

**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)

**Reply Comments of
The Nebraska Rural Independent Companies**

I. Introduction

The Nebraska Rural Independent Companies (“Nebraska Companies”)¹ hereby submit reply comments in the above captioned proceeding. The Nebraska Companies appreciate the opportunity to reply to comments in this matter filed in response to the Federal Communications Commission (“Commission”) Notice of Proposed Rulemaking (“Notice”).²

Specifically, the Commission sought comments on the Joint Board’s recommendation for adoption of permissive federal guidelines encouraging state commissions to consider additional minimum qualifications when evaluating ETC designation requests.³ The Commission also sought comments on the Joint Board’s recommendation to limit the provision of high-cost support to a single connection per customer to the public telephone network and

¹ Companies submitting these collective comments include: Arlington Telephone Company, The Blair Telephone Company, Cambridge Telephone Company, Clarks Telecommunications Co., Consolidated Telco, Inc., Consolidated Telecom, Inc., Consolidated Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Company, Inc., K&M Telephone Company, Inc., Nebraska Central Telephone Company, Northeast Nebraska Telephone Co., Rock County Telephone Company, Stanton Telephone Co., Inc. and Three River Telco.

² See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 04-127 (“Notice”) (rel. June 8, 2004).

³ *Id.* at para. 2.

recommendations on several related proposals to modify current Commission rules governing the filing of annual certifications and data submissions by ETCs.⁴

The Nebraska Companies reaffirm their initial comments in this docket, filed on August 6, 2004, and wish to further address several issues associated with the ETC designation process and the scope of support brought up by other commenters.

II. ETC Designation Process

The FCC Should Introduce a “Bright Line” Test for Both ETC Applicants and Existing CETCs.

The Nebraska Companies respectfully reassert that the analysis of a petition for ETC status in rural carriers’ service areas must be based upon the presumption that multiple ETCs cannot be supported, due to high costs and low population density. To implement this rebuttable presumption, states and/or the Commission, should consider adopting a “bright line” test to identify such service areas where it is presumed that scarce universal service funding cannot justify supporting multiple networks. Under such an approach, each state or the Commission could adopt a benchmark of per-line support, above which the presumption should be that multiple ETCs are not in the public interest. States would be able to overcome this presumption by examining specific evidence about particular carriers or particular areas. The Joint Board, in its *Recommended Decision* highlighted that “[p]er-line support is a single ‘marker’ that encompasses various underlying factors that may impact the determination of whether it is in the public interest to have an additional subsidized carrier entering a carrier’s study area.”⁵

⁴ *Id.* at paras. 3-5.

⁵ *Id.* at para. 74.

The National Association of State Utility Consumer Advocates (“NASUCA”) also recommends the use of the “bright line” test proposed by Joint Board member Billy Jack Gregg.⁶ Under Mr. Gregg’s approach, in rural study areas that receive support in excess of \$30 or more in monthly support, the guideline would state that it is presumed that it is not in the public interest to designate more than one ETC. NASUCA asserts that using per line per month support data “distills all cost-influencing factors – such as density, distance and topography – into readily available information.”⁷

CenturyTel, Inc. provides local exchange service in rural areas of 22 states, with about half of its exchanges having fewer than 1,000 access lines. CenturyTel argues that “many of [its] markets do not have economies of scale sufficient to support CenturyTel as the only provider in the market, let alone additional market entrants.”⁸ The Nebraska Companies understand this market position as most of its members’ exchanges are considerably smaller in terms of access lines per exchange than CenturyTel. In an effort to acknowledge the realities of providing telecommunications in rural areas while still recognizing the necessity of achieving long term stability of the universal service fund, CenturyTel also recommends the Commission adopt a “hard and fast limit on the number of ETCs that could be designated in high cost areas based on the level of per-line support in a given market.”⁹ CenturyTel specifically refers to Mr. Gregg’s proposal as a potential base for such a “bright line” test.

The Nebraska Companies note that the parties recommending the adoption of a “bright line” test are not limited to rural LECs. For example, AT&T Corporation, in its comments in this

⁶ See Comments of the National Association of State Utility Commissioners (“NASUCA”), CC Docket No. 96-45, (“NASUCA Comments”) (filed August 6, 2004) at pp. 42-43.

⁷ *Id.* at p. 44.

