zero sum game” -- if one ETC wins the primary line support, the other ETC loses it. In short, ETCs will have to compete for the high-cost subsidy available for serving customers in high-cost and rural areas.³⁴ If states do not believe that a particular rural area or a particular incumbent rural carrier can stand to have the existing level of USF support reduced or diluted, under a primary line restriction it will have an

³⁴ This competition for support among ETCs should drive down the cost of universal service, as originally conceived by Congress. See, House Report No. 104-204(I)(1995). As previously mentioned, current rules which support all lines of all ETCs, is leading to excessive growth in the high-cost fund.

incentive to limit the number of ETCs in that service area, using the “public interest” requirement found in Section 214(e)(2) of the Act. This approach has already been endorsed by the Fifth Circuit: “To the extent petitioners [rural LECs] argue Congress recognized the precarious competitive positions of rural LEC’s, their concerns are addressed by 47 U.S.C. §214(e), which empowers state commissions to regulate entry into rural markets.”³⁵

As discussed below, the Commission should adopt strict standards to guide state designation of ETCs. However, no other single issue will do more to rationalize the ETC designation process than limiting high-cost support to a single line per household. For this reason alone, the Commission should adopt single line restriction as recommended by the Joint Board.

F. Parties advocating continued support for multiple connections have failed to address the cost difference between providing primary and additional lines.

Few parties have addressed the financial *need* to support non-primary lines. Given the architecture of both wireline and wireless facilities, it is very likely that the cost of subsequent non-primary connections by either type of provider is much lower than the initial connection.

AT&T correctly illustrated the cost difference between primary and secondary lines:

When LECs construct new network facilities, such as for a new subdivision, they open up a single trench or put up a single set of poles, then lay multiple loops to each home or business in that facility. The costs of digging the trench or erecting the poles must be incurred fully in order to provide first-line service. There are few incremental costs to providing

³⁵ *Alenco v. FCC*, 201 F.3d 608, 621-622 (5th Cir. 2000).

additional connections. By providing support for first lines only, the High Cost Support mechanisms would comport with this reality.³⁶

Second lines provided by a single firm to a single household or business also tend to be more profitable than the initial line. Therefore, second lines may be provided at an affordable price in rural areas even without support, obviating concerns about substantial increases to the price of second lines.³⁷

G. The USF is not intended to be a cost-recovery or revenue guarantee mechanism.

The Fifth Circuit explained that “[t]he Act does *not* guarantee all telephone service providers a sufficient return on investment... The Act only promises universal service, and that is a goal that requires sufficient funding of *customers*, not *providers*.”³⁸ Some have opposed supporting only a single connection per customer out of a concern that this will disrupt rural carriers’ revenue streams. The 1996 Act added specificity and detail to the federal universal service mechanisms, but did not create an entitlement program. Whether or not the pre-Act mechanisms could be looked at as revenue guarantees, the 1996 Act changed all that.

The same response is possible to those who argue that limiting support to a single line per customer would make support not “sufficient,” as directed by § 254(b)(5). At base, this is an argument that the support would not be sufficient to maintain a guaranteed

³⁶ AT&T Comments (May 5, 2003) at 16.

³⁷ In most cases, wireline facilities are installed so as to provide at least two connections for every customer. Presumably, turning on the second connection causes little incremental cost to the local carrier.

³⁸ *Alenco*, 201 F.3d at 620.

revenue stream for rural carriers. As the Joint Board stated, “supporting primary connections better fulfills the sufficiency requirements of the Act.”³⁹

As discussed above, high-cost funding is a mechanism to produce quality services at just, reasonable and affordable rates, and to allow rural customers access to services reasonably comparable -- at reasonably comparable rates -- to those available in urban areas.⁴⁰ This does not make the USF a cost-recovery guarantor for rural carriers, just as it is not a cost-recovery guarantor for non-rural ETCs.

Further, given the array of transition mechanisms available to the Commission, rural carriers may not lose total revenue at the outset of a transition to support for only primary lines. In the longer term, there are many other technological and regulatory trends -- such as the move of more and more telecommunications traffic to voice over Internet protocol (“VoIP”) -- that could threaten the current revenue stream for rural ILECs. Such concerns cannot be addressed in this proceeding.

H. Limiting support to a single line per customer is competitively neutral.

The Commission asks for details on “competitively neutral” rules and procedures that could be adopted to administer a limitation of support to a single connection per customer.⁴¹ NASUCA submits that, fundamentally, supporting a single line per customer is in itself competitively neutral, especially where the customer gets to choose which line

³⁹ RD, ¶ 64.

⁴⁰ 47 U.S.C. §§ 254(b)(1), (2), (3).

⁴¹ NPRM, ¶ 3.

is to be supported. Equally importantly, supporting multiple lines per customer in the name of promoting competition is inherently **not** competitively neutral.⁴²

As the RD states, limiting support to a single connection “would not artificially encourage entry by competitive ETCs in areas where a rational business case cannot be made absent support for *all* connections.”⁴³ And limiting support means that “rural carriers will no longer be insulated from the effects of universal service competition, because they would lose per line support to the extent that they lose primary connections.”⁴⁴

The USF should be competitively neutral, but it should not be used to artificially *create* competition.⁴⁵ Any such policy would be doomed to failure and would represent a particularly inefficient use of public support.

