**JOINT SEPARATE STATEMENT OF
COMMISSIONERS JONATHAN S. ADELSTEIN,
G. NANETTE THOMPSON, REGULATORY COMMISSISSION OF ALASKA,
AND BOB ROWE, MONTANA PUBLIC SERVICE COMMISSION
APPROVING IN PART, DISSENTING IN PART**

Re: Federal-State Joint Board on Universal Service, Recommended Decision

We are pleased that this Joint Board has determined that it is useful to employ guidelines to ascertain whether it is appropriate to designate multiple eligible telecommunications carriers in particular areas. We are pleased that this Joint Board recognizes, as Congress did in 1996, that when designating an ETC in an area served by a rural telephone company we must take greater care in examining the public interest to determine the wisdom of multiple ETCs in rural, high cost areas. Establishing a meaningful public interest test[1] and providing meaningful guidance on ETC designations will help to limit federal universal service funding to those providers who are committed to serve rural communities.[2]

We disagree, however, with the majority's recommendation to limit funding to primary lines. We believe it is inconsistent with Congress' intent when codifying the Universal Service provisions in the 1996 Act. It is also inconsistent with the December 18, 2003 letter from Senators Dorgan, Burns, Snowe, Johnson, Baucus, Lincoln and Daschle, stating that a primary line restriction would be "a major step backward that would thwart the essential purpose of universal service." A primary line restriction would reduce incentives for deployment of both wireless and wireline networks. We are also disappointed that the Joint Board cannot yet make progress on how to determine the basis of support, which was a core element of this "portability" referral.

The majority's recommendation to restrict funding to primary lines is a well-intentioned effort that will have a deleterious effect on the provision of universal service. Restricting funding to primary lines is not necessary to control fund growth. There are other better means to control fund growth that do not have the same draconian consequences for rural consumers and that would better advance the long term goal of an equitable support system that affords all Americans reasonable access to telecommunications services.

In this referral, the Joint Board faces the question of how the Act's goals of competition and universal service are to be reconciled and balanced in rural areas. The majority's recommendation would discourage network investment in rural areas. It also would distort rural

[1] A meaningful public interest test will allow commissions to withhold granting ETC status to additional carriers if they believe that the dilution of support caused by the designation will undermine the ability of all carriers to offer comparable service at comparable rates as is required by Section 254(b)(3) of the Act.

[2] After further development of the record, it may be possible for the FCC to adopt more specific standards for consideration and adoption by the Commission or the states. For example, we note the specific recommendations offered by the Montana Independent Telecommunications Systems in an ex parte filed January 5, 2004. The ex parte suggested, *inter alia*, very specific provisions concerning coverage, network congestion, cost reporting based on existing NECA forms, and a method for achieving service quality standard comparability.

markets in a way that would ultimately undermine the goal of universal service. Such a result is anathema to the purpose of universal service funding and the intent of Congress.

We believe that a better policy would be to put in place a more stringent public interest test, as we recommend today, and to move away from the identical support rule by basing each ETC's support on its own costs. This would limit fund growth, comply with Section 254(e) and encourage continued investment in rural markets. It also would limit funding only to those providers, whether incumbents or new entrants, who are committed to serve rural communities.

Designating Primary Lines

The majority recommends that support be distributed based on a carrier's number of primary lines and that support, under one option, be "rebased" to ensure that the amount does not change initially. If the number of primary lines were to increase in the future, however, support would increase. Likewise, if the number of primary lines were to decrease, support would decrease in proportion. Future support therefore depends upon an ETC's ability to get customers who will designate their line as primary. We foresee a number of harmful effects from such a system.

The primary line recommendation would be harmful to consumers. Section 254(b)(3) of the statute directs us to make reasonably comparable services available to consumers nationwide at reasonably comparable rates:

> Consumers in all regions of the Nation, including low-income consumers and those in rural, insular and high cost areas, should have access to telecommunications and information services, *including interexchange services and advanced telecommunications and information services*, that *are* reasonably comparable to those services provided in urban areas and are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

This section provides not only that *the rates for* services should be reasonably comparable, but also that *access* should be reasonably comparable. Moreover, the statute covers not just basic service, but also advanced telecommunications services and information services.[3] Limiting support to primary lines would deny rural consumers comparable access to a variety of telecommunications services: voice, data, fixed, and mobile.

The majority's recommendation would deny support for all second lines, including those used as second voice lines and data lines.[4] The economic development effects in rural areas

[3] If this provision applied only to "access," then the statute would use the singular "is" to describe what must be reasonably comparable. We therefore conclude that the "reasonably comparable" language in Section 254(b)(3) focuses both on telecommunications *and* information services."

[4] In some cases, the consumer may be able to receive wireline and wireless service under the majority's recommendation, but only one of these services will be the primary "line" that is funded. And in some cases, the

could be quite harmful. Rates could become unaffordable for second lines in high cost areas because all consumers will be asked to pay the cost of a second line without any offsetting support. While the majority has offered options (e.g., rebasing, hold harmless provisions) to attempt to ameliorate the harmful affects of the lost support, we believe these options are likely to be anti-competitive, or will prove ineffective and impractical.

