

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

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket 96-45
Universal Service	)	

**Comments of TCA, Inc. – Telcom Consulting Associates**

**I. INTRODUCTION AND SUMMARY**

TCA, Inc. - Telcom Consulting Associates (“TCA”) hereby submits these comments in response to the Notice of Proposed Rulemaking<sup>1</sup> issued in the above-captioned proceeding.

TCA is a consulting firm that performs financial, regulatory, management, and marketing services for over eighty small, rural local exchange carriers (LEC) throughout the United States. TCA’s clients are rate-of-return regulated rural local exchange carriers (RLECs) and therefore will be directly impacted by the FCC’s actions in this proceeding. These comments address the concerns of TCA’s clients.

The current NPRM starts the work of the Joint Board that is being continued as the end of the Commission’s revised Rural Task Force (RTF) plan nears. On June 28, 2004, the Commission tasked the Joint Board with reviewing “the Commission’s rules relating to the high-cost universal service support mechanisms for rural carriers and to determine the appropriate rural mechanism to succeed the five-year plan adopted in the Rural Task Force Order.”<sup>2</sup> Clearly, the issues raised in the current proceeding and Joint Board Recommended Decision will impact deliberations in the latest Joint Board referral. Therefore, TCA recommends the Commission proceed with care and ensure any decisions made in this proceeding do not prejudice any of what are sure to be major decisions to be made in the latter Joint Board referral proceeding.

TCA recommends the Commission move expeditiously to adopt mandatory national guidelines for processing competitive eligible telecommunications carrier (CETC) applications, and should not make such guidelines “permissive” as suggested by the Joint Board. TCA also recommends that the Commission not adopt a primary line support mechanism at this time. If

---

<sup>1</sup> *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, Notice of Proposed Rulemaking released June 8, 2004 (FCC 04-127) (“NPRM”).

<sup>2</sup> *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, Order released June 28, 2004.

the CETC designation criteria are constructed properly and made mandatory for any regulatory body considering the designation of a CETC in an area served by a rural telephone company, the Commission's goals for this phase of universal service reform will be met.

## **II. THE COMMISSION CAN AND SHOULD ADOPT FEDERAL GUIDELINES FOR COMPETITIVE ETC DESIGNATIONS.**

The Commission can and should adopt criteria to aid in what is now an inconsistent process for designating additional eligible telecommunications carriers (ETCs) in areas served by RLECs. Furthermore, the Commission should adopt a list of minimum, mandatory criteria to be followed by the state commissions in processing competitive ETC (CETC) designation requests, as opposed to adopting "permissive" criteria as recommended by the Joint Board.<sup>3</sup> These guidelines should be adopted as soon as possible, and should not be delayed until the Joint Board determines the successor to the RTF plan.

### **A. The Commission's CETC Designation Criteria Should be Mandatory**

The only way this Commission can be assured that the CETC designation process receives the rigorous and detailed review necessary to ensure universal service support is provided to carriers *requiring* such support is to adopt a list of minimum, mandatory requirements. Permissive guidelines, as recommended by the Joint Board, will allow for continuation of the *status quo* -- inconsistent state commission processing of CETC applications. Permissive guidelines will not meet the goals as stated by the Commission -- the most important being the assurance of specific, predictable, and sufficient federal and state universal service support mechanisms.

Having a consistent, nationally-recognized process for considering CETC applications will be the largest benefit of adopting mandatory guidelines. Currently, there is little consistency among states regarding the designation of CETCs, especially in RLEC areas, where the public interest must be met. This lack of consistency harms all parties involved -- the RLEC, prospective CETC, and the state commissions.

TCA offers the following examples of this lack of consistency among state commission processing of CETC applications:

---

<sup>3</sup> CC Docket 96-45, *In the Matter of Federal-State Joint Board on Universal Service*, Recommended Decision released February 27, 2004 (Joint Board Recommendation), paragraph 2.

