

**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 WESTERN WIRELESS CORPORATION

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September 21, 2004

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Western Wireless Corporation (“Western Wireless”), by counsel, hereby
submits these reply comments in response

service policy should be focused on the rural consumer and on the benefits from a competitive universal service system. Each side puts forth their best arguments to support their points of view, but only the CETC arguments are consistent with the mandates of the Telecommunications Act of 1996 (“1996 Act”), the FCC’s universal service and eligible telecommunications carrier (“ETC”) orders, and the vast majority of state commission decisions recognizing the public interest value and consumer benefits of a competitive universal service marketplace.

Why is the rural incumbent carrier point of view so fixated on excluding wireless carriers from participating in the universal service support system? Why is the urban-centric point of view so intent on minimizing universal service payments in rural areas? The answers are clear – and they ignore the Congressional mandate that the “Joint Board and the Commission shall base policies for the preservation and advancement of universal service on

(1) QUALITY AND RATES, . . . (2) ACCESS TO ADVANCED SERVICES, . . . [and] (3) ACCESS IN RURAL AND HIGH COST AREAS,” as required by Section 254(b) of the 1996 Act, 47 U.S.C. § 254(b).

The RLECs’ point of view is firmly rooted in protecting their historically protected monopoly local telephone service market. Clearly, the RLECs are terrified of facing real, facilities-based competition on a level playing field – the very thing Congress sought when it amended the Communications Act in 1996.

competition,” 2/ the RLECs are fighting for the ‘good ole days’ when consumers had no choice but what the RLECs offered. Whether the battle is universal service, local number portability (“LNP”), or interconnection, the RLECs’ position is to oppose mandates of the 1996 Act to open the local telephone markets to competition by: (i) designating additional carriers as ETCs; 3/ (ii) implementing number portability; 4/ and (iii) establishing cost-based interconnection rates. 5/

In these reply comments, Western Wireless refocuses the debate on the purpose and intent of universal service reform – , the rural consumer. Clearly, limiting universal service support to only primary lines does not advance universal service, would unreasonably discriminate against universal service carriers that have invested in their networks to bring service to rural areas, and would harm

longer term, the universal service funding mechanism in RLEC areas needs to be overhauled. 6/

These reply comments also show that the Commission should reject

The proponents make it clear that the main objective of the primary line restriction is to restrict universal service fund growth by minimizing or eliminating funding to wireless CETCs. NASUCA, for example, touts the primary line restriction on the basis that it could cut 96% of funding going to wireless CETCs. 8/ Apparently to help ensure that this dramatic cut in wireless CETC funding is achieved, NASUCA also offers the remarkably blatant anti-competitive proposal that the ILEC be designated as the default primary line provider in those cases where the subscriber fails to indicate a choice. 9/ Likewise, Qwest suggests that the primary line designation default should be the first service established by the customer,10/ which in most cases will be the incumbent local exchange carrier (“ILEC”) service.

AT&T frames the relevant policy question as “how best to curb [the] growth” of wireless CETCs, and expounds for several pages on this point while reassuring ILECs that, under the restatement proposal, a primary line restriction “would not eliminate the embedded cost-based USF support that today flows to ILECs” and “would initially .” 11/

8/ NASUCA at 8.

9/ NASUCA at 26. Even with proposals like this to stack the odds against wireless carriers, NASUCA incredulously argues that, if it is more difficult for a wireless carrier than the ILEC to compete for the customer’s primary line designation, it will be because it has been unable to provide competitive universal service connections. . at 22.

10/ Qwest at 2-3. Western Wireless submits that a more neutral rule would determine the default primary line based on which connection carries the greatest number of calls or minutes of use.

The argument put forth by the proponents – that wireless CETC funding must be slashed in order to save the high cost fund – is both illegitimate and ineffective. The FCC cannot lawfully adopt policies designed to take funding away from a selected, disfavored industry segment, as these parties propose. Such a blatantly anti-competitive policy would, in the words of the court, be “the very antithesis of the Act.”^{12/} It would also violate the “competitive neutrality” principle established by the Commission pursuant to statutory authority.^{13/} Although the Recommended Decision pays lip service to this principle, even it admits that, together with a primary line restriction, the Commission should “adopt some means of preventing or mitigating reductions in the support available to rural [incumbent local exchange] carriers.”^{14/} While rural ILECs may not receive USF funding for secondary lines connected in the , CETCs under the proposal will lose funding even for “secondary connections.” It is difficult to see how this is a competitively neutral solution.