Interestingly, both incumbents and competitors oppose limiting support only to primary lines. The ILECs say that a primary line restriction would not be competitively neutral because they would be harmed; wireless ETCs say that the restriction would not be competitively neutral because they would be harmed. They cannot both be right. The fact is that limiting support to primary lines will ensure that the high cost support system

⁴² Especially under the current mechanism, where CETCs get support based on the ILEC’s embedded costs. See footnote 3, *supra*.

⁴³ RD, ¶ 69 (emphasis in original).

⁴⁴ *Id.*, ¶ 70. As the RD also notes, if the Commission adopts a “hold-harmless” mechanism, incumbent carriers would not lose support if other carriers won primary lines. As discussed below, that is, in fact, the main argument against adopting a “hold harmless” mechanism.

⁴⁵ The most frequently-expressed concern in the Commission’s (and the D.C. Circuit’s) proceedings concerning the statutory impairment standard has been to **prevent** subsidized competition.

is competitively neutral for all parties, and that all ETCs will compete for the universal service support.⁴⁶

It is important that the Commission act now to send the right signals to all players in the telecommunications market. NASUCA has consistently urged the Commission to make clear in its ETC orders that individual ETC decisions should not be relied on by future applicants, and cannot form the basis of generic policy.⁴⁷ Competitive business plans should not be formulated in reliance on public high-cost fund support unless, as discussed below, the competitor offers a reliable, affordable substitute for the basic exchange service that is available to all households in the service area and subject to sufficient regulation to protect its customers. NASUCA again emphasizes that the Commission should not base its public policy decisions on the business plans of current or future ETCs, but on the fulfillment of statutory goals and priorities.

CETCs and ILECs alike must be prepared to compete for high-cost fund support on a customer-by-customer basis. A system that would allow each new competitive entrant to impose incremental costs on all existing telecommunications customers is, as discussed above, unsustainable and inconsistent with universal service goals.

Unfortunately, under current rules, such incremental support is available to existing carriers that are granted ETC status, even if those carriers provide no service that they would not have otherwise provided at rates that could be just as high as they would be without support. Currently, there is little doubt that the vast majority of CETC lines

⁴⁶ It must be remembered that there will be no competition for universal service support unless and until an additional ETC is designated within a study area. As discussed below, the states and the Commission should restrict the number of ETCs in rural study areas receiving high levels of support.

⁴⁷ See, e.g., NASUCA ex parte (February 9, 2004) at 2-3.

are secondary lines, especially when the CETC is a wireless carrier. If it will be more difficult for wireless carriers than ILECs to compete for the primary line designation, it will be because wireless carriers have been unable to provide competitive universal service connections in accordance with the criteria set out in Section III, below.

Some, including the United States Telecom Association (“USTA”), have argued that if a state decides to grant ETC status to multiple carriers, then the state should pay for the additional cost of promoting competition in high-cost areas by means of a state USF.⁴⁸ USTA’s proposal should not be adopted since it is neither competitively nor technologically neutral, and would tend to entrench the incumbent ETC. Under USTA’s proposal, only an incumbent ETC would be eligible for federal support, while other ETCs designated under § 214(e) would have to wait for additional support to become available from the state. Such a system would contravene the requirement in § 214(e)(1) that all ETCs be eligible for federal support under § 254.

Although NASUCA does not support this proposal, a variation of the proposal may be appropriate to consider. As the RD notes, if an individual state wants to provide support for secondary lines, it should be allowed to do so, but it must be willing to pay for the additional lines from state resources.⁴⁹ This approach maintains competitive and technological neutrality -- whichever company is designated as primary wins the federal support -- but leaves it up to each state how much more it is willing to pay to promote competition in high-cost areas. However, the cost of support for additional lines should no longer be the responsibility of the federal USF. As noted by the RD, under § 254(f), a

⁴⁸ See, e.g., USTA Comments (May 5, 2003) at 14-15.

⁴⁹ RD, ¶ 66.

state may adopt additional standards or definitions for its own USF, so long as these standards and definitions do not “burden Federal universal service support mechanisms.”⁵⁰

I. Reasonable methods should be adopted to allow consumers to designate their primary line.

Customers with multiple lines per household should be able to designate their primary line so that that line can receive high cost support. That choice should be recognized through a balloting process, as detailed in Section J., below.

Allowing the customer to choose is the ultimate expression of the consumer sovereignty that is supposed to apply in a competitive market. As the RD states, allowing the customer to designate a primary line “would allow consumers – the intended beneficiaries of universal service – to decide whether an ETC’s service is ‘truly a substitute for basic universal service.’”⁵¹

Opponents of a primary line support policy argue that it will be difficult to determine which line is primary and which lines are not. Although there may be practical difficulties in transitioning to a primary line support system, these administrative issues can be overcome, as they have been in the past. The difficulties in identifying primary lines -- whatever they might be -- do not justify continuing to support all lines. And no one seriously contends that the cost of identifying primary lines outweighs the cost of continuing to support second or additional lines.

⁵⁰ Id.

⁵¹ Id., ¶ 82, quoting NASUCA’s comments (internal footnote omitted).

Some have argued that allowing customers to designate their primary line will place carriers in the position of fighting over the customer designation -- in other words that there will be competition for the designation. They predict that slamming will result.⁵² Of course, concerns over slamming arise only where customers can choose.

Rather than assuming abuse by market participants, the Commission should assume that competition will benefit consumers and that slamming rules will be enforced. The Commission and the states have the necessary authority and tools to deter such behavior.⁵³ Equal access in the wireline long-distance market has certainly resulted in substantial net benefits for consumers even if slamming has occurred in a small percentage of transactions.

