

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

In the Matter of)
Federal-State Joint Board on Universal Service) CC Docket No. 96-45
)

To: The Federal-State Joint Board on Universal Service

**COMMENTS OF DOBSON CELLULAR SYSTEMS, INC.
ON CERTAIN OF THE COMMISSION'S RULES RELATING TO
HIGH-COST UNIVERSAL SERVICE SUPPORT**

Dobson Cellular Systems, Inc. ("Dobson") hereby submits its comments in response to the Joint Board's *Public Notice* seeking comment on certain rules relating to high-cost universal service support.¹ Dobson offers a number of suggestions herein with respect to the cost basis of support and the calculation of support in rural areas. Dobson also urges the Joint Board to take note of the changing telecommunications marketplace and recommend rules and policies that will reflect and accommodate the significant changes in the how rural consumers utilize telecommunications services.

INTRODUCTION

Dobson, through its various subsidiaries and affiliates,² is licensed to provide wireless telecommunications service in portions of 16 states stretching from Alaska to New York. A significant contributor to the universal service fund ("USF"), Dobson provides service to approximately 1.6 million subscribers throughout its service areas, in predominantly rural areas.

¹ *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support*, CC Docket 96-45, *Public Notice*, FCC 04J-2 (rel. Aug. 16, 2004) ("*Public Notice*").

² Dobson Cellular Systems, Inc. and American Cellular Corporation ("ACC") are wholly-owned subsidiaries of Dobson Communications Corporation. Both Dobson and ACC hold Cellular Radiotelephone Service and Personal Communications Service licenses.

Dobson sets itself apart as one of the earliest rural wireless carriers to have rolled out digital service throughout its entire service area, and to offer local, regional, and nationwide rate plans substantially similar to large nationwide wireless service providers. Most recently, Dobson has completed its roll-out of an overlay of both GSM/GPRS and EDGE technology on its existing TDMA networks, which will bring rural consumers the benefits of additional advanced data and information services.

Dobson has been an active participant in the Joint Board's and the Commission's various proceedings related to universal service funding issues as well as the eligible telecommunications carrier ("ETC") designation process generally. Dobson and ACC have applied for ETC status in a number of states. Given Dobson's long commitment to providing high-quality wireless services to rural America, and its experience with the universal service program as both a contributor to the fund and a participant in the development of related FCC rules and policy, Dobson believes it can make a valuable contribution to the Joint Board's efforts to reform the rural high-cost support mechanism.

As it considers the issues it has presented for comment, Dobson urges the Joint Board to remain cognizant of three crucial facts:

- Telecommunications markets are evolving, and intermodal competition is becoming the norm. An increasing percentage of consumers define their wireless service as their primary telecommunications service. Cable providers are offering residential and business telephone service. Independent voice over Internet protocol ("VoIP") providers are aggressively promoting their services and are being embraced by an increasing number of consumers. Universal service policy must acknowledge and embrace the evolution in services available to consumers from a multiplicity of facilities-based providers.
- The purpose of universal service, as defined in the Act, is to ensure that *consumers* in rural and high-cost areas have access to an evolving level of telecommunications services that are comparable in quality and price to those available in urban areas. The Act's universal service provisions guarantee rural consumers "reasonably comparable" access to today's dynamic

telecommunications marketplace. These goals cannot be sacrificed in the name of the profitability of any particular competitor (including rural LECs).

- The Joint Board should set its focus clearly on the *future* rather than the past, and establish universal service policy today that will move regulation towards the needs of tomorrow. The requisite reforms are admittedly too extensive and politically sensitive to be undertaken in a single step. But neither the Joint Board nor the Commission can let the perfect be the enemy of the good. Some steps discussed herein can be taken right away, while others will require a long-term transition. But the focus should be on establishing forward-looking policy rather than bickering over the details of relics from the bygone monopoly era (*e.g.*, rate-of-return regulation, average schedule formulas, etc.)

In formulating its recommendations on the scope of support, the Joint Board should not miss the clearest opportunity to use market forces – consumer choices about the use of telecommunications technologies – to target support efficiently.

