**Before the**
**Federal Communications Commission**
**Washington, D.C. 20554**

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| In the Matter of | ) | |
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| Federal-State Joint Board on Universal Service | ) | CC Docket No. 96-45 |
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## COMMENTS OF VERIZON


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## COMMENTS OF VERIZON[1]

### Introduction and Summary

Commenters and commissioners alike are in agreement that something must be done to control growth of the high cost fund.[2] Almost half of the universal service fund is used for high

1 The Verizon telephone companies ("Verizon") are the local exchange carriers affiliated with Verizon Communications Inc., and are listed in Attachment A.

2 *See, e.g.*, BellSouth Comments, at 3 (filed May 5, 2003); CenturyTel Comments, at 9-15 (filed May 5, 2003); NTCA Comments, at 9-10 (filed May 5, 2003; OPATSCO Comments, at 9 (filed May 5, 2003); Sprint Comments, at 6 (filed May 5, 2003); *Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, 19 FCC Rcd 1563, Separate Statement of Chairman Michael K. Powell (2004) ("*Virginia Cellular Order*") ("Despite the importance of making rural, facilities-based competition a reality, we must ensure that increasing demands on the fund should not be allowed to threaten its viability"); *Federal-State Joint Board on Universal Service*, Recommended Decision, 19 FCC Rcd 4257, Separate Statement of Commissioner Kathleen Q. Abernathy (2004) ("*Recommended Decision*"), ("[I]t seems clear that the universal service fund can no longer subsidize an unlimited number of connections provided by an unlimited number of carriers").

cost support.[3] Of that, the largest piece by far – over one billion dollars – will provide funding to high cost loop support in rural areas. [4]

One area that has the potential to rapidly expand growth of the high cost fund is the portability of support to competitive eligible telecommunications carriers ("ETCs"). At the time of the Commission's *Referral Order*, it noted that competitive ETCs were increasingly qualifying for high cost support, receiving $14 million (1.8%) in high cost funding by the third quarter of 2002.[5] For fourth quarter 2004, USAC projects that more than $267 million will be spent for high cost loop support to rural carriers, and an additional $45 million – approximately 14% of total rural high cost loop support – will go to competitive ETCs.[6] The universal service fund simply cannot sustain such growth. Moreover, providing funding to multiple ETCs in high cost areas in the name of "competition" does not further the goals of the universal service fund, which is to provide support to build the necessary infrastructure to provide customers in high cost areas with access to basic, affordable telecommunications services.

The Commission should swiftly undertake several measures to control the growth in the high-cost fund in rural areas. Specifically, it should:

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3 *See* Universal Service Administrative Company, 2003 Annual Report, *available at* http://www.universalservice.org/Reports/ ($3.27 billion of $5.6 billion in 2003 universal service support was for high cost support).

4 *See* Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for Fourth Quarter 2004, at 7 (August 2, 2004) ("USAC Fourth Quarter 2004 Report") *available at* http://www.universalservice.org/overview/filings/2004/Q4/4Q2004%20FCC%20Final.pdf. This support is designed to subsidize the "last mile" of connection in service areas where costs are above the national average. Of the projected $1.24 billion in projected support, $1.06 billion is expected to go to rural carriers. *Id.*, at 7-8.

5 *See Federal State Joint Board on Universal Service*, Order, 17 FCC Rcd 22642, ¶ 4 (2002).

6 *See* USAC Fourth Quarter 2004 Report, at 8.

- Establish a rebuttable presumption that it is not in the public interest to grant more than one ETC per rural study area. In areas where there already exists more than one ETC, the Commission should direct states to use the new presumption to determine whether it is appropriate to de-designate certain ETCs.
- In rural areas, institute a primary line limitation on support when a competitive ETC is designated in the study area, and initially "rebase" support for rural ILECs to avoid rate shock.
- Freeze per-line support to all rural study areas, similar to the suggestion proposed by the Rural Task Force in 2000.
- Adopt guidelines to assist the states in determining, in both rural and non-rural areas, whether it is in the public interest to designate additional ETCs.

The measures suggested above are designed to control growth of the high cost fund, while simultaneously minimizing unnecessary administrative burdens and expense and maintaining a "sufficient" level of support. Because of the different concerns presented by non-rural and insular areas, the measures to be undertaken here should apply only to rural areas.

