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	)	

TO: The Commission

COMMENTS OF THE WESTERN TELECOMMUNICATIONS ALLIANCE

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SUMMARY

The Western Telecommunications Alliance supports the adoption and implementation of mandatory federal minimum qualification standards for Eligible Telecommunications Carriers ("ETCs"). Mandatory federal standards are necessary to limit and control the number of ETCs that receive federal high-cost dollars. These mandatory standards should include carrier of last resort, service quality and affordable rate requirements, and should be based (at least initially) upon the same carrier of last resort, service quality and affordable rate requirements that state commissions currently impose upon incumbent local exchange carriers ("ILECs") serving the same areas.

The Western Alliance agrees with the Joint Board that Section 214(e)(2) of the Act obligates state commissions (and this Commission, when it has jurisdiction) to perform additional, in-depth public interest analyses before acting upon applications for designation of new ETCs in rural carrier service areas. It believes that the most effective and efficient public interest analysis is a cost-benefit test that balances the benefits of proposed infrastructure investments by the proposed new ETC against the costs of the additional federal high-cost support it will receive.

The Western Alliance opposes limitation of the scope of federal high-cost support to "primary lines" and the capping of high-cost support in areas served by rural carriers on a per-primary line basis when a CETC is present or enters the market. There are more effective ways to sustain the USF program without discouraging the rural infrastructure investment that was the goal of the 1996 Act. In particular, the "primary line" approach will impair the ability of rural consumers to access services "reasonably comparable" to

those available in urban areas at reasonably comparable rates; will render high-cost support unpredictable and insufficient; will destroy incentives to invest in rural telecommunications infrastructure; will unfairly favor wireless ETCs over wireline ETCs; will create numerous and complicated administrative problems; and will invite gaming and fraud likely to dwarf prior slamming problems.

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The Western Telecommunications Alliance ("Western Alliance") comments upon the Commission's Notice of Proposed Rulemaking (Federal-State Board on Universal Service), FCC 04-127, released June 8, 2004 ("NPRM"). The NPRM sought comment on the Recommended Decision (Federal-State Board on Universal Service), FCC 04J-1, released by the Federal-State Joint Board on Universal Service ("Joint Board") on February 27, 2004.

The Western Alliance agrees with the Joint Board that state commissions should apply more rigorous eligibility standards to Eligible Telecommunications Carriers ("ETCs") in rural carrier service areas. (Recommended Decision, par. 49). It believes that state commissions should be required to apply federal ETC qualification standards when determining which carriers will receive federal high-cost dollars, and that such mandatory standards should include carrier of last resort, service quality and affordable rate requirements. The Western Alliance also applauds the Joint Board's recognition that Section 214(e)(2) of the Communications Act obligates state commissions (and this Commission, when it has jurisdiction) to perform an additional, in-depth public interest analysis before acting upon an application for designation of a new ETC in a rural carrier service area (Recommended Decision, par. 69).

The Western Alliance vigorously opposes the Joint Board's recommendation that the scope of federal high-cost support be limited to "primary lines." By making essential federal high-cost dollars subject to the whims, uncertainties and shenanigans of ballots, vouchers and/or phone stamps, the proposed "primary line" approach violates the Section 254(b)(3) principle that rural consumers have access to telecommunications and information services that are reasonably comparable to those services provided in urban areas and at rates reasonably comparable to the rates charged for similar services in urban areas. It also violates the Section 254(b)(5) principle that the federal universal service mechanism should be "specific, predictable and sufficient," as well as the Section 254(e) requirement that federal universal service support be "explicit and sufficient to achieve the purposes of [Section 254]." It erroneously focuses upon "lines" rather than the telecommunications networks that are necessary to serve rural and other high-cost areas, and will destroy the incentives for many wireline and wireless carriers to invest in rural telecommunications networks. The "primary line" approach is not competitively or technologically neutral, and will unreasonably favor wireless carriers (which provide wireless "phones" to multiple individuals within households and businesses) over wireline carriers. Finally, "primary line" mechanisms will be extremely difficult and cumbersome to administer, and will encourage gaming and outright fraud likely to dwarf the Commission's prior problems with interstate toll slamming.

I.

The Western Alliance

The Western Telecommunications Alliance is a trade association that was formed by the merger of the Western Rural Telephone Association and the Rocky Mountain Telecommunications Association. It represents approximately 250 rural telephone companies operating west of the Mississippi River.

Western Alliance members are generally small local exchange carriers ("LECs") serving sparsely populated rural areas. Most members serve less than 3,000 access lines overall, and less than 500 access lines per exchange. Most members also generate revenues much smaller than the national telephone industry average, and rely upon federal high-cost dollars for the recovery of approximately 25-to-50 percent of their costs.

Western Alliance members serve remote and rugged areas where loop and switching costs per customer are much higher than in urban and suburban America. Their primary service areas are comprised of sparsely populated farming and ranching regions, isolated mountain and desert communities, and Native American reservations. In many of these areas, the Western Alliance member not only is the carrier of last resort, but also is the sole telecommunications provider ever to show a sustained commitment to invest in and serve the area.

Western Alliance members are highly diverse. They did not develop along a common Bell System model, but rather employ a variety of network designs, equipment types and organizational structures. They must construct, operate and maintain their networks under conditions of climate and terrain ranging from the deserts of Arizona to the rain forests of Hawaii to the frozen tundra of Alaska, and from the valleys of Oregon to the plains of Kansas to the mountains of Wyoming.

Predictable and sufficient cost recovery is essential to Western Alliance members if they are to continue investing in and operating telecommunications facilities in high-cost rural areas, while providing quality services to their rural customers at affordable rates. Therefore, the Western Alliance has found it necessary to participate in this and other proceedings that may affect the Universal Service Fund.

II.

Position of the Western Alliance

The overriding goal of the Telecommunications Act of 1996 was to encourage private sector investment in telecommunications infrastructure, particularly that necessary for the delivery of advanced telecommunications and information services. The Conference Report for the 1996 Act (H. Rept. 104-458) clearly and explicitly declared that the pro-competitive, deregulatory national policy framework of the Act was "designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans." 142 Cong. Rec. H1078 (January 31, 1996).

"Fostering competition" and "maintaining universal service" are not (and never were) the "goals" or "dual goals" of the 1996 Act. Rather, they were the two principal "means" designated by Congress as the tools to achieve its infrastructure investment goal.

During the mid-1990s, the Clinton Administration and Congress wanted the public telecommunications network to be upgraded to accommodate the new voice, data and video services made possible by advancing technology. However, budget deficits and political constraints prevented the use of public funds for infrastructure investment. The statutory solution was to encourage telecommunications infrastructure investment by reducing regulation and promoting competition among the various entities in the converging telecommunications, computer and video industries.