Some predict that single line support will result in “bribes” to the subscriber and warn that adverse financial results will occur as they did when interexchange carriers (“IXCs”) paid customers to switch after equal access was required.⁵⁴ This argument appears to suggest that equal access was a mistake because it turned out that carriers became subject to competitive forces. Primary line designation will create competition, as did equal access. These warnings by some commenting carriers should be viewed with skepticism, because they would naturally prefer not to compete for support.

It may, in fact, be true that providing support to only one line per customer provides opportunities for gaming the system – opportunities for carriers and for

⁵² See RCA/ARCC Comments (May 5, 2003) at 27-28; see also NRIC Comments (May 5, 2003) at 24.

⁵³ See WUTC Comments (May 5, 2003) at 17.

⁵⁴ See RTIA Comments (May 5, 2003) at 25.

customers. Yet the alternative is continuing to support multiple lines from multiple carriers for each customer.

Under a system where only primary lines are supported, there may be a small amount of fraud and abuse -- but under current rules, *all* support for secondary lines could be considered a waste of program dollars. Finally, the Commission may take note of the substantial strengthening of USAC's collection and enforcement efforts. As a result of new federal debt collection tools and vastly increasing auditing budgets, it is much less likely that USF program participants will engage in fraud or abuse – or get away with it if they try.

Pessimism about the feasibility of new administrative tasks is premature before anyone has designed and implemented systems to carry out the desired functions. Given the billions of dollars at stake in the current inefficient system where subsidies are available for every line, and where every type of carrier can become an eligible recipient, the administrative burdens will be small compared to the potential benefits of a more efficient system of universal service support. This is especially true because the alternative to restricting support to a primary line is granting support to all lines, whether or not they need support.

J. NASUCA's proposals for the balloting process

NASUCA proposes as follows:

- Carriers should be required to submit uniform ballots to customers using a form similar to the one in Appendix A.
- Carriers should be required to retain all returned ballots for future audit.
- The primary line for customers submitting multiple ballots should be the first one postmarked. If, by chance, two same-date ballots are received, the one in the name of the customer of record should be accepted.

- USAC’s computer systems should reject a second primary line designation for one address.
- Carriers should report primary lines to USAC on a quarterly basis.
- Carriers should be free to compete for the designation as “primary.”
- Customers should be permitted to change primary line designation only once every six months.

The Commission should allow a reasonable transition period within which consumers could exercise their choice if they have more than one line or if they are served by more than one ETC. However, the Commission must devise a system to deal with customers who fail to indicate a choice by the end of the transition period, as the Commission did when customers were given the choice of long-distance carriers some twenty years ago. One way to determine the primary line would be to designate the initial ILEC line as the default primary line.⁵⁵ (This is the approach taken on the sample ballot in Appendix A.) Another alternative is to require a ballot to be submitted by every customer with multiple lines, which entails more administrative burden.

A default assumption that the first ILEC line receives support will reduce the likelihood of sudden revenue shifts for the ILECs. Perhaps most importantly, in the absence of an affirmative customer choice to rely on CETC service, the Commission can be certain that core universal service services are being reliably provided by means of the ILEC’s line.

Of course, there should be some flexibility for unusual circumstances, such as when unrelated persons reside at a single address. These same problems are encountered

⁵⁵ CETCs would, of course, be free to induce their customers to declare that the CETC’s line is the primary line at the next six month interval.

in applying subscriber line charges (“SLCs”), approving Lifeline eligibility and in designating primary long distance carriers, and are dealt with on a daily basis by carriers, state regulators and the Commission. The procedures for dealing with conflicting primary line designations would become routine.

K. The Lifeline program has always supported only primary lines without undue administrative burdens.

The Joint Board’s recent Recommended Decision concerning the Lifeline and Linkup programs describes the Lifeline program as follows: “Lifeline provides low-income consumers with monthly discounts on the cost of receiving telephone service for *a single telephone line* in their principal residence.”⁵⁶ Although the Lifeline program does not permit discounts on secondary lines, and while there is no doubt that many Lifeline customers have more than one connection, primary line fraud or abuse has not been a problem in the Lifeline program. Many of the warnings about distinguishing primary and other lines raised by various commenters could apply equally to the Lifeline program. For example, when more than one unrelated individual shares a residence, how does USAC or the ILEC determine whether the line is a primary line eligible for low-income support? The experience with the Lifeline program demonstrates that these issues are not so difficult that they interfere with effective administration of the program.

The comparison with the Lifeline program also suggests the need for consistency in the universal service programs. NASUCA cannot identify any good reason that multiple lines of multiple carriers should be supported in the high-cost programs while only single lines to primary residences should be supported in the Lifeline program.

⁵⁶ Recommended Decision, FCC 03J-2, 18 FCC Rcd 6589, ¶ 4 (citing 47 C.F.R. §54.401(a)(2)) (emphasis added).

L. The Commission should adopt transitional measures for rural carriers to mitigate the impact of the shift to supporting only a single line per customer.

As discussed above, customers should be allowed to choose their primary line but for customers who fail to choose, the ILEC line should be designated “primary” by default. A presumption that the first ILEC line will receive the support will reduce the likelihood of sudden revenue shifts for the ILECs. This is one transition mechanism that should be adopted. Others mechanisms discussed in the RD should be rejected, as discussed below.

In this area as in others, it is important to maintain the distinction between rural carriers (especially smaller rural carriers) and the non-rural carriers. For example, if the Commission is concerned about the impact of this change on rural incumbent carriers, support for second lines could be phased out within five years for rural ILECs with fewer than 50,000 access lines within a state and within two years for rural carriers with more than 50,000 access lines.