## Argument

### I. The Commission Should Take Prompt Action To Limit Growth of the Rural High Cost Fund, and Should Reject Proposals that Would Not Meet That Goal

More than a year ago, when the Joint Board was accepting comments on this proceeding, commenters were nearly unanimous in urging that something be done to control growth of the high cost fund.[7] The size of the universal service fund is growing to levels that threaten two of the primary goals of the universal service program – sustainability of the fund, and affordability of telecommunications services for all Americans. *See* 47 U.S.C. § 254. Commission staff

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[7] *See* footnote 2, *supra*.

projections at the time were that the universal service fund will grow from almost $6.82 billion in 2002 to approximately $7.37 billion in 2007 – a roughly 25% increase, requiring an additional $1.5 billion per year, in just a five year period.[8] High-cost disbursements were $1.72 billion in 1999; by fourth quarter 2004, the high cost fund requirements were almost a billion dollars *per quarter*. Even if there were no additional growth, by 2005 the fund size would be more than $3.75 billion per year – more than double the size of high cost support from just five years ago.[9]

Absent Commission action, there is reason to believe the demand for high cost funding will grow even more. One of the growth sources that has the greatest potential to spiral out of control is the funding of competitive ETCs in high-cost areas. In the first quarter of 2001, competitive ETCs received $2 million in high-cost support; just over two years later, they were receiving more than eighteen times that amount ($37 million).[10] In 2003, competitive ETCs received a total of more than $131 million in high cost support; by 2004, they had received almost that much – $119 million – in the first two quarters of the year alone.[11]

Funding to competitive ETCs increase the size of the rural high cost fund in one of two ways: If the support is for *additional* customer lines (*e.g.*, the customer is receiving support from

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8 *See Commission Seeks Comment on Staff Study Regarding Alternative Contribution Methodologies*, 18 FCC Rcd 3006, at 5 (2003) (line listing "USF program requirements").

9 *See* USAC Fourth Quarter 2004 Report, at 12 (projecting a total high cost fund requirement for 4Q2004 to be $943.402 million; multiplying that number times four to estimate four quarters of 2005 equals $3.77 billion).

10 *See* Universal Service Administrative Company, *Federal Universal Service Support Mechanisms Fund Size Projections and Contribution Base for the Second Quarter 2003*, Appendix HC01 (rel. Feb. 28, 2003) *available at*: www.universalservice.org/overview/filings/; *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support and the ETC Designation Process*, 18 FCC Rcd 1941, ¶ 10 (2003).

11 *See* Chart, "High Cost Support Mechanism: Disbursements to CETCs 1998 through 2Q2004," *available at* http://www.universalservice.org/hc/download /pdf/HC%20Disbursements.pdf.

both the ILEC and the competitive ETC), the competitive ETC funding is over and above existing rural high cost funding amounts. In other words, more universal service dollars for competitors does not lead to a corresponding decrease in the funding provided to incumbents. If the support is provided to lines that are new or captured from the rural ILEC ETC, it is possible that as the ILEC loses lines, the per line rate – for both the ILEC and the competitive ETC – will increase, so that the ILEC can recover all of the same costs from fewer lines.[12] In addition, under current rules, there is no means to control this growth. As each new ETC is designated in a rural area, the fund size grows.

Much of this expenditure is not necessary to assure basic access to quality and affordable telecommunications services, but instead has been used to subsidize duplicative networks in high-cost areas. According to USAC, more than *96%* of the funding to competitive ETCs is going to wireless carriers.[13] Therefore, it is likely that universal service funds are being used not just to provide one basic connection to services in high cost areas, but may be paying for two phones – one wireline and one wireless – or even more per household.[14]

A growing portion of support is not going to the intended purposes of the fund – providing support to the carriers of last resort who are providing the basic infrastructure necessary for rural American networks – but instead is being spent to fund purported "competition." As described below in Section II, while commenters arguing for unlimited portability of support tout the alleged "competitive benefits" of additional ETC funding, most of

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[12] *See Federal-State Joint Board on Universal Service*, Fourteenth Report and Order, 16 FCC Rcd 11244, ¶¶ 207-211 (2001) ("*Fourteenth Report and Order*").

[13] *See* Chart, "Distribution of HC Support Between Wireless & Wireline CETCs," *available at* http://www.universalservice.org/hc/download/pdf/HC%20Wireless-Wireline%20CETC.pdf.

[14] *See Recommended Decision*, ¶ 67 & n. 257 (noting that one study estimates that only 3 to 5% of wireless customers say they have only a wireless telephone).

this money appears not to be funding lines that compete for ILEC services, but instead to provide each customer with additional lines. Thus, instead of funding lines that are "captured" from the ILEC, or provided to "new" customers, 47 C.F.R. §54.307(a), the current portability structure is leading to the subsidization of two or more lines per customer in many areas. *See Recommended Decision*, ¶ 67.