⁸ See Comments of CenturyTel, Inc., CC Docket No. 96-45, (filed August 6, 2004) at p. 1.

docket, recognized the unique nature of rural areas by addressing this same issue prior even to discussing the issues raised by the Commission in the NPRM. It recommended the Commission go further than the Joint Board's recommendations by adopting a national benchmark of per-line support, above which there should be a presumption that more than one ETC is not in the public interest.¹⁰

Verizon also recommends the Commission 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.”¹¹ (emphasis in original) Verizon argues that not only should new ETC applicants be subject to this presumption, but it should also apply to existing ETCs. Verizon asserts, and the Nebraska Companies concur, that “[u]sing universal service 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.’”¹² While Verizon does not explicitly advocate a specific level of per-line support be used as a “bright line” test, its presumption that it is not in the public interest to grant ETC status to more than one carrier in rural areas is supportive of a mechanism such as that of a “bright line” test.

⁹ *Id.* at p. 17.

¹⁰ *See* Comments of AT&T Corporation, CC Docket No. 96-45, (filed August 6, 2004) at p. 3.

¹¹ *See* Comments of Verizon Communications, CC Docket No. 96-45, (filed August 6, 2004) at p. 9.

¹² *Id.* at p. 11.

The Commission Should Encourage State Commissions to Adopt Mandatory Minimum Requirements in Determining if CETC Designations Would Serve the Public Interest.

Several parties filed comments that recommended the Commission consider mandatory minimum requirements in determining if CETC designations would serve the public interest.¹³ The Nebraska Companies recommend that the Commission encourage states to adopt mandatory minimum requirements in determining if CETC designations would serve the public interest, provided it does not restrict a state from adopting additional requirements the state believes must be fulfilled to meet public interest standards. This position is similar to that taken by TDS Telecommunications Corporation (“TDS”). According to TDS, the Commission should establish mandatory minimum requirements that state commissions must find are satisfied before they can designate a competitive ETC to receive universal service support. States would be free to adopt additional requirements that go beyond those mandatory minimum requirements adopted by the Commission.¹⁴

Some states have certified all ETCs that requested status in order to maximize the amount of “free” federal high-cost dollars flowing to their states.¹⁵ If all states were to follow this dangerous precedent of granting ETC status without following clear standards and public interest guidelines, not only would the universal service fund likely become unsustainable, but there would also be no guarantee that the funds would in fact be used to advance the goals of universal service. As the Joint Board recognized, while Congress delegated to individual states the right to

¹³ See NASUCA Comments at p. 40; Comments of the National Exchange Carrier Association, Inc. (“NECA”), CC Docket No. 96-45, (“NECA Comments”) (filed August 6, 2004) at pp. 18-19; Comments of the Coalition of State Telecommunications Associations and Rural Telephone Companies, CC Docket No. 96-45, (filed August 6, 2004) at pp. 5-6.

¹⁴ See Comments of TDS Telecommunications Corporation, CC Docket No. 96-45, (“TDS Comments”) (filed August 6, 2004) at p. 6.

¹⁵ See Comments of the Western Telephone Alliance (“WTA”), CC Docket No. 96-45, (“WTA Comments”) (filed August 6, 2004) at p. 9.

make ETC decisions, collectively these decisions have national implications, including affecting the overall size of the fund.¹⁶ The Commission should encourage states to adopt mandatory minimum requirements to help ensure that consistent, minimum requirements are applied among the states and to ensure that universal service remains sustainable on a national level.

The Nebraska Companies believe the Commission should recommend the states consider the following competitively and technologically neutral additional minimum requirements as prerequisites for ETC designation.

ETC Applicants Must Demonstrate the Ability to Remain Functional in Emergencies.

The Nebraska Companies agree with the Joint Board’s recommendation that the Commission adopt a guideline encouraging state commissions to require that ETC applicants demonstrate the ability to remain functional in emergency situations. The Nebraska Companies further agree that the “security of a carrier’s network and the ability to protect critical telecommunications infrastructure should be a major consideration in evaluating the public interest.”¹⁷ An ETC applicant’s ability to remain functional in emergencies is essential to public safety and national security and must be considered an integral part of any public interest determination.¹⁸

All ETCs Must Provide Subscribers With Equal Access to IXCs.

Without an equal access requirement, consumers would be denied the very choice Congress deemed so important and beneficial as to require its provision by ILECs. The Nebraska Companies believe that there should be a requirement that all carriers requesting ETC

¹⁶ See *Recommended Decision* at para. 47.

¹⁷ *Id.* at para. 61.

¹⁸ See Comments of the National Telecommunications Cooperative Association (“NTCA”) CC Docket No. 96-45, (“NTCA Comments”) (filed August 6, 2004) at p. 18.

status provide equal access to IXCs, consistent with the NASUCA's position and Commissioner Martin's separate statement to the Joint Board's Recommended Decision:

Equal access provides a direct, tangible consumer benefit that allows individuals to decide which long distance plan, if any is most appropriate for their needs. . . an equal access requirement would allow ETCs to continue to offer bundled local and long distance service packages, while also empowering consumers with the ability to choose the best calling plan for their needs. An equal access obligation is also fully consistent with the Commission's existing policy of competitive neutrality amongst service providers, facilitating competition on the basis of price and service quality for comparable service offerings.¹⁹

ETCs Must Offer an Unlimited or Defined Local Usage Package.