The RD presents three alternatives as transitional mechanisms for rural carriers: 1) Restating high-cost support upon the adoption of a primary line restriction; 2) providing a “lump sum” payment; or 3) adopting a “hold harmless” mechanism.⁵⁷ Of these, only the first should be adopted, and then only for rural carriers with fewer than 50,000 access lines within a state.

As the RD notes, “The total amount of high-cost support flowing to an area served by a rural carrier could be restated in terms of support *per first line*, rather than support *per line*, without any effect on the amount of support received by the rural carrier

⁵⁷ RD, ¶ 73-75.

at the time support is restated.”⁵⁸ As the RD also notes, currently, “[r]ural carriers are eligible for high cost support based on total embedded costs averaged on a study-area level.”⁵⁹

A numerical example might be helpful. A hypothetical rural carrier receives \$100,000 per month from USAC in high-cost support, based on its embedded costs. The carrier has 5,400 lines, of which 400 are second lines to specific residences. If support were based on all lines, the carrier receives \$18.52 per line in support.⁶⁰ If support were limited to the primary lines, the carrier would then receive \$92,593 on a per-primary line basis, a reduction of 7.4% in total support. Restating or “rebasing” support would mean that the carrier would receive \$20 in support for each of its current primary lines, and would continue to receive a total of \$100,000, *ceteris paribus*, as long as it maintained 5,000 primary lines. Only if its lines fell below 5,000 would support diminish.

In this context, it is important to differentiate between the rural and non-rural support mechanisms. The non-rural mechanism, based on a forward-looking cost model, produces per line support that is divorced somewhat from the incumbent’s network and does not vary with competitive losses by the incumbent. The rural support mechanism, on the other hand, is based on embedded costs of the incumbent. As a result, rural per-line support amounts vary substantially with changes in number of lines served by the incumbent.

⁵⁸ *Id.*, ¶ 73 (citation omitted; emphasis in original).

⁵⁹ *Id.* (citation omitted). As discussed in other comments in this proceeding, NASUCA submits that it is time for the Commission to transition the larger rural carriers away from support based on embedded costs.

⁶⁰ $\$100,000/5,400 = \18.52 .

The second alternative discussed does not increase per-line support when support is limited to primary lines; instead it keeps the rural carrier's support the same as before the limitation by giving the ILEC a lump sum payment of the difference between cumulative primary line support and its current high-cost support. In the previous example (\$100,000 per month support and 5,400 lines, of which 400 are second lines), currently, based on all lines, the carrier receives \$18.52 per line in support. If support were limited to the primary lines, the carrier would then receive \$92,593 on a per-primary line basis, a reduction of 7.4% in total support. The "lump sum" alternative would pay the carrier the \$92,593 plus the lump sum of \$7407, such that its total support would remain \$100,000.

This alternative is supposed to discourage arbitrage by CETCs, by not increasing the level of per-line support when the single-line limitation is imposed.⁶¹ In the restatement hypothetical, per-line support would increase from \$18.52 to \$20.00, or 8%. This sort of differential is unlikely to incent any carrier to undertake the numerous obligations required of an ETC.⁶² The hypothetical is based on a carrier with 7.4% second lines⁶³; only where the ILEC had a substantially greater proportion of second lines would the opportunities for arbitrage be substantial.

⁶¹ Id., ¶ 74. Of course, if the CETC's support were not based on the ILEC's costs but on the CETC's own costs, this arbitrage would not be possible. See footnote 3, supra.

⁶² Especially under the heightened standards set out in Section III, below.

⁶³ $400/5400=0.074$.

In addition, as noted by the RD,⁶⁴ by giving these lump sum payments only to the ILEC, this alternative is not competitively neutral. The restatement alternative gives all carriers the same level of per-line support.

Under the first two alternatives, the ILEC would lose support for each primary line that a CETC captured. The last alternative discussed in the RD is the “hold harmless” approach, which would continue the same level of support for the ILEC no matter how many primary lines it lost.⁶⁵ CETCs would, however, get support for each primary line they won. Clearly, this alternative is not competitively neutral. But more importantly, it largely fails to accomplish – at least for rural carriers – the main goal of limiting support to a single connection per customer: that is, limiting the growth in the high-cost fund.

The RD identifies a key purpose of the “hold harmless” alternative as supporting the ILECs’ revenue streams.⁶⁶ As discussed in Section G., supra, however, such purposes are not within the directives of Section 254.

Of the three alternatives discussed by the RD, only the first (restating or rebasing the per-primary-line level of support) should be adopted. The other alternatives are not competitively neutral. Any arbitrage opportunities allowed by the rebasing alternative should be minimal.

Finally, because rural carrier support is now based on the embedded costs of the ILEC, the RD notes that “a rural carrier’s per-primary line support automatically

⁶⁴ RD, ¶ 74.

⁶⁵ Id., ¶ 75.