When the Commission initially adopted the principle of "portability" of high cost support, support to competitive ETCs was minimal. For example, competitive ETCs accounted for 0% of the high cost fund in 1998 and only 0.03% in 1999.[15] However, by 2003, they were receiving 4% of the fund. Just two quarters later, that amount had jumped to more than 7%. By fourth quarter 2004, USAC estimates that approximately 14 percent of high cost loop support will go to competitive ETCs.[16] This threatens to expend universal service funds unnecessarily and, where fund sizes are capped (such as with CALLS-based interstate access support), to dilute support from its intended purposes.

In addition, while many carriers petitioning for ETC status have claimed that granting their *individual* ETC petitions will have only "negligible" impact on the size of the universal service fund, it is undeniable that the cumulative effect that would occur if the FCC and various state commissions were to grant all pending and future ETC petitions would be an enormous increase in the size of the universal service fund. If competitive ETCs were to get funding for additional lines throughout the study areas where they are seeking to be designated by the FCC, just the petitions at issue in the pending ETC public notices and the recently granted Virginia

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15 *See* Chart, "Distribution of HC Support Between CETC & ILEC, 1998 Through 2Q2004," *available at* http://www.universalservice.org/hc/download /pdf/HC%20CETC%20%25%20Disburse.pdf.

16 *See* USAC Fourth Quarter 2004 Report, at 8 ($45.309 million of estimated $315.892 million required for 4Q2004 will go to competitive ETCs).

Cellular and Highland Cellular ETC designation orders could increase the size of the rural universal service high cost fund by approximately $430 million per year.[17] In addition, they would capture up to $230 million in non-rural, CALLS-based high cost support.[18] As CALLS support is capped at $650 million per year, this further dilutes the amounts available for intended use (replacing interstate access support), and threatens to unravel the access charge reform established by the CALLS Order.[19]

Under the current rules, as the number of competitive ETCs increase, the strain on the fund will grow. Currently, competitive ETCs report loop counts to USAC, and receive universal service support for all customers they serve in all areas where they have received ETC status, regardless of whether those customers are still receiving service from the ILEC. *See Recommended Decision*, ¶ 67. Thus, a single customer may receive duplicative high-cost support from more than one carrier, which drives up the size of the fund in rural areas. In non-

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17 *See* Verizon Comments, CC Docket 96-45, at 3 & Attachments B & C thereto (filed June 21, 2004) ("Verizon June 21 Comments"). The Commission estimated that, if Virginia Cellular were to capture "each and every customer located in the" rural study areas for which it was seeking ETC status, the grant of the Virginia Cellular petition could result in an increase of up to approximately $900,000 per quarter, or nearly $3.6 million per year. *Virginia Cellular Order,* ¶ 31 n. 96. Using a similar analysis for the Highland Cellular petition resulted in an estimated potential increase of up to $360,000 per quarter, or over $1.4 million per year. *See Highland Cellular, Inc., Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, 19 FCC Rcd 6422, ¶ 25 n.73 (2004) ("*Highland Cellular Order*"). Verizon has used the same assumptions as the Commission in calculating the amount of support potentially at issue. It is not unreasonable to assume that, if the current trends continue without any change to the rules regarding portability of support, the high-cost fund could end up subsidizing one wireline and one wireless line per customer, which is what the estimates roughly approximate.

18 *See* Verizon June 21 Comments, at Attachment B.

19 *See Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long Distance Users, Federal-State Joint Board on Universal Service*, 15 FCC Rcd 12962 (2000) ("CALLS Order"), *aff'd in part, rev'd and remanded in part sub nom. Texas Office of Public Utility Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001).

rural areas, the effects of such a policy are to dilute the amount of CALLS-based interstate access support that is available to meet the fund's primary goal.

Moreover, the current number of competitive ETCs and pending ETC petitions appears to be just the tip of the iceberg. Many petitioners for ETC status appear to be undertaking a strategy to seek high-cost support in *all* states in which they operate. *See* Verizon June 21 Comments, at Attachment B. Indeed, many states have two or more wireless carriers seeking high cost support for the same state. *See id.*, at Attachments B, C. Estimating conservatively, without any changes to the Commission's portability rules, if the Commission were to grant all of the pending ETC petitions, and state commissions were to grant the ETC petitions pending before them, the cumulative impact will easily total hundreds of millions of dollars per year in additional high cost support. This is on top of the already "dramatic" recent increase in ETC funding commitments previously noted by the Commission.[20]

The Commission simply cannot allow this growth to remain unchecked, because it will undermine the sustainability of the entire universal service system. It should take swift action to curb expenditures in rural areas that are not targeted to meet the central goal of universal service support: namely, to provide access to basic, affordable services at reasonable prices.[21] Indeed, as

[20] *See Highland Cellular Order*, ¶ 25 (noting that, in the first quarter of 2001, three competitive ETCs received approximately $2 million in high cost support; by fourth quarter 2003, it had grown to 112 competitive ETCs receiving $32 million per quarter); *see also* Universal Service Administrative Company, *Federal Universal Service Support Mechanisms Fund Size Projections for the First Quarter of 2004*, Appendix HC1 (estimating that 121 competitive ETCs would receive approximately $41 million during the first quarter of 2004) *available at* www.universalservice.org/overview/filings.