NASUCA proposes that an ETC should be required to offer at least one calling plan that provides unlimited local calling, equal access to IXCs, and a monthly price comparable to that charged by the ILEC.²⁰ The Independent Telephone and Telecommunications Alliance ("ITTA") recommends that where the ILEC is required to provide flat-rated local service, CETCs should be required to provide a comparable service at a comparable price, including the same number of local exchange minutes per month.²¹ Such an obligation would be consistent with the Commission's existing policy of competitive neutrality amongst service providers. The Nebraska Companies propose that the Commission encourage states to require an unlimited local usage package as a minimum requirement for ETC designation. Without unlimited local usage, customers may incur significant per-minute charges in addition to the block of time rate which would violate the reasonable comparability standard of Section 254(b)(3) of the Act.

ETCs Must Have Adequate Financial Resources to Provide Quality Services Throughout the Designated Service Area.

¹⁹ Separate statement of Commissioner Kevin J. Martin Dissenting in Part, Concurring in Part at pp. 60-61.

²⁰ See NASUCA Comments at pp. 39-40.

²¹ See Comments of the Independent Telephone and Telecommunications Alliance ("ITTA"), CC Docket No. 96-45, ("ITTA Comments") (filed August 6, 2004) at p. 26.

The Joint Board recommended that the Commission adopt guidelines encouraging states to evaluate whether ETC applicants have the financial resources and ability to provide quality services throughout the designated service area. The Nebraska Companies agree with the Joint Board that “it would neither be prudent nor serve the public interest if a financially unsound carrier is designated as an ETC, receives universal support and yet is still unable to achieve long-term viability that is sufficient to sustain its operations.”²² The public interest would be better served by carefully reviewing the financial resources of an ETC applicant to assist in ensuring it is capable of sustaining its operations for the long-term.²³ NASUCA is correct in asserting that it would not be in the public interest if consumers were to rely on a carrier unlikely to provide service over the long run.²⁴ Furthermore, carriers should not be allowed to seek funding in an attempt to bolster their financial position. It is at odds with the goals of universal service to allow carriers to use funding for financial gain rather than to provide high quality universal service to consumers.²⁵

ETCs Should Have the Capability and Commitment to Serve All Customers Throughout the Designated Service Area.

The Nebraska Companies agree with the Joint Board’s recommendation to adopt a guideline encouraging state commissions to require that ETC applicants demonstrate their capability and commitment to provide services throughout the designated service area to all customers who make a reasonable request for service.²⁶ However, the Nebraska Companies

²² See *Recommended Decision* at para. 53.

²³ See NTCA Comments at p. 16.

²⁴ See NASUCA Comments at p. 37.

²⁵ See Comments of Fred Williamson and Associates, Inc., CC Docket No. 96-45, (“Fred Williamson and Associates Comments”) (filed August 6, 2004) at p. 21.

²⁶ See Comments of the Nebraska Companies, CC Docket No. 96-45, (“Nebraska Companies’ Comments”) (filed August 6, 2004) at p. 8.

continue to emphasize that the determination as to whether a request for services is “reasonable” must be left up to the states and not the individual carriers. The Nebraska Companies agree with Commissioner Abernathy’s separate statement asserting that states should ensure a prospective ETC has the ability and commitment to build-out facilities necessary to serve the entire study area.²⁷ Carriers receiving support should not be allowed to decide on their own which customers they will serve and which customers they will not serve. This would defeat the purpose of universal service and, in effect, allow such a carrier to “cream skim” by serving only low-cost customers within a designated area.²⁸

ETC applicants should be required, as part of the demonstration of their commitment, to submit a build-out proposal.²⁹ The Nebraska Companies concur with NTCA that a formal build-out plan is critical because provisioning a network that serves all of the customers within the designated service area goes to the heart of what it means to be an ETC.

In order to ensure compliance with a build-out requirement, the Nebraska Companies recommend that states require completion of the build-out within three years of ETC designation. Without such a requirement, companies could and would delay indefinitely any meaningful build-out in rural, high-cost areas.³⁰ The Nebraska companies concur with the United States Telecom Association (“USTA”) that if a carrier that received ETC status fails to meet its build-out requirements, then that status should be revoked and the carrier must agree to return any support it received.³¹

²⁷ See Separate Statement of Commissioner Kathleen Q. Abernathy at p. 59.

²⁸ See Fred Williamson and Associates Comments at p. 24.

²⁹ See NTCA Comments at p. 17.