However, recognizing that airline deregulation had previously resulted in service losses for many rural communities, Congress added the universal service provisions of Section 254 as a "safety net" for rural and other high-cost areas where competition might not develop or might not produce the desired infrastructure investment. As Senator Byron Dorgan of North Dakota stated during the Senate discussion of the 1996 Act:

> I come from a rural State. I know there are a lot of people in this Chamber who worship at the altar of competition and the free market. That is wonderful. But, I have seen deregulation. . . . Example: Airline deregulation. There was a move in this country and in these Chambers for airline deregulation, saying this will be the nirvana. If we get airline deregulation, Americans are going to be better served with more choices, more flights, lower prices, better service.
>
> Well, that is fine. That has happened for some Americans but not for all Americans. Deregulation in the airline industry has had an enormously important impact if you live in Chicago or Los Angeles. ...
>
> But I bet if you go to the rural regions of Nebraska, and I know if you go to the rural regions of North Dakota and ask consumers, what has airline deregulation done to their lives, they will not give you a similar story. . . . In fact, airline deregulation has largely, in my judgment, hurt consumers in rural America. We have fewer choices at higher prices as a result of deregulation.
>
> * * *
>
> First, a one-size-fits-all approach to competition in the local exchange may have destructive implications. In large, high-volume urban markets, competition will certainly be positive. However, in smaller, rural markets, competition may result in high prices and other problems. The fact is that in some markets (namely, high-cost rural areas) competition may not serve the public interest. If left to market forces alone, many small rural markets would be left without service.
>
> That is why the protection of universal service is the most important provision in this legislation. S. 652 contains provisions that make it clear that universal service must be maintained and that citizens in rural areas deserve the

same benefits and access to high quality telecommunications services as everyone else. 141 Cong. Rec. S. 7947-51 (June 8, 1995).

Senator Dorgan's concerns were echoed by legislators from both parties, including Senator Larry Pressler of South Dakota,[1] Senator Thomas Daschle of South Dakota[2] and Senator Ernest Hollings of South Carolina.[3]

Federal high-cost support is not a subsidy or a gift, but rather is a cost recovery mechanism necessary to encourage and enable investment in telecommunications infrastructure in rural areas. Given the high costs, small populations and minimal economies of scale of many rural areas, it is not financially feasible for owners and lenders of many rural telephone companies to invest in the capital-intensive networks needed to provide the services mandated by federal and state regulators unless there are long-term predictable and sufficient mechanisms for recovery of their investment costs. If some federal and state regulators continue to promote "bill and keep" arrangements that would totally eliminate access charges, high-cost support may soon become the predominant cost recovery mechanism for many rural telephone companies.

High-cost support should be calculated and distributed to telecommunications carriers on the same basis that telecommunications facilities are constructed and that telecommunications services are provided -- namely, as networks (which can be represented by study areas). Carriers do not invest in and construct "lines"; they build

[1] "[T]his bill is also responsibly deregulatory. When it comes to maintaining universal access to telecommunications services, for instance, it does that. It establishes a process that will make sure that rural and small-town America doesn't get left in the lurch." 141 Cong. Rec. S7887-88 (June 8, 1995).

[2] "While legislation focuses on competition and deregulation, the bill before us also contains essential rural safeguards. It would create a Federal-State Joint Board to oversee the continuing issue of rural service and to monitor and help evolve a definition of Universal Service that makes sense for the present day and for the kinds of services that will be coming on-line. 141 Cong. Rec. S8478 (June 15, 1995).

networks. Customers do not purchase service on "lines"; they subscribe to service on a network so that they can communicate with all the other people connected to or through the network.

The Western Alliance believes that many of the problems and distortions of the current portable high-cost support mechanism are due to a lack of focus upon the essential network character of telecommunications investment and service. Calculation and distribution of high-cost support to both incumbent local exchange carriers ("ILECs") and competitive eligible telecommunications carriers ("CETCs") on a "per line" basis has distorted both infrastructure investment and support outlays because both ILECs and CETCs build and operate their facilities as networks rather than as lines.

The other primary source of problems and distortions is the misguided notion that high-cost support should be used to promote competition rather than to promote infrastructure investment where competition does not develop or does not produce sufficient investment. As Commissioner Kevin J. Martin stated in his Separate Statement regarding the MAG Order[4]:

> I also note that I have some concerns with the Commission's policy - adopted long before this Order - of using universal support as a means of creating "competition" in high cost areas. I am hesitant to subsidize multiple competitors to serve areas in which costs are prohibitively expensive for even one carrier. This policy may make it difficult for any one carrier to achieve the economies of scale necessary to serve all of the customers in a rural area, leading to inefficient and/or stranded investment and a ballooning universal service fund. It is thus with real pause that I sign on to an Order that may further this policy.

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[3] "Special provisions in the legislation address universal service in rural areas to guarantee that harm to universal service is avoided there." 142 Cong. Rec. S687 (Feb. 1, 1996).

[4] Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Second Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 00-256, FCC 01-304, released November 8, 2001.

The Western Alliance is not opposed to rural competition that arises from natural market forces, or to a true principle of competitive neutrality that does not favor or disfavor any class of carriers or any technology. However, it agrees with Commissioner Martin that portable high-cost support should not be used to attract competitors to areas they would not otherwise serve. This is particularly true where the "attraction" is in the form of portable support that bestows windfalls upon CETCs because it is based upon: (a) the costs of ILEC investments for services and service quality that the CETCs do not provide; and (b) the costs of ILEC regulatory requirements to which the CETCs are not subject.

With these principles in mind, the Western Alliance: (1) supports the imposition of mandatory and competitively neutral minimum federal eligibility standards upon all new and existing ETCs that seek to obtain or to continue to receive federal high-cost dollars; and (2) opposes the limitation of the scope of federal high-cost support to "primary lines."

III.

The Commission Should Adopt Mandatory Federal ETC Standards

The Western Alliance recommends that the Commission adopt additional mandatory (rather than permissive) federal requirements for state commissions and the Commission to use when determining whether existing ETCs, as well as future applicants for ETC status, are qualified to receive federal high-cost dollars. In addition to the statutory requirements of Section 214(e)(1) of the Act, the minimum eligibility standards applicable to all existing and future ETCs should include: (1) carrier of last resort obligations imposing the same conditions upon all ETCs within a service area regarding the build-out of their networks to serve high-cost and/or low-income customers in remote and sparsely populated areas; (2) service quality requirements, including comparable standards for all ETCs regarding clear and audible voice conversations, call blocking, and dropped calls; and (3) comparably affordable local service rate offerings. Moreover, in an area served by a rural telephone company, an entity seeking to obtain designation as an additional ETC should be required to satisfy the public interest requirement of Sections 214(e)(2) and 214(e)(6) of the Act by demonstrating that the tangible public interest benefits of its ETC designation will exceed the cost of additional federal high-cost dollars that it will receive.

