

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 )

COMMENTS OF THE  
COALITION OF STATE TELECOMMUNICATIONS ASSOCIATIONS  
AND RURAL TELEPHONE COMPANIES

Richard A. Finnigan  
Law Office of Richard A. Finnigan  
2405 Evergreen Park Drive SW  
Suite B-1  
Olympia, WA 98502  
(360) 956-7001  
Fax (360) 753-6862

## INTRODUCTION

These Comments are filed on behalf of the Coalition of State Telecommunications Associations and certain rural local exchange carriers from the state of Alabama (the “Alabama Rural LECs”) in response to the Notice of Proposed Rulemaking issued under FCC 04-127. The Coalition of State Telecommunications Associations (Coalition) includes the following: California Telephone Association Small Company Committee, Colorado Telecommunications Association, Independent Telephone Companies of Vermont, Indiana Exchange Carrier Association, New Hampshire Telephone Association, Oklahoma Rural Telephone Coalition, Oregon Telecommunications Association, Telephone Association of Maine, Washington Independent Telephone Association and the ILEC Division of the Wisconsin State Telecommunications Association. The members of each state association and the list of the Alabama Rural LECs participating in these Comments are set out on a state-by-state basis in Appendix 1.

By joining together in these Comments, the goal is to emphasize to the Commission the importance of the issues in this docket.

## SUMMARY OF COMMENTS

In these Comments, the Coalition proposes the following:

- The Commission should adopt a mix of mandatory standards and permissive guidelines to be applied by state commissions in the review of applications for designation as a competitive eligible telecommunications carrier (ETC).
- The mandatory standards should include a requirement that the review be a rigorous, fact-intensive, cost/benefit analysis. In considering the public interest requirement for

applications to serve a rural company's service area, it should be mandatory that the analysis address each rural service area on a company by company basis. A state commission should not be allowed to consider subjective and speculative generic benefits to the state as a whole as the grounds to grant an ETC application. There must be an explicit demonstration that the benefit to the rural service area for which designation is sought outweighs the costs.

- ETC applicants should be required to demonstrate their commitment to serve each rural service area for which designation is sought through specific build-out plans.
- Each state commission should be required to establish an appropriate amount of local usage to be provided by an applicant for ETC status.
- The Commission should adopt its Highland Cellular standards for cream skimming as national standards.
- State commissions should have flexibility in applying the details of a cost/benefit analysis and the details of the public interest test.
- The Commission should adopt guidelines for state commissions which include consideration of the financial resources of an applicant, the ability of the applicant to function in emergencies, and the application of consumer protection and quality of service standards to an applicant. The Commission should also adopt its Virginia Cellular analysis as a guideline for state commissions to apply in evaluating cream skimming issues.
- The Commission should not adopt the single connection per household proposal. This concept is administratively difficult, costly, and potentially detrimental to continued investment in rural areas.

- If the Commission determines that supporting wireless service with high-cost funds in a rural area is in the public interest, then only one wireless company per rural service area should be designated as an ETC. Comparative Ashbacker<sup>1</sup> style hearings can be used for this purpose. This approach will better address fund sustainability than use of the primary connection approach.
- Fund sustainability can further be addressed by requiring a wireless ETC to draw support based upon its own costs.
- Fund sustainability can also be addressed by limiting ETC support to those wireless customers who can actually use the service at their residence. If the service is used primarily for commuting or working in non-rural areas, high-cost support would not be available.

#### THE COMMISSION SHOULD ESTABLISH MINIMUM REQUIREMENTS FOR ETC DESIGNATION

In its Recommended Decision, the Joint Board recommended that permissive guidelines be established for use by the states in ETC designation proceedings.<sup>2</sup> It is the Coalition's position that the Joint Board recommendation does not go far enough.

There are certain basic standards that should apply to every application. The Joint Board itself recognized the importance of careful, rigorous examination of ETC designations.<sup>3</sup> The Joint Board stated: "A rigorous ETC designation process should ensure that only fully qualified

---

<sup>1</sup> Ashbacker Radio Corp. v. FCC, 326 U.S. 327, 66 S. Ct. 148, 90 L.Ed. 108 (1945).

<sup>2</sup> In the Matter of Federal-State Joint Board on Universal Service, Recommended Decision, CC Docket No. 96-45, FCC 04J-1, 19 FCC Rcd. 4257 ("Recommended Decision") at ¶2 (2004).

<sup>3</sup> Recommended Decision at ¶40.

applicants receive designation as ETCs and that ETC designees are prepared to serve all customers within the designated service area.” The Joint Board went on to describe the process as one that should be fact-intensive.<sup>4</sup>

The Joint Board stressed that this type of fact-intensive, rigorous process was particularly appropriate in areas served by rural carriers: “Rigorous review of ETC applications assumes added importance in areas served by rural carriers.”<sup>5</sup> The Joint Board concluded, “We believe that Congress intended state commissions to exercise a higher level of scrutiny when evaluating ETC applications for designations in rural carrier service areas.”<sup>6</sup>

The Joint Board supported this conclusion by pointing out that “The characteristics of many rural carrier service areas also support a more rigorous standard of eligibility. Rural carrier service areas often have low customer densities and high per-customer costs. Subsidies flowing from federal and state universal service funds are often substantial...[t]hese circumstances support our belief that state commissions should apply a particularly rigorous standard to the minimum qualifications of applicants seeking ETC designation in rural carrier service areas.”<sup>7</sup>

The Coalition agrees with the analysis of the Joint Board set out above. However, in order to address the issues identified by the Joint Board in a meaningful way, certain mandatory standards should be established. First, it should be required that the state commissions apply a cost/benefit analysis to the review of an application for ETC status. As recommended by the Joint Board, the review of the application should be more rigorous for applications to provide service in rural service areas. Second, it should be required that the review be fact-intensive,

---

<sup>4</sup> Recommended Decision at ¶42.