³⁰ See Nebraska Companies’ Comments at p. 9.

³¹ See Comments of USTA, CC Docket No. 96-45, (“USTA Comments”) (filed August 6, 2004) at p. 9.

ETCs Must Comply With Consumer Protection Reporting Requirements.

As the Nebraska Companies illustrated in their initial comments, a state commission's ability to require a carrier's compliance with consumer protection reporting mechanisms for ETC approval is unquestioned.³² Imposing consumer protection requirements as part of the ETC designation process is consistent with the public interest, convenience, and necessity to ensure that consumers receive high-quality, affordable and reasonably comparable services and rates.³³ Consumers should not receive diminished protections simply because they switch from one ETC to another.³⁴ Further, since states impose such obligations on ILECs, to allow CETCs to avoid such responsibilities is not competitively neutral.³⁵ The Nebraska Companies believe that the Commission should reiterate the states' rights to require any carrier's compliance with consumer protection requirements as a condition of ETC designation.

ETCs Must be Willing and Able to Become the Carrier-of-Last-Resort.

ITTA and TDS recommend that CETCs should be required to take on carrier-of-last-resort obligations as the term is defined for the ILEC study area the CETC seeks to serve.³⁶ As ITTA points out, competitive carriers seeking ETC designation should be able to provide an effective substitute for the ILEC, and not merely an additional service offering used by consumers to complement wireline service. Requiring all ETCs to satisfy this obligation would also be consistent with the Commission's policy of competitive and technological neutrality

³² See Nebraska Companies' Comments at pp. 9-10.

³³ See NTCA Comments at p. 20.

³⁴ See USTA Comments at p. 10.

³⁵ See NASUCA Comments at p. 37.

³⁶ See ITTA Comments at p. 24 and TDS Comments at p. 8.

among service providers.³⁷ Thus, the Nebraska Companies propose that the Commission adopt a guideline which encourages states, as part of their public interest findings, to create an obligation on behalf of all ETCs to be willing and able to take on carrier-of-last-resort obligations.

Additional Minimum Requirements Must Apply to All ETCs in Order to be Competitively Neutral.

The Commission should reject the arguments put forward by Western Wireless that the additional minimum eligibility requirements recommended by the Joint Board should not be adopted by the Commission. The Nebraska Companies believe that the Commission should encourage state commissions to adopt the competitively and technologically neutral additional requirements previously addressed to ensure that consistent requirements are applied among the states and to ensure that universal service remains sustainable on a national level.

The Commission should specifically reject Western Wireless' arguments that an equal access requirement would violate Section 332(c)(8) of the Act and that a local usage requirement would violate Section 332(c)(3) of the Act.³⁸ The Nebraska Companies assert that Section 332 does not impose limitations on state commissions with respect to regulation of wireless carriers when ETC status is an elected condition by such carriers. A state commission is free to exercise any applicable rule as a condition for ETC status determination as long as those requirements are not inconsistent with the Commission rules to preserve and advance universal service.³⁹

³⁷ Separate statement of Commissioner Kevin J. Martin Dissenting in Part, Concurring in Part at p. 60.

³⁸ See Comments of Western Wireless, CC Docket 96-45, ("Western Wireless' Comments") (filed August 6, 2004) Exhibit C, at pp. 3-4.

³⁹ 47 U.S.C. § 254(f) A state may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms.

Comments Filed by the Rural Telecommunications Associations (“RTA”)⁴⁰ are not Representative of All Rural LECs.

The RTA asserts that its plan is being submitted by “major telecommunications carrier associations” which represent small, rural wireline and wireless carriers. However, it must be noted that the plan does not represent many of the positions held by the Nebraska Companies, and certainly not many other rural carriers across the country.

According to RTA, its plan recommends strong but reasonable eligibility criteria for ETC applicants in rural service areas to better ensure that future designations there would serve the public interest.⁴¹ Yet, RTA recommends that regulators streamline and expedite the ETC application process in both rural and non-rural service areas for Tier IV wireless carriers.

The Nebraska Companies disagree with RTA’s position urging regulators to streamline and expedite the ETC application process for Tier IV wireless carriers, as these companies are characterized in the RTA filing. The Nebraska Companies strongly disagree with any expedited and streamlined ETC designation process based simply upon an unsubstantiated claim that such carriers are “committed to bring quality wireless service to traditional rural areas.”⁴² An ETC designation must be found to be in the public interest and subject to the review a state commission undertakes for each carrier.

The Nebraska Companies recommend that the Commission adopt the Joint Board’s guideline that states consider adopting a requirement for all ETC applicants, including Tier IV wireless carriers.

⁴⁰ The RTA consists of the Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”), the Rural Independent Competitive Alliance (“RICA”), and the Rural Telecommunications Group (“RTG”).