**Public Interest, Burden of Proof.** The question of which party in a CETC designation proceeding bears the burden of proving an additional ETC designation in the area served by a rural telephone company is in the public interest has received varying treatment by state commissions. In Kansas, the Corporation Commission found that “[t]he obligation to establish that additional ETCs are not in the public interest is on the rural telephone company serving the area.”<sup>4</sup> Contrast this finding with the statement made by the Texas Public Utilities Commission that “for rural ILEC study areas, an applicant bears the burden of showing that its designation would be in the public interest.”<sup>5</sup> Clearly, two more conflicting statements could not be made by state commissions trying to determine whether additional ETCs in RLEC areas are in the public interest. Of course, the Commission’s findings in the Virginia Cellular order should have clarified which party has the burden of proving the public interest.<sup>6</sup>

**Providing Service throughout the ETC Service Area.** Many state commissions properly raise issues about the CETC applicant’s ability and commitment to offer service throughout the area in which designation is sought. The Commission also addressed this issue in Virginia Cellular when, as part of its investigation of Virginia Cellular’s CETC application, it looked into “the competitive ETC’s ability to satisfy its obligation to serve the designated service areas within a reasonable time frame.”<sup>7</sup> In Texas, the PUC has determined the CETC applicant must “unconditionally commit to offer the supported services to any consumer throughout the proposed ETC service area.”<sup>8</sup> In contrast, the Indiana Utility Regulatory Commission held that a CETC must only “respond to reasonable requests for service”<sup>9</sup> in order to meet its ETC obligation in this area. In its own Virginia Cellular decision, the Commission apparently accepted the oft-used plan set forth by the Virginia Cellular, consisting of six steps, the failure of which could lead to the wireless CETC not being able to provide service to the requesting customer<sup>10</sup>. This is a vital issue in determining the public interest, and one that deserves clarification and standardization by the FCC.

**Supported Services.** Another important issue in the determination of whether additional ETCs should be designated in rural telephone company areas is if and how the prospective CETC can provide services designated for universal service support,<sup>11</sup> and which services are properly deserving of support. As discussed above, state commissions, and the FCC, struggle to address a related issue – that of the commitment

---

<sup>4</sup> *In the Matter of GCC License Corporation’s Petition for Designation as an Eligible Telecommunications Carrier*, Docket No. 99-GCCZ-156-ETC, May 19, 2000 Order, pages 3-4

<sup>5</sup> *Application of NPCR, Inc. d/b/a Nextel Partners for Eligible Telecommunications Carrier Designation*, Texas PUC Docket No. 27709, June 30, 2004 Order, page 9.

<sup>6</sup> *In the Matter of Federal-State Joint Board in Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket 96-45, Memorandum Opinion and Order, released January 22, 2004, at paragraph 26, (Virginia Cellular) (“In determining whether the public interest is served, the Commission places the burden of proof upon the ETC applicant.”)

<sup>7</sup> *Id.* at paragraph 28

<sup>8</sup> Texas PUC Docket No. 27709, Order dated June 30, 2004, page 5

<sup>9</sup> *In the Matter of the Designation of Eligible Telecommunications Carriers by the Indiana Utility Regulatory Commission Pursuant to the Telecommunications Act of 1996 and Related FCC Orders, and in Particular, the Application of NPCR, Inc. d/b/a Nextel Partners to be designated*, IURC Cause No. 41052-ETC 43, 3/17/2004 Order at Section 5 (Commission Findings) D (Petitioner’s Designated ETC Service Areas).

<sup>10</sup> See *Virginia Cellular* Order, paragraph 15.

<sup>11</sup> 47 CFR §54.101

to provide service throughout the requested service area. One of the controversies being addressed in the states, especially as it relates to wireless CETCs, is whether conventional wireless service, such as is being provided today in most areas of the United States, is deserving of federal (and state) universal service support. For example, most states approve wireless CETC requests when the CETC's service is nothing more or less than its currently-available conventional wireless service.<sup>12</sup> Contrast this policy with statements made by other state commissions that existing cellular service does not require universal service support,<sup>13</sup> current mobile cellular service does not comply with the requirements for designation as an ETC,<sup>14</sup> and that the CETC applicant must provide services of material benefit above and beyond what it currently provides.<sup>15</sup> From these few examples, it is clear that state commissions are inconsistent in their approach to determining the threshold question of what CETC services are deserving of universal service support.