[21] *See* 47 U.S.C. § 254(b)(3); *Federal-State Joint Board on Universal Service*, Ninth Report and Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432, ¶ 12 (1999).

Commissioner Martin noted, spreading universal service dollars among several competitors can actually undermine this goal, by diluting support to those who truly need it.[22]

Because the goal of any proposal should be to control growth of the high cost fund, the Commission should reject proposals that would not accomplish that goal. For example, one of the Joint Board's proposals would "hold harmless" rural ILECs, without limiting the amount of support they receive from the high cost fund. *See Recommended Decision*, ¶¶ 75-76. However, this would allow the fund size to increase indefinitely, because rural ILECs would receive more per-line support as they lost lines.[23] Simply adopting a "benchmark" on the number of ETCs allowed in a given area would not control growth if there were more than one ETC per study area, and no cap on the growth of the fund.

## II. The Commission Should Establish a Rebuttable Presumption that it Is Not in the Public Interest to Have More than One ETC in Rural High Cost Areas

The Commission should clarify that, in rural areas, unless extraordinary circumstances exist, it is presumptively *not* in the public interest to grant ETC status to more than one carrier. Petitioners seeking ETC status should have a heavy burden to overcome the presumption of one ETC per rural study area. In addition to applying this presumption to new and pending ETC applications, the Commission also should re-examine the ETC petitions already granted, and de-

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22 *Multi-Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Separate Statement of Commissioner Kevin J. Martin, 16 FCC Rcd 19613, 19746 (2001) ("*MAG Plan Order*") (noting that using universal service funds to artificially "create" competition by funding multiple ETCs in high cost areas, "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").

23 As a rural ILEC lost lines to competitive ETCs, it would be able to recalculate the amount of per-line support, thus providing the same level of universal service support to the ILEC regardless of how few lines it served, plus funding to all of its competitors at the new, higher per-line rate. *See Fourteenth Report and Order*, ¶¶ 207-211.

designate ETCs in areas where more than one exist unless the competitive ETCs in those areas can demonstrate that there are exceptional circumstances that would warrant supporting more than one ETC per study area.

The Commission should reject the oft-repeated premise that high cost subsidies should be used to create "competitive benefits" in these rural, high cost areas. As more than one commissioner has recognized, it makes little sense to subsidize "multiple competitors to serve areas in which the costs are prohibitively expensive for even one carrier."[24] Although members of the Joint Board may disagree on the best way to control growth of the high cost fund, all agree that the Commission simply cannot continue to subsidize multiple ETCs in high cost areas.[25]

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[24] *MAG Plan Order* , Separate Statement of Commissioner Kevin J. Martin, 16 FCC Rcd 19746; *see also* Jonathan S. Adelstein, Commissioner, FCC, Remarks before the National Association of Regulatory Utility Commissioners (Feb. 25, 2003), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-231648A1.pdf; *see also*, *Virginia Cellular Order*, Separate Statement of Chairman Michael K. Powell ("Despite the importance of making rural, facilities-based competition a reality, we must ensure that increasing demands on the fund should not be allowed to threaten its viability").

[25] *See e.g.*, *Recommended Decision*, Separate Statement of Commissioner Kathleen Q. Abernathy ("[I]t seems clear that the universal service fund can no longer subsidize an unlimited number of connections provided by an unlimited number of carriers"); *id.*, Separate Statement of Commissioner Lila A. Jaber, Florida Public Service Commission ("[T]he universal service fund should not be used to artificially induce competitive entry that would not have otherwise occurred. Instead, universal service funds should be used for the purpose intended – to provide universal access to a customer by providing the appropriate funding for a single connection"); *id.*, Separate Statement of Thomas J. Dunleavy, New York State Public Service Commission ("[W]e simply cannot sustain a universal service program that provides support to two, three, four or more phones in most households"); *id.*, Separate Statement of Billy Jack Gregg, Director of the Consumer Advocate Division, Public Service Commission of West Virginia ("I believe there are certain areas of this country where it is so expensive to provide service that it makes no sense to have more than one carrier subsidized by the federal universal service fund"); *id.*, Separate Statement of Commissioner Kevin J. Martin, Dissenting in Part, Concurring in Part ("As I have stated in the past, I have concerns with policies that use universal service support as a means of creating 'competition' in high cost areas"); *id.*, Joint Separate Statement of Commissioners Jonathan S. Adelstein, G. Nanette Thompson, Regulatory Commission of Alaska, and Bob Rowe, Montana Public Service Commission, Approving in Part, Dissenting in Part ("[W]hen designating an ETC in an area served by a rural telephone company