<sup>5</sup> Recommended Decision at ¶48.

<sup>6</sup> Ibid.

<sup>7</sup> Recommended Decision at ¶49.

reviewing on its own merits the costs and benefits in each rural service area for which the ETC applicant seeks designation.

It is only by requiring that state commissions (1) apply a cost/benefit analysis, (2) perform a fact-specific analysis, and (3) apply a higher standard of review in rural service areas that the Commission can accomplish the goals set out by the Joint Board.

In some cases, state commissions are not giving applications any sort of rigorous review today. For example, in the State of Washington, the Washington Utilities and Transportation Commission grants applications for ETC status in rural service areas two to three weeks after they are filed. The Washington Commission gives no consideration on how the application affects any particular rural service area, relying on generic statements of benefit.<sup>8</sup> Failure to establish mandatory requirements would mean that those state commissions which do not want to limit the windfall of high-cost support could continue to undertake only the most cursory reviews of rural ETC applications.

### SPECIFIC COMMISSION STANDARDS

In addition to the general standards on how to conduct an ETC designation proceeding set forth above, there are three specific areas for which the Commission should establish mandatory standards. First, the state commissions should require that an applicant for a competitive ETC designation provide specific build-out plans for each rural service area for which it seeks ETC designation. Second, state commissions should be required to define the appropriate minimum level of usage in an ETC offering for that state. Third, the Commission should require that the

---

<sup>8</sup> See, e.g., In the Matter of the Petition of AT&T Wireless PCS of Cleveland, LLC et al. For Designation as an Eligible Telecommunications Carrier, Docket No. UT-043016, Order Granting Petition for Designation as an Eligible Telecommunications Carrier (April 13, 2004).

states apply the analysis of the cream skimming potential that is set forth in the Highland Cellular decision.<sup>9</sup>

An applicant for competitive ETC status in a rural service area should demonstrate how it will provide service in that area. Under current rules, the support that the competitive ETC will receive is predicated upon the underlying wireline ETC's level of support. This is support based upon the actual cost to serve the particular rural service area. It seems axiomatic that if a competitive ETC is going to receive support for the rural service area, it should demonstrate how it will provide service. The only meaningful way to demonstrate the actual ability to provide service in a rural service area is to provide a build-out plan. This demonstration should be required as a basic and essential component of the application for competitive ETC status.

By way of illustration, the Oregon Public Utility Commission recently approved two applications for service submitted by RCC Minnesota, Inc. d/b/a Cellular One and US Cellular Corporation.<sup>10</sup> Those applications showed that the applicants' service was lacking or very poor in many rural service areas. However, in considering the public interest aspect of those applications, the OPUC cited to the wireless carriers' build-out plans, which projected cell site construction largely in non-rural areas, apparently based upon support these competitive ETCs would be receiving from rural service areas.<sup>11</sup> Build-out plans to serve the rural service areas were not required. That makes absolutely no sense.

---

<sup>9</sup> In the Matter of 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, FCC 04-37 (rel. April 12, 2004).

<sup>10</sup> In the Matter of RCC Minnesota, Inc. Application for Designation as an Eligible Telecommunications Carrier, Pursuant to the Telecommunications Act of 1996, Docket UM 1083, Order No. 04-355 (June 24, 2004) ("RCC Oregon Order") and In the Matter of United States Cellular Corporation Application for Designation as an Eligible Telecommunications Carrier, Pursuant to the Telecommunications Act of 1996, Docket UM 1084, Order No. 04-356 (June 24, 2004) ("US Cellular Order").

<sup>11</sup> RCC Oregon Order at p. 10 and US Cellular Order at p. 9-10.

It may help to give a more concrete example of what the Oregon Commission's orders say. The record in the proceedings before the Oregon Public Utility Commission shows that there is little, if any, wireless service in the Helix, Oregon service area.<sup>12</sup> Yet, the Oregon Public Utility Commission approved both US Cellular and RCC Minnesota as additional ETCs for that area. Both Cellular One and US Cellular will receive support, ostensibly for that area, based upon the Helix Telephone Company's level of support. However, both companies presented proposed build-out plans that are primarily in non-rural areas. One proposal would build additional cell sites in the area of Bend, Oregon. Bend, a bustling community surrounded by destination resorts for winter skiing and summer golf, is served by Qwest. Under the decision of the Oregon Public Utility Commission, high-cost funds from the federal Universal Service Fund will be used to build cell sites to provide further wireless service for this Bend, Oregon area and other areas served by non-rural companies.

Neither the Commission, nor the Joint Board, addressed the amount of local usage that should be required for ETC designation. The Commission should require each state regulatory commission establish the appropriate amount of local usage that must be offered by an ETC. This approach removes the burden to craft a definition at the federal level that applies nationwide.