From the examples provided above, which represent only a small fraction of the difficulties state commissions face when determining whether or not to designate additional ETCs in areas served by RLECs, it is clear and vital that this Commission not only adopt the Joint Board's recommended eligibility and public interest criteria, but that such criteria be mandatory.

The Joint Board is concerned about whether the FCC has the ability to adopt CETC designation guidelines, whether permissive or mandatory, based on a ruling made by the Fifth Circuit Court of Appeals.<sup>16</sup> While the Joint Board states that "state commissions apply these permissive federal guidelines in all ETC proceedings"<sup>17</sup>, TCA is concerned that by making such guidelines "permissive", state commissions will either choose to ignore such guidelines, or pick and choose which guidelines to apply. As stated above, TCA believes that only a set of mandatory federal guidelines will bring the needed consistency to the CETC designation process

---

<sup>12</sup> For example, See *In the Matter of the application of ALLTEL Communications, Inc., for designation as an eligible telecommunications carrier pursuant to Section 214(e)(2) of the Communications Act of 1934*, Michigan Public Service Commission Case No. U-13765, Opinion and Order dated September 11, 2003. Also See *Indiana Utilities Regulatory Commission Order in Cause No. 41052-ETC 43*, (Nextel Partners ETC designation).

<sup>13</sup> Louisiana Public Service Commission, Docket No U-27174, *In re: Application for Designation as an eligible telecommunications carrier pursuant to Section 214(e)(6) of the Communications Act of 1934 for the purposes of receiving federal universal service support in Louisiana*, Order dated March 5, 2004, at page 26; Also see, Nebraska Public Service Commission, Application No. C-2932, *In the Matter of the Application of Amended NPCR, Inc., d/b/a Nextel Partners...seeking designation as an eligible telecommunications carrier that may receive universal service support*, February 10, 2004 Order, at page 7.

<sup>14</sup> Texas PUC Docket No. 22289, *Application of WWC Texas RSA Limited Partnership for Designation as an Eligible Telecommunications Carrier pursuant to 47 U.S.C. § 214(e) and PUC Subst. R. 26.418*, Order dated October 2000, Findings of Fact #84.

<sup>15</sup> Texas PUC Docket No. 27709, *Application of NPCR, Inc. d/b/a Nextel Partners for Eligible Telecommunications Carrier Designation*, Order dated June 30, 2004, page 9.

<sup>16</sup> *Joint Board Recommendation*, paragraph 10, citing *Texas Office of Public Utility Counsel v. FCC*, United States Court of Appeals for the Fifth Circuit, Opinion issued July 30, 1999 (*TOPUC*)

<sup>17</sup> *Joint Board Recommendation*, paragraph 14

across the country. In *TOPUC*, the Court only overturned the Commission's policy prohibiting state commissions from imposing additional eligibility requirements. By adopting a set of minimum, yet mandatory, federal guidelines for CETC designation, the Commission would not be in conflict with the Court's opinion in *TOPUC* as states would continue to be able to adopt additional CETC designation criteria as they see fit.

**B. Eligibility and Public Interest Criteria Must be Subject to a Rigorous Review**

Any CETC designation criteria adopted by this Commission must be subject to a rigorous review when the applicant CETC seeks to obtain designation in RLEC areas. The Commission recognized this necessity itself when it stated "we acknowledge the need for a more stringent public interest analysis for ETC designations in rural telephone company service areas."<sup>18</sup> The Joint Board also recognized this need when it stated: "A rigorous ETC designation process should ensure that only fully qualified applicants receive designation as ETCs and that ETC designees are prepared to serve all customers within the designated service area."<sup>19</sup> Many states apparently apply less than a rigorous review to CETC applications,<sup>20</sup> a point with which TCA agrees. In the past, states have too often ended investigations of whether CETC applications for RLEC areas are in the public interest with a finding that competition, in and of itself, is in the public interest.