A. Mandatory Requirements

One of the most serious shortcomings of the present ETC designation system is that state commissions have the authority to designate multiple ETCs in service areas, but lack any specific responsibility or obligation to raise or control the federal high-cost dollars distributed to these multiple ETCs. This has resulted in pressures and incentives for state commissions to designate as many ETCs as request that status in order to maximize the amount of "free" federal high-cost dollars received in their state.

The Commission has a fiduciary responsibility and obligation to control the distribution of the federal high-cost funds it raises, and is the only agency capable of exercising such control at this time. It must adopt and implement mandatory minimum eligibility requirements in order to reduce the adverse impacts of the excessive and unwarranted ETC designations that have been made in the past, and to improve the ETC designation process in the future.

Sections 254(c)(1) of the Act gives the Commission express authority to establish the "evolving level of telecommunications services" that constitutes "universal service," as well as to establish the "definition of the services that are supported by federal universal service support mechanisms." Section 214(e)(2) of the Act authorizes state commissions to designate as ETCs carriers that meet the requirements of Section 214(e)(1), including the requirement that such carriers "offer the services that are supported by federal universal service support mechanisms under Section 254(c)."

Hence, the Act clearly and expressly gives the Commission the authority and the obligation to define and describe the services that a carrier must provide in order to qualify for ETC status. Such definitions and descriptions may encompass carrier of last resort obligations, service quality standards, affordable rate ceilings, and other requirements. In fact, such requirements are wholly congruent with the Section 254(b) universal service principles that establish: (a) the availability of quality services at just, reasonable and affordable rates (Section 254(b)(1)); and (b) access by rural consumers to telecommunications and information services reasonably comparable to urban services at rates reasonably comparable to urban rates (Section 254(b)(2)).

Mandatory federal ETC standards would not impinge upon state commission jurisdiction or responsibilities. They would merely require state commissions to determine that carriers met minimum federal universal service requirements before they receive federal high-cost dollars.

State commissions that desire to establish additional ETC requirements that are not inconsistent with the Commission's requirements will remain empowered to do so under Section 254(f) of the Act. Likewise, states that desire to establish their own state universal service funds -- to provide additional universal service support or to provide universal service support to carriers that fail to meet the minimum federal requirements – will remain able to do so pursuant to Section 254(f). Finally, as detailed below, the minimum federal ETC standards would be influenced in major part by the existing service, service quality and affordable rate standards that have been adopted and implemented by state commissions.

B. Minimum Federal ETC Standards

The minimum federal ETC standards that should be applied to all existing and future ETCs include: (1) carrier of last resort obligations; (2) service quality requirements; and (3) affordable rate requirements.

Carrier of Last Resort Obligation. Virtually all Western states presently impose carrier of last resort obligations upon incumbent local exchange carriers ("ILECs"). These obligations promote universal service by requiring ILECs to build out or extend their networks under certain conditions to serve remote or otherwise high-cost customers that the carrier otherwise would not find to be economically feasible to serve. Existing carrier of last resort obligations are generally not unlimited, but rather include conditions and procedures that alleviate unreasonable service requests and service refusals, and special construction tariffs and link-up programs that permit early recovery of some initial costs.

In stark contrast, most ETCs that are not ILECs have no carrier of last resort obligations, and are generally able to disregard remote and other customers that they deem to be either too expensive or insufficiently profitable to serve.

Both the advancement of universal service and the principle of competitive neutrality require that all ETCs be subject to the same carrier of last resort obligations. If a carrier requests and accepts federal high-cost dollars, it must be required to advance universal service by serving the high-cost and/or low-income customers that request its service in remote and/or sparsely populated areas pursuant to the same carrier of last resort obligations under which the local ILEC is required to provide service. In this manner, rural customers will have service options reasonably comparable to urban customers, while all carriers that seek the benefits of ETC designation will have the same obligations to serve high-cost customers requesting their service.

This proposal is consistent with Sections 214(e)(3) and 214(e)(4) of the Act. Section 214(e)(3) requires the Commission (with respect to interstate services) and state commissions (with respect to intrastate services) to determine which common carrier or carriers are best able to provide supported federal universal services to an unserved community or portion thereof, and to order such carrier or carriers to provide the services for that unserved community or portion thereof. Section 214(e)(4) permits a carrier to relinquish its ETC designation and federal high-cost support in an area served by more than one ETC, and requires the state commission (or the Commission, where it has jurisdiction) to require the remaining ETC or ETCs to ensure that all customers served by the relinquishing carrier will continue to be served. Both of these provisions specifically authorize the Commission and state commissions to impose carrier of last resort obligations upon multiple ETCs serving an area.

The Western Alliance requests that the Commission adopt a mandatory minimum standard that requires all existing and future ETCs within each state to satisfy the same carrier of last resort obligations, and that requires state commissions to enforce their own state carrier of last resort obligations against all ETCs that they have designated in the past and that they may designate in the future. In the beginning, the specific carrier of last resort obligation in each state will be the same as that presently applicable to ILECs within the state. However, state commissions will have authority to increase, reduce, eliminate, or otherwise modify their carrier of last resort obligations.

The Western Alliance believes that its proposed "carrier of last resort" requirement is similar to and consistent with the Joint Board's proposed "commitment and ability to provide the supported services" requirement, and that it eliminates the need for the Joint Board's proposed "adequate financial resources" requirement. Instead of developing new build-out, cost, resale, and "reasonable request" standards for ETCs under a "commitment and ability to provide the supported services" requirement, it appears more effective and efficient to require state commissions to impose their existing carrier of last resort obligations and procedures upon all ETCs.

And, whereas adequate financial resources are relevant to the provision of universal service, the proof of the pudding is not whether a carrier can make some sort of "financial showing" but rather whether it is ready, willing and able to build out and extend its network to serve remote or otherwise high-cost customers that request service. Requirements for demonstrations of "adequate financial resources" can place small companies and start-up businesses at a serious disadvantage, particularly by forcing them to pay large sums (that could otherwise be available for infrastructure and service improvements) to financial entities for the loan commitment letters that "demonstrate" their financial qualifications. As the Commission learned during the 1970s and 1980s in broadcast and cellular comparative hearings, the effect of requirements to demonstrate "basic financial qualifications" in advance of obtaining a desired regulatory authorization has generally been gamesmanship wherein "creative accounting methods" are employed in the preparation of financial projections, and "loan commitment" letters are carefully worded and qualified to pass Commission muster without actually committing prospective lenders to make the loans.

Requiring the states to enforce their existing carrier of last resort obligations against all carriers that seek and obtain ETC status will effectively weed out carriers lacking the commitment and ability to provide supported services, without requiring state commission proceedings to develop new standards or opening the gates to new financial qualification games.

Service Quality Requirements. The Commission should adopt and implement minimum federal service quality standards, including comparable standards for all existing and future ETCs regarding clear and audible voice conversations, call blocking, and dropped calls.

Section 254(b)(1) of the Act establishes the universal service principle that "quality services" should be available at just, reasonable and affordable rates. The Commission should implement this principle by requiring all ETCs to satisfy identical or substantially equivalent minimum service quality standards.

