

and the Commission's rules regarding high-cost universal service support. The Commission seeks comment on three major areas of recommendation: (1) whether the Commission should adopt permissive federal guidelines encouraging state commissions to consider certain additional minimum qualifications when evaluating ETC designation requests and whether higher levels of scrutiny are required for ETC applications in rural areas; (2) whether high-cost support should be limited to a single connection, and if so, how to administer such a limitation; and (3) whether the Commission's rules should be amended relative to required certifications and the filing of line-count data. Dozens of parties filed responses to the NPRM in the initial comment period. In response to many of those comments, the Wyoming Office of Consumer Advocate hereby files its Reply Comments.

Should the Commission adopt permissive federal guidelines encouraging state commissions to consider additional minimum qualifications when evaluating ETC designations requests and should higher levels of scrutiny be required for ETC applications for rural areas?

The Joint Board recommends that the Commission adopt permissive federal guidelines for states to consider in proceedings to designate ETCs under section 214 of the Communications Act of 1934, as amended. The Joint Board notes that such permissive guidelines would: allow for more predictable application processing among states, would assist in determining whether the public interest test has been met³, and would improve the long-term sustainability of the federal universal service fund.

The Wyoming OCA agrees that the ETC designation process should be rigorous to assure that only fully qualified applicants receive designation as ETCs. We further agree that a core set of minimum qualifications would allow for a more predictable and rigorous process and that only fully qualified carriers that are committed to providing universal

³ Sprint argues at page 24 in its August 6, 2004 comments in this proceeding (as do several other commenters) that the "statute does not require a special 'public interest' finding for areas served by *non-rural* ILEC's separate and apart from the general finding that the applicant has satisfied the established ETC criteria." The Wyoming OCA disagrees. Section 102 of the federal Telecommunications Act of 1996 states, "Upon request *and consistent with the public interest, convenience and necessity*, the State commission may, in the case served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier . . ."

service should receive federal universal service support.⁴ As described in the Joint Board's Recommended Decision, those additional minimum qualifications should include: adequate financial resources, commitment and ability to provide the supported services, the ability to remain functional in emergencies, consumer protection, and local usage. We agree that each of these items is consistent with a determination that a service meets the goals and objectives of universal service as stated in Section 254 of the federal Telecommunications Act of 1996. We also agree with California that "inclusion of such factors as financial viability and technical capability is in the public interest in that it ensures the ETC has the resources to serve all customers within its designated service area."⁵

In its Recommended Decision, the Joint Board raises the question of whether or not its recommendations regarding a more comprehensive review of ETC applications should be applied in such a way that state commissions might re-evaluate whether previously granted ETC status for a carrier remains appropriate or should be rescinded – specifically with an eye to whether the existing competitive ETC is serving the public interest. While the Wyoming OCA supports the future application of the more comprehensive review of ETC applications pursuant to permissive guidelines and admires those far-sighted state commissions who conducted comprehensive initial reviews of ETC applications in the absence of the proposed guidelines, we are concerned about the consequences of retroactive application of these guidelines. That is, we do not believe that each state

⁴ Many ETC applicants appear to focus on gaining access to the universal service funds under the guise of leveling the competitive playing field with little or no mention of the impact that such access will have on customer service or customer rates. Often, there is no indication that customers will receive any benefit from the additional ETC designation, since the applicants indicate that their competitiveness does not depend on access to funds and there is no indication that end user rates or services will change once funds are provided to these carriers. Thus, making sure that ETC applicants meet the most stringent of tests, including public interest tests, is reasonable and necessary.

This position also appears to be supported by the Universal Service Administrative Company who states at page 6 in their August 6, 2004 comments in this proceeding, "Whatever the approach ultimately selected by the Commission, USAC urges the Commission to adopt clear rules, provide clear direction to USAC and carriers, and choose a process that is transparent, enforceable, and fully auditable."

⁵ See the Comments of the People of the State of California and the Public Utilities Commission of the State of California in CC Docket No. 96-45, filed August 6, 2004, page 4.

commission should reopen each and every ETC application previously granted to test existing ETCs against the proposed guidelines.