The third specific area in which the Commission should establish a mandatory standard is the adoption of the Highland Cellular test<sup>13</sup> enunciated by the Commission earlier this year for the evaluation of cream skimming issues. For purposes of the public interest test, the smallest geographic area of service that makes sense for a rural telephone company is the wire center. As

---

<sup>12</sup> See, e.g., Exhibits OTA/7 and USCC/19 in the Oregon proceedings.

<sup>13</sup> In the Matter of 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, FCC 04-37 (rel. April 12, 2004) ("Highland Cellular").

the Commission stated, “Applications to serve only a portion of a wire center are not in the public interest.”<sup>14</sup> Adoption of this standard on a national basis will put in place a clear litmus test for evaluation of applications for ETC designation. The Commission was absolutely correct in its evaluation that the potential for *de facto* cream skimming exists. In addition, the Commission should adopt the standard coming out of the Highland Cellular order that where an applicant seeks to serve only the low-cost (as determined by density) wire centers in a rural telephone company’s study area, *de facto* cream skimming exists.<sup>15</sup>

#### STATE COMMISSIONS CAN RETAIN FLEXIBILITY UNDER THE FEDERAL STANDARDS

The Joint Board recognized that state commissions need flexibility to address their state-specific situations and environment. The Coalition agrees. However, the flexibility can be provided in the application of the cost/benefit test and the public interest test. The basic requirements to perform a cost/benefit analysis and undertake a service area by service area, fact-intensive review should be mandatory.

In other words, as the Joint Board recommended, the states should be given the flexibility to decide what weight to give the factors identified by the Joint Board. For example, one factor is the evaluation of whether an ETC applicant has the financial resources and ability to provide quality service throughout the requested service area. This is an evaluation that varies with the

---

<sup>14</sup> Highland Cellular at ¶26.

<sup>15</sup> Highland Cellular at ¶26-33; Prior to Highland Cellular, two ETC designation orders were issued for CETCs seeking to serve certain rural areas in Alabama. *Cellular South License, Inc., Petition for Designation as an Eligible Telecommunications Carrier throughout its Licensed Service Area in the State of Alabama*, CC Docket No. 96-45, Memorandum Opinion and Order, 17 FCC Rcd 24393 (“CellSouth Order”); *RCC Holdings, Inc., Petition for Designation as an Eligible Telecommunications Carrier throughout its Licensed Service Area in the State of Alabama*, CC Docket No. 96-45, Memorandum Opinion and Order, 17 FCC Rcd 23532 (“RCC Order”). These ETC orders are currently pending before the Commission on Applications for Review and should be modified by the Commission in a manner that is consistent with the standards enunciated in Highland Cellular.

scope of the area sought for ETC designation. If the ETC designation is for only one or two rural service areas, the threshold might be relatively low. If it is for an entire state, the threshold will be considerably higher.

Another flexible guideline that could be applied is the ability of the applicant to function in an emergency. Such functionality will vary by the areas sought to be served by an ETC and the scope of the existing emergency service infrastructure.

State commissions should have flexibility in how they apply consumer protection standards to an application for competitive ETC status and in measuring and enforcing compliance with ETC requirements. The extent to which there should be complaint reporting or commission involvement in the resolution of customer complaints for a competitive ETC should be left to each state to address. However, the clear authority to impose such requirements should be vested in the state commission.

The same flexibility should exist for quality of service standards. State commissions should have the clear authority to apply quality of service standards to wireless carriers. These standards can be generic standards. Or, in some instances, this might entail conformance to the state's quality of service standards for wireline carriers.<sup>16</sup> In the Coalition's opinion, the ultimate public policy goal should be that a consumer served by a competitive ETC receives at least the level of service for the supported services that is received from the incumbent ETC. However, the Coalition recognizes there are trade-offs and that the evaluation of the weight of this factor should rest with the state commissions.

---

<sup>16</sup> In saying this, the Coalition recognizes that in some states there may be a few standards that would have to be modified to reflect differences in technology.

In its Virginia Cellular<sup>17</sup> decision, the Commission adopted a structure for analysis of the public interest test, and the Commission should require that the states analyze the factors it identified in that decision as among the factors states must consider in applying the public interest test. These factors were identified as follows:

- The benefits of increased competitive choice.
- The impact of multiple designations on the universal service fund.
- The unique advantages and disadvantages of the service offerings.
- Any commitments made regarding quality of telephone service provided by competing providers.
- The competitive ETC's ability to provide the supported services throughout the designated service area within a reasonable time.<sup>18</sup>

In summary, the Coalition recommends that the Commission adopt a mix of mandatory standards and permissive guidelines. The mandatory standards would be as follows:

- States must perform a cost/benefit analysis in reviewing an application for designation as an ETC.
- The review must include a higher level of scrutiny when evaluating applications for ETC designations in rural company service areas.
- In considering applications for ETC designation in rural company service areas, the review must be a fact-specific analysis of the costs and benefits to each rural service area apart from the state as a whole or other rural service areas.

---

<sup>17</sup> In the Matter of 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, FCC 03-338 (rel. Jan. 22, 2004) ("Virginia Cellular").

<sup>18</sup> Virginia Cellular at ¶4.

- An applicant for ETC status for a rural company service area must present a build-out plan demonstrating its commitment to serve that rural service area.
- Each state commission must establish an appropriate level of local usage to be included in an ETC offering for that state.
- The smallest geographic area of service for designation of an applicant for ETC status seeking to serve areas served by a rural telephone company is the wire center.
- If an application for ETC designation is for less than the entire study area of a rural telephone company, *de facto* cream skimming exists if the lowest cost wire centers are the wire centers sought to be served.