Using universal service funds to artificially "create" competition by funding multiple ETCs in high cost areas, "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."[26]

The primary goal of high cost support is to provide a sufficient level of funding to enable customers in high cost areas to have access to basic, affordable services.[27] Nevertheless, under the Commission's portability rules, all carriers are provided the same level of per-line support as local exchange carriers receive, which leads to subsidization of multiple carriers and a ballooning in the size of the fund.

The statute specifically contemplates limiting support to one ETC per study area in rural high cost areas. As an initial matter, claims for subsidizing multiple carriers in uneconomic locations ignore the policy goals set by Congress. The Act itself reflects Congressional recognition of the fact that, because investment in rural and high-cost areas is more expensive than other regions, it is not appropriate to subsidize redundant networks in places where it is not economically viable for even one carrier to operate. For example, rural carriers do not face the same section 251 unbundling obligations as carriers serving other areas. *See* 47 U.S.C. § 251(f)(1)(A). In addition, section 214 recognizes limits on multiple eligible telecommunications carriers. In rural areas, the state *cannot* designate more than one ETC *unless* it first makes a public interest finding, and even then it has the discretion *not* to designate more

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we must take greater care in examining the public interest to determine the wisdom of multiple ETCs in rural, high cost areas").

26 *MAG Plan Order*, Separate Statement of Commissioner Kevin J. Martin.

27 *See Recommended Decision*, ¶ 62.

than one ETC. 47 U.S.C. § 214(e)(2).[28] And the Act requires that universal service support under section 214(e) be used "*only* for the provision, maintenance, and upgrading of facilities and services for which the support is intended." 47 U.S.C. § 254(e) (emphasis added).

Thus, while the Act *generally* was designed to be "pro-competitive," two carriers "competing" by using public subsidies rather than their own investment is not true competition. Even if there were unlimited universal service funds available (which there are not), using high-cost funds to subsidize multiple providers to customers does not make sense as a matter of policy.

Moreover, the purported "competitive benefits" of the current portability rules are suspect. The fact is that many petitioners are seeking ETC status in areas where they *already* provide service, even *without* universal service support.[29] In those instances, it appears that customers often are choosing to buy *additional* service – *i.e.*, customers with wireline telephone service are also choosing to purchase wireless telephone service.

However, there currently are no incentives for states to limit the number of ETC petitions granted in high cost study areas. Indeed, some have noted that there might be incentives for states to grant multiple ETC petitions, because it leads to more universal service funding for that particular state.[30] Whether or not that is the case, it undoubtedly is true that in some states,

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[28] Even in non-rural areas, additional ETCs are only designated when it is "consistent with the public interest." *Id.*

[29] *See, e.g., Dobson ETC Petition for Non-Rural and Rural New York*, at 12-14 (filed May 3, 2004) (noting that there has been increased "facilities development by large national carriers of their own facilities along [rural highway] corridors" and that the existence of such corridors in Dobson's service area "has provided valuable revenue streams to finance costly deployment to serve rural customers outside the corridors").

[30] *See Recommended Decision*, Separate Statement of Lila A. Jaber, Florida Public Service Commission ("Some commenters believe that states have used multiple carrier ETC designation as a means to attract more universal service funds into the state.").

several ETCs have been designated for the same areas.[31] And while individual ETC applications purport to have only a "negligible" impact on the size of the universal service fund, the cumulative impact of granting all of these petitions would be staggering. *See* Section I, *supra*.

The Commission should make it clear that in most cases it will *not* be in the public interest to grant ETC status to more than one carrier in rural high-cost areas, because it unnecessarily wastes universal service funds. Normally, providing support to one ETC – the carrier of last resort – will be sufficient to meet the statutory goals of universal service, without unnecessarily burdening consumers with growing universal service funding obligations. While the Commission should allow individual ETC applicants to overcome the presumption of one-ETC-per-rural-study area if they provide sufficient evidence that designating an additional ETC in the study area would be in the public interest, the burden should be high. In particular, the Commission should make it clear that boilerplate assertions about the purported "competitive benefits" of granting additional ETC petitions will not be acceptable. Rather, the petitioners must show either that there is some significant lack of service being provided by the current carrier of last resort in the area, or some other *specific* evidence that, unlike other high cost study areas throughout the United States, there exists particular reasons why it would be in the public interest to grant more than one carrier ETC status.