Rural business customers would be particularly disadvantaged because they frequently have more than one line. Net costs for telephone service would increase significantly for many of these rural business customers.[5] Consumers would also face higher costs for "data lines" or fax lines. Given the distance limitations inherent in DSL services, these fax and data lines are essential to the economic life of rural communities. Just as one example, it will be very difficult to attract telecommuters to an area that not only has no DSL but that has high rates for fax and data lines. These higher costs could severely affect small business investment in rural areas and would be very likely to restrict rural economic development. The rural areas most in need of economic development will be left further behind. If we don't care for these communities as Congress intended, photographs may well be all that is left as rural areas dwindle when faced with additional economic hardships.

The primary line recommendation will also be harmful to existing ETCs, especially rural carriers. The majority says that its proposal would protect rural providers. In reality, the proposal offers only a limited and temporary protection. It presumes not only that services and rates are now comparable between rural and urban areas, but also that the level of service will remain adequate in perpetuity. Markets are not static, and as time progresses, existing ETCs in

consumer may be able to receive more than one type of service over a single wireline connection. For example, some consumers can receive voice and data over a DSL connection. However, the decision to restrict funding to one line is not technology-neutral because it favors carriers who can provide multiple services over one connection. We acknowledge that providing an economic incentive for technological efficiency is a good result, but we are more concerned that where dual technologies are not available, a consumer will be limited to one means of communication.

[5] The following chart illustrates the problem for rural businesses.

			Current Funding		Primary Line Funding			
Customer Type	Total Lines	Primary Lines	Per Line Funding	Total Funding	Per Primary Line Funding	Per Line Funding	Effective Per Line Funding	Change in Per Line Funding
Centrex	250	20	$10.00	$2,500	$15.27	$305	$1.22	($8.78)
Residential	10,000	7,500	$10.00	$100,000	$15.27	$114,557	$11.46	$1.46
Business	2,000	500	$10.00	$20,000	$15.27	$7,637	$3.82	($6.18)
Total	12,250	8,020		$122,500		$122,500		
Average			$10.00		$15.27			

many areas will lose primary line "market share." If the competitor is a wireless ETC, the loss in primary line market share may occur though the incumbent continues to serve their existing wireline customer base. Under the primary line proposal, even with the initial rebasing option, ETCs that lose primary line market share will lose support. Over time, this will jeopardize the ability of carriers to provide rural consumers with access to comparable services at comparable rates.

For at least seventy years, and both before and after 1996 when universal service principles were codified, universal service policies have supported the cost of *networks* in high cost areas. Customers are not served by individual lines, but by networks.[6] While "basic access" has been the touchstone of the Lifeline program, the rural high cost program has traditionally recognized the importance of network support and cost recovery of network investment to keep rates and services comparable. Adopting a primary line approach would reverse this historical policy and fundamentally redefine universal service for rural communities. The primary lines approach is contrary to the Act because, as its authors understood, communications work through networks, not individual connections.[7]

Support limited to primary lines would not be sufficient in rural areas. Congress stated in Section 254(b)(5) that support must be "specific, predictable and sufficient." Rural carriers have higher operating costs and equipment costs because they have lower subscriber density and lack economies of scale. Losing support for "all lines" would potentially undermine the ability of these carriers to recoup their network costs without raising rates for rural consumers. Rebasing and similar hold harmless and lump sum payments would at best only temporarily address this problem. We should not be applying more temporary solutions to remedy the universal service programs. It is time to fix them with an eye towards the long term sustainability of the programs.

Telecommunications technology is advancing rapidly. If, as the Act provides, rural services are to be comparable to urban services, rural carriers must continue to invest in state-of-the-art equipment. But under the majority's primary line method, future revenues become much more uncertain. Any primary line market share loss to a competitor not only reduces the incumbent's customer revenue, but it also reduces universal service revenue. This magnification of investor risk is likely to discourage prudent carriers from installing costly new technology.

The Joint Board majority has cited with approval several recommendations in the 2000 report of the Rural Task Force.[8] An important concept in the Rural Task Force report was that

[6] Technology has not yet obviated the need for physical networks. Even the most exciting new technologies are deployed either in or over networks. Networks are efficient in themselves, and they create opportunities for innovation by network users of all kinds. That's what customers need and expect.

[7] The economics of providing telephone service results in substantial fixed costs for the network capable of providing any service throughout the service area. Those costs do not vary significantly if the lines per customer location change. Therefore, reducing support to a carrier if its primary lines decrease almost guarantees insufficient support in the future for that carrier.