However, it is the duty and responsibility of the state regulators (or the Commission where the state commissions lack the necessary authority) to monitor and oversee the service provide by the ETCs to ensure that they continue to meet their ongoing universal service obligations. When an ETC ceases providing each of the required elements of universal service, or otherwise fails to meet its obligations under Section 214, the regulator should be free to consider rescinding ETC status, and to conduct its inquiry using the previously established standards as well as the new guidelines. We believe state commissions could efficiently integrate this oversight of the carriers' compliance with universal service obligations with the annual certification process. While the annual certification requirement specifically requires scrutiny of the use of USF funds, it would be absurd for a state regulator to certify the use of the funds if an ETC were no longer providing the supported services or otherwise not meeting its universal service obligations. On this issue, we agree with the United States Telecom Association's⁶ suggestion that decertification is appropriate if during the annual certification process it is found that ETC designation requirements are not being met.

Furthermore, we ask the Commission to clarify the process of decertification in cases where ETC status was originally granted by the Commission due to lack of state authority, and the state commission has since gained authority to conduct annual certifications which are routinely based on the self-serving, unverified statement of the carriers. The Wyoming OCA is concerned that in such cases, neither adequate oversight of the use of the funds nor compliance with ETC requirements is adequately assured. We

⁶ See Comments of the United States Telecom Association, filed August 6, 2004, in CC docket No. 96-45, page 15, "If a carrier cannot demonstrate compliance with the ETC designation requirements and the proper uses of their support, state regulatory agencies (or the Commission if it originally granted ETC status) should decertify any such carrier as an ETC, thereby removing the carrier's eligibility for federal universal service support."

encourage the Commission to clarify the state commissions' options and eliminate this compliance enforceability gap.⁷

Should the high-cost support be limited to a single line connection and if so, how should such a limitation be administered?

The Joint Board recommends that the Commission limit the scope of high-cost support to a single connection that provides access to the public telephone network. The Joint Board, (though not unanimously) believes that supporting a single connection is more consistent with the goals of the federal Act than the present system, is necessary to preserve the sustainability of the fund, would send more appropriate entry signals in rural and high-cost areas, and would be competitively neutral. In addition, the Joint Board recommends that high-cost support in areas served by rural carriers be capped on a per-line or per-connection basis where a competitive carrier is designated as an ETC, and adjusted annually by an index factor.

While the Wyoming OCA takes no position on whether support should be limited to a single line, we agree with the Joint Board that such a proposal would present difficult administrative challenges. If the Commission adopts the recommendation to limit support to a single line, it should very thoroughly and specifically establish the administrative process and rules by which the supported line is designated. These rules must be consistent from state-to-state, within each state, and within each ETC service area. Additionally, the designation process should be non-burdensome to customers and carriers. The process of limiting the size of the federal universal service fund should not create additional burdens for carriers, which would increase customer rates. We also agree with the observation found in nearly every initial comment filed in this matter, that

⁷ At the time that Western Wireless sought ETC designation, Wyoming did not have the authority to grant such a designation, and thus, the Commission ultimately issued the ETC designation. However, pursuant to the established processes, the Commission requires the Wyoming Public Service Commission to annually submit a certification that the funds are being used appropriately. Since the Wyoming Public Service Commission has taken the position that it does not have jurisdiction over wireless carriers, the certification is based solely on unverified statements from the carrier itself. Questions are now arising about Western Wireless' compliance with ETC requirements but it is not clear that the Wyoming Public Service Commission has the authority to decertify given the circumstances, nor is it clear that the Commission is periodically reviewing Western Wireless actual operations to see if its continuing ETC designation remains in the public interest.

there are numerous questions that need be addressed, including everything from defining the primary line to defining a household. The Commission must specifically address each and every one of these questions and not leave the process to work itself out or leave the answers to be developed independently by each state.