As Dobson has pointed out previously, the most significant threat to the long-term sustainability of the high-cost universal service fund is the bloated and ever-increasing amount of support paid to incumbent local exchange carriers (“ILECs”). The Joint Board cannot ignore this fact. According to USAC, the high-cost support mechanism has grown 53% from 1999 to 2003, from \$1.7 billion in 1999 to \$3.3 billion in 2003.³ Fully 92% of that growth, or \$1.4 billion, has gone to ILECs. During that same time period, support to competitive ETCs has grown only 8.4%, and competitive ETCs still collect only 7.1% of the fund.⁴

These figures make clear that, if the Joint Board wishes to bring the growth of the fund under control, it must address ILEC support. Dobson is pleased to see that the Joint Board has undertaken to do so with this proceeding. One of the primary problems with support currently provided to rural ILECs is that it is based on their embedded costs. In short, the higher the rural

³ USAC, Information on Specific CETC High Cost Support, Distribution of High Cost Support Between CETC & ILEC, 1998 Through 2Q2004, at <http://www.universalservice.org/hc/download/pdf/HC%20CETC%20%25%20Disburse.pdf> (rel. July 27, 2004).

⁴ *Id.*

ILEC's costs, the more support it receives. The current system therefore places no discipline on support amounts that flow to rural ILECs, and creates no incentives for rural ILECs or the fund to benefit from advances in technology, efficient practices, or other efforts to reduce costs. Accordingly, as discussed below, Dobson supports a transition to using a forward-looking cost model for determining the basis of support for all ETCs. Dobson also presents other ideas for reformulating rural support so that it meets the goals of the Act.

DISCUSSION

I. THE CURRENT DEFINITION OF "RURAL" IS TOO BROAD.

Both the Joint Board and the Commission have concluded that support should be based on forward-looking costs.⁵ The Rural Task Force, the Joint Board, and the Commission also have concluded, however, that rural carriers should not be subject to a cost model until rural carriers' costs can be modeled with more accuracy. Presently, the class of carriers that are not subject to the forward-looking model are "rural telephone companies" as defined in Section 3(37) of the Communications Act.⁶ This definition focuses both on the size of the carrier (*i.e.*, the number of lines it serves) and the size of the communities it serves (*i.e.*, the population or population density). Dobson agrees that both of these factors can be relevant in defining the class of carriers for whom a more detailed and refined cost model is necessary. Experience has shown, however, that the statutory definition can be over-inclusive on both metrics.

With respect to the size of the carrier, this definition captures companies that are operating subsidiaries of large holding companies who can achieve economies of scale that

⁵ See *infra* section II.

⁶ See 47 U.S.C. § 153(37); *Public Notice* at ¶ 8 n.23.

dwarf the capability of less-capitalized, independent rural telephone companies.⁷ Along these same lines, Dobson believes that the test should consider all of a company's study areas within a state to better reflect the appropriate economies of scale that can be achieved by the carrier.⁸ Doing so would increase the class of carriers for whom support could be determined in a more efficient fashion using the forward-looking cost model.

With respect to the size of the community served, in developing a proper definition of "rural," Dobson believes that the best approach would be to use readily recognized and ascertainable boundaries. In the Commission's recent proceeding intended to promote wireless service in rural areas, the Commission established a baseline definition of "rural area" as those counties with a population density of 100 persons per square mile or less, based upon the most recently available Census data.⁹ In adopting this metric, the Commission noted that "it is important that we not make the definition difficult to administer," and chose a definition based on county boundaries because they are "easy to administer and understand, population data based on county boundaries are widely available to the public and county boundaries rarely change."¹⁰

In this respect, among the various proposals included in the Joint Board's *Public Notice* is a discussion of the merits of interpreting "communities of more than 50,000" in a different manner so as to exclude some areas from rural classification.¹¹ If the Joint Board chooses to employ a measure of "rural" that is based on a term like "communities," it must provide certainty

⁷ See *Public Notice* at ¶ 13.

⁸ See *id.* at ¶ 12.

⁹ *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services*, WT Docket No. 02-381, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 04-166, at ¶ 11 (rel. Sept. 27, 2004).