Apart from being impermissibly anti-competitive, the proponents’ argument would also be ineffective because other policies (discussed below) address the problem of fund growth much more directly than targeting the relatively small percentage of funding that goes to wireless CETCs. Contrary to the implication embedded in the proponents’ argument, it is funding that is the main cause of

^{12/} , 201 F.3d 608, 622 (5th Cir. 2000) (“ ”).

^{13/} , Report and Order, 12 FCC Rcd 8776, ¶ 43 (1997), .

^{14/} , ¶ 76.

fund growth. As CTIA calculated from USAC reports, from 2000 to 2003, 90% of high cost fund growth was attributable to ILECs. 15/ Looking at the past five years, RCA/ARC and U.S. Cellular calculated that rural ILECs – with mature networks and a stagnant (or in some cases, shrinking) subscriber base – will receive \$600,000,000 support in 2004 than they did in 1999. 16/ Amazingly, however, proponents complain indignantly that wireless carriers – which are actually using the funds to build out new infrastructure in rural areas and are increasing the number of rural subscribers at a rapid pace – received a total of \$131 million in support last year, or only about seven percent of the total.

Rather than continuing to consider primary line restrictions, the Commission should pursue other means to limit the growth of the high-cost fund. In the short term, the Commission should adopt the Joint Board’s proposal to impose a cap on per-line funding in rural study areas with competition. 17/ Under this proposal, the amount of support flowing to a rural ILEC (and to CETCs in its study area) would be capped on a per-line basis, and “would be adjusted annually based on an index factor, rather than changes in the rural carrier’s embedded costs.” 18/ While the characterized this proposal as one that should be adopted

15/ CTIA at 7.

16/ RCA/ARC at 9-10 & Exh. 1; U.S. Cellular at 30 & Exh. 1 (note that the \$600 million figure does not include support funds shifted out of implicit access charge subsidies.).

17/ This proposal is supported by a number of parties, including AT&T (at 17-24); CTIA (at 22-23); Dobson (at 28); GCI (at 28-32); NASUCA (at 33); Regulatory Commission of Alaska (at 9); and Verizon (at 18-19) (calling for applying such a cap on all rural study areas, not just those where there are more than one ETC).

18/ , ¶ 77.

in conjunction with a primary line restriction, it can and should be adopted even in the absence of a primary line restriction. This approach would address one of the most illogical aspects of the current fundin

Commission should devise a system that would disburse support funds to all ETCs – ILECs and CETCs alike – based on the forward-looking costs of an efficient technology. 21/ Western Wireless looks forward to further consideration of this issue in the proceeding. 22/

In addition, the record in this proceeding is replete with other good ideas for imposing limits on funding growth without compromising the mandate that any reform initiatives must advance universal service while complying with the principle of competitive neutrality. Western Wireless believes that many of the ideas offered by commenters merit further consideration, including:

- Cap the overall size of the high-cost fund to grow in proportion to the size of the interstate telecommunications market. 23/
- Cap total high-cost support in a study area upon competitive ETC entry, and allocate the support among ETCs based on market share. 24/
- For purposes of computing costs under the rate of return system, require holding companies to combine all “study areas” in each state. 25/

- Revise the local switching support mechanism to reflect economies of scale that can be achieved by carriers with fewer than 50,000 lines. 26/
- Consider restructuring the high-cost system to rely on consumer “vouchers” rather than disbursements to carriers. 27/
- Conduct investigations or audits of whether rural ILECs’ costs were reported properly and whether they were prudently incurred. 28/
- Eliminate or restrict rural ILECs’ ability to recover general overheads or “corporate operations expenses” through High-Cost Loop Support. 29/
- Re-examine the authorized 11.25 percent rate of return and average-schedule formulas. 30/
- Decline to provide high-cost funds to carriers unless those carriers recover a reasonable portion of the costs of service from their own customers through local exchange rates. 31/
- Consider developing a system of support based on a competitively-neutral system of competitive bidding. 32/
- Preclude rate-of-return ILECs from recovering any reductions in USF revenues through per-minute access charges, which would constitute an unlawful implicit subsidy. 33/

26/ CTIA at 25; Nextel Communications at 14-15.

27/ Sprint at 12-13.

28/ Centennial at 9. In this regard, the Wireline Competition Bureau’s investigation of NECA’s access tariffs, launched yesterday, is a modest but positive step in the right direction. Order Designating Issues for Investigation, DA 04-3020 (WCB, released Sept. 20, 2004). The Bureau is investigating “whether NECA’s rates are targeted to realize an 11.25 percent return and the ability of NECA’s rate-of-return reports and data to serve as reliable indicators that rates are not unjust or unreasonable,” including reviewing revenue, rate base, and rate of return data for monitoring periods going back to ____, as well as seeking an explanation of “true-up” adjustments and “the differences between the means used by carriers to report their initial data to NECA and the means used to calculate the trued-up data.” ¶¶ 11, 14, 19.