⁴¹ See Comments of RTA, CC Docket No. 96-45, (“RTA Comments”) (filed August 6, 2004) at pp. 4-5.

⁴² See RTA Comments at p. 30.

The Commission Should Affirm that the ILEC Study Area be the Minimum ETC Service Area.

According to Western Wireless, the Commission should facilitate the redefinition of rural ILEC service areas. Western Wireless argues that it is unable to serve portions of rural ILEC study areas due to “gerrymandered” study areas.⁴³ Western Wireless’ position is in stark contrast to the position of Commissioner Martin. In his dissent, Commissioner Martin stated:

I would have. . . preferred that the Joint Board recommend that the Commission require ETCs to provide service throughout the same geographic service area in order to receive universal service support. This obligation would help guard against the potential for creamskimming. I would have supported a recommendation to deny future requests to redefine the service areas of incumbent telephone companies—and to deny ETC designations in instances where an ETC’s proposed service area does not cover the entire service area of the incumbent service provider.⁴⁴

The Nebraska Companies agree with Commissioner Martin that the Commission recommend states require any carrier seeking ETC status to commit to serving the entire study area, as does the incumbent ETC. Without such a requirement, competitive neutrality will not be possible.

The States Have the Authority to Re-test and Rescind ETC Status if Necessary.

The Nebraska Companies agree with the Joint Board’s recommendation that where an ETC fails to comply with the requirements in Section 214(e) and any additional requirements proposed by the state commission, the state commission may decline to grant an annual certification or may rescind a certification previously granted.⁴⁵

⁴³ See Western Wireless’ Comments, Exhibit C, at p. 4.

⁴⁴ See *Recommended Decision*, Separate Statement of Commissioner Martin, at p. 2.

⁴⁵ See Nebraska Companies’ Comments at p. 12.

Since Section 214(e)(1) authorizes a carrier designated as an ETC to receive universal service payments only as long as the carrier continues to meet the eligibility requirements for ETC status, a carrier that no longer meets these requirements should no longer receive support.

Conditioning ETC designation upon a carrier's ability to meet all of the qualifications is particularly relevant if the existing universal service funding scope of support is limited to a primary line (also referred to as a single-connection), as proposed by the Joint Board. If the Commission were to adopt a primary line funding mechanism for universal service, which the Nebraska Companies oppose, it should require states to reexamine existing ETC designations, given the limitations on support likely to exist going forward.

III. Scope of Support

In its *Recommended Decision*, the Joint Board argues that supporting a single-connection is more consistent with the goals of Section 254 than the present system and is necessary to preserve the sustainability of the universal service fund. It believes that a system based on a single-connection would send more appropriate entry signals in rural and high-cost areas, and would be competitively neutral.⁴⁶ The Nebraska Companies respectfully disagree and oppose limiting high-cost support to a single-connection for the reasons outlined below.

The Commission Should Reject the Joint Board's Single-Connection Approach as Inconsistent with Section 254 of the Act.

Section 254 of the Act requires that the Joint Board and the Commission base their policies for the preservation and advancement of universal service on the following principles: 1) Quality services should be available at just, reasonable and affordable rates; 2) Access to advanced information and telecommunications services should be provided in all regions of the Nation; 3) Consumers in all regions of the Nation should have access to information and

⁴⁶ See *Notice* at para. 87.

telecommunications services, including advanced services and interexchange services at reasonable and comparable rates; 4) Equitable and nondiscriminatory contributions; and 5) Specific, predictable and sufficient federal and state mechanisms to preserve and advance universal service.⁴⁷ The institution of a single-connection approach as recommended by the Joint Board would certainly fail to achieve these goals.

Section 254(b)(3) of the Act requires that access to information and telecommunications services be available at reasonable and comparable rates across the nation.⁴⁸ The Nebraska Companies argue that stripping support for additional service lines ignores this requirement. By limiting support to a single-connection, rural LECs would likely be forced to raise prices on additional lines to both business and residential customers in order to recover the costs of universal service.

USTA also identifies the problem associated with a single-connection approach where “carriers will be forced to charge market rates (or the cost of the second line plus a reasonable profit) for secondary lines. . . . When this happens, consumers in high-cost areas no longer have access to quality services at *affordable rates* and carriers are no longer providing reasonably comparable services at *reasonably comparable rates* to those available in urban areas where consumers can purchase secondary lines at affordable rates.”⁴⁹ (emphasis in original) The Iowa Utilities Board (“IUB”) echoes USTA in arguing that restriction of funding to a single-connection would lead to rural customers failing to be provided comparable services at comparable rates.⁵⁰

⁴⁷ 47 U.S.C. § 254(b).