¹⁰ *Id.*

¹¹ See *Public Notice* at ¶ 10.

by ensuring that “communities” are to be delineated by, for example, known municipal boundaries. Another approach that could be used to easily and objectively determine rural areas would be to define as “rural” those areas of the country that are outside the “urbanized areas” most recently identified by the U.S. Census Bureau.

In any event, the Joint Board should recommend a definition of rural that prevents carriers that should be subject to the current cost model, either because of the urbanized nature of the communities they serve or because of the economies of scale that result from their actual scope, from avoiding the efficiencies that forward-looking support brings.

II. THE JOINT BOARD SHOULD RECOMMEND A TRANSITION TO A FORWARD-LOOKING MODEL TO ESTABLISH THE COST BASIS OF SUPPORT.

The Rural Task Force, the Joint Board, and the Commission have long recognized that the most efficient starting point for determining support is a forward-looking model of the cost of providing service. The use of a model avoids some of the most serious problems inherent in the embedded-cost system currently used in rural areas. It eliminates the incentives for inefficiency and gold-plating resulting from basing support on the incumbent’s embedded costs. It avoids requiring wireless carriers, whose prices are constrained by the hyper-competitive marketplace in which they operate, to report cost data to regulators like an old-fashioned monopolist. And it can end the debate about the fairness of providing support to competitive ETCs based on the incumbent’s costs. Dobson therefore supports basing support calculations for both incumbent and competitive ETCs on the forward-looking cost of providing service in a given area.¹²

In the long run, it is difficult to argue that “sufficient” support is more than the cost of the most efficient technology to serve a given area. The Joint Board therefore should recommend a

¹² See *Public Notice* at ¶ 31.

long-term goal of using a cost model that computes the forward-looking cost of the lowest-cost technology available. In some instances, the lowest-cost technology will be wireline, and in others it will be wireless.

Dobson recognizes, however, that the Joint Board and the Commission may feel compelled to provide rural LECs with a reasonable, time-delimited opportunity to recover investment incurred under the current regulatory environment. In the interim, therefore, the Joint Board could recommend that the Commission utilize a wireline cost model for wireline ETCs and a wireless cost model for wireless ETCs.¹³ This type of accommodation is recognized in the use of forward-looking models,¹⁴ but could be phased out with sufficient administrative notice to achieve greater efficiency. Although the formulation of cost models and their inputs is always a difficult task, it would be easier to model wireless costs than it has been to model wireline costs, because the prices for wireless service (on both the input and output side) already are determined by competitive markets.

Until the rural ILECs are transitioned to a forward-looking model, and as part of the process of data-gathering for building a rural cost model, the Joint Board should recommend that investigations or audits be undertaken into rural ILECs' costs, and restrictions should be placed on nebulous cost categories such as corporate operations expenses. Because rural ILECs historically have not operated in competitive markets, it is important to consider whether the costs they report are prudently incurred and accurately reported. Regulators need to have rules or mechanisms in place to control costs. For example, rural consumers do not benefit when universal service support is being used by rural companies for expenses related to general

¹³ See *Public Notice* at ¶ 36.

¹⁴ For example, the Supreme Court acknowledged the accommodation of using ILECs' existing wire center locations in the FCC's TELRIC model. *Verizon Communications Inc. v. FCC*, 535 U.S. 467, 505 (2002).

administrative costs as well as travel, entertainment, and lobbying efforts. In this regard, Dobson notes that under the Commission's *Virginia Cellular* and *Highland Cellular* orders, wireless ETCs must demonstrate how they will spend the USF support, which is limited to specific new cell site construction and related costs.¹⁵ Not only do the wireless ETC applicants provide detailed construction plans, but they further certify that the funds will be spent as described and can be subject to yearly audits. If this is a fair and reasonable system for competitive ETCs, then the incumbent ETCs must be held equally accountable.¹⁶ Once support is based on a forward-looking model, however, such scrutiny no longer will be necessary.