29/ Nextel Communications at 13-14.

30/ Dobson at 29.

31/ Dobson at 29; Sprint at 11-12; SBC at 6.

32/ CTIA at 26.

Any of these approaches would restrict the growth of the fund more effectively than primary line restrictions, and with neither the anti-competitive impacts nor the insurmountable administrative difficulties presented by the primary line proposal.

B. Primary Line Restrictions Are Administratively Infeasible

Aside from the theoretical problems with primary line restrictions, such a policy would be a nightmare to administer. The went to great lengths to tout the purported advantages of (and to gloss over the anti-competitive effects of) a primary line restriction, without ever defining what “primary line” or “single connection” actually means, or how such a system would work. The Commission, therefore, has been left with a mind-numbing list of policy questions to consider in crafting any such scheme, many of which have been thoughtfully outlined in the comments of the Universal Service Administrative Company (“USAC”), as well as by many other commenters. ^{34/} In particular, USAC notes the near impossibility of defining who constitutes the “consumer” for purposes of defining the primary line and averting waste, fraud, and abuse; ^{35/} and the need for substantial additional

^{33/} AT&T at 24-25, citing , 250 F.3d 931, 939 (5th Cir. 2001).

^{34/} , CTIA at 18; ITTA at 12; Dobson at 18; Mid-Size Carrier Coalition at 21; NECA at 9; NTCA at 9; Nebraska Rural Independent Companies at 17; Nextel Partners at 27; Rural Cellular Assoc. at 24; Rural Telecommunications Associations at 26; Sprint at 18; USTA at 19; US Cellular at 44; Western Telecommunications Alliance at 32.

^{35/} “Would a consumer be the named individual on a telephone bill? Alternatively, would a consumer be defined by a unique identifier, such as a social security number? Moreover, could there be multiple consumers within a single residence and, if so, how many primary lines could be designated for a single address? For example, more than one family may live in a single home, with each family having its own separate telephone service. Would each of those families be considered a consumer and therefore eligible to designate a primary line for purposes of universal service? If not, who would have the authority to make the primary line designation for the address? Would it be the first individual to submit the primary line selection to its carrier of

resources for USAC to collect, validate, and audit customer-specific information, potentially from individual consumers. 36/ The Joint Board provides no guidance for resolving these complex problems or managing the extraordinary implementation burdens that would inevitably arise under a primary line restriction.

As CTIA points out, a primary line system would be much more complex to administer than the Commission's prior experience with the primary line concept in the context of assessing Subscriber Line Charges and Presubscribed Interexchange Carrier Charges. 37/ The California PUC, a supporter of the primary line concept, nevertheless admits that a similar state-level program under its jurisdiction "remains a continuing challenge" to administer. 38/ Without repeating the full litany of issues here, Western Wireless notes that the record clearly establishes that such a scheme: (1) would be extremely costly to administer; 39/ (2) would require the collection of vast quantities of new data, much of it personal,

choice, or would it be the last individual to make that election? Depending on the answers to the above questions, USAC may need to collect customer-specific information for each line served by rural ILECs and the CETCs that serve in their study areas Without information such as name, address, and possibly some other unique identifier, the primary line selection process has the potential to raise serious issues of waste, fraud, and abuse." USAC at 6-7.

36/ at 8-12.

37/ CTIA at 18-19.

38/ Public Utilities Commission of the State of California at 9.

39/ ., USAC at 11-12 (citing "significant impact" on operations and need for additional resources).

customer-specific data; 40/ and (3) would result in carriers spending funds on marketing campaigns to “win” customers’ primary line designation that otherwise could be reinvested in the network. 41/ The Commission should conclude, as most commenters have, that the primary line proposal is administratively infeasible.

C. Primary Line Restrictions Would Harm Rural Consumers

In addition to the concerns about the anti-competitive and administrative problems with the proposed primary line restriction, the record clearly establishes that a primary line restriction would impede universal service in rural America. 42/ As BellSouth warns, the proposal would lead to an increase in rates charged by carriers for second lines, pricing them out of the reach for some consumers, and crippling small and rural businesses that rely on multiple wired and wireless lines. 43/ In letters to Chairman Powell earlier this year, members of Congress stated that such a restriction “would dramatically reduce incentives for the deployment and upgrade of facilities in rural areas” 44/ and “puts rural

40/ ., USAC at 8-9, 12 (citing the “vastly increased amount and type of data required under a primary line approach,” including the need for direct USAC contact with subscribers to obtain customer-specific data).