In addition, the Commission should direct states to reexamine – and it should itself reexamine – rural study areas where there exists more than one ETC. The ETCs in those areas should be directed to produce specific evidence regarding why it would be in the public interest to have more than one ETC in that area. If the ETC is unable to provide such evidence, the

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[31] *See USAC Fourth Quarter 2004 Report*, Appendix HC03, Rural Study Areas With Competition, *available at* http://www.universalservice.org/overview/filings/2004/Q4/HC03%20-%20Rural%20Study%20Areas%20with%20Competition%20-%204Q2004.xls.

Commission or state commission should de-designate ETC status to all but the carrier of last resort.

**III. In Both Rural and Non-Rural Areas, the Commission Should Adopt Certain Guidelines for Determining Whether Granting ETC Status Would Be in the Public Interest, and Clarify that Applicants for ETC Status Must Prove, By Specific Evidence, that it Would Be in the Public Interest to Grant the Petition**

As the Commission already has recognized, there must be a public interest analysis before designating ETCs in both rural and non-rural areas.[32] The Joint Board recommended that the Commission adopt certain minimum guidelines for states to consider in proceedings determining whether it is in the public interest to grant ETC status. *See Recommended Decision*, ¶¶ 2, 13. However, the Commission should not let the ETC process become a back-door way to adding increased regulation to non-ETCs. In particular, the ETC process should not be allowed to become a vehicle for imposing regulations on wireless carriers.

The Commission also should clarify that the burden for proving that the public interest is served by granting the ETC petition lies with the petitioner, and must be proven with facts, not boilerplate assertions.[33] For example, in rural areas, ETC applicants should be required to provide specific evidence as to what (if any) particular factors would warrant a departure from the general presumption that there should be only one ETC per study area. *See* Section II, *supra*. In both rural and non-rural areas, carriers should be required to estimate the impact to the size of the fund of granting their individual petitions, as well as the cumulative impact to universal

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[32] *See Virginia Cellular Order* ¶ 26.

[33] "In determining whether the public interest is served, the Commission places the burden of proof upon the ETC applicant." *Virginia Cellular Order*, ¶ 26. The Commission has noted that the public interest test "is a fact-specific exercise," that weighs a number of different factors. *Id.*, ¶ 28. The Commission noted this in the context of the public interest standard required for rural areas; however, the same factors must be considered in the non-rural public interest analysis. *See* Verizon June 21 Comments, at 11-17.

service support that would result if similar petitions were granted. As stated above in Section II, the Commission should clarify that the purported benefits to "competition" should not be a basis for granting additional ETC petitions in high cost areas.

## IV. The Commission Should Limit Rural High Cost Support to One Primary Line Per Customer, and Initially "Rebase" Support to ILECs

In addition to creating a presumption that only one ETC per rural high cost study area should receive high cost support, the Commission also should limit high cost support in rural areas to only one primary line per address in study areas where there exists more than one ETC. This would best be accomplished by using the proposed Joint Board primary line "Restatement Proposal." *Recommended Decision*, ¶ 73. Under this approach, the ILEC would receive support only for the number of primary lines that it has. However, to avoid rate shock to the rural ILEC, when the proposal is initially implemented, the per-line amount of support would be recalculated so that the rural ILEC receives the same amount of total support. Thereafter, it would lose support only if it lost lines to a competitive ETC. To make carriers whole, the Commission should clarify that rural carriers would be able to recover from customers any loss in universal service support resulting from customers' designation of another carrier as the recipient of primary line support.

The Joint Board found several compelling reasons to support a primary line limitation in rural high cost areas. First, it found that a primary line limitation would be consistent with the goals of the Act. *Recommended Decision*, ¶ 62. Although it recognized that "supporting multiple connections is advantageous to consumers in high-cost areas," it reasoned that "Section 254(b)(3) encourages access to connectivity, however, not unlimited connections at supported rates." *Id.*, ¶ 63. The Joint Board also found that a primary line limitation met the Act's goals of providing sufficiency and predictability of the fund, "because excess support may detract from universal service by causing unnecessary increases in rates, thereby pricing some consumers out of the market." *Id.*, ¶ 64.