⁶⁶ Id.

increases as its total embedded costs are spread over fewer lines.⁶⁷ The RD thus proposes capping per-line support “when a competitive ETC is present or when a competitive ETC enters the market...”⁶⁸ Capping per-line support is important as part of the move away from the use of embedded costs.⁶⁹

As the RD states,

[A]bsent a per-primary line cap, a rural carrier would continue to receive support for new lines served -- regardless of whether such lines provide primary connectivity -- because any costs associated with new connections would increase the rural carrier’s total embedded costs and, therefore, the per-line support associated with the primary lines it serves. Likewise, a rural carrier would not lose support if it loses primary connections to a competitive ETC. Thus the absence of a per-line cap would obviate the effect of a single-line connection limitation.⁷⁰

Indeed, as the RD notes,

[F]und size could grow significantly if rural carriers lose primary connection to competitive ETCs, because rural carriers would continue to receive the same total support, but the per-line support amounts available to both the incumbent LEC and competitive ETCs would increase as rural carriers’ per-line costs were spread over fewer primary lines.⁷¹

As stated earlier, much of the need for such measures comes from the use of rural ILECs’ embedded costs as the basis for high-cost support. If that paradigm is changed, the need for a cap may change.

⁶⁷ Id., ¶ 78.

⁶⁸ Id., ¶ 77.

⁶⁹ See footnote 3, supra. Moving away from embedded costs also moves the fund away from what some carriers perceive it to be, a revenue guarantee mechanism. See Section II.G., supra.

⁷⁰ RD, ¶ 78.

⁷¹ Id.

Although NASUCA agrees that capping per-line support is necessary, it is less clear that any of the indexing proposals discussed in the RD is appropriate.⁷² Any mechanism that increases per-line support based on increases in the number of lines (primary or otherwise) does indeed double-count line growth.⁷³ A mechanism based solely on the Gross Domestic Product - Chained Price Index (“GDP-PI”) alone⁷⁴ could be used if there were a showing that, indeed, rural carriers’ per-primary line costs increase commensurate with the GDP-PI.

III. ETC designation issues

Receiving federal high-cost funds should be a privilege granted upon a showing that the receipt of the funds is in the public interest. The public interest demands that the statutory goals are met. More than is currently required of carriers should be insisted on as a condition of being designated as an ETC and receiving those funds.

Ultimately, state commissions must be charged with the responsibility of ensuring that enhancements to facilities and improved service quality will result as a direct result of high-cost support. If an applicant for ETC status cannot demonstrate the required improvements would not occur *but for* the support, ETC status should not be granted.

⁷² Id., ¶ 80.

⁷³ Id., citing Rural Task Force Order, 16 FCC Rcd at 11266, para. 48.

⁷⁴ Id., ¶ 80.

A. The Commission should raise the bar for receipt of high-cost funds.

In the past, promotion of competition has seemed to be enough to justify designation of an ETC.⁷⁵ The RD correctly recognizes that merely encouraging competition is, in this context, insufficient to meet the public interest test.⁷⁶ The Commission should provide guidelines that would make the ETC designation process more consistent among the states. The need is more than hypothetical: There has already been a fair degree of inconsistency with respect to state proceedings considering the designation of a CETC.⁷⁷

NASUCA urges the adoption of more stringent requirements for ETC designation. Such designation should be granted only to entities providing communications service that is reliable, affordable and comparable to that of current incumbent providers of last resort. Providers using wireless and other technologies would continue to be eligible for ETC status. However, eligible services supplied by such providers must constitute basic, reliable, and affordable connectivity. In addition, any ETC must be subject to certain aspects of state regulation even if it provides service using a technology that is not otherwise regulated by the state.

ETC eligibility must entail the acceptance of specific public interest obligations in exchange for public support. In the case of ILEC ETCs, the quid pro quo is self-evident

⁷⁵ See NASUCA Reply Comments (June 3, 2003) at 18.

⁷⁶ RD, ¶ 12.

⁷⁷ For example, ETC status has been denied in some jurisdictions based on “public interest” criteria that do not appear to have been applied in a consistent manner among the states. See, e.g., *In the Matter of GCC License Corporation For Designation as an Eligible Telecommunications Carrier*, South Dakota PUC, TC98-146 (May 19, 1999); *WWC Holding Co v. Public Service Commission of Utah*, 2002 UT 23 (March 5, 2002).

and traditional. ILECs typically provide high quality, highly reliable service ubiquitously throughout their service territory and are providers of last resort for that territory.

Moreover, customers of ILECs have the substantial benefit of state regulation, which enforces service quality rules, billing and collection rules, and ensures just and reasonable rates. By contrast, wireless carriers are generally unregulated entities that provide highly variable service quality, varying levels of customer service, unilaterally determined billing and collection policies, unilaterally-determined rates and have no requirement to provide facilities in specific areas.

In the *Virginia Cellular Order*, the Commission “acknowledge[d] the need for a more stringent public interest analysis for ETC designations in rural telephone company service areas.”⁷⁸ NASUCA submits that there is also a need in non-rural companies’ service areas. The Commission imposed certain requirements on Virginia Cellular and on Highland Cellular explicitly in anticipation of the recommendations of the Joint Board.⁷⁹ Challenges were raised to the Commission’s actions in the *Virginia Cellular Order* and the *Highland Cellular Order* on the basis that the Commission could only adopt such changes in a rulemaking.⁸⁰ Regardless of the merits of that position, the instant proceeding is just such a rulemaking. NASUCA will not, in these comments, discuss the specific requirements adopted by the Commission in the two Virginia orders.

⁷⁸ *In the Matter of 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 (rel. January 22, 2004) (“*Virginia Cellular Order*”), ¶ 4. See also *In the Matter of 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 04-37 (rel. April 12, 2004) (“*Highland Cellular Order*”), ¶ 4.

⁷⁹ *Id.*

⁸⁰ See, e.g., Highland Cellular Petition for Reconsideration (May 12, 2004) at 6-12.