Because we believe the burden on customers should be minimized to the greatest extent possible, we take issue with the Joint Board's recommendation to have customers select one of their multiple lines to receive support. In our experience, many customers dislike making these kinds of choices. It imposes on their time and often induces significant stress related to the fear of making unfamiliar decisions with potentially negative economic consequences. Regarding similar choices for other utility matters, customers have repeatedly shared with us that they would prefer to leave such choices to the experts. Additionally, we would expect a flood of dinnertime calls and piles of mailings from carriers urging customer to select them as the designated carrier to receive support. There is great potential for carriers engaged in this type of communication to exploit customers' fears of real or imagined dangers associated with the designation of their supported line, or to resort to unfair, deceptive and misleading practices as they compete for supported line designations.⁸ Here, we again agree with the United States Telecom Association's statement at page 20 of their initial comments in this proceeding: "Adoption of a primary line plan is likely to result in massive customer confusion that will undoubtedly have a negative impact on the industry."

Many customers will not understand that if their wireless carrier is selected to receive the support in lieu of supported wireline service, their wireline service rates will likely increase without corresponding decreases in their wireless rates. In Wyoming, the state commission has the authority to require most carriers who receive federal universal

⁸ Many Wyoming natural gas customers have recently been subjected to the process of having to choose a natural gas supplier as well as a pricing option for natural gas service. A significant number of customers indicated their dissatisfaction with the selection process and the requirement to select a supplier or have one randomly chosen for them through a default process. One of the many comments received was the fear that making the wrong choice would impact not only the size of their bill but also the quality and safety of their service. If this fear exists for a service that remains highly regulated, we can only imagine the fear tactics that could be used by unregulated telecommunications providers.

service funds to either reduce their rates by the amount of federal universal service funds received, or to directly credit that amount to customers' bills. However, it is not clear that the Wyoming commission has such authority over wireless carriers. Therefore, customers designating their wireless service to receive support would lose their current bill credits and very possible find that the same bill credit requirement does not apply to their wireless carrier, who would be permitted to absorb all or part of the support associated with the service. This would result in a net increase in the total telecommunications expense to customers who chose their wireless provider as the carrier to receive support. The National Exchange Carrier Association, Inc., at page 17 of their August 6, 2004 comments, also raises this issue:

Finally, the potential for customer confusion should not be underestimated. Implementing the Joint Board's recommendation will require customers throughout the nation to make new and potentially confusing choices as to their "primary" carriers. Customers will be justifiably concerned as to the consequences of designating their "primary" connection, particularly if it is not clear how that designation will affect consumer rates. In cases where unexpected increases in rates will result from a change in "primary" carrier designation, consumer outrage will be the norm. The Commission must obviously make sure that potential rate impacts are fully understood prior to implementing a plan that can potentially have such widespread adverse consequences on consumers.

We agree.

The Joint Board's Recommended Decision rejects the argument that rates might rise for second lines, which are often used for access to information services such as dial-up Internet access or fax services. We agree that it is unlikely that second line rates will increase. *Rather, we are concerned that the price for the first line is likely to increase!* The basis of this concern is that as many of the costing, pricing, and support-determination models are currently configured, the cost of trenching, laying cable, and other costs associated with the network investment of providing service are averaged over the total number of lines. Thus, the results of the models show no difference in the cost of the first, second, third, or tenth line to a customer location. So while it is true that laying the second line to a location may impose only a small incremental cost on the

network, that fact is not currently reflected in the costing and pricing regimes used for most regulatory purposes.⁹ To truly recognize the cost of providing universal service in one line to one location, all of those trenching costs, backhoe rentals, etc. should be associated with the cost – and the price – of the first line. This fundamental change would require re-evaluation of the continued affordability of universal service to all customers. It may also have a perverse impact on the stated goal of limiting the size of the federal fund.

We urge the Commission to carefully consider whether supporting only a single line is consistent with its other competitive policy and pricing goals. Since the passage of the Telecommunications Act of 1996, Wyoming has worked diligently, often against vigorous resistance from the public and industry, to make its telecommunications market competitor friendly. We have, with few exceptions, eliminated price differentials between business and residential service. This was done to eliminate implicit subsidies, so that remaining subsidies would be explicit and competitively neutral. Similarly, when establishing costs, as described above, the averaging concept is used in order to treat a line-as-a-line, whether it is the first or second line at a location. It is not clear how the Joint Board's recommendation would impact Wyoming's significant progress toward establishing an environment that might foster competition. What is clear is that the "a line is a line" concept would no longer be valid, and any incentive to be *competitive purists* in our implementation of pricing and costing policies may disappear.