TCA appreciates the Commission's efforts to focus the public interest analysis on the applicant CETC, place the burden of proof on the prospective ETC, and ensure factors other than competition are considered. Specifically, the Commission's statement that "the value of increased competition, by itself, is not sufficient to satisfy the public interest test in rural areas"<sup>21</sup> is particularly on point. The Commission must now take this statement, and its desire to enact more stringent public interest analysis, and apply it to a set of national mandatory guidelines for states to follow when considering the designation of CETCs in RLEC areas.

A rigorous review and analysis of the public interest standards related to allowing additional ETCs in RLEC areas must begin and end with a cost/benefit analysis. It should be

---

<sup>18</sup> *Virginia Cellular* order, at paragraph 4

<sup>19</sup> Joint Board Recommendation, paragraph 9

<sup>20</sup> See May 5, 2003 Comments of the Montana Universal Service Task Force (MUST), CC Docket 96-45, at page 37 ("we at MUST are greatly concerned by the policies of many states that have designated wireless CETCs in rural areas, often with cursory examination of the public interest."); Also see May 5, 2003 Comments of the Washington Independent Telephone Association, CC Docket 96-45, at page 18 ("Some state commissions pay only lip service to the concept of dual goals of advancing universal service and promoting competition.")

<sup>21</sup> *Virginia Cellular*, paragraph 4

logical and obvious that the public interest cannot be met if the costs of a proposed CETC designation are greater than the benefits. Unfortunately, it has been TCA's experience that most state proceedings examining CETC designation sorely lack in the cost/benefit analysis area. Thus, it should be a main point of focus in this proceeding for the Commission to determine how to make the public interest analysis as rigorous as possible.

The purported benefits of the prospective ETC in RLEC areas being allowed to draw from the universal service fund must be investigated closely. The applicant CETC should be forced to provide the FCC and state commissions with a high comfort level that the universal service support sought will be used to preserve and advance universal service. There must be a finding that the additional ETC, wishing to receive support for serving RLEC areas, is adding significantly to the universal service available in those areas. If the additional ETC only wishes to receive support for services it already provides, then there can be no finding that the CETC's designation is in the public interest. If the prospective additional ETC already provides services in the RLEC areas for which designation is sought, especially in competition with other, non-ETC, carriers, then the public interest test cannot possibly be met. Congress clearly did not intend preserving and advancing universal service to mean providing support for services already being provided in a competitive market. This principle has been succinctly stated in several recent state CETC designation proceedings:

- “the Commission finds that ETC designation will not directly provide consumers with increased choices in rural areas....Since 2000, Nextel Partners has been providing service in rural areas in Idaho. The Company has accomplished this without ETC designation or the federal universal service support that would follow. The record demonstrates that several other wireless carriers have also accomplished the same feat under similar circumstances in these rural areas in Idaho. Thus, the Commission concludes that consumers in these rural areas are already benefiting from increased choices for telecommunications service. Designation would allow Nextel to receive USF support for the access lines that it already successfully serves without USF support... the public interest is not served in this case by subsidizing multiple carriers in rural high cost areas.”<sup>22</sup>
- “Centennial has failed to demonstrate that the company needs USF support in order to continue providing services in rural Louisiana. This is a threshold issue. If the current market prices in the cellular market place provide a sufficient return for the services rendered, there's no need for USF support at this time.”<sup>23</sup>

---

<sup>22</sup> See Idaho Public Utilities Commission Case No. GNR-T-03-8 and GNR-T-03-16, Order No. 29541 dated July 23, 2004, at pages 22-23.