Federal ETC designation guidelines should and would ensure that all states receive federal support in a consistent manner. Under current rules, states have something of a conflict of interest. That is, there may be an inherent bias toward granting ETC status because, when new ETCs are created, more federal dollars flow into the state. Conversely, there is a disincentive for states to ensure that the public interest is fulfilled on a national basis because the benefit of imminent additional federal funds may outweigh state regulators' concerns about the longer-term sustainability of the federal program. The bias and potential for inconsistent rules governing ETC designation can only be overcome by more specific and mandatory federal guidelines that create a floor for the public interest obligation.

Further, when considering the designation of ETC status in rural areas where the § 251(f)(1)(A) rural exemption from the market-opening requirements of § 251(c) has not been lifted, state commissions should be required to consider whether granting ETC status is inconsistent with the protection intended by the rural exemption provision of the 1996 Act. This should be part of any "public interest" test that state commissions are currently required to examine.

Given the many differences between wireless, CLEC and ILEC services and markets, disparity in regulation is reasonable. However, ETC designation and the concomitant acceptance of public support should require CETCs to meet certain obligations that approach those required of ILEC ETCs.

The RD proposed that the following minimum qualifications be adopted for ETC designation:

- That the ETC have adequate financial resources.⁸¹

NASUCA agrees that an ETC without adequate financial resources risks wasting the federal funds provided to it. As the RD states, “it would be neither prudent nor serve the public interest if a financially unsound carrier is designated as an ETC, receives universal service support and yet is still unable to achieve long-term viability that is sufficient to sustain its operations.”⁸² It would not be in the public interest for consumers to come to rely on a carrier that is unlikely to provide service over the long run.

- That the carrier demonstrate commitment and ability to provide the supported services.⁸³

The RD recognizes that the Commission “has determined that [§ 214(e)(1)] does not require a competitive carrier to actually provide the supported services throughout the designated service area *before* designation as an ETC.”⁸⁴ Yet § 214(e)(1) *does* say that an ETC “*shall* throughout the service area for which the designation is received -- (A) offer the services that are supported....” Hence it is entirely reasonable for states to require CETCs to show how they will be able to meet the statutory requirement.

The RD also recommends that a guideline be adopted “encouraging” states “to require competitive ETCs to be prepared to provide equal access if all other ETCs in that service area exercise their rights to relinquish their designations pursuant to section 214(e)(4).”⁸⁵ The RD also recommends that the Commission clarify its decision in the

⁸¹ RD, ¶ 22.

⁸² Id.

⁸³ Id., ¶¶ 23-29.

⁸⁴ Id., ¶ 20 (footnote omitted) (emphasis added).

⁸⁵ Id., ¶ 28.

Western Wireless Kansas CMRS Order so that it cannot “be interpreted as imposing equal access requirements on CMRS carriers under any circumstances.”⁸⁶ NASUCA agrees with both recommendations, but reiterates its view that the Commission should establish offering equal access as minimum qualification for *all* ETCs, wireline and wireless.

As Commissioner Martin stated in his separate statement to the RD:

Equal access provides a direct, tangible consumer benefit that allows individuals to decide which long distance plan, if any, is most appropriate for their needs. . . . [A]n equal access requirement would allow ETCs to continue to offer bundled local and long distance service packages, while also empowering consumers with the ability to choose the best calling plan for their needs. An equal access obligation is also fully consistent with the Commission’s existing policy of competitive neutrality amongst service providers, facilitating competition on the basis of price and service quality for comparable service offerings.⁸⁷

The Commission should adopt an equal access requirement.

- That the carrier demonstrate its ability to remain functional in emergencies.⁸⁸

NASUCA supports this recommendation. States impose such requirements on ILECs; to allow CETCs to evade such responsibilities is not competitively neutral, in addition to the risk that it puts on the customers of the CETC.

- That the carrier be subject to consumer protection requirements.⁸⁹

⁸⁶ Id., ¶ 29, citing *Petition of the State Independent Alliance and the Independent Telecommunications Group for a Declaratory Ruling that the Basic Universal Service Offering Provided by Western Wireless in Kansas Is Subject to Regulation as Local Exchange Service*, Memorandum Opinion and Order, WT-Docket No. 00-239, 17 FCC Rcd 14802 (2002) (“*Western Wireless Kansas CMRS Order*”).

⁸⁷ Separate Statement of Commissioner Kevin J. Martin Dissenting in Part, Concurring in Part, at 1.

⁸⁸ Id., ¶ 30.

⁸⁹ Id., ¶¶ 31-35.

An ETC should be required to submit to the regulatory authority of the state and be subject to the consumer protection rules, including billing and collection rules, that apply to ILECs in the state. CETCs may be granted waivers from any rules that are not practical with respect to the technology they employ. CETCs should be subject to all consumer assistance, mediation, or adjudication processes that are normally employed by the state to protect ILEC customers.

The RD correctly notes that application of consumer protection regulations to wireless ETCs does not represent regulation of wireless rates and wireless entry that is forbidden by 47 U.S.C. 332(c)(3); indeed, the law “specifically allows states to regulate the other terms and conditions of commercial mobile services.”⁹⁰ Further, requiring wireless carriers to accept state consumer protection regulation *as a condition of receiving high-cost funding* does not violate the statute.⁹¹

- That the carrier offer some amount of local usage.⁹²

The RD merely says that “states may consider how much local usage ETCs should offer as a condition of federal universal service support.”⁹³ In this respect, the RD does not go far enough. “Some [undefined] amount” of local usage does not adequately promote the public interest.⁹⁴ NASUCA proposes that an ETC should be required to offer

⁹⁰ Id., ¶ 33.