The most effective and efficient starting point for such service quality requirements should be the existing service quality standards imposed by most state commissions upon ILECs. These standards have ensured that most urban and rural ILEC customers can conduct clear and audible voice conversations, and encounter minimal instances of fast busy signals and interrupted calls. If a carrier requests and accepts federal high-cost dollars, it should be required to advance universal service by providing the very same high quality of service to its customers. In addition, competitive neutrality requires that all ETCs receiving federal high-cost support in the same service area should have the same service quality obligations.

The Western Alliance requests that the Commission adopt a mandatory minimum ETC standard that requires all ETCs within a state to comply with the same voice telecommunications service quality standards, and that requires state commissions to enforce these service quality standards against all ETCs that they have designated in the past and that they may designate in the future. As with carrier of last resort obligations, state commissions should start with the existing service quality standards that they have imposed upon ILECs, but will retain the authority to increase, reduce, eliminate, or otherwise modify these standards in response to local economic and technical conditions.

The Western Alliance's "service quality" encompasses the Joint Board's proposed "consumer protection" requirement. It believes that federal voice telecommunications service quality standards constitute the most effective and efficient means to protect consumers in the ETC context. States already have full authority (including authority under Section 332(c)(3) of the Act) to impose general consumer protection requirements (including criteria for service termination and the handling of customer deposits) upon wireline and wireless carriers, whether or not they request and obtain ETC status, as well as upon non-telecommunications businesses. What are most urgently needed in the ETC context are requirements which ensure that rural consumers whose service is supported by federal high-cost dollars receive high quality service reasonably comparable to that available to their urban counterparts.

Affordable Rate Requirements. As noted above, Section 254(b)(1) of the Act establishes the universal service principle that quality services should be available "at just, reasonable and affordable rates." Carriers seeking the benefits of ETC status and federal universal service dollars should be required to offer comparable basic universal service packages (including reasonable and adequate amounts of local calls) at just, reasonable and affordable rates.

Most Western state commissions regulate the local service offerings and rates of ILECs, and some have capped or refused to allow increases in the rates of various basic local service packages. Where they exist, such rate caps and limits, and associated local service requirements, should be imposed upon all ETCs within the same service area. This will promote universal service by enabling customers of all ETCs to receive comparable services at comparably affordable rates. It will also satisfy the principle of competitive neutrality by imposing the same rate regulation upon all ETCs.

The Western Alliance recognizes that Section 332(c)(3) of the Communications Act strips state and local governments of authority to regulate the entry or rates of commercial mobile services. Under federal law, it is clear that a FCC-licensed wireless carrier can commence operations in a state without state commission certification, but that the state can thereafter regulate all aspects of the wireless carrier's operations (e.g., service quality and customer service practices) except its rates.

However, when a wireless carrier voluntarily seeks ETC status in order to obtain federal universal service dollars, it subjects itself to the ETC designation authority of the state commission under Sections 214(e) and 254(f) of the Act. This voluntary act of subjecting itself to the state commission's ETC designation jurisdiction requires the wireless carrier to comply with the existing and future requirements and conditions imposed by the state commission upon the ETCs that it designates, including affordable rate requirements. In other words, whereas a state commission cannot normally regulate the rates of commercial wireless carriers, it can require all ETCs (including wireless ETCs) that choose to seek ETC designation and to obtain federal high-cost dollars to comply with affordable rate requirements. As the Joint Board recognized, seeking ETC designation is a choice, and renders wireless ETCs subject to state regulation applicable to ETC designation and the related receipt of high-cost support (Recommended Decision, par. 64).

The Joint Board's proposed "local usage" requirement is included within the Western Alliance's proposal that ETCs be required to offer comparable basic universal service packages at just, reasonable and affordable rates. However, rather than focusing just upon some amount of local usage, universal service is more effectively and efficiently advanced by requiring a package of basic services at an affordable rate.

C. Section 214(e) Public Interest Showing for New ETCs

Sections 214(e)(2) and 214(e)(6) of the Act expressly require state commissions and this Commission (where a state commission lacks jurisdiction) to make a specific and separate finding that the designation of an additional ETC for an area served by a rural telephone company is "in the public interest." The Joint Board has correctly recognized this requires state commissions (and this Commission, when it has jurisdiction) to perform in-depth public interest analyses before acting upon applications for designation of new ETCs in rural telephone company study areas (Recommended Decision, par. 69).

The most feasible and practicable way to comply with the statutory public interest requirement is to require the conduct of a detailed and specific cost-benefit analysis before designating an additional ETC in an area served by a rural telephone company. Every entity requesting designation as an additional ETC should be required to show that the specific and tangible public interest benefits of its designation exceed the cost of the additional federal high-cost dollars that it will receive.

The proposed cost-benefit test should not be satisfied by vague promises that the additional ETC will "enhance competition" or "increase consumer choices" or "promote deployment of new technologies." Rather, because infrastructure investment is the predominant goal of the 1996 Act, each entity requesting designation as an additional ETC in a rural telephone company study area should be required to submit a detailed and specific plan showing: (1) the new infrastructure it proposes to deploy in the area for which it is requesting CETC status; (2) the estimated cost of the proposed infrastructure investment; and (3) the proposed schedule for deployment of the new infrastructure. If ETC status is granted, it should be conditioned upon compliance with the requesting entity's proposed infrastructure investment plan and schedule, and should be revoked in the event of non-compliance.[5]

In addition to mandatory infrastructure investment plans, entities seeking designation as additional ETCs should be allowed to present evidence of additional public interest benefits in the form of the specific existing or new telecommunications

[5] Where relatively brief delays in compliance were found by the FCC or state commission to be justified, limited waivers or brief extensions could be granted.

and information services that they propose to deploy in the area for which they are requesting ETC status, together with a specific timetable for such deployment(s). Information regarding specific services and service areas will help the designating authority determine the extent to which the proposed ETC designation will produce benefits in the form of increased access by rural consumers to telecommunications and information services that are reasonably comparable to those provided in urban areas (thus advancing the criteria in Section 254(b)(2) of the Act), as well as clarifying the degree to which competition will be enhanced and consumer choices increased.

The state commission or this Commission should then be required to balance the benefits of the proposed CETC's infrastructure investment plan (plus any additional service benefits) against the costs of the incremental high-cost support to be received by the CETC. If the agency determines that the specific benefits exceed the specific costs, it can designate the additional ETC. If it determines that the specific costs exceed the specific benefits, it must deny the ETC designation request for failure to satisfy the public interest test.

IV.