<sup>23</sup> See Louisiana Public Service Commission Docket No. U-27174, February 10, 2004 Order, at page 7

- “As NPCR is already successfully providing a wireless service in that area, there is no reason to believe that NPCR needs a subsidy to level the competitive playing field.”<sup>24</sup>

As further evidence that the Commission should require a rigorous review of a set of minimum, mandatory federal CETC designation guidelines, TCA offers the following example related to Western Wireless’ (WW) CETC designation in Kansas. The Kansas Corporation Commission (KCC) approved WW’s CETC designation for rural telephone company areas in 2001.<sup>25</sup> Subsequently, KCC Staff filed a motion to revoke WW’s ETC designation due to, among other issues, WW requesting and receiving federal support for customers served with conventional cellular service.<sup>26</sup> Staff correctly pointed out that WW’s ETC designation was limited to a form of wireless service termed by WW as its “basic universal service” (BUS) offering, and explicitly excluded WW’s conventional cellular service. WW responded to Staff’s position by stating “nothing in Section 214(e), nor in the FCC’s rules, gives a state commission any authority to determine whether a particular service offering is eligible for federal universal service support.”<sup>27</sup> Staff then depicted WW’s position as the “tin can theory”, stating that WW’s position could mean, if taken to its extreme conclusion, that “Western could string together a couple of tin cans for a ‘universal service offering’ in Kansas” and request federal universal service support.<sup>28</sup> TCA submits to the FCC that the lesson to be learned from this battle in Kansas is that a rigorous review requirement, including a requirement to determine if a CETC’s service is deserving of universal service support, will avoid these types of situations.

TCA notes that one factor is often forgotten in CETC designation proceedings – the impact of the CETC on service penetration rates. One goal of the 1996 Act is to preserve and advance universal service. If, for example, the penetration rate for telephone service in a particular RLEC study area is 98%, then the prospective additional ETC should be required to show that its designation will maintain and increase that penetration rate.

---

<sup>24</sup> See Nebraska Public Service Commission Application No. C-2932, Order dated February 10, 2004, at pages 7-8.

<sup>25</sup> Docket No. 99-GCCZ-156-ETC, *In the Matter of GCC License Corporation’s Petition for Designation as an Eligible Telecommunications Carrier*, Order issued October 15, 2001.

<sup>26</sup> See Docket No. 99-GCCZ-156-ETC, *Motion of Commission Staff to Reopen Docket to Clarify Order #11 and to Determine if ETC Designation of Western Wireless Should be Revoked* (July 22, 2003)

<sup>27</sup> See *Western Wireless’s Response to Motion of Commission Staff to Reopen Docket to Clarify Order #11 and to Determine if ETC Designation of Western Wireless Should be Revoked* (October 21, 2003), page 2

### C. CETC Designation Guidelines

As stated above, TCA believes the Commission should adopt a set of minimum, mandatory guidelines for states to follow when considering the designation of additional ETCs in areas served by rural telephone companies. State commissions should, of course, be allowed to continue to add to the FCC's adopted guidelines. These mandatory guidelines should be based upon the Commission's findings in Virginia Cellular and Highland Cellular, and upon the Joint Board's recommendations.

As stated above, TCA believes the "rigorous" review of any CETC designation request should begin with a critical examination of how the prospective CETC's designation would preserve and advance universal service. As succinctly stated by the Louisiana Public Service Commission, this is a "threshold issue."<sup>29</sup> Thus, the mandatory guidelines should begin with a requirement that either the FCC or state commission find that the prospective competitive ETC will preserve and advance universal service in the targeted area by 1) increasing availability of service to unserved areas, or 2) bringing new services not currently available that will not threaten the current level of telephone service penetration and that are supported by universal service programs. While the Telecommunications Act of 1996 presents the regulatory conundrum of advancing competition *and* universal service, in rural areas it is quite possible that competition, especially subsidized competition, simply will not work. Thus, having a competitive alternative available in rural areas is not, in and of itself, reason enough to provide universal service support to any requesting carrier.