⁴⁸ *Id.*

⁴⁹ See USTA Comments at p. 17.

⁵⁰ See Comments of the Iowa Utilities Board, CC Docket No. 96-45, (filed August 6, 2004) at p. 7.

It is essential that the Commission remember that telecommunications providers build *network* infrastructure, not individual lines or connections. If a large number of connections become ineligible for support, the carrier serving a rural market will be unlikely to build capacity to meet the statutory goals for both supported services and access to advanced services.

USTA highlights this same point in its comments in this docket. It states that “[s]ervices ride over networks. Importantly, networks in high-cost areas cannot be built, maintained, expanded and improved if carriers do not have specific, predictable, and sufficient universal service support, which is required by the Act.”⁵¹ The single-connection approach clearly would not provide funding sufficient to maintain an entire telecommunications network.

It is also important to note that as telephony moves from a circuit-switched network to a packet-based IP network, the Joint Board’s primary line recommendation fails to adapt to the changing needs of the universal service fund. In the IP world, universal service funding must be targeted toward network infrastructure capable of delivering the broadband connection necessary for IP, and not toward specific lines which are useless without the network behind them.

The single-connection approach also fails to meet Section 254 predictability and sufficiency goals. OPASTCO is correct when it asserts that a single-connection approach will jeopardize rural customers’ access to high-quality services that are reasonably comparable to those offered in urban areas.⁵²

The Implementation of a Single-Connection Approach Would be Administratively Unworkable.

The Joint Board was not persuaded by arguments that competition for primary line designation would disserve the public interest by diverting an ETC’s resources from

⁵¹ See USTA Comments at p. 16.

⁵² See Federal State Joint Board on Universal Service, CC Docket No. 96-45, Reply Comments of the Organization for the Promotion and Advancement of Small Telecommunication Companies (filed June 3, 2003) at p. 20.

infrastructure investment to marketing and promotion. It further recommended the Commission develop the record on proposals to allow customers with more than one connection to designate an ETC's service as "primary."⁵³ The Nebraska Companies believe a process to designate a primary line would be inherently flawed. It is extremely doubtful that Congress ever envisioned a universal service system where carriers competed not for customers but for universal service support.

Further complicating implementation of the recommended approach is the lack of definitional integrity for the single-connection concept. What is a single connection or primary line? Should a single-connection be associated with an account, a premise, a household or a business address? What happens with customers who share the same living accommodations, but not the same service? The Universal Service Administrative Company ("USAC") states that "[it] believes it would be critical to clearly define who constitutes the 'consumer' to enable effective administration."⁵⁴ The natural question that arises is to where or to whom does a consumer have a single-connection? USAC asks explicitly "could there be multiple consumers within a single residence and, if so, how many primary lines could be designated for a single address?"⁵⁵ These exact sentiments concerning the administrative nightmare that would certainly arise from a primary line approach were highlighted in comments filed by WTA,⁵⁶ the National Exchange Carrier Association ("NECA"),⁵⁷ GVNW Consulting,⁵⁸ and USAC.⁵⁹ The

⁵³ See Notice at para. 113.

⁵⁴ See Comments of the Universal Service Administrative Corporation ("USAC"), CC Docket No. 96-45, ("USAC Comments") (filed August 6, 2004) at p.6.

⁵⁵ *Ibid.*

⁵⁶ See WTA Comments at p. 32.

⁵⁷ See NECA Comments at p. 10.

⁵⁸ See Comments of GVNW, Inc., CC Docket No.96-45, (filed August 6, 2004) at p. 10.

answer to “Who is the Customer?” will impact how each and every administrative issue is addressed going forward by USAC or whatever group the Commission designates to administer such a behemoth program. USAC states that “[i]f the Commission were to determine, for example, that multiple individuals living at the same address could designate separate primary lines, how would USAC distinguish that situation from one in which a single individual simply designated multiple primary lines without access to unique identifying information for each consumer? Without information such as name, address, and possibly some other unique identifiers, the primary line selection process has the potential to raise serious issues of waste, fraud, and abuse.”⁶⁰

USAC, as the most likely administrator of any new single-connection or primary-line approach to USF distribution, is in a unique position to comment on the potential administrative headaches associated with such a complex approach. Given its quasi-governmental status, USAC is unable to comment directly on the proposals offered by the Joint Board. It is, however, capable of setting forward any changes in its operations it believes will become necessary as a result of the implementation of such an approach.

USAC asserts that “in order to properly administer a primary line approach and protect the universal service fund from waste, fraud, and abuse, it would have to collect substantially more data than it collects today.”⁶¹ This information would necessarily be of a customer specific nature. Indeed, USAC believes that “[i]f the Commission adopts a primary line approach, it is quite possible that USAC would have to establish direct relationships with end-user consumers for the collection and validation of primary line elections. If the Commission were to adopt this

⁵⁹ See USAC Comments at p. 6.