The Commission should adopt flexible guidelines that go beyond the mandatory standards. The flexible guidelines should have state commissions consider:

- An ETC applicant's financial resources and ability to provide quality service throughout the requested service area.
- The ability of the applicant to function in an emergency.
- The application of consumer protection standards.
- The application of quality of service standards.
- The amount of local usage to be included in ETC offerings.
- In the application of the public interest test:
  - The benefits of increased competitive choice.
  - The impact of multiple designations on the universal service fund.
  - The unique advantages and disadvantages of the service offerings.
  - Any commitments made regarding quality of telephone service provided by competing providers.

- The competitive ETC’s ability to provide the supported services throughout the designated service area within a reasonable time.<sup>19</sup>

THE COMMISSION SHOULD NOT ADOPT THE  
SINGLE CONNECTION PER HOUSEHOLD AS THE BASIS OF SUPPORT

The Joint Board recommends that support should be limited to a single connection to the public telephone network.<sup>20</sup> It appears that the primary policy reasoning for doing so is to protect fund sustainability. As stated by the Joint Board, “Continued support of multiple connections for multiple networks in rural and high-cost areas threatens fund sustainability.”<sup>21</sup> The Coalition believes that there are better solutions for protecting fund sustainability than moving to a single connection concept. The single connection concept should be rejected as too costly to administer and potentially leading to loss of investment in rural areas.

On its face, the single point of connection is administratively difficult to implement. There are too many ways to play games with the system. For example, would a husband sign up for wireline service in his name and a wife sign up for wireless service in her name? How would that be policed? As a child reaches the age of majority, does that mean he or she can register a cell phone as that child’s primary line of connection? Even if residing at the same household? Again, how would this be policed?

If someone has their own business, as a sole proprietor, can they register their business line and also their home line? Can this occur when the business is run out of the home? Can a business partnership with four partners register four lines? Can a corporation register its street address for one primary line, its post office box for another primary line and the address of its

---

<sup>19</sup> Virginia Cellular at ¶4.

<sup>20</sup> Recommended Decision at ¶93.

<sup>21</sup> Recommended Decision at ¶98.

registered agent for a third? In addition to these administrative “workability” questions, there are important policy issues as well.

The reason that high-cost support exists is to provide support to serve areas that are difficult and expensive to serve. That usually means rural areas with low population density. These are the very areas in which state and local governments struggle today to find new enterprises to develop the rural economy. One of the first things that an employer looks for is the availability of affordable telecommunications infrastructure. Right now, that is something that most rural telephone companies can offer. Moving to a single connection will substantially impair that ability.

For example, if a rural company is receiving \$60.00 per line per month in support with an existing business rate of \$25.00 per month, how is increasing the cost for second lines to \$85.00 per month going to encourage rural economic development? The answer simply is that it will not.

It should also be remembered that second lines for businesses generate access revenues and vertical feature revenues. If second lines go away because of the higher pricing due to lack of high-cost support, those other revenue sources go away as well. This compounds the difficulty of serving high-cost areas. It does not solve the problem

Adequate protections must exist to insure that universal service support paid to competitive ETCs (CETCs) will be used to *benefit subscribers* that use the service *within* the requested designation area. Customers of the rural carriers do not “travel” with their wireline telephones away from their rural, isolated residences such that the universal service support rural carriers receive will be used “only for the provision, maintenance, and upgrading of facilities for

which the support is intended.”<sup>22</sup> Conversely, the service area in which a rural customer resides may not correspond to where the customer uses a CETC’s voice communications service. In fact, customers with portable voice communications service may have most if not all of their usage occurring away from their residences, indeed even outside a designated ETC service area. Until CMRS carriers are required to monitor subscriber usage and terminate universal service support for those subscribers who actually use the service outside the designated service area, CETCs will be motivated to seek high levels of per-line support. CETCs will obtain customers located in rural ILEC territory and those customers will primarily use their service in locations well beyond the geographic constraints of the area designated for support; ultimately high cost support will be paid to CETCs for services used in low-cost, urban areas.

#### THERE ARE OTHER MECHANISMS AVAILABLE TO ADDRESS SUSTAINABILITY OF THE FUND

The Coalition takes the position that rather than addressing fund sustainability through the primary connection concept, the Commission should consider other mechanisms available to it. The Coalition respectfully sets out four possibilities.

The first is the use of comparative hearings for wireless ETC applicants. If it is the national policy that wireless infrastructure should be supported with high-cost funds in rural service areas, that does not lead to the conclusion that multiple wireless networks in a rural service area should all receive support. A valid policy is to allow one wireline and one wireless carrier to be designated as an ETC for any particular rural service area. This policy approach is

---

<sup>22</sup> 47 U.S.C. 254(e). The Telecommunications Act of 1996 appears to require that support must be expended for allowed purposes in the area for which it is intended -- high cost rural study areas.

technologically neutral. An advantage is that such a policy reflects the practical limits of the high-cost fund.

There are many examples of multiple wireless ETCs designated for the same rural service area. For example, in the State of Washington, the Washington Commission has designated four ETCs for the rural areas served by Pioneer Telephone Company. These four ETCs are the wireline incumbent Pioneer, and three wireless carriers: RCC Minnesota, US Cellular and Inland Cellular. There are approximately 600 access lines in the Pioneer service area. This means that the Washington Commission has created an ETC ratio of one ETC for every 150 customers.