TCA also recommends the Commission adopt a CETC designation criteria relating to certifications required under Section 254(e) of the Act. These certifications are designed to provide assurance to regulators and policymakers that the finite resource of universal service support, the source for which is the general public, is used for its intended purposes. For the most part, state commissions have the responsibility for gathering these certifications and assuring the FCC and USAC that support being provided to ETCs under state jurisdiction are using federal universal service support properly. For rate-of-return regulated RLECs, the fact that support is based on cost provides state commissions with assurance of 254(e) compliance. However, no such mechanism exists for most CETCs. CETCs generally have much lighter certification requirements than RLECs – in essence, a brief "self certification" that the support is

---

<sup>28</sup> See *Staff's Reply to Western's Response to Motion for Clarification and Determination of ETC Status Should be Revoked*, page 3 (October 31, 2003)

<sup>29</sup> See Louisiana Public Service Commission Docket No. U-27174, February 10, 2004 Order, at page 7

being used for its intended purposes.<sup>30</sup> Given this disparate regulatory compliance treatment, it is difficult to envision how regulatory authorities, or even the general public, can reasonably be assured that support provided to CETCs is being used properly. At least one legal authority found this proposition difficult to fathom:

*If the Commission audits the LEC's[sic] to make sure that the KUSF distributions are being applied for the provision of services, maintenance, and upgrading of facilities in services required by the state and federal acts, how can the Commission assure that the wireless providers are doing the same without requiring them to demonstrate their costs for providing these same services.*<sup>31</sup>

Indeed, one has to wonder.

TCA offers the following criteria for determining if the public interest is served by designating more than one ETC in areas served by rural telephone companies for the Commission's consideration.

*Burden of Proof.* TCA reiterates its concurrence with the Commission's finding in Virginia Cellular that the burden of proving the public interest is met by designating an additional ETC in an area served by a rural LEC rests entirely with the applicant CETC. It is logical that the carrier requesting access to, at times, millions of dollars of finite funds should have the burden of proving such access is in the public interest and preserves and advances universal service principles.

*Cost/Benefit Analysis.* As stated above, the public interest test should begin and end with a detailed analysis of the costs and benefits of designating the CETC. If the costs exceed the benefits, then the designation is not in the public interest and the request should be denied. This analysis, at a minimum, should include a quantification of the tangible benefits of the CETC's access to federal and/or state universal service funds, and the costs of allowing access to the funds. The benefits should not consider, as the sole criteria, a generic discussion of whether competition is beneficial to the public. In addition, the prospective CETC should be required to show that, upon designation, customers will see immediate and tangible benefits, such as lower rates and/or increased services. The public interest is clearly not being served if the prospective CETC is granted access to universal service funds, without even one change in its level of service provided prior to CETC designation.

*Impact on the Universal Service Fund.* A key issue to resolve in each and every CETC application for RLEC areas should be the impact on the high cost funding mechanisms. However, rather than only considering the impact of the specific CETC's proposed designation, the analysis should take into account the likely growth in USF requirements

---

<sup>30</sup> In some cases, the certification burden is one-sided. In Colorado, RLECs were subject to audits before the PUC would certify the support was properly used under Section 254(e).

<sup>31</sup> Memorandum Decision, issued April 30, 2004, in the District Court of Nemaha County, Kansas. Case Nos. 01-C-39, 01-C-20, and 2004-CV-19. (Various Kansas RLECs vs. Kansas Corporation Commission)

in the entire market served by the prospective CETC. Just as the support received by one incumbent RLEC is not likely material to the overall fund, neither would the support received by one CETC. However, that type of short-sighted analysis entirely misses the point – the threat to the high cost support mechanisms is the addition of multiple CETCs to the funding requirement. In the case of wireless CETCs, the trend is clearly to request access to support once one competitor is granted access. To do otherwise places non-CETC carriers at a competitive disadvantage. Thus, TCA urges the Commission to adopt this criterion with an eye towards an analysis of the impact on the USF of multiple CETC designations. The FCC recognized this need in *Virginia Cellular* when it stated “We note, however, in light of the rapid growth in competitive ETCs, comparing the impact of one competitive ETC on the overall fund may be inconclusive.”<sup>32</sup> Verizon, in fact, put this issue into sharp relief, when it provided evidence that the impact of several pending CETC petitions could result in an additional rural high cost support requirement of almost \$430 million.<sup>33</sup>

*Adequate Financial Resources.* All CETCs should be required to prove adequate financial resources exist to not only provide quality, continuing services, but also to provide service as the carrier of last resort should the incumbent rural LEC decide to exit the market. Only financially sound carriers should be approved as additional ETCs in areas served by rural LECs.