41/ Dobson at 20; CenturyTel at 17-19.

42/

customers at a distinct disadvantage to their urban counterparts.”45/ Further emphasizing their strong feelings on this matter, the United States Senate Appropriations Committee recently passed an appropriations rider (offered by Senators Burns and Dorgan) that would prevent the Commission from implementing a primary line restriction. 46/

Nevertheless, proponents of the primary line restriction, ignoring § 254(b)(3), the related legislative history and recent Congressional pronouncements, 47/ believe rural consumers should settle for far less than what is available to their city cousins. The Commi

III. MAJOR CHANGES TO THE ETC DESIGNATION PROCESS ARE UNNECESSARY

Much like the advocacy in favor of the primary line restriction, it is transparently clear that parties' calls for a more restrictive ETC designation process amount to little more than attempts to "throw wireless off the train." If the Commission really cares about promoting deployment of wireless service in rural areas and bringing additional technological and competitive options to rural consumers, then it must reject these proposals.

As the state commission commenters urge, any new ETC designation criteria or guidelines that are adopted should be permissive, not mandatory. 49/ States (and the FCC) are, for the most part, getting it right. States are conducting rigorous assessments and reaching well-developed conclusions. Likewise, the FCC's precedent provides generally appropriate guidance and is far superior to the limitless set of criteria set forth in the Recommended Decision. 50/

Some commenters suggest that wireless CETCs should be subject to the same set of state regulatory obligations as ILECs, 51/ although these obligations are imposed on ILECs not as a prerequisite for universal service funding, but for other reasons, mostly relating to the historic monopoly status of ILECs. Attempting

competitive, wireless carriers would not be competitively neutral, as it would be comparatively more burdensome for wireless providers to comply with rules designed for a different service. 52/ Such requirements would discourage wireless expansion into rural areas and could limit

with dubious public interest benefit in the 21st Century. Policy-makers should question whether it makes any sense to continue to prop up a technology of the past when wireless networks in many cases may be able to provide service more efficiently in rural areas and are increasingly chosen by consumers to meet their communication needs. As Western Wireless previously commented, American consumers now use more wireless service than ILEC service. 54/

IV. THE FCC SHOULD REJECT NEW ANTI-COMPETITIVE, OFF-THE-WALL PROPOSALS

A few commenters put forth new proposals not raised in the NPRM.

Some of these proposals are even more anti-competitive than the primary line restriction proposed in the Recommended Decision and should be rejected out of hand:

- OPASTCO, RICA, and RTG propose to ramp down funding for wireless carriers based on size. The smallest carriers would receive 80% of the per-line support received by the ILEC, with larger wireless carriers receiving only 40%, 20% or 0%, depending on their total number of national subscribers. Apart from being beyond the scope of the NPRM in this proceeding, such a scheme would blatantly violate the law, since funding portability is mandated by the Act. 55/ Allowing the CETC to submit a cost study is hardly an acceptable solution given that no CETC cost study methodology exists and there are no “generally accepted accounting principles” 56/ that can be used in developing such methodology. Moreover, imposing the burden on CETCs to develop a cost study methodology from scratch – and then capping the CETC’s support at the level received by the ILEC or the statewide average, regardless of the results of the cost study (without capping the ILEC’s support at the level received by the CETC) – would hardly pass the competitive neutrality test. Finally, the proposed plan would be terrible

54/ Western Wireless at 15.

55/ , 201 F.3d at 615.

56/ OPASTCO

public policy, as it would reward wireless carriers just for being small and inefficient (like the unsustainable ROR regime does for ILECs), further exacerbating the current inequities whereby different carriers receive dramatically different levels of support for serving the same populations.