In Oregon, the Oregon PUC has recently approved the second and third ETCs for the Helix service area. There are approximately 300 access lines in the Helix service area. This means there is a ratio of one ETC to 100 access lines. Does any of this make sense?

Currently, there are five ETC proceedings (two granted and three pending) in rural Alabama.<sup>23</sup> As a result some of the smallest Alabama rural local exchange carriers have the potential for three CETCs in some or all of their service areas.<sup>24</sup> If all of the Alabama ETC petitions were granted or, in the case of the *RCC Order* and *Cell South Order*, were allowed to stand, resulting CETCs in Alabama alone could draw millions of dollars annually from the

---

<sup>23</sup> *RCC Order; CellSouth Order; AT&T Wireless Services, Inc. ("AT&T Wireless") Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama*, (Dec. 31, 2003) ("*AT&T Wireless Petition*") as supplemented (May 11, 2004); *Corr Wireless Communications, LLC, Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama*, (May 13, 2003) ("*Corr Petition*") as supplemented (May 14, 2004); *Nextel Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama*, (April 4, 2003) ("*Nextel Petition*") as supplemented (March 24, 2004).

<sup>24</sup> These numbers have been compiled by reviewing the *RCC Petition*, *AT&T Wireless Petition*, *Corr Petition*, *Nextel Petition* and *CellSouth Petition*.

USF.<sup>25</sup>

One way to control growth of the high-cost fund is to hold comparative hearings among wireless carriers that desire to be designated as an ETC for a particular rural service area. This means, in the case of LaCrosse and Endicott, Washington served by Pioneer Telephone Company, US Cellular, that RCC Minnesota and Inland Cellular could each present their proposal for serving that area. The state commission would choose which proposal makes the most sense. This has the very decided advantage of showing that the area itself will be benefited by the designation. Under today's rules, the situation exists where wireless ETCs are designated for an area and are not investing in any infrastructure for that area, even though they receive support based upon the cost to serve that rural area.

Of course, as the Commission knows, comparative hearings are not unusual. The United States Supreme Court has found that such comparative hearings fulfill public interest test requirements. Ashbacker Radio Corp. v. FCC, 326 U.S. 327, 66 S. Ct. 148, 90 L.Ed. 108 (1945).

A second means to address the sustainability of the fund is to require wireless ETCs to receive support based upon their own costs. The ETC designation process is rampant with wireless ETCs claiming to be the lower cost provider when compared to the incumbent wireline ETC. While these claims need to be taken with more than a grain of salt, one way to look at limiting growth in the size of the fund is requiring the wireless ETCs to demonstrate their costs

---

<sup>25</sup> RCC indicates that in a little over a year of ETC designation in Alabama it has received \$3.4M in high-cost support. *Supplement* at Exhibit A. CellSouth projects that it will receive approximately \$110,000 per year in support for Alabama. *CellSouth Petition Supplement* at p. 4 (May 14, 2004); Nextel expects to draw approximately \$700,000 annually from the USF based on its Alabama petition. Nextel's Alabama Supplement to *Nextel Petition* at p. 5, footnote numbered 14 (Mar. 24, 2004). Corr Wireless estimates that it will receive approximately \$.5M annually in support for Alabama rural areas. *Corr Petition Supplement* at p. 8 (May 14, 2004). AT&T Wireless estimates that it will receive \$1M annually in high-cost support in its requested Alabama ETC designation areas. Supplement to *AT&T Wireless Petition* at p. 5 (May 10, 2004). Using solely these supplied figures, annual draws of several million dollars from the federal Universal Service Fund for the state of Alabama alone would be virtually assured.

and capping their support at their demonstrated costs. Such an approach is technologically neutral, while today's approach is not.

A third mechanism that can be used to address fund sustainability is to cease use of the billing address as a basis for determining the location of the wireless customer. Use of the billing address has caused all sorts of strange results in its limited time. For example, use of billing addresses (which sometimes seem difficult to verify) resulted in wireless provider US Cellular receiving more support for the Toledo, Washington area than the wireline provider the Toledo Telephone Company received.

As previously stated, rural ILEC subscribers do not "travel" with their wireline telephones away from their residences. Consequently, regulators can be reasonably assured that the universal service support that ILECs receive will be used for provision, maintenance and upgrading of facilities in those isolated, rural areas for which support is intended. This is not the case with a wireless CETC customer, whose usage occurs away from the billing address and perhaps outside the wireless CETC's designated ETC service area entirely. Under recent orders issued by the WCB, wireless CETCs are currently receiving high cost support based solely on a rural billing address regardless of whether that customer uses his telephone in the rural area, *or even has wireless coverage at his residence*. This is an absurd result.

Below is a chart that sets out the amount of support received in 2001 and 2002 for both US Cellular and Toledo Telephone Company in serving the Toledo, Washington area.<sup>26</sup> It should be noted that US Cellular is one of six wireless carriers that market to this area and that

---

<sup>26</sup> The information is from Universal Service Administrative Company reports HC01, HC03 and HC04. In 2001 and 2002, the State of Washington had a disaggregation plan in place that had two zones per wire center. Under this plan, it was possible for US Cellular to have fewer lines than Toledo, but receive more support by reporting a higher percentage of lines in the higher cost zone.