The Joint Board also found that a primary line approach would be competitively neutral and would send more appropriate competitive entry signals in rural and high cost areas, by not creating *artificial* inducements for entry into high cost areas:

> Supporting a single point of access would send more appropriate entry signals in rural and high-cost areas. Some commenters argue that carriers increasingly are seeking ETC designation based on perverse incentives created by the current rules. Our recommended approach would not artificially encourage entry by competitive ETCs in areas where a rational business case cannot be made absent assumptions of support for *all* connections. Competitive ETCs instead would have incentives to enter rural and high-cost areas only where doing so makes rational business sense under a model assuming incremental support only for subscribers captured from, or unserved by, the incumbent LEC. Furthermore, by preventing automatic support of multiple connections, supporting a single point of access would address alleged incentives under the current rules for states to designate additional ETCs to attract more universal service funding.

*Recommended Decision*, ¶ 69.

The Restatement Proposal accomplishes the goals set forth by the Joint Board, controls the size of the high cost fund, and does not cause unnecessary harm to the rural ILECs who rely on this support. By rebasing initial support to the rural ILEC, this will initially make rural carriers "whole" for the loss in support they otherwise would have realized by losing support for their non-primary lines. After the initial rebasing of support, these carriers would only lose additional support if, and to the extent, they were to lose primary lines to competitive ETCs. And, as Commissioner Abernathy noted, a primary line limitation would "bring about no change in the flow of high-cost funding" for rural areas that do not have multiple ETCs, "which is the majority of them." *Recommended Decision*, Separate Statement of Commissioner Kathleen Q. Abernathy. According to recent USAC data, only 140 of 1487 total rural study areas – 9.4% –

would currently be at risk for losing support to competitive ETCs.[34] If the Commission directs states to de-designate ETCs based on a presumption that there should be only one ETC per study area, that percentage would be even lower.

Operationally, the rule would work as follows

- Initial primary line limitation/level of support. Support to all carriers in rural high cost areas (ILECs and competitive ETCs) would be limited to one primary line per residential or business address. The initial level of support would be calculated by rebasing the current level of per-line support, multiplied by the number of primary lines per carrier. Rural high cost support would be calculated based on primary lines to determine total rural high cost support. This support amount would be determined by multiplying the number of primary lines and the rebased per line support amount. However, after the initial rebasing of support, the per-line support levels would be capped per study area, in all rural study areas. After the initial rebasing of support, a rural ILEC would not receive additional support if it lost primary lines to a competitive ETC.

- Initially determining which lines are "primary." Initial balloting would be conducted and supervised by USAC, only in those areas where there already exists at least one competitive ETC. Where the ILEC is the only ETC, it self-reports its primary lines to USAC. If there exists an ILEC and at least one competitive ETC, the competitive ETC would give USAC a list of its customers, and those customers would be balloted to determine which carrier they will designate as primary.

- Subsequent determination of primary line support. After initial balloting, or upon subsequent entry of an ETC in the study area, when a new customer enrolled in service, it would have to indicate the line and ETC for which it wished to receive primary line support. High cost support would be provided to ETCs only for those customers and lines that were certified as primary. Customers would be able to change ETC designations through such self-certification. To avoid "slamming"-type problems, any such primary line certifications would be processed by USAC.

- Definition of primary line. There would be only one primary line per residential household, based on billing address, as is used today for purposes of determining subscriber line charges. For businesses, there would be one primary line per business location. For example, if a particular business has one bill but ten business locations (*e.g.*, ten division offices or retail outlets), each location would be assessed one primary line charge.

[34] USAC Fourth Quarter 2004 Report, at 12.

## V. The Commission Should Freeze Per-Line Support for All Rural Study Areas.

Several years ago, the Rural Task Force recommended that the Commission freeze per-line high-cost loop support upon the entry of a competitive ETC in rural carrier study areas.[35] The Joint Board now recommends that the Commission adopt this proposal. *See Recommended Decision*, ¶¶ 77-80. The Commission should adopt a freeze of per-line support, but apply it to *all* rural study areas, not just those where there exist more than one ETC. As stated above, the increase in competitive ETCs is certainly an area of growing concern in high cost support. However, the largest part of high cost support is going to rural rate of return carriers, and that support also has been growing significantly in recent years.

Under this proposal, per-line support would be based on the ILEC's cost and line count data for the twelve-month period before the new rules take effect, and would be adjusted annually by an indexed factor tied to the change in the number of supported loops, rather than based on cost changes. *See Recommended Decision*, ¶ 77; *Fourteenth Report and Order*, ¶ 120. If there is more than one ETC in the study area, all carriers – the ILEC and competitive ETC – would receive support based on the frozen rate. *Fourteenth Report and Order*, ¶ 120.