*Commitment and Ability to Provide Supported Services.* Prospective CETCs should be required to demonstrate the commitment and ability to provide service to any requesting customer within the rural LEC service area within a reasonable time frame. This demonstration should include, at a minimum, how the prospective CETC plans on being able to provide service ubiquitously throughout the rural LEC service area, and should encompass more than a mere promise or one-page affidavit.

*Provision of Equal Access.* TCA believes all ETCs, including prospective wireless CETCs, should be required to provide equal access to long distance carriers. Dialing parity, including interLATA and intraLATA equal access, has been found to be in the public interest.<sup>34</sup> As Commissioner Martin stated in his separate statement to the Joint Board’s Recommendation: “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.”<sup>35</sup> Furthermore, a portion of the support to which CETCs are requesting access includes costs of equal access.<sup>36</sup>

*Ability to Remain Functional in Emergencies.* Prospective CETCs should be required to demonstrate the ability to remain functional in emergencies. This is a critical guideline as any prospective CETC should be willing to take on carrier of last resort (COLR) responsibilities and, as such, could be looked upon as the sole source of communications

---

<sup>32</sup> *Virginia Cellular* Order, footnote 96

<sup>33</sup> CC Docket 96-45, *Supplemented Petitions for Eligible Telecommunications Carrier Designations*, Comments of Verizon (June 21, 2004), paragraph 1.

<sup>34</sup> See 47 USC § 251(b)(3) – Obligations of all local exchange carriers, Dialing Parity

<sup>35</sup> Joint Board Recommendation, Separate Statement of Commissioner Kevin J. Martin, Dissenting in Part, Concurring in Part, page 67 (Martin Separate Statement).

<sup>36</sup> See Letter from Robert Schoonmaker, GVNW, to Marlene Dortch, Docket 96-45 (filed June 19, 2002)

in certain areas. The Nebraska Commission recently recognized this when it proposed to “amend this [supported services] definition to indicate the primary power source for this service cannot be battery. In the event the primary source of power is not available for a period of time, a minimum amount of backup, so as to not disrupt service, is required.”<sup>37</sup>

*Consumer Protection.* The Commission should adopt, and the states should follow, certain consumer protection guidelines for CETC designation. These guidelines should include, but not be limited to, protections against unreasonable or dishonest business practices, and ensuring that the prospective CETC’s rate plans result in just, reasonable, and non-discriminatory rates.

*Local Usage.* All ETCs should be required to provide at least certain rate plans that include unlimited local usage.

TCA believes that adoption of these mandatory criteria, with the understanding that states may adopt more stringent criteria, for processing CETC applications will accomplish the Commission’s goals in opening this proceeding – to “review certain of the Commission’s rules relating to the high-cost universal service support mechanisms to ensure that the dual goals of preserving universal service and fostering competition continue to be fulfilled.”<sup>38</sup>

### **III. THE COMMISSION SHOULD NOT ADOPT A PRIMARY LINE SUPPORT METHODOLOGY AT THIS TIME**

The Commission requests comment on the Joint Board’s recommendation to limit the provision of universal service support to a single connection that provides access to the public telephone network.<sup>39</sup> The Joint Board’s primary line recommendation is made under the subject “scope of support.” TCA does not believe adoption of any type of primary line support methodology is necessary at this time, if the Commission adopts standardized and mandatory CETC designation criteria, such as proposed by TCA above, addresses the basis of support in the very near future, and thus ensures only carriers that preserve and advance universal service are granted access to the federal universal service mechanisms. If the Commission and the states follow a rational and reasonable path to designating additional ETCs in areas served by RLECs, the growth in universal service support mechanisms will not continue to spiral out of control.

