

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
High-Cost Universal Service Support) WC Docket No. 05-337
Federal-State Joint Board on Universal Service) CC Docket No. 96-45

**COMMENTS OF THE WYOMING OFFICE OF CONSUMER ADVOCATE
ON THE ELIMINATION OF THE IDENTICAL SUPPORT RULE**

Submitted April 17, 2008

Introduction

On January 29, 2008, the Federal Communications Commission (Commission) released a Notice of Proposed Rulemaking (NPRM) seeking comment on whether to eliminate the current *identical support* rule (or equal support rule) which provides the same per-line support to a competitive eligible telecommunications carrier (CETC) as is received by an incumbent local exchange carrier (ILEC). The NPRM also seeks comment on the support method that should replace the identical support rule, should it be eliminated.

The Commission reached two essential tentative conclusions which it expressed in the NPRM. The Commission first tentatively concluded that the identical support rule should be eliminated, as the amount of support received by the CETC bears no relationship to the amount of money that the CETC has invested in rural and other high-cost areas. The rapid rate of growth in the high-cost fund due to support payments to CETCs based on the identical support rule is also a concern noted in the NPRM.

The Commission further concludes, on a tentative basis, that the identical support rule should be replaced with a support mechanism that is based on the CETC's own costs of providing the supported services. It opines that the CETC's own costs will better

reflect its real investment in high-cost areas, and that using this method will provide a greater incentive for investments in the high-cost areas.

The Wyoming Office of Consumer Advocate (WYOCA) agrees with the Commission's tentative conclusion that the identical support rule should be eliminated. However, we disagree that a support method based on the CETC's own costs is the best replacement. Instead, we support a transition to a new, comprehensive system of reform that is not grounded in formulaic inputs that are hard to verify. The transition process and the new method of support for CETCs should be tied directly to the overall comprehensive reform of high-cost support which the Commission is to decide in a companion NPRM.

Discussion

In 1997, the Commission decided that *competitive neutrality* should be added to the list of universal service principles and that this should include technological neutrality.¹ In adding this principle, the Commission did not intend to choose between competition and universal service and anticipated that it was creating a mechanism "that will sustain universal service as competition emerges."² However, in adding competitive neutrality to the list of principles delineated by Congress in Section 254 of the Telecommunications Act of 1996, it was clearly not the Commission's intent to show the competitive neutrality principles precedence over the others. This is clear in paragraph 52 of the Commission's Universal Service Report and Order of May 8, 1997:

We agree with the Joint Board's recommendation that our universal service policies should strike a fair and reasonable balance among all of the principles identified in section 254(b) and the additional principle of competitive neutrality to preserve and advance universal service. Consistent with the recommendations of the Joint Board, we find that promotion of any one goal or principle should be tempered by a commitment to ensuring the advancement of each of the principles enumerated above. [Emphasis added.]

¹ CC Docket No. 96-45, Report and Order released May 8, 1997, paragraph 49.

² Id. paragraph 50.

Yet, the tempering of one principle for the survival of another is rarely discussed in conversations about competitive neutrality and support for CETCs. The focus is usually simply on the fact that the Commission implemented the identical support rule – end of story. There is no balance as to the affordability of rates or the predictability or sufficiency of the high-cost fund. We applaud the Commission for finally seeking some balance in the process.

Yet, we are not asking the Commission to ignore its finding that competitive and technological neutrality is important. We simply urge the Commission to find another means of implementing competitive fairness. We are not suggesting that the only providers who should receive support are the ILECs. Instead, we are suggesting that the structure of the support for all providers, including the CLECs, be reexamined and restructured.

As to the replacement of the identical support rule, the Commission should look at this on a comprehensive basis with other contemplated reforms of the high-cost support system. It should not be piecemealed separately from the rest of the universal service reform being concurrently considered by the Commission.³ The WYOCA does not see the creation of cost-based support for CETCs (who are primarily wireless carriers) as being the best step in an overall plan of comprehensive reform.

From very early on, unique regulatory treatment has been given to wireless carriers. States have generally been limited in or prohibited from regulation of wireless carriers. They are not required by the Commission to keep their records in any prescribed uniform manner. Their costs or rates are not examined or overseen by regulators. So, to now suggest a cost-based support system would be starting at ground zero. A uniform system of accounts would need to be established to provide for comparability of costs among carriers and to assure that only the proper costs are included in the proper

³ We agree with Commissioner Copps in his statement on the identical support rule, “I hope the FCC will deal with these recommendations expeditiously and comprehensively. This is no place for piecemeal actions.”

categories that are subject to support. Studies would have to be done to separate the expenses and assets for supported services versus non-supported services. A system of verification of these costs would need to be established. It would be the equivalent of starting a mini-regulatory system for wireless carriers in an era where there is little regulation of wireline carriers. It makes no sense in today's regulatory environment. It would be a distraction from the real reform of universal service that should be the focus of the pending NPRMs.