⁹¹ Just as requiring wireless carriers to provide equal access as a condition does not violate the statute. See id., ¶ 29.

⁹² Id., ¶¶ 35-36.

⁹³ RD, ¶ 35.

⁹⁴ For example, the discussion of an ETC applicant’s “30 free minutes per month” throughout its network, even though a “much larger area” than the ILECs’ (id.), is woefully inadequate. Supporting a service that allows a single one-minute call per day hardly advances universal service.

at least one calling plan that provides unlimited local calling minutes, equal access to IXCs, and a monthly price comparable or lower than that charged by the ILEC.⁹⁵

In comments to the Joint Board, NASUCA proposed the following standard, in addition to existing ones and those set forth in the RD, for states to follow in designating ETCs.⁹⁶ NASUCA continues to believe that the following should be a minimum requirement that all ETCs should be required to follow.

- Provision of Financial Data/Limited Use of Funds

For ILECs, the Commission and state commissions have financial data to provide a basis to determine the need for support in order to improve service and facilities. Currently, there is no such data for CETCs. ETCs should be required to provide all financial data necessary to demonstrate their need for high-cost support. Such data should include current capital spending budgets and all relevant data necessary to demonstrate the degree of profitability and incremental cost of service in any given study area.

B. The Commission should adopt mandatory minimum guidelines for state commissions to consider when designating ETCs.

The RD recommends that “the Commission adopt permissive federal guidelines for states to use when determining whether applicants are qualified to be designated as ETCs under section 214.”⁹⁷ NASUCA agrees that guidelines like those discussed above should be adopted. However, the guidelines should not be permissive, able to be used or

⁹⁵ If the ILEC’s flat rate is low due to the application of permissible intrastate implicit support, it makes no economic sense to support as an ETC a carrier whose rates are higher.

⁹⁶ These guidelines should not restrict states from imposing additional requirements on ETCs. *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 418 (5th Cir. 1999).

⁹⁷ RD, ¶ 9.

ignored, upon a state's whim. The guidelines should be minimum federal standards for the expenditure of federal dollars.

Nothing that is said in the RD about the merits of "permissive" guidelines⁹⁸ is rendered untrue by making them mandatory; indeed, the benefits of guidelines are reinforced by making them mandatory. Despite the RD's proposal that the guidelines should be "non-binding on the states,"⁹⁹ there is really no explanation of why "non-binding" guidelines are superior to mandatory directives.

C. There should be a higher public interest standard in areas served by rural carriers.

1. Generally

The Rural Task Force pointed out the significant operational difficulties faced by rural companies, including lack of density, lower percentages of business customers, smaller switches, and a customer base with lower disposable incomes.¹⁰⁰ Congress clearly intended to make a distinction between rural incumbent local exchange carriers and other carriers for universal service support purposes, among others. Congress explicitly provided in the 1996 Act that the states *may* grant requests from competitive providers for ETC status in areas served by rural incumbent carriers when found to be in the public interest -- as opposed to the directive that states *shall* grant ETC status to competitors in non-rural carriers' territory.¹⁰¹ Congress clearly left the obligation for the public interest determination -- based on that distinction -- to the states.

⁹⁸ Id., ¶¶ 14-18.

⁹⁹ Id., ¶ 10.

¹⁰⁰ Rural Task Force White Paper No. 2, *The Rural Difference* (2000).

¹⁰¹ 47 U.S.C. 214(e)(2).

The Commission must take strong steps to encourage the states to fully consider the impact of competitive entry into high cost areas served by rural carriers, areas that currently receive high cost support. The impact of competitive entry into high cost areas supported by universal service funding can be significant. The Commission must ensure that the states “do the math” when they consider the public interest in allowing competitive entry in high cost areas.

Under the current program, as a CETC takes market share from a rural incumbent, the incumbent’s per-line costs rise. The incumbent receives more USF funding and the CETC’s funding rises also. Rural competition in such an environment provides none of the benefits one would expect to receive from competition -- lower costs and better service. Rural competition in that environment produces negative consequences for consumers in terms of increased universal service funding and, thereby, higher costs to consumers nationwide.¹⁰²

2. A per-line support public interest test should be adopted.

The RD indicates that

states making public interest designations may properly consider the level of high-cost per-line support to be received by ETCs. High-cost support is an explicit subsidy that flows to areas with demonstrated levels of costs above various national averages. Thus, one relevant factor in considering whether or not it is in the public interest to have additional ETCs designated in an area may be the level of per-line support provided to the area. If the per-line support level is high enough, the state may be justified in limiting the number of ETCs in that study area, because funding

¹⁰² Even if NASUCA’s recommendations herein -- such as determining ILEC ETC support on a per-primary line basis and capping ETC support upon CETC entry -- and others, such as basing support on each carrier’s cost -- are adopted, there will remain concerns with designating CETCs in small rural ILECs’ territories.

multiple ETCs in such areas could impose strains on the universal service fund.¹⁰³

NASUCA agrees, and submits that the Commission adopt the economic public interest benchmarks first proposed by Joint Board member Billy Jack Gregg.¹⁰⁴ The proposal was first discussed at the en banc meeting of the Joint Board in Denver, Colorado on July 31, 2003.

The proposal is that in rural study areas receiving \$30 per line per month in support or more, it should be presumed that only one ETC -- for now, the ILEC -- should be designated. In rural study areas receiving \$20 per line per month or more, but less than \$30 per line per month, it should be presumed that only one ETC in addition to the ILEC should be designated. There should be no presumed limit on the number of ETCs in rural areas receiving less than \$20 per line per month in support.