The Commission Should Not Limit The Scope of Federal High-Cost Support to "Primary Lines"

The Western Alliance opposes the Joint Board's recommendation that the scope of federal high-cost support be limited to "primary lines." This approach violates the Section 254(b) universal service principles of reasonable urban-rural comparability and of specificity, predictability and sufficiency, as well as the Section 254(e) requirement that federal universal service support be explicit and sufficient. It improperly and unreasonably focuses upon "lines" rather than the telecommunications networks that are necessary to serve rural and other high-cost areas, and will destroy the incentive for many wireline and wireless carriers to invest in rural telecommunications networks. The "primary line" approach is not competitively or technologically neutral, but rather favors wireless carriers over wireline carriers. Finally, "primary line" mechanisms will be very difficult and expensive to administer, and will be susceptible to gaming and outright fraud.

The Western Alliance understands that the Commission needs to control the growth of the federal Universal Service Fund ("USF") so that the program remains sustainable in the long run. However, the adoption of a "primary line" approach (together with the voucher, virtual voucher, ballot, phone stamp or similar mechanism to designate a customer's "primary line") will disrupt cost recovery, discourage rural infrastructure investment, impair universal service and complicate program administration without significantly resolving sustainability issues. The adoption and enforcement of more stringent ETC designation standards offers a much more effective, and less disruptive, means of limiting long-term USF growth. In addition, the Joint Board and Commission need to eliminate the ability of some CETC's to obtain windfall portable universal service support based upon the per-line costs and support of rural ILECs.[6] Finally, the Commission must recognize that ILECs and other "last mile" carriers will continue to invest in expensive local exchange facilities only if they receive reasonable and adequate intercarrier compensation from the long-haul carriers that use

[6] The Western Alliance proposed to the Joint Board that CETCs should receive universal service support on the basis of their own actual costs as averaged throughout their own service or study area within each state. It is unfair and unreasonable for a wireless CETC that serves Denver, Colorado Springs, Pueblo and other populous areas of Colorado to receive portable universal service support in several sparsely populated Colorado exchanges served by rural telephone companies when wireline carriers like US WEST must average their costs throughout the urban and rural Colorado exchanges that they serve.

their origination and termination facilities, and support the maintenance of a just and reasonable interstate access revenue stream (rather than continuing to transfer more and more access cost recovery mechanisms into the USF).

The Western Alliance also opposes the Joint Board's proposal that high-cost support in areas served by rural carriers be capped on a per-line basis when a competitive carrier is designated as an ETC.

A. Reasonable Comparability

Section 254(b)(3) of the Act establishes the principle 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 telecommunications and information services" that are reasonably comparable to the services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

The Joint Board asserts that a "primary line" connection will provide "access" to all of the indicated "telecommunications and information services, including interexchange services and advanced telecommunications and information services" (Recommended Decision, par. 93). However, it does not demonstrate that such "access" will be effective access, or that it will be "reasonably comparable" to the access or rates available in urban areas.

Whereas the Joint Board indicates that second lines are often used for dial-up Internet access or fax services[7] (Recommended Decision, par. 94), the principal purpose of such second residential lines is to enable households to maintain access to the public switched telephone network ("PSTN") for the origination and receipt of voice telephone calls while extended Internet access[8], facsimile and teen calling activities are taking place. If the Commission denies support for second residential lines in high-cost rural areas, rural LECs will be forced to raise their second line rates to the level necessary to recover their costs. In most cases, these increased rural second line rates will be significantly higher than second line rates in urban areas, and hence will no longer be "reasonably comparable" to the urban rates.

Moreover, to the extent that these rural second line rate increases render second residential lines unaffordable for significant numbers of rural households, rural customers will effectively be denied "reasonably comparable" access to "telecommunications and information services" as required by Section 254(b)(3). Unlike urban residents able to purchase affordable second lines, rural residents will not be able to maintain an open connection to the PSTN for voice calls while a family member is surfing the Internet, checking e-mails, or talking for hours with his or her adolescent friends.

The Joint Board recognized that restricting support to a "single business connection" warrants careful consideration because it might discourage the operation of businesses, particularly small businesses, in rural areas (Recommended Decision, par. 115). It indicated that one possible solution was to limit high-cost support to some designated maximum number of multiple connections for businesses, but did not indicate whether that maximum would consist of 2, 3, 5, 10 or some other number of lines.

Rural communities are extremely dependent upon small businesses for jobs and services. During recent years, both rural Chambers of Commerce and rural telephone

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[7] The Western Alliance would add teen lines to this list.

companies have worked very hard to attract and retain small businesses in their communities. One of the primary rural community attractions has been the availability of high quality telecommunications services that allow access to "telecommunications and information services, including interexchange services and advanced telecommunications and information services" that are reasonably comparable to the services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas. Such "reasonably comparable" services can reduce or eliminate the geographic disadvantages of rural communities, and support the creation and retention of jobs that give succeeding generations of families the option of remaining in rural America.

Any artificial limitation of high-cost support for rural business lines (whether to 2, 3, 5, 10 or some other number of lines) will cause the rates for some business lines and services to increase. If these increases are significant, they will result in unnecessary and unacceptable risks of business relocations, service and payroll reductions, job losses and other adverse impacts that can destroy years of economic development efforts within a rural community. The primary line approach will not enhance the sustainability of the USF enough to justify these risks.

In a letter, dated January 22, 2004, to Commissioner Kathleen Q. Abernathy and G. Nanette Thompson, the Chairpersons of the Universal Service Joint Board, Senator Ted Stevens of Alaska stated:

> One item that I hope to explore with you further is the primary line restriction option. I believe that such a restriction is contrary to the fundamental purposes for universal service. Section 254 of the Telecommunications Act of 1996 specifically contemplates that consumers in rural and high cost areas should

[8] Although Digital Subscriber Line ("DSL") services have reduced the need for second lines with respect to Internet access, many rural customers remain situated outside the areas where DSL can be furnished.

> have access to telecommunications and information services "that are reasonably comparable to those services provided in urban areas" at reasonably comparable rates.
>
> I know that you are fully aware of the difficulties faced by rural communities, carriers and consumers. Limiting universal service to primary lines would favor urban consumers over rural consumers. It would deprive rural carriers of much-needed support for such deploying network facilities and services ubiquitously throughout rural America. I also worry that limiting support solely to primary lines would also become burdensome on small businesses operating in rural areas because they would be forced to pay higher rates for their telecommunications services in high-cost areas than they would pay in urban areas.
>
> Finally, I am conscious of the fact that a split decision on this issue could also be detrimental to rural markets because it may cause uncertainty for investors. It is my hope that the Joint Board will be able to find a unified solution that will encourage investment in rural markets rather than cause confusion. I applaud your efforts to maintain the high cost support mechanism, but urge you to explore other options to achieve that goal.

The Western Alliance shares Senator Stevens' concerns about the adverse impacts of the "primary line" approach upon urban-rural comparability, rural telecommunications investment incentives, and rural businesses. It hopes that the Commission will listen to Senator Stevens more attentively, and seek less disruptive ways to sustain the USF program.