We do agree, however, with the concept of providing support to the CETCs in a manner that more directly promotes investment and quality services in high-cost, low-density areas of the nation. We would also like to see support provided in a manner for which a direct benefit is more easily identified. The Joint Board's comprehensive proposal where wireless CETCs receive support for more towers and equipment in unserved and underserved areas fits the bill. A direct benefit to end users can be seen when an extra tower is placed in service such that wireless customers don't have to drive to the top of the hill to get wireless service. This is opposed to the current situation, where the use of the high-cost funding is often more difficult to trace. In today's market, it is becoming more and more difficult to determine whether the high-cost funding is replacing funds that previously came from the corporate budget, or whether it is supplementing that budget.

This brings us to paragraph 26 of the NPRM wherein the Commission seeks comment on the sufficiency of the Commission's existing use of certifications with respect to CETCs. The Commission reports that some parties are concerned that wireless CETCs are not using their universal service support to promote universal service goals. The WYOCA has this same concern. Although the Commission did an excellent job of delineating a list of items that are appropriate for inclusion in CETC certifications, the same type of checklist or suggested reporting does not exist for the October 1st process in which regulators annually certify the proper use of the funds. We ask the Commission to consider issuing guidance to the state regulators, the telecommunications industry, and other interested parties regarding the type of information that is desired and/or expected

to be reviewed before providing assurance that the funds are being used for the purposes specified by Federal law. While we are not suggesting that the Commission mandate the states' review or certification process, we have seen states incorporate the earlier ETC certification recommendations into their processes – thereby strengthening those processes. We suspect the same would occur with suggestions to the states and industry on what items comprise proper use of the funds and how that is best shown.

While the above suggestion on additional guidance from the Commission may seem a bit out of character with this proceeding, we don't see it that way. Much of the reform that is being proposed in this and the two companion NPRMs (on reverse auctions and comprehensive reform) is premised on the need to control the size of the fund. Rather than only focusing on caps and reporting and other similar fund outflow reforms, we suggest a focus on the use of the money. The Commission's Office of Inspector General issued a report on October 3, 2007,⁴ concluding that the payments made pursuant to the high-cost funding mechanism exceed the allowed erroneous payment rate as defined in the Improper Payments Information Act of 2002. While this high level of erroneous payment is due primarily to poor reporting and recordkeeping, this should not be accepted as a routine practice. As stated on pages 27 – 28 of the Inspector General's Report:

...The problem of the lack of documentation is disturbing not only because it complicates (negates) the process of determining compliance with Commission rules, but also because the HC Program provides millions of dollars in subsidies to companies based on reported numbers. Without documents supporting the reported numbers, it is impossible to determine if the amounts claimed comport with Commission rules and are otherwise appropriate...For at least 18.46 percent of the beneficiaries receiving high cost, inadequate documentation makes it impossible to determine if HC support, virtually all of which is funded through consumer end-user charges, does not contain inflated expenses or gold-plated investments, or is otherwise improper.

As the Commission looks for a way to preserve the sustainability of the high-cost fund, it should consider additional safeguards not only in regard to who receives the

⁴ The report is titled, *The High Cost Program Initial Statistical Analysis of Data from the 2006/2007 Compliance Audits* and is dated October 3, 2007.

funding and at what levels, but also safeguards as to how is the money being used to benefit the goal of preserving and advancing universal service.

Conclusion

The WYOCA supports the elimination of the identical support rule. We recommend that the Commission look for ways to incorporate the overall principle of competitive and technological neutrality in its comprehensive reform of the high-cost fund. We urge the Commission to reconsider its tentative conclusion that the identical support rule be replaced with a support system based on the CETC's actual cost. The detailed accounting and reporting systems and other rules that would have to be established to implement a CETC cost-based system would soon be outgrown and is inconsistent with the general regulatory regime for wireless. Instead, we ask the Commission to focus on comprehensive reform where there is an identifiable benefit to the end users from the universal service funding.

Respectfully submitted on the 17th of April, 2008.



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