Similarly, the Joint Board's recommendation to separately address the issue of support for multiple business lines in rural areas without the same support for multiple residential lines in rural areas simply invites gaming of pricing and costing in those areas. This too has the potential to *increase* the overall size of the federal universal service fund.

⁹ In initial comments of AT&T Corp, filed August 6, 2004 in this proceeding, at page 14, AT&T agrees that the first line incurs most of the cost of trenching and laying poles. However, it only comments on the cost of this activity and fails to mention that this is not consistent with the way that prices and support mechanisms are currently computed.

Should the Commission's rules be amended relative to required certifications and the filing of line-count data?

The Notice of Proposed Rulemaking also seeks comments on several administrative issues, including: (1) should newly designated ETCs begin receiving high-cost support as of their ETC date, provided certifications and line-counts are filed within sixty days of the ETC designation date and (2) what support ramifications should there be for the untimely certification filings of Interstate Access Support? The Joint Board suggested the need for comment on several miscellaneous matters, including: (1) how the customer location for mobile wireless customers should be defined, and (2) should USAC have the authority to develop standards for the submission of ETC maps, such that they are provided in a uniform, electronic format? The Wyoming OCA does not offer comments on each of these matters, but does offer some general thoughts on the administrative processes.

As to the requirements and processes ETCs are required to meet and follow, we believe that they should be strictly enforced and diligently monitored for compliance.¹⁰ While all regulatory bodies, including the Commission, should periodically review their processes and filing requirements to determine whether they are still necessary and relevant, while in effect such standards should be strictly enforced. Otherwise, competitive fairness will likely erode. Furthermore, without some negative consequence related to non-compliance, the common corporate motto would become “better to ask forgiveness than permission.” There is already a great deal of incentive to bend the rules when it comes to complying with ETC standards and requirements.¹¹ We fear that without stringent

¹⁰ With this statement, we agree with the comments of CenturyTel that “...it is insufficient to establish standards and public interest criteria without implementing a mechanism to enforce requirements and ensure accountability on an on-going basis.” See comments of CenturyTel, Inc., filed August 6, 2004 in CC Docket No. 96-45, page 5.

¹¹ For example, the Wyoming OCA is extremely concerned about the attitude taken by Western Wireless when it comes to their universal service offering. While Western Wireless receives millions of dollars based on reported line counts in Wyoming, as of April 2004, not a single customer in Wyoming had taken the universal service offering described grandly in Western Wireless' ETC filing which was granted by the Commission based on a promise to offer rather than the existence of an offering. Furthermore, Western Wireless feels no need to advertise that particular service, stating that it only has to advertise any of its services in general to comply with the ETC standards. More guidance and monitoring of this situation

oversight of the process and clear guidance for all participants, competitors will flourish while competition flounders.¹² So, USAC should have the authority to implement nationwide standards that allow for reasonable monitoring and enforcement of the policies that have been established by the U.S. Congress and the Commission. Consistent mapping is one of those that are specifically identified by the Joint Board, but others may also exist. USAC should be encouraged to continually provide input to the Commission and the industry as to its needs in order to best administer the limited funds available.

Conclusion

As the process of reforming the federal USF support system continues, the Wyoming OCA asks that the Commission focus on the principles of the federal Telecommunications Act of 1996. While we agree that there are a number of inefficiencies in the current distribution of the fund, and the distribution should be more precisely targeted to those high cost and high priced areas of the nation, this does not translate into specific caps or fund size limitations. Limiting the size of the fund should not become the Commission's primary goal in this proceeding to such an extent that the other important principles of the Act are ignored or overlooked. Rather, maintaining ubiquitous, affordable service with all customers having the ability to access both basic and advanced services, while preserving essentially equal footing for competitors must be the outcome in this reform proceeding. Finally, any reforms adopted should be clearly and comprehensively expressed, including all administrative and procedural aspects.

Respectfully submitted this 21st day of September 2004.

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would assist in making sure that the federal universal service funds are distributed in a wise and careful manner.

¹² This is consistent with CenturyTel's comments that "the purpose of this proceeding is not to stimulate competition." See Comments of CenturyTel, Inc., filed August 6, 2004, in CC Docket No. 96-45, page 3.