---

<sup>37</sup> Nebraska Public Service Commission Application No. NUSF-26, Progression Order No 5 (issued June 29, 2004), *In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to establish a long-term universal service funding mechanism*, paragraph 26

<sup>38</sup> Federal-State Joint Board on Universal Service, November 8, 2002 Order, CC Docket 96-45, paragraph 1 (*Referral Order*)

TCA also submits that the administrative challenges surrounding a primary line methodology are substantial enough as to render this proposal unworkable. For instance, if “primary line” is defined as one line per location, then issues will arise as to 1) which line is primary, 2) who makes the primary line determination, and 3) in cases where more than one household exists at a given location, which household’s line will be considered primary? In addition, an issue not addressed by the Joint Board is how such a mechanism will be administered, and by whom. It was these types of unresolved administrative questions that led the Kansas Corporation Commission to reject a primary line methodology for distribution of state universal service support.<sup>40</sup>

A primary line support methodology in general also seems to conflict with the concept of a carrier of last resort (COLR). The COLR exists in order to be able to provide universal service to each and every customer that requests such service. It naturally follows that the COLR, which in today’s environment are the incumbent RLECs, is forced to serve customers for which cost-based rates would prove to be unaffordable; thus, the advent of universal service policy. In return for being designated the COLR, the incumbent LEC was generally given exclusive right to serve a certain geographic area (i.e., the regulatory compact). It is some parties’ position that this “regulatory compact” was obliterated by the 1996 Telecommunications Act, which gave rise to the oft-mentioned regulatory balancing act between competition and universal service.

The inherent problems with the Joint Board’s primary line proposals, and the Commission’s failure to address the National Telecommunications Cooperative Association’s (NTCA) Petition to define “captured” or “new” customers in relation to portable universal service support,<sup>41</sup> make it clear that universal service policy and pro-competition policy exist separately for a good reason – that a competitive telecommunications marketplace alone will not lead to universal service. Thus, until the Commission finds a more effective method than a COLR policy to ensure universal service in high cost, rural areas, a pure competition-driven support methodology is not possible. On the contrary, it is TCA’s belief that the Commission should not attempt to, in Commissioner Kevin Martin’s words, “subsidize multiple competitors to serve areas in which costs are prohibitively expensive for even one carrier.”<sup>42</sup>

---

<sup>39</sup> *NPRM*, paragraph 3

<sup>40</sup> Kansas Corporation Commission docket no. 99-GIMT-326-GIT, *In the Matter of an Investigation into the Kansas Universal Service Fund (KUSF) Mechanism for the Purpose of Modifying the KUSF and Establishing a Cost-based Fund*, Order Addressing Support of Primary Line (February 25, 2002), paragraph 5

<sup>41</sup> Petition for Expedited Rulemaking, filed July 26, 2002.

<sup>42</sup> Martin Separate Statement, page 67.

Finally, a primary line support methodology ignores the fact that the COLR incurs costs in large part for the acquisition, deployment and maintenance of facilities through which service to the public is provided. Even though the Joint Board recognizes one Court's opinion that universal service policy requires sufficient funding of customers, as opposed to funding of providers, the fact remains that RLECs, as COLRs, construct *networks* in order to be able to serve all customers, and do not build *lines* only. Only supporting the primary line threatens the COLR policy, a policy that has long and well-served this nation.

#### IV. CONCLUSION

TCA commends the Commission and Joint Board on their recognition of the current dangers in today's CETC designation process. Much work is left to do before the rural LEC universal service mechanisms can be settled, but, in the interim, TCA urges the Commission to adopt mandatory national guidelines for all regulatory bodies to use when processing CETC applications when the applicant CETC seeks to gain access to universal service funds for providing service in rural telephone company areas. Mandatory guidelines are essential in ensuring the CETC designation process is as consistent as possible. If reasonable and rational criteria for CETC designation are established, then the Commission should not have to adopt a primary line support methodology as proposed by the Joint Board, leaving the Commission free to address the successor to the current transitional RLEC universal service support system.

Respectfully submitted,

[electronically filed]  
TCA, Inc.-Telcom Consulting Associates  
1465 Kelly Johnson Blvd., Suite 200  
Colorado Springs, CO 80920  
(719) 266-4334

August 6, 2004