⁶⁰ *Id.* at p. 7.

⁶¹ *Id.* at p. 8.

approach, USAC's data collection responsibilities would increase significantly, as would its administrative expenses and potentially the scale and content of its outreach functions."⁶² USAC presents an exhaustive list of some of the changes it foresees with the adoption of a primary line approach:

USAC believes, however, that since inherent in any change is an impact on its operations, it is reasonable to assume a significant impact on its operations if the Commission adopts a primary line approach. For example, the systems that USAC use to process data would have to be substantially overhauled and expanded in order to accommodate the vastly increased amount and type of data required under a primary line approach, which would result in significant information technology development costs. . . . USAC would need to significantly increase its staff, including, for example, additionally data entry clerks, data validation personnel, call center staff, and auditors.⁶³

It is abundantly clear that there are substantial and likely overwhelmingly prohibitive costs associated with the implementation of a flawed primary line approach. This increase in costs will be further exacerbated by the need for more frequent data collection. WTA 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."⁶⁴ Along the same logic path as WTA, USAC states that "[b]ecause there would likely be significant 'churn' among carriers' primary lines, USAC believes that all of the data submitted would have to be updated periodically. . . on at least a quarterly basis, but it is quite possible that more frequent updates would be required."⁶⁵

Given the dramatic cost increases and additional burden on already scarce and threatened resources, WTA asserts that "[n]either this Commission nor state commissions nor USAC

⁶² *Id.* at p. 10.

⁶³ *Id.* at pp. 11-12.

⁶⁴ *See* WTA Comments at p. 25.

⁶⁵ *See* USAC Comments at p. 10.

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.”⁶⁶

Commenters such as Verizon, Qwest, SBC and others that support the single-connection or primary line approach extol the virtues of such an approach while neither addressing the massive administrative difficulties (both economic costs and human resource costs) nor proposing a workable solution. The Nebraska Companies believe that the administrative burdens associated with a single-connection approach are simply too high to even consider implementation of such a program.

The Single-Connection Approach is Prone to Waste, Abuse, and Fraud.

Even assuming a single-connection primary line approach is consistent with Section 254 of the Act and that it is administratively workable, both myths debunked above, the Nebraska Companies assert that a single-connection primary line approach is rife with opportunities for waste, abuse and fraud.

Customer churn in response to the single-connection designation will turn revenue support into a “game of dice” for the wireline carrier. Carriers will be induced to invent more and more creative ways to capture the customer’s support, not to capture the actual customer.

Toll service “slamming” is a major problem in the industry today. The Commission and state commissions devote considerable amounts of both financial and human resources towards combating this problem. Slamming occurs daily, as can be seen through a simple review of the FCC Daily Digest. The techniques used by slammers run the gamut from borderline unethical to blatantly illegal. As pointed out by WTA, “[t]hese slamming practices have arisen, in major

⁶⁶ See WTA Comments at p. 34.

part, from competition for \$10-to-\$40 per month toll customers, and the telemarketing commissions applicable to them.”⁶⁷

WTA further avers that “where \$200-to-\$400 of per-line high-cost support is in play, slamming efforts are likely to become even more pervasive and sophisticated.”⁶⁸ NECA argues that “[e]nforcing the Commission’s anti-slamming rules will seem a stroll in the park compared to the activities necessary to uncover and deter the fraudulent identification of ‘primary connection’ carriers. Because of the flow of USF support that would be associated with primary connection designation, carriers as well as customers will have far greater incentives to identify as many primary connections as possible, particularly in areas with comparably high levels of USF support.”⁶⁹

NECA states that fraud has likely already begun to appear under the current high-cost program. It gives the illustration of Batavia, a town in Iowa that has 500 residents, yet wireless carriers are claiming over 900 wireless customers (in addition to all the wireline customers) in the same rural Iowa town.⁷⁰ NECA believes it “unlikely that residents have purchased on average 2.1 mobile telephones for every wired access line or nearly two mobile phones for every man, woman and child in Batavia.”⁷¹

⁶⁷ *Id.* at p. 35.

⁶⁸ *Ibid.*

⁶⁹ *See* NECA Comments at p. 12.

⁷⁰ *Id.* at p. 14.

⁷¹ *Ibid.*

With Unresolved Issues Surrounding Intercarrier Compensation, the Adoption of a Single-Connection Approach Could Devastate Rural Carriers and All Rural Customers Who Rely on Those Carriers' Facilities for Transport and Termination of Calls.