B. Specific, Predictable and Sufficient

Section 254(b)(5) of the Act establishes the principle that the federal universal service mechanism be "specific, predictable and sufficient," while Section 254(e) requires that federal universal service support be "explicit and sufficient to achieve the purposes of [Section 254]."

The Joint Board has recommended that the Commission further develop the record on proposals to allow consumers with more than one connection to designate a certain ETC's service as their "primary line" (Recommended Decision, par. 113). It notes that these proposals include ballots, vouchers, and phone stamps, and asserts that they have the advantages of allowing consumer choice and being competitively neutral (Id.).

What the Joint Board does not recognize is that a ballot, voucher, phone stamp or similar "consumer choice" mechanism would render federal high-cost support wholly unpredictable from period to period. ETCs will not be able to plan or rely upon their high-cost revenue stream for any longer than the minimum time period (whether hours, days, weeks, months, or years) during which consumer ballots, vouchers or phone stamps are effective and cannot be changed.

The Western Alliance does not believe that the Commission would be willing or able to restrict consumers from changing their designated "primary line" for a period longer than a month. If that is the case, critical universal service revenue streams will fluctuate widely and unstably from month to month as some customers switch to and from ETCs in response to the latest "special offer" or promotion. Even if the Commission were able to limit changes of customer "primary line" designations to one per year, high cost revenue streams would still be too unpredictable to support the multi-year business and investment planning required in the capital-intensive telecommunications industry.

The Joint Board's claim that a "primary line" mechanism would satisfy the statutory "sufficiency" principle and requirement disregards the fact that carriers build and operate telecommunications networks rather than individual subscriber lines. LEC networks are comprised of transport facilities, switching equipment, local distribution facilities, and finally individual customer connections. The "primary line" approach imputes the sum of all of these network costs to the "individual customer connection," which in reality entails only the cost of placing approximately 200 feet of drop wire at the customer's premises.

Whereas the Commission has arbitrarily divided the high-cost support received by ILECs for these network facilities into an artificial "per line" figure, the fact is that most of the network facilities and costs contained in these "per line" figures are not eliminated when a customer terminates service or designates another ETC's service as its "primary line." If an ILEC loses the entire amount of a customer's "per line" support when the customer designates another "primary line," the lack of scale economies in rural areas means the ILEC will lose a substantial amount of support for its network facilities as well as the support directly attributable to the "individual customer connection." Hence, the ILEC's remaining support will not be "sufficient" to achieve the universal service purposes of operating a network that provides quality and affordable services to its remaining customers.

The Western Alliance recognizes that the Joint Board has proposed Restatement, Lump Sum Payment and Hold Harmless options to mitigate reductions in high-cost support to rural carriers. To date, very little detail has been offered as to how these mechanisms would operate and how long they would remain in place. In the latter respect, the Western Alliance notes New York Commissioner Thomas J. Dunleavy's emphasis in his separate statement to the Recommended Decision that such proposals are intended only as "transitional" mechanisms. As such, they offer only short-term amelioration that is wholly inadequate to permit predictable or sufficient recovery of the substantial and long-term costs incurred by carriers to invest in telecommunications facilities and to provide telecommunications services in rural areas.

C. Incentives to Invest in Rural Infrastructure

The telecommunications networks necessary to serve rural areas are planned, designed, constructed, financed, operated and upgraded over time horizons of 3-to-35 years.[9] The process for both initial projects and subsequent upgrades includes the preparation and approval of engineering designs; the application and negotiation of Rural Utilities Service, Rural Telephone Finance Corporation, CoBank or other financing; the evaluation, selection purchase and delivery of equipment; the obtaining of construction permits and access to rights-of-way and towers; and the actual construction, installation, testing and cut-over. Such capital-intensive and long-term projects will not be undertaken unless there are reasonable expectations that their substantial costs will be recovered.

Federal high-cost support currently constitutes approximately 25-to-50 percent of the revenue stream of most Western Alliance members.[10] As indicated by the following table, the amount of federal high-cost support per-loop to be received by rate-of-return companies in the Western states during 2004 far exceeds the national average of $168.03 of high-cost support per loop. Hence, the size and stability of federal high-cost support flows constitute one of the most critical (and in many cases, THE most critical) elements of the revenue streams of Western rural telephone companies when they and their lenders

[9] The shortest portion of the time horizon (3 years) pertains to switching software changes. Switches themselves are generally purchased and installed on a 5-to-10-year time horizon. Loop investments are often made on a 20-to-35-year basis.

[10] The portion of Western Alliance member revenue streams comprised of federal high-cost dollars will grow even larger if "bill and keep" proposals eliminate or further reduce interstate and/or intrastate access revenues.

assess their ability to recover the costs of past, present and future infrastructure investment projects.

Table 1

Estimated 2004 High-Cost Support Per Loop In Western States

State	Estimated 2004 High Cost Support/Loop
Alaska	$220.02
Arizona	$781.50
Arkansas	$224.95
California	$224.21
Colorado	$411.98
Iowa	$213.45
Idaho	$615.64
Kansas	$785.09
Louisiana	$409.80
Minnesota	$174.24
Missouri	$224.22
Montana	$326.73
North Dakota	$252.63
Nebraska	$340.03
New Mexico	$780.67
Nevada	$316.12
Oklahoma	$387.39
Oregon	$296.74
South Dakota	$286.43
Texas	$247.13
Utah	$471.03
Washington	$173.43
Wyoming	$563.71
National Average	$168.03

Source: 2004 USAC Quarterly filings for 1Q04 – 3Q04.

The ballot, voucher, phone stamp and other "consumer choice" options for implementing a "primary line" mechanisms are inherently unstable and unpredictable. If customers are able to change the designation of their "primary line," and thus change (on a monthly, quarterly or even annual basis) the recipient of the substantial federal high-cost support attributable to their "lines," ETCs will be unable to forecast or rely upon the stable revenue streams necessary to recover the costs of their rural infrastructure investments.

Put simply, rendering a critical cost recovery mechanism unstable and uncertain in an industry requiring capital-intensive investments that must be recovered over lengthy time horizons is a recipe for disaster. Boards of Directors will not approve, and lenders will not fund, significant rural telecommunications infrastructure investments where a major component of the revenue stream necessary for cost recovery is subject to large and unpredictable fluctuations in response to the whims of ballots, vouchers, and/or phone stamps.

The Western Alliance has observed that investment in new and upgraded rural telecommunications infrastructure has slowed during recent years, and that some projects have been postponed or cut back because of uncertainties regarding the existence and size of future high-cost and access revenue streams. It believes that the adoption of a "primary line" mechanism that renders future high-cost support even more uncertain and unstable will exacerbate these concerns, and further reduce or halt existing and future investment plans. Even if the "primary mechanism" were accompanied by a "hold harmless" option, carriers and their lenders are likely to view such option as a short-term palliative, and continue to be reluctant to initiate major investment projects with longer time horizons.