These presumptive benchmarks are based on the average amount of support for all study areas (\$30.74 per line per month when proposed; \$31.00 as of second quarter 2004) and the median amount of support for all study areas (\$18.33; 18.69 as of second quarter 2004).¹⁰⁵ These presumptive benchmarks clearly identify high-cost areas where it is not in the public interest to subsidize an unlimited number of ETCs.

Based on data published by USAC, study areas with support of \$20 per line per month or more represent only 1.7% of access lines in the United States (no change as of second quarter 2004), but received 45% of total high-cost support (45.5% as of second

¹⁰³ RD, ¶ 43.

¹⁰⁴ Mr. Gregg is Director of the Consumer Advocate Division for the State of West Virginia.

¹⁰⁵ If the median and average change significantly, the Commission should consider adjusting the benchmarks.

quarter 2004). Support per line data distills all cost-influencing factors - such as density, distance and topography – into readily available information. As the RD states, “Per-line support is a single ‘marker’ that encompasses various underlying factors that may impact the determination of whether it is in the public interest to have an additional subsidized carrier entering a carrier’s study area.”¹⁰⁶

D. The annual ETC designation process should be used to ensure that federal support is used for the purposes required by § 254.

As noted above, NASUCA recommends that the voluntary guidelines contained in the RD be transformed into mandatory minimum standards. Nowhere is the need for specific federal requirements greater than in the area of ensuring that the federal dollars are being spent as the statute intended. States should not be “encouraged” to perform this oversight¹⁰⁷; they must be required to do so.

The examples cited by the RD of oversight requirements adopted by individual states (Alaska, Minnesota and West Virginia¹⁰⁸) are the sort of minimum requirements that should be adopted. As the RD notes, “State commissions will ... have the flexibility to adopt certification requirements that are appropriate for their state and the particular service area in which the ETC is designated.”¹⁰⁹ Yet these requirements must meet minimum standards adopted by this Commission for oversight of federal funds.

¹⁰⁶ Id.

¹⁰⁷ Id., ¶ 46.

¹⁰⁸ Id., ¶ 47.

¹⁰⁹ Id.

E. The standards adopted here should apply to ETCs that have already been designated.

The RD recommends that the Commission seek comment “on the applicability of the proposed designation guidelines to ETCs that have already been designated.”¹¹⁰

These guidelines, whether discretionary for the states or mandatory, must apply to all ETCs, not just those who seek certification after the guidelines are adopted. For example, if the guidelines require ETCs to demonstrate that they are able to provide service during an emergency,¹¹¹ then all ETCs should have to make that demonstration. Early appliers for ETC status should not be able to evade these requirements and, more importantly, the customers of those ETCs should not be deprived of the security of those requirements. No carrier -- ILEC or CETC, wireless or wireline -- has an entitlement to high-cost funding such that it has standing to complain if the standards change and it loses funding.

On the other hand, the guidelines cannot be retroactive. That is, it cannot be declared that because a currently-designated ETC does not meet the new guidelines, its earlier designation was in error. Thus the carrier cannot be required to disgorge the high-cost funds it previously received.

In the end, adopting new standards for ETC designation is not fundamentally different from adopting a new standard that only a single line per customer will be supported. Under the latter standard, carriers now receiving support for second and third

¹¹⁰ Id., ¶ 45.

¹¹¹ Id., ¶ 30.

lines will lose that support; under new ETC designation standards, carriers now receiving support that cannot -- or will not -- meet the new standards will also lose support.

IV. Conclusion

Proponents of supporting all lines of all networks have claimed that such support is necessary for:

- Supporting entire networks
- Upgrading and building out new networks
- Promoting mobility
- Funding competitive entry
- Funding new investment opportunities
- Maintaining revenue streams (or ensuring total cost recovery) for small telephone companies

Although these arguments may describe secondary benefits of universal service support, none of these issues touch on the real purpose for the federal universal service funds: providing basic access to all Americans, with rates in rural areas that are reasonably comparable to those in urban areas. That purpose is accomplished by providing high-cost support only to a single line per customer.

That purpose is also accomplished by raising the standards for qualification as an ETC. Certainly, merely providing competition for the ILECs' services does not sufficiently enhance the public interest so as to justify granting federal funding to an CETC.

Providing support for a single line per customer and adopting higher ETC standards both have as their key not spending federal USF dollars -- which are actually

consumers' funds -- for purposes outside the statute. The Commission should adopt NASUCA's recommendations.

Respectfully submitted,

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APPENDIX A

PRIMARY TELEPHONE LINE BALLOT

John Q. Customer
123 Main Street
Anywhere, USA

- As a telecommunications customer, you can choose which telephone line or number is your primary local service line.
- Your designation of a primary line or number will determine which carrier is eligible to receive any federal universal service support that may be available as a result of providing service to you.
- You may currently receive local service over several lines and/or from several carriers – traditional phone carriers or wireless carriers. However, you can only designate one line as your primary line.
- You can only change primary lines once every six months, although you are not required to change.

Please fill in the phone number, including area code, of your primary line below and mail this ballot to the carrier that provides the line or number you have chosen as primary, using the enclosed prepaid envelope.

PHONE NUMBER OF YOUR PRIMARY LINE:

You must return this ballot by _____. If you do not return this ballot, your primary line will be deemed to be the primary line provided by your incumbent traditional phone carrier, INCUMBENT CARRIER, INC.