US Cellular claimed more access lines in Toledo than Toledo reports for much of the two year period.

	<b><u>US Cellular Lines</u></b>	<b><u>Toledo Telephone Lines</u></b>	<b><u>US Cellular USF Support</u></b>	<b><u>Toledo Telephone USF Support</u></b>
<b><u>2001</u></b>				
<b>1st Quarter</b>	<b>1857</b>	<b>2083</b>	<b>\$384,358</b>	<b>\$345,891</b>
<b>2nd Quarter</b>	<b>2025</b>	<b>2085</b>	<b>\$464,820</b>	<b>\$395,451</b>
<b>3rd Quarter</b>	<b>2245</b>	<b>2085</b>	<b>\$513,661</b>	<b>\$410,625</b>
<b>4th Quarter</b>	<b>2245</b>	<b>2085</b>	<b><u>\$531,153</u></b>	<b><u>\$421,542</u></b>
			<b>\$1,893,992</b>	<b>\$1,573,509</b>

	<b><u>US Cellular Lines</u></b>	<b><u>Toledo Telephone Lines</u></b>	<b><u>US Cellular USF Support</u></b>	<b><u>Toledo Telephone USF Support</u></b>
<b><u>2002</u></b>				
<b>1st Quarter</b>	<b>1735</b>	<b>2115</b>	<b>\$482,424</b>	<b>\$445,701</b>
<b>2nd Quarter</b>	<b>2171</b>	<b>2034</b>	<b>\$583,305</b>	<b>\$427,257</b>
<b>3rd Quarter</b>	<b>1486</b>	<b>2034</b>	<b>\$369,978</b>	<b>\$438,849</b>
<b>4th Quarter</b>	<b>1486</b>	<b>2034</b>	<b><u>\$369,978</u></b>	<b><u>\$511,547</u></b>
			<b>\$1,805,685</b>	<b>\$1,823,354</b>

As another example, the recently concluded proceedings in Oregon showed that US Cellular and RCC Minnesota, on a combined basis, claimed more customers in the Helix service area than Helix Telephone Company reports for support.<sup>27</sup> The evidence shows that the Helix service area itself receives very little in the way of usable wireless signal.<sup>28</sup> This reporting underscores the difficulty in using a billing address. To the extent that the customers in Helix are

<sup>27</sup> Exhibits OTA/41 and RCC Application, Exhibit E, respectively, in the Oregon proceedings.

<sup>28</sup> Exhibit OTA/7 in the Oregon proceedings.

subscribing to US Cellular or RCC Minnesota's service, they are using that service while roaming or while working in larger, neighboring communities, such as Pendleton, Oregon, served by Qwest. On the other hand, there are instances in which customers reside in a service area, but their billing address is a post office box in a different service area.<sup>29</sup>

Support should be limited to only those customers who can actually use the wireless phone at their home (for residential lines) or at the business within the rural service area (for business lines). It is a major defect to include support for wireless lines that cannot even be used at the location for which support is given.

Finally, the fourth means the Commission could employ to protect the long-term sustainability of the fund is to set a threshold above which the presumption is that the per month per line support indicates the area cannot support more than one ETC over the long term. In passing the universal service portions of the 1996 Act, Congress clearly contemplated that there may be some areas where competition would not be in the public interest.<sup>30</sup>

Obviously, there is one certainty about high-cost support: the higher the monthly amount per line that is provided to a rural service area, the less densely populated it is. This proposition was recognized by the Joint Board: "Thus, one relevant factor in considering whether or not it is in the public interest to have additional ETCs designated in an area may be the level of per-line support provided to the area."<sup>31</sup> In other words, the cost to serve an area is so high on a per-customer basis that it is not sustainable to have more than one supported entity providing service in that area. Joint Board member Billy Jack Gregg proposed that support in the neighborhood of

---

<sup>29</sup> An example of this is the Lauderdale exchange served by Ellensburg Telephone Company. Lauderdale has no mailing addresses within the scope of its boundaries. Those customers receive their mail at a post office box in the City of Ellensburg. Under the disaggregation approach that is in place for Ellensburg Telephone Company, there is no support that a wireless ETC can receive for customers who live in the Lauderdale exchange.

<sup>30</sup> See, e.g., Comments of Senator Dorgan in the Congressional Record of June 8, 1995, S 7951-2.

<sup>31</sup> Recommended Decision at ¶67.

a \$30.00 per month per line is a threshold above which no competitive ETC would be designated. Whether the correct number is \$25.00 per month per line, \$30.00 per month per line or \$35.00 per month per line, is not clear at this time. The Commission could, however, set a threshold. It may be that the \$30.00 per month per line is the magic number. At this threshold, a competitive ETC could not be designated for areas where the high-cost support per month per line exceeds \$30.00 since support at that level in rural areas means that the customer base will not sustain a second supported ETC over time without unduly burdening the fund.

#### CONCLUSION

The rural companies and the state associations representing rural companies that form this Coalition respectfully request that the Commission adopt the recommendations set forth above. These recommendations are designed to protect the sustainability of the federal Universal Service Fund and bring real benefits to customers in rural areas.

Respectfully submitted this 6th day of August, 2004.