Three years ago, the Rural Task force warned that if rural ILECs were to lose a significant number of lines to competitive ETCs, this could result in excessive growth of the high-cost fund.[36] That is because when a rural ILEC "loses" lines to a competitive LEC, its per-line support can be recalculated to allow it to recover its fixed costs from fewer lines. This results in a higher average per-line cost. However, because competitive ETCs are eligible for the

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35 *Federal-State Joint Board on Universal Service*, Rural Task Force Recommended Decision, 16 FCC Rcd 6153, Appendix A at 25-26 (2000) ("*Rural Task Force Recommendation*"); *see also Fourteenth Report and Order*, ¶¶ 123-131.

36 *See Fourteenth Report and Order*, ¶¶ 207-211.

same level of cost support as the ILEC, this higher per-line rate also is being provided to the lines "captured" by the competitive ETC. *Fourteenth Report and Order*, ¶ 207. Thus, while the amount of per-line funding increases, the overall number of lines being funded does not experience a corresponding decrease. To address this problem, the Rural Task Force recommended freezing per-line support amounts in study areas serviced by rural carriers when a competitive ETC initiates service in that area. Rural Task Force Recommendation, ¶ 17 & Appendix A at 26.

In the *Fourteenth Report and Order*, the Commission rejected the Rural Task Force's suggested freeze as unwarranted "at this time," because it found the potential problem of excessive growth due to competitive ETC lines to be "speculative." *Fourteenth Report and Order*, ¶ 123. However, the harm from excessive growth of the rural high cost fund can no longer be deemed "speculative." *See* Section I. Moreover, something must be done to control growth throughout the fund, not just in those areas where there exist competitive ETCs.

## VI. The Commission Should Not Apply The Same Rules to Non-Rural or Insular Areas

Although the solutions proposed above are necessary to control growth in rural high cost areas, the Commission should not reflexively adopt the same solutions in non-rural and insular areas, because different concerns exist in those areas. As an initial matter, there are legal issues that would be raised by extending the one-ETC-per-study area presumption for rural study areas to non-rural areas, because the statute specifically contemplates more than one ETC in non-rural areas. *See* 47 U.S.C. § 214(e)(2), (6). The primary line proposal and freeze on per-line support are not necessary for non-rural and insular areas, as there does not exist the same potential for growth in high cost funding. Indeed, the costs of administering a primary line proposal in all non-rural areas might be more than the potential cost savings that would be achieved. Perhaps because of that reason, the Joint Board's primary line proposals focus only on rural high cost support.[37]

The overwhelming potential for growth in the high cost fund is in rural high cost areas. Of the 1663 high cost study areas, 1487 are rural. *See* USAC Fourth Quarter 2004 Report, at 6. Of the estimated $3.4 billion in 2004 high cost support, only about one third of that (approximately $1 billion) will go to non-rural study areas. And the vast majority of non-rural support – interstate access support ("IAS" or "CALLS-based support") already is capped at $650 million per year. Thus, the only non-rural support programs that are *not* already subject to a cap are (1) the $277 million per year in forward-looking support provided to 10 states, and (2) a small portion of interstate common line support (approximately $ 63 million), which is provided to six non-rural rate of return carriers, and seven competitive ETCs.[38] Moreover, because support for non-rural high cost funding is not based on carriers' costs, unlike support in rural areas, it does not have the potential to increase if the ILEC loses lines to a competitor, or if the carriers' costs increase. There is no evidence that these non-rural portions of the fund will be a significant cost driver in future universal service spending.

Moreover, adopting such limitations to non-rural insular areas would only exacerbate the problems that exist in those areas. Those areas often have very low telephone penetration levels,

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[37] *See Recommended Decision*, ¶ 72 (recommending a primary line restriction as a means of mitigating "reductions in the amount of high-cost support flowing to rural areas"). As many commenters and the Joint Board noted, there are significant administrative problems that exist with implementing a primary line approach. *See, e.g.*, *Recommended Decision*, ¶¶ 57, 81-83.

[38] *See* USAC Fourth Quarter 2004 Report, at 11 & Appendix HC09, at 29.

and low per capita income that would not allow consumers to absorb any increase in telephone rates that likely would result from a reduction in high-cost support.[39]

**Conclusion**

The Commission should adopt rules that will control the growth in the rural high-cost fund. It should do so by setting a presumption that it is not in the public interest to grant more than one ETC per rural study area, adopting a primary line limitation on support in rural areas, and capping the per-line support to rural carriers.

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[39] *See* Ex Parte of Puerto Rico Telephone Company, Inc., CC Docket Nos. 00-256, 96-45, 98-77, and 98-166, at 4 (dated Feb. 28, 2003, filed March 3, 2003).

THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Midwest Incorporated d/b/a Verizon Midwest
GTE Southwest Incorporated d/b/a Verizon Southwest
The Micronesian Telecommunications Corporation
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Hawaii Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
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