III. CALCULATION OF SUPPORT.

In determining the methodology that should be used to calculate each rural carrier's support, Dobson previously offered a number of options that would serve to properly contain the growth of the universal service fund.¹⁷ Specifically, Dobson urges the following:

- The FCC should examine whether funding is appropriate for rural ILECs with local rates below the average urban rate. Although section 2(b) of the Act places authority over local rates with the states, the Commission may decide (particularly in consultation with the Joint Board) whether federal support is excessive if it permits rural rates that are substantially below urban rates. Also, as Dobson previously has observed, technology and the marketplace are making the concept of "local" rates obsolete. Wireless carriers long ago ceased pricing based on distance, and the trend is spreading rapidly into the wireline marketplace. Rural consumers, too, should benefit from any-distance pricing. Today, many rural LEC ETCs have local rates that are 50% to 75% below urban LECs'

¹⁵ *Federal-State Joint Board on Universal Service; Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, *Memorandum Opinion and Order*, 19 FCC Rcd 1563, 1571, 1584-85 (2004); *Federal-State Joint Board on Universal Service; Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, *Memorandum Opinion and Order*, 19 FCC Rcd 6422, 6430, 6441-42 (2004).

¹⁶ The Joint Board recognizes that the high-cost loop support mechanism currently limits corporate operations expense, and seeks comment on whether other federal support programs should include similar limitations. *Pubic Notice* at ¶ 40. Dobson sees no purpose in permitting the kinds of corporate expenses and administrative expenses noted above, and supports the imposition of such limits for all support mechanisms.

¹⁷ Comments of Dobson Cellular Systems, Inc. on the Joint Board's Recommended Decision, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, at 28-29 (filed Aug. 6, 2004).

local rates, even though the cost of service in urban areas is substantially below the cost of service in rural areas. Rather than focusing on cost, as under the current methodology, the Joint Board should recommend a benchmark tied to the average urban rate.

- The FCC should consider whether the USF is duplicative of the Department of Agriculture's RUS loan program. Although the Commission has, on occasion, acknowledged the benefits of the RUS loan program to rural carriers, the Commission has never undertaken an examination of whether it is necessary to provide explicit support when loans also are available. The size of the fund could be reduced by deducting RUS loan disbursements (amortized over the term of the loan) from an ETC's universal service support. Interest on RUS loans is subsidized by general revenues, placing less of a burden on the telecommunications sector, so shifting support to the loan program increases economic efficiency. Because the RUS loan program is available to both wireline and wireless carriers, taking account of it for universal service purposes would be competitively neutral.

IV. SUPPORT FOR TRANSFERRED EXCHANGES.

The Joint Board recognizes that there may be more effective alternatives to ensure that carriers do not purchase exchanges in order to maximize the amount of universal service support that they receive when acquiring exchanges from unaffiliated carriers.¹⁸ Consistent with Dobson's position stated above that a company with multiple study areas within a state should be required to consolidate such study areas for purposes of determining status as a "rural" carrier, the same should be true with respect to any acquired exchanges within the same state. Thus, Section 54.305 should be modified to ensure, for example, that for non-rural carriers acquiring exchanges from rural ILECs, they not obtain the level of per-line support that had been available to the rural company and based on such rural carrier's embedded costs.

¹⁸ See *Public Notice* at ¶ 49.

CONCLUSION

The changing telecommunications landscape requires the Joint Board to adopt a forward-looking approach to reforming the rural high-cost support mechanism. In doing so, the Joint Board must bear in mind that the statutory goal of the universal service mechanism is to provide comparability of services and rates to rural *consumers*. This comparability only is possible if rural consumers have access to a vibrant competitive marketplace, just as urban consumers have. As a first step towards a forward-looking universal service policy, as well as a sound means of safeguarding the sustainability of the fund, the Joint Board should recommend a transition of support in rural areas to a forward-looking model.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Patrice Wilson, hereby certify that true and correct copies of the foregoing “COMMENTS OF DOBSON CELLULAR SYSTEMS, INC. ON CERTAIN OF THE COMMISSION’S RULES RELATING TO HIGH-COST UNIVERSAL SERVICE SUPPORT” have been served this 15th day of October, 2004, by United States mail, first class postage prepaid, or via electronic transmission upon the following:

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