LAW OFFICE OF RICHARD A. FINNIGAN

---

Richard A. Finnigan, on behalf of the Coalition of State  
Telecommunications Associations

Mark Wilkerson  
Leah S. Stephens  
Wilkerson & Bryan, P.C.  
For the Alabama Rural Local Exchange Carriers

Ron Commingdeer  
Commingdeer, Lee & Gooch  
For the Oklahoma Rural Telephone Coalition

## APPENDIX 1

### Alabama Rural Local Exchange Carriers<sup>32</sup>

Ardmore Telephone Company, Inc.  
Butler Telephone Company, Inc.  
Castleberry Telephone Company, Inc.  
Farmers Telephone Cooperative, Inc.  
GTC, Inc. d/b/a GT Com  
Graceba Total Communications, Inc.  
Gulf Telephone Company, Inc.  
Hayneville Telephone Company, Inc.  
Interstate Telephone Company  
Millry Telephone Company, Inc.  
Mon-Cre Telephone Cooperative, Inc.  
Moundville Telephone Company, Inc.  
National Telephone of Alabama, Inc.  
New Hope Telephone Cooperative, Inc.  
Oakman Telephone Company, Inc.  
Peoples Telephone Company, Inc.  
Ragland Telephone Company, Inc.  
Roanoke Telephone Company, Inc.  
Valley Telephone Co., LLC

---

<sup>32</sup> While not an Alabama Rural LEC, CenturyTel of Alabama, LLC has joined the Alabama Rural Local Exchange Carriers in support of these Comments.

California Telephone Association Small Company Committee

Cal-Ore Telephone Company  
Ducor Telephone Company  
Evans Telephone Company  
Foresthill Telephone Company  
Happy Valley Telephone Company  
Hornitos Telephone Company  
Kerman Telephone Company  
Pinnacles Telephone Company  
The Ponderosa Telephone Company  
Sierra Telephone  
The Siskiyou Telephone Company  
Winterhaven Telephone Company  
Volcano Telephone Company

Colorado Telecommunications Association

Agate Mutual Telephone Co-op Association  
Big Sandy Telecom, Inc.  
Blanca Telephone Company  
CenturyTel of Eagle, Inc.  
Columbine Telecom Company  
Delta County Tele-Com, Inc.  
Dubois Telephone Exchange, Inc.  
Eastern Slope Rural Telephone Association, Inc.  
El Paso County Telephone Company  
Farmers Telephone Company, Inc.  
Great Plains Communications, Inc.  
Haxtun Telephone Company  
Nucla-Naturita Telephone Company  
Nunn Telephone Company  
Peetz Cooperative Telephone Company  
PC Telecom  
Pine Drive Telephone Company  
Plains Cooperative Telephone Association, Inc.  
Rico Telephone Company  
Roggen Telephone Company  
Rye Telephone Company  
South Park Telephone Company  
Stoneham Cooperative Telephone Corp.  
Strasburg Telephone Company  
Sunflower Telephone Company  
Union Telephone Company  
Wiggins Telephone Association  
Willard Telephone Company

Independent Telephone Companies of Vermont

Franklin Telephone Company

Ludlow Telephone Company

Northfield Telephone Company

Northland Telephone Company of VT

Perkinsville Telephone Company

Shoreham Telephone Company

Vermont Telephone Company

Waitsfield and Champlain Valley Telephone Company

Indiana Exchange Carrier Association

Bloomington Home Telephone Company, Inc.  
Camden Telephone Company, Inc.  
Centurytel of Central Indiana, Inc.  
Centurytel of Odon, Inc.  
Citizens Telephone Corporation  
Clay County Rural Telephone Cooperative, Inc.  
Communications Corporation of Indiana  
Communications Corporation of Southern Indiana  
Craigville Telephone Company, Inc.  
Daviess-Martin County Rural Telephone Corporation  
Frontier Communications of Indiana, Inc.  
Frontier Communications of Thorntown, Inc.  
Geetingsville Telephone Company, Inc.  
Hancock Telecom  
Home Telephone Company, Inc.  
Home Telephone Company of Pittsboro  
Ligonier Telephone Company, Inc.  
Merchants & Farmers Telephone Company  
Monon Telephone Company, Inc.  
Mulberry Cooperative Telephone Company, Inc.  
New Lisbon Telephone Company, Inc.  
New Paris Telephone, Inc.  
Northwestern Indiana Telephone Company, Inc.  
Perry-Spencer Rural Telephone Cooperative  
Pulaski-White Rural Telephone Cooperative, Inc.  
Rochester Telephone Company, Inc.  
S & W Telephone Company, Inc.  
Southeastern Indiana Rural Telephone Cooperative  
Sunman Telecommunications Corporation  
Swayzee Telephone Company, Inc.  
Sweetser Telephone Company, Inc.  
Tipton Telephone Company, Inc.  
Tri-County Telephone Company, Inc.  
Washington County Rural Telephone Cooperative  
West Point Telephone Company, Inc.  
Yeoman Telephone Company, Inc.