- AT&T and other commenters 57/ proposed that there should be a national benchmark of per line support – set “as low as possible” – above which there would be a presumption that the designation of a CETC is not in the public interest. Such a scheme should be rejected for a host of reasons, as it: (1) would create even more powerful incentives for ILECs to operate inefficiently, since the rule would not only ramp up their own funding but also preclude ETC competition; (2) paradoxically would preclude funding of increased wireless penetration just where it is needed most – in the most rural, high-cost areas; (3) would substitute regulators’ choices for consumers’ choices (the number of carriers in low-population areas is necessarily limited by marketplace forces; there is no need for artificial regulatory restrictions); (4) improperly assumes, without foundation and without examination, that excessive funding amounts received by some RLECs are fully justified, instead of more appropriately recognizing that the fact that some areas receive high amounts per-line should lead to re-examination of current funding rules, not erection of anti-competitive policies.
- Verizon and others 58/ offered a similar but even more aggressively anti-competitive proposal that would simply establish a blanket presumption against the designation of CETCs in rural ILEC areas, period, regardless of the existing per line support levels. Like the threshold-based proposal above, this pure, unadulterated monopolistic protectionism blatantly violates both the Act and the Commission’s pro-competitive policy framework. As mentioned above, there is no need to artificially limit the number of CETCs serving a particular study area. Because CETCs receive USF support strictly on a per line basis, overall payments from the high cost fund will not increase with additional competitors in the market, as consumers will only purchase as many connections as they need. In other words, the introduction of a second wireless CETCs into a market is unlikely to induce a consumer to subscribe to an additional wireless connection. Consumers, not regulators, should decide whether an additional CETC can survive in a given market.
- Western Wireless does not support CommNet’s proposal to target a flat USF funding of \$3,000 per cell site per month in the most sparsely-populated

areas. ^{59/} While CommNet’s suggestion may be a well-intentioned contribution to the debate, Western Wireless nevertheless believes that this level of support would be inadequate to make a significant difference in most cases. More fundamentally, this proposal would violate the principle of competitive neutrality. The only way to achieve competitive neutrality is to strictly adhere to the requirement of funding portability on a per-connection basis, in which each carrier in a given geographic area receives an identical amount of dollars per customer connection served. ^{60/} Attempts to provide funding to wireless carriers based on assumptions regarding their network costs are as unlikely to be accurate, and are as likely to create uneconomic incentives, as the embedded cost-based system of “rate of return” regulation for rural ILECs, which is non-functional and in desperate need of reform.

V. INFLAMMATORY, UNSUPPORTED STATEMENTS HIGHLIGHT THE DESPERATION OF SOME COMMENTERS

Some commenters go beyond good advocacy by making unsupported, inflammatory allegations that bear little or no relationship to the facts. By leveling these attacks, these commenters simply discredit themselves and any credibility they might have previously enjoyed.

For example, Fred Williamson and Associates, Inc. (“FW&A”) offers a seriously flawed, back-of-the-envelope calculation to show that Western Wireless’ domestic revenues per line (net of federal universal service support) exceed its costs per line and, on that basis, contends that “Western Wireless has no need for federal universal service funding and any such funding would be a windfall for Western

^{59/} CommNet Wireless at 3-4. CommNet’s proposal would only apply to future ETC applications for service to counties with an overall population density of less than 100 people per square mile and where the population density within the reliable service area contour is less than 10 people per square mile. The proposal would not affect the USF program in other areas.

^{60/} Sappington, David E. M., “Harnessing Competitive Forces to Foster Economical Universal Service,” attached to Comments of General Communications, Inc.; 201 F.3d at 615 (“portability is not only consistent with predictability, but also is dictated by principles of competitive neutrality”).

Wireless's shareholders."61/ First, FW&A's analysis is flat wrong: by taking overall corporate data from a Western Wireless SEC report, it includes revenue data (as well as cost data) that have nothing to do with Western Wireless' provision of universal service – and other relevant data are excluded. Moreover, the fact that Western Wireless' overall domestic revenues per line may exceed its cost per line –

Wireless has constructed a state-of-the-art wireless network in Kansas and elsewhere capable of supporting high-speed data services and four different technologies (GSM, CDMA, TDMA and AMPS). TCA also blindly goes where no reasonable individual would go by implying that Western Wireless' network is somehow inferior when, in fact, Western Wireless has made incremental investments into its network in Kansas that far exceed any universal service support it has received. 64/ The attached presentation delivered to state commissioners attending the Qwest Regional Oversight Committee meeting in Missoula, Montana on September 12-13, 2004 clearly illustrates how Western Wireless is using universal service support to benefit rural consumers, consistent with the mandates of the 1996 Act. 65/

64/ Similarly, the South Dakota Telecommunications Association and Townes Telecommunications, Inc. ("SDTA") also allege, based on a misleading reference to data in the record of a South Dakota PUC proceeding, that Western Wireless' mobile service is sub-standard. SDTA at 8. But SDTA neglects to mention that the South Dakota PUC, following a lengthy and extremely rigorous proceeding, ultimately rejected its claim. Tj10.12 PUC,

VI. CONCLUSION

In conclusion, Western Wireless urges the Commission to conclude this rulemaking in a manner consistent with these reply comments and with Western Wireless' comments and reply comments filed with the Joint Board.

Respectfully submitted,

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