On April 27, 2001 the Commission released a Notice of Proposed Rulemaking (“*ICC NPRM*”) in which it began a fundamental re-examination of all regulated forms of intercarrier compensation.⁷² In the *ICC NPRM* the Commission sought comment on the feasibility of a bill-and-keep approach as a means to unify the flows of payments among telecommunications carriers resulting from network interconnection under the current regulatory system.⁷³ Furthermore, the Commission sought comment on whether a bill-and-keep approach would affect its ability to preserve and advance universal service through specific and predictable support mechanisms as required by the Act.⁷⁴ Based on its questions, the Commission was clearly aware of the interoperability between intercarrier compensation and the universal service systems. The worst of all possible outcomes for rural customers and the LECs that serve them would be the implementation of a bill-and-keep regime (or any regime that significantly reduced intercarrier compensation revenue) in concert with the institution of the single-connection approach recommended by the Joint Board. Bill-and-keep would shift cost recovery to the universal service fund, which ultimately could be lost through a single-connection approach. The cost recovery burden would be almost completely shouldered by the rural end-user customer if rural LECs were unsuccessful in a marketing game on an uneven playing field for primary line designations against carriers that are most likely not price regulated. The Nebraska Companies again urge the Commission to continue to be wary of making decisions concerning universal service without consideration of impending policy changes in intercarrier compensation. Indeed,

⁷² See *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, FCC 01-132 (rel. April 27, 2001) (“*ICC NPRM*”).

⁷³ *Id.* at para. 1.

⁷⁴ *Id.* at para. 124.

any modifications in universal service support distributions should not be implemented until after any intercarrier compensation reforms are in place.

IV. Conclusion

The Nebraska Companies believe that to create an ETC designation process that provides nationwide consistency, the Commission should accept the Joint Board's recommendation and adopt permissive guidelines creating additional minimum requirements to be applied by states in ETC designation proceedings. However, the Commission must recognize that these guidelines are not all-inclusive. State commissions, as entities most familiar with the service areas in question, would still be free to require additional measures. The adoption of these guidelines would help to ensure that universal service remains sustainable on a national level.

Several parties that commented in this proceeding, including the Nebraska Companies, also recommended that the Commission expand the permissive guidelines beyond the list of supported services currently examined for USF funding. These additional guidelines include the adoption of an initial "bright line" test to identify rural service areas where a presumption should apply that scarce universal service funding cannot justify supporting multiple networks, and consequently, ETCs.

Once the "bright line" test has been conducted and it is concluded that multiple ETCs can be supported, it is necessary to apply additional guidelines and requirements to the public interest analysis conducted. Several commenting parties, including the Nebraska Companies, identified the following additional competitively and technologically neutral minimum requirements as prerequisites for ETC designation: 1) ETC applicants must demonstrate the ability to remain functional in emergencies; 2) all ETCs must provide subscribers with equal access to IXC; 3) ETCs must offer an unlimited or defined local usage package; 4) ETCs must have adequate financial resources to provide quality services throughout the designated service areas; 5) ETCs

should have the capability and commitment to serve all customers throughout the designated service area; 6) ETCs must comply with consumer protection reporting requirements; and 7) ETCs must be willing and able to become the carrier-of-last-resort.

In order for the additional minimum requirements to pass the Commission's competitive and technological neutrality test, these requirements must be applied to all ETCs. The Commission should reject any argument that the equal access and local usage requirement would violate Section 332 of the Act. The Nebraska Companies assert that Section 332 does not impose limitations on state commissions with respect to regulation of wireless carriers when ETC status is an elected condition by such carriers.

The Nebraska Companies agree with Commissioner Martin that the Commission recommend that the states require any carrier seeking ETC status to commit to serving the entire study area as does the incumbent ETC. Without such a requirement, competitively neutrality would not be possible.

The Nebraska Companies agree with the Joint Board's recommendation that where an ETC fails to comply with the requirements in Section 214(e) and any additional requirements proposed by the state commission, the state commission may decline to grant an annual certification or may rescind a certification previously granted.

Most parties that filed comments oppose the Joint Board's recommendation limiting high-cost support to a single-connection. Many parties believe, and the Nebraska Companies concur, that the adoption of the Joint Board's single-connection approach is inconsistent with Section 254 of the Act. In addition, parties gave numerous examples as to why the implementation of a single-connection would be administratively unworkable and why it is prone to waste, abuse, and fraud.

Finally, the Nebraska Companies urge the Commission to continue to be wary of making decisions concerning universal service without consideration of impending policy changes in intercarrier compensation. Any modification to USF policies should only be implemented after any intercarrier compensation reforms are in place.

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Respectfully submitted,

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Great Plains Communications, Inc.,
Hartington Telecommunications Co., Inc.,
Hershey Cooperative Telephone Company, Inc.,
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