This result will be very unfortunate, for the primary purpose of the 1996 Act was to stimulate private sector investment in urban and rural telecommunications infrastructure. The Western Alliance notes that, notwithstanding the hopes and hype surrounding Vonage, Pulver and other Voice over Internet Protocol ("VoIP") providers, they are not building new infrastructure in rural areas. Rather, during the foreseeable future, it is the ILECs that will be building and maintaining the major portion of the telecommunications infrastructure necessary to furnish "legacy" and new services in Rural America, as well as providing the major portion of the telecommunications jobs needed to sustain fragile rural economies.

D. Absence of Competitive Neutrality

Section 254(b)(7) of the Act allows the Joint Board and the Commission to adopt such other principles as they determine are necessary and appropriate for the protection of the public interest and are consistent with the Act. To date, the Commission has adopted one such additional principle – that of competitive neutrality, which states that universal service mechanisms and rules should neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor or disfavor one technology over another. Report and Order (Federal-State Joint Board on Universal Service), 12 FCC Rcd 8776 (May 8, 1997).

The "primary line" mechanism violates the competitive neutrality principle because it unfairly advantages and favors wireless ETCs over wireline ETCs. This is because the "primary line" approach is designed and intended to limit the provision of high-cost support to a single wireline per residence and a single wireline (or, perhaps, a limited number of wirelines) per business. Because wirelines physically terminate at residences and businesses, it is relatively easy for regulators and auditors to ascertain the number of wirelines serving a particular residence or business, and to restrict federal high-cost support to a single one.

In contrast, the "primary line" mechanism is not designed or capable of determining accurately the number of wireless phones serving a particular residence or business, or of limiting the number of such wireless phones for which federal high-cost dollars are received. Whereas a household may be served by one or two wirelines that can be readily counted, every full-time and part-time resident of a household may have his or her own wireless phone, may use the wireless phone at a variety of locations, and may be billed for wireless service at home, at work, at a post office box, or at some other location. Likewise, whereas a business may be served by a number of readily ascertainable wirelines, every manager and employee of the business may have his or her own wireless phone, may use the wireless phone at a variety of locations, and may be billed for wireless service at a variety of possible addresses.

Hence, regulators and auditors will not readily be able to count accurately the number of wireless phones serving a particular residence or business, or to restrict federal high-cost support to a single "primary wireless phone" as easily as they can restrict it to a single wireline. Rather, the "primary line" mechanism is structured to permit wireless ETCs to receive federal high-cost support for multiple wireless phones in many cases where a competing wireline ETC will receive support for only a single wireline. It therefore unfairly and unreasonably advantages and favors wireless ETCs over wireline ETCs, and thus violates the principle of competitive neutrality.

E. Administrative Difficulties

The Joint Board underestimates the complexity and expense of administering a "primary line" mechanism that will control the distribution of large amounts of per-line federal high-cost support. NASUCA may believe that "primary lines" have been accurately and honestly reported in connection with the assessment of $3.50 and $6.00 per month Subscriber Line Charges, and that balloting worked reasonably effectively for the selection of presubscribed interexchange carriers at the outset of equal access. However, the much larger amounts of high-cost dollars at stake among competing ETCs, and the much greater impact upon customer rates of a "primary" or "non-primary" line classification, make the administration of the proposed "primary line" mechanism a much more difficult and dangerous proposition.

Even in traditional single family households, the definition and tracking of "primary lines" will be complicated. Can a husband and wife each have their own "primary" wireline? Can a husband and wife each have their own "primary" wireless phone? Can a husband have his own "primary" wireline and a wife her own "primary" wireless phone, or vice versa? If a husband and wife separate, can each then have his or her own "primary" wireline and or wireless phone? If a husband and wife each had a "primary" wireline or wireless phone before marriage, do they have to designate a single "primary" wireline or wireless phone after their wedding?

Can an adolescent child living at home have his or her own "primary" wireline or wireless phone? What if the "child" is over 18, or over 21, or over 30, and is still living in his or her parents' home? Can college students living at school part of the year and at home part of the year have their own "primary" wireline or wireless phone?

Can a grandfather or grandmother who comes to live with the family keep his or her own "primary" wireline or wireless phone? What if he or she has her own separate "apartment" or living quarters within the home? What if he or she lives outside the main house in a converted barn or carriage house that has been constructed on the property?

Can a wireline or wireless phone used by a family at its summer cottage, winter ski condominium or hunting cabin be deemed a "primary" line?

Can an unrelated individual who rents a room or basement in the family's home have his or her own "primary" wireline or wireless phone?

Going outside traditional families, can unrelated individuals living in a group house or sharing an apartment each have their own "primary" wireline or wireless phone? On Native American reservations and elsewhere, can multiple families sharing the same living quarters at various times of the year each have its own "primary" wireline or wireless phone(s)? Can phones placed in quarters housing migrant farm laborers at various times during the year be deemed to be "primary" lines?

Even if some of the foregoing questions can be answered at some point in time, what happens when conditions or situations change? What happens when a 23-year-old takes his wireless phone from his parent's home to his graduate school apartment and then to a group house within a particular year? How much of the year will the wireless phone be deemed a "primary line" eligible for support? If the rates for a non-supported wireless phone increase substantially, who will have incentive to track and report the changes?

Administrative difficulties arise not only with respect to the definition of "primary lines," but also with respect to who can and will obtain, track and verify "primary line" information. The Western Alliance notes that that the obtaining, tracking and verification of "primary line" information constitutes a different and much more difficult, expensive and time-consuming task than the annual certification by state commissions pursuant to Section 254(e) of the proper use of universal service support by

ETCs. It notes that most state commissions have not conducted extensive inquiries into the use of federal universal service support by most ETCs, and have frequently relied upon self-certifications from ETCs. In the relatively few instances where state commissions have investigated the use of universal service support by ETCs, they have focused their efforts upon the ILECs that they were used to regulating, and have largely ignored the wireless and other ETCs that they do not normally regulate.

Neither this Commission nor state commissions nor the Universal Service Administrative Corporation ("USAC") currently have sufficient resources to effectively track and verify the "primary line" representations of ETCs and their millions of customers. This would require thousands of enforcement personnel located throughout the high-cost areas of the country.

And if the burden were placed upon them, neither wireline nor wireless ETCs have the resources or capabilities to make the numerous "primary line" determinations that will be required. Whereas wireline ETCs can determine the number of lines terminating at a particular location, they do not have the authority or ability to investigate households, living arrangements and businesses at many locations. In some instances, such an investigation could constitute a serious invasion of the privacy of the people residing or working at the location, and may even be dangerous for the investigating employee of the ETC. Likewise, wireless ETCs can track the cell sites from which customers may place and receive calls, but have little or no ability to determine or verify the "primary wireless phone" for particular households, businesses and other locations.

F. Susceptibility to Fraud

With no effective administrative oversight mechanism and substantial federal high-cost dollars at stake, a "primary line" mechanism will be very vulnerable to fraud.