New Hampshire Telephone Association

Bretton Woods Telephone Company

Dixville Telephone Company

Dunbarton Telephone Company

Granite State Telephone Company

Kearsarge Telephone Company

Merrimack Telephone Company

Northland Telephone Co. of NH

Wilton Telephone Company

Hollis Telephone Company

Oklahoma Rural Telephone Coalition

Bixby Telephone Company  
Carnegie Telephone Company  
Chicksaw Telephone Company  
Cherokee Telephone Company  
Cross Telephone Company  
Hinton Telephone Company, Inc.  
Salina-Spavinaw Telephone Company, Inc.  
Shidler Telephone Company  
Southwest Oklahoma Telephone Company  
Valliant Telephone Company

Oregon Telecommunications Association – Participating Companies

Asotin Telephone Company d/b/a TDS Telecom  
Beaver Creek Cooperative Telephone Company  
Canby Telephone Association  
Cascade Utilities, Inc.  
CenturyTel of Oregon, Inc. and CenturyTel of Eastern Oregon, Inc.  
Citizens Telecommunications of Oregon d/b/a Frontier Communications of Oregon  
Clear Creek Mutual Telephone Company  
Colton Telephone Company  
Eagle Telephone System, Inc.  
Gervais Telephone Company  
Helix Telephone Company  
Home Telephone Company  
Molalla Communications, Inc.  
Monitor Cooperative Telephone Company  
Monroe Telephone Company  
Mt. Angel Telephone Company  
Nehalem Telecommunications, Inc.  
North-State Telephone Co.  
Oregon-Idaho Utilities, Inc.  
Oregon Telephone Corporation  
People's Telephone Co.  
Pine Telephone System, Inc.  
Pioneer Telephone Cooperative  
Roome Telecommunications Inc.  
St. Paul Cooperative Telephone Association  
Scio Mutual Telephone Association  
Stayton Cooperative Telephone Company  
Trans-Cascades Telephone Company

Telephone Association Of Maine

China Telephone Company  
Cobbosseecontee Telephone & Telegraph Company  
Community Service Telephone Company  
Hampden Telephone Company  
Hartland/St. Albans Telephone Company  
The Island Telephone Company  
Lincolnton Telephone Company  
Maine Telephone Company  
Mid-Maine Communications  
Northland Telephone Company  
Oxford Telephone Company  
Oxford West Telephone Company  
Pine Tree Telephone & Telegraph Company  
Saco River Telegraph & Telephone Company  
Sidney Telephone Company  
Somerset Telephone Company  
Standish Telephone Company  
Tidewater Telecom  
Union River Telephone Company  
Unitel, Inc.  
Warren Telephone Company  
West Penobscot Telephone Company

Washington Independent Telephone Association

Asotin Telephone Company  
CenturyTel of Cowiche, Inc.  
CenturyTel of Inter Island, Inc.  
CenturyTel of Washington, Inc.  
Ellensburg Telephone Company  
Hat Island Telephone Company  
Hood Canal Telephone Co., Inc.  
Inland Telephone Company  
Kalama Telephone Company  
Lewis River Telephone Company, Inc.  
Mashell Telecom, Inc.  
McDaniel Telephone Co.  
Pend Oreille Telephone Company  
Pioneer Telephone Company  
St. John Co-operative Telephone and Telegraph Company  
Tenino Telephone Company  
The Toledo Telephone Co., Inc.  
Western Wahkiakum County Telephone Company  
Whidbey Telephone Company  
YCOM Networks, Inc.

ILEC Division of the Wisconsin State Telecommunications Association

Amery Telephone Company  
Amherst Telephone Company  
B.B. & W.  
Badger Telephone  
Baldwin Telecom, Inc.  
Bayland Telephone, Inc.  
Belmont Telephone Company  
Bergen Telephone Company  
Black Earth Telephone  
Bloomer Telephone Company  
Bonduel Telephone  
Bruce Telephone Company  
Central State  
CenturyTel  
Chequamegon Communications  
Cooperative, Inc.  
Chibardun Telephone Cooperative, Inc.  
Citizens Telephone Cooperative, Inc.  
Clear Lake Telephone Company  
Cochrane Cooperative Telephone  
Company  
Coon Valley Farmers Telephone Company,  
Inc.  
Cuba City Telephone Exchange Company,  
Inc.  
Dickeyville Telephone  
East Coast  
Farmers Independent Telephone Company  
Farmers Telephone  
Frontier Communications of Wisconsin,  
Inc.  
Grantland Telephone  
Hager Telecom, Inc.  
Hillsboro Telephone Company, Inc.  
Indianhead Telephone Company  
Lakefield Telephone Company  
La Valle Telephone Cooperative  
Lemonweir Valley Telephone Company  
Luck Telephone Company  
Manawa Telephone Company, Inc.  
Marquette-Adams Telephone Cooperative,  
LLC  
Mid-Plains Telephone  
Midway Telephone  
Milltown Mutual Telephone Company  
Mosinee Telephone Company  
Mount Horeb Telephone Company  
Mt. Vernon Telephone  
Nelson Telephone Cooperative  
Niagara Telephone Company  
Northeast Telephone Company  
Price County Telephone Company  
Richland-Grant Telephone Cooperative,  
Inc.  
Riverside  
SBC Wisconsin  
S & S Telephone  
Scandinavia Telephone  
Sharon Telephone Company  
Siren Telephone Company, Inc.  
Somerset Telephone Company  
Southeast Telephone  
Spring Valley Telephone Company, Inc.  
State Long Distance Telephone Company  
Tenney Telephone  
Tri-County Telephone Cooperative, Inc.  
Union Telephone Company  
Utelco  
Verizon North, Inc.  
Vernon Telephone Cooperative Inc.  
Waunakee Telephone  
West Wisconsin Telcom Cooperative, Inc.  
Wittenberg Telephone Company  
Wood County