To the extent that ETCs serve customers taking multiple services, there will be substantial incentives for ETC representatives and agents to get those customers, by hook or crook, to designate the ETC's service as their "primary line." In some cases, this will be accomplished via intensive marketing and promotional campaigns that use substantial resources that could otherwise have been invested in service expansions and improvements. In other cases, techniques similar to those employed in toll service slamming will be used to grab the per-line high-cost support attributable to the customer.

During recent years, the Commission, state commissions, interexchange carriers ("IXCs") and consumers have encountered serious problems with toll service slamming. Tens of thousands of toll service consumers have been shifted from their preferred IXC to another IXC without their informed consent via a number of devices, including (a) inadvertent "authorizations" on the basis of answers to questions they did not understand; (b) unauthorized "authorizations" by children, grandparents, babysitters and others not entitled to change service; and (c) outright fraud. These slamming practices have arisen, in major part, from competition for $10-to-$40 per month toll customers, and the telemarketing commissions applicable to them.

Where $200-to-$800 of per-line high-cost support is in play, slamming efforts are likely to become even more pervasive and sophisticated. The Western Alliance believes that all sorts of old and new ploys will be used by unscrupulous ETC representatives to obtain unwitting or phony "authorizations" on ballots, vouchers, phone stamps and other devices to change customer designations of "primary lines" and redirect distribution of the "per-line" high-cost support attributable to such customers. Unlike toll slamming where presubscribed IXC changes generally appear on the next bill, some unauthorized "primary line" changes may not come to the attention of customers for months or years thereafter. This is particularly possible where a state commission will not allow an ILEC to increase a customer's local service rates even if the customer designates another service as its "primary line."

In addition to slamming problems, neither this Commission nor most state commissions nor USAC will have the resources necessary to track and verify the "primary line" representations of ETCs and their customers. Even if "primary lines" can be reasonably defined, the substantial dollars at stake make it likely that some ETCs and their customers will claim, as "primary lines," wirelines and/or wireless phones that they know do not satisfy the definition. With over 13 million wirelines and wireless phones in service in high-cost areas, federal and state regulators cannot track and verify more than a minuscule number of "primary line" representations. The Western Alliance fears that this lack of effective oversight will become an open invitation to fraudulent claims.

G. Per-Line Support Should Not Be Capped Upon Competitive Entry

The Joint Board's recommendation that high-cost support in areas served by rural carriers be capped on a per-primary line basis when a CETC is present or enters the market (Recommended Decision, par. 108) fails to consider the adverse impact of such caps upon infrastructure investment, extraordinary maintenance and other substantial operations.

Federal high-cost support, which comprises approximately 25-to-50 percent of rural telephone company revenue streams, is a major component of investment cost recovery. If federal high-cost dollars are capped at a per-line level, new investments may not be made unless the costs thereof can be recovered within the scope of existing and available depreciation charges. For example, if a rural telephone company is recovering in its high-cost support $200 thousand per year of depreciation for past infrastructure investments at the time that its per-line support is capped, it will henceforth not be able to recover in its high-cost support any more than this $200 thousand per year of depreciation (subject to possible increases due to the working of an index factor) for its existing and future investments. Additional investments will not be made until some or all of the existing investments were fully depreciated, unless the carrier is able to recover its added costs via increases in its local service rate or access charge revenue streams.

Capped high-cost support will also hamstring a rural telephone company if its maintenance and labor costs increase significantly due to the need to respond to an earthquake, hurricane, fire, flood, ice storm or other natural disaster. The carrier's recovery costs are likely to exceed significantly the maintenance and associated labor costs included and recovered in its capped per-line support. Unless it can recover such additional disaster recovery costs by increasing its other revenue streams, the carrier will have to reduce its maintenance and labor costs (e.g., by laying off technicians) for months or years to come until it can offset the increased disaster recovery costs.

Extraneous cost increases (such as the recent 74 percent increase in Alaskan workmen's compensation insurance premiums) will also wreak havoc in a capped per-line support system. Where pre-existing costs are recovered in whole or part in the carrier's high-cost support, major cost increases in certain areas will require offsetting cost reductions in other areas (such as infrastructure investment and jobs) or increases in local service rates or access charge revenues.

Capping per-line support will not serve the public interest if it limits or postpones infrastructure investment, reduces maintenance activities and service quality, produces layoffs and salary cuts, and/or forces substantial rate increases. As indicated above, there are more effective and efficient ways to limit the growth of the USF, including implementation of more stringent ETC standards, adoption of a more accurate and reasonable basis for calculating the high-cost support provided to CETCs, and limiting the transfer of intercarrier compensation mechanisms into the USF.

V.

Conclusion

The Western Alliance supports the adoption and implementation of mandatory federal minimum standards to limit and control the number of ETCs that receive federal high-cost dollars. It believes that these mandatory standards should include carrier of last resort, service quality and affordable rate requirements.

The Western Alliance further agrees that Section 214(e)(2) of the Act obligates state commissions (and this Commission, when it has jurisdiction) to perform additional, in-depth public interest analyses before acting upon applications for designation of new ETCs in rural carrier service areas. It believes that the most effective and efficient public interest analysis is a cost-benefit test that balances the benefits of proposed infrastructure investments by the new ETC against the costs of the additional federal high-cost support it will receive.

The Western Alliance opposes limitation of the scope of federal high-cost support to "primary lines" and the capping of high-cost support in areas served by rural carriers on a per-primary line basis when a CETC is present or enters the market. There are more effective ways to sustain the USF program without discouraging the rural infrastructure investment that was the goal of the 1996 Act. In particular, the "primary line" approach will impair the ability of rural consumers to access services "reasonably comparable" to those available in urban areas at reasonably comparable rates; will render high-cost support unpredictable and insufficient; will destroy incentives to invest in rural telecommunications infrastructure; will unfairly favor wireless ETCs over wireline ETCs; will create numerous and complicated administrative problems; and will invite gaming and fraud likely to dwarf prior slamming problems.

The Western Alliance notes and understands that this USF portability proceeding is not being conducted in a vacuum, but rather is interrelated with existing and future proceedings involving USF contributions, the basis for calculating USF support, and intercarrier compensation. Of particular concern are rumored future proposals and rulemakings regarding intercarrier compensation, which may result in the adoption of "bill and keep" arrangements and in the transfer of significant additional access cost recovery mechanisms into the USF. If this USF portability proceeding is not resolved in a manner that produces a predictable, sufficient, efficient, and competitively neutral high-cost support program that encourages rural infrastructure investment and that enables "reasonably comparable" services and rates, the transfer of additional access cost recovery mechanisms into the USF will exacerbate the problems that are not resolved in this proceeding as well as the new problems created by wrong "solutions" such as the proposed "primary line" mechanism.

Respectfully submitted,
THE WESTERN TELECOMMUNICATIONS ALLIANCE

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