[8] E.g.: Recommendation, para. 18 (costs of rural carriers); paras. 53-54 (disaggregation); paras. 76-78 (cap on per-line support on competitive entry); para. 91 (adoption of embedded cost basis for support).

there should be "no barriers" to deployment of advanced facilities.[9] While the Commission has never endorsed that concept fully, it has agreed that universal service policies should not inadvertently create barriers to the provision of access to advanced services. It also has stated a belief that the current universal service system does not create such barriers.[10] The majority here moves away from effectuating a "no barriers" approach. By basing support on primary lines, the majority would substantially reduce the incentive for continued rural investment in any facilities by creating uncertainty of sufficient universal service funding. This is indeed a substantial barrier and one that is contrary to the spirit of the Rural Task Force Report.

The Act also anticipates that universal service will support an evolving level of services.[11] We cannot simultaneously put future investment at risk and increase the level of service. More Americans than ever have access to the Internet and mobile communications.[12] Unless providers can invest in their rural networks, they cannot provide that "evolving" level of service. Limiting support to primary lines may not only chill investment generally, but also may jeopardize funding for advanced services and cause networks to lag technologically for want of adequate investment.

The majority's recommendation also would jeopardize the continued availability of carriers of last resort. We cannot reasonably expect carriers to maintain responsibility as carrier of last resort if we deny them the funding necessary to build and maintain the network we demand.[13] The principle of a carrier of last resort is essential to universal service. However, by

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[9] The Rural Task Force recommended that the "no barriers" policy incorporate the following general principles: (1) support should be provided for plant "that can, either as built or with the addition of plant elements, when available, provide access to advanced services[;]" (2) "carriers should be encouraged by regulatory measures to remove infrastructure barriers relating to access to advanced services[;]" and (3) "[t]he federal universal service support fund should be sized so that it presents no barriers to investment in plant needed to provide access to advanced services." *Rural Task Force Order*, FCC 01-157 (released May 23, 2001), para. 197, citing Rural Task Force Recommendation at 22-23.

[10] *Rural Task Force Order*, FCC 01-157 (released May 23, 2001), para. 199.

[11] In Section 254(c)(1) Congress states that: "Universal service is an evolving level of telecommunications services that the Commission shall establish periodically under this section, taking into account advances in telecommunications and information technologies and services."

[12] According to the CTIA Semi-Annual Wireless Survey, published June 2003, the number of wireless subscribers has increased from 10% from 2002 to 2003. As of the report, there were 148,065,824 wireless subscribers. From 2002-2003, the number of cell sites increased 12% to 147, 719. According to the FCC Industry Analysis and Technology Division High-Speed Services for Internet Access Report, from Dec. 2002-June 2003, subscribership to high speed services increased by 18% during the first half of 2003 to a total of 23.5 million lines. High speed ADSL lines in service increased by 19% during the first half of 2003 and high speed connections over coaxial cable systems increased by 20%. High speed connections to end users by means of satellite or fixed wireless technologies increased by 12% during the first half of 2003.

[13] States assign the COLR obligation differently, but it has consistently been an important policy tool to insure that all potential customers in high cost and hard to serve areas receive service.

limiting funding to primary lines, we may inadvertently destroy the incentive to accept this responsibility.[14]

The majority's recommendation would effectively establish a virtual voucher system. Congress squarely addressed this issue in 1995, and dispatched it. During the debates about high cost funding, an amendment was offered that would have replaced the high cost funding mechanism with a voucher mechanism under which low income individuals would receive a voucher and then determine which carrier would get that funding. Essentially, the individual customer would have been given the opportunity choose his or her primary carrier. This amendment would have conflated the high-cost and low-income programs. It was soundly defeated. Congress clearly rejected efforts to merge the high-cost and low-income funds and to establish a voucher system. The majority's primary line recommendation violates Congressional intent in both ways.

Basing support on primary lines would raise serious administrative issues and would create opportunities for gaming that will disadvantage and confuse consumers. Defining primary lines is problematic in a multitude of housing and living situations. We cannot expect providers to investigate and police the panoply of American housing and living arrangements. Who is to decide which line is primary? If we shift the focus away from funding the network and give each individual or household a choice of primary line, we will have to define "household" and "individual." The telecommunications industry and its regulators are not well equipped to resolve these questions.

A primary line restriction is also unauditable. A consumer could easily have his wireline bill sent to a residence, and a wireless bill sent to a post office box. The inability to verify that the funds are being used appropriately compromises both the fund's integrity and the FCC's ability to ensure that the funds are being properly expended. We are concerned that any potential gains from restricting funding to primary lines will be outweighed by the administrative costs of administering funding only to primary lines and the risks that necessarily follow an unauditable restriction.

The FCC has moved away from its primary/non-primary residential line distinction in the interstate ratemaking process. For price-cap carrier, the FCC found that different Subscriber Line Charges (SLCs) created consumer confusion and unnecessary costs that were ultimately borne by consumers. Later, the FCC abandoned the distinction entirely in the Multi Association Group (MAG) proceeding and cited the Federal Regulatory Flexibility Act, which requires the Commission to take into account the potential impact of its rules on small, local telephone companies.

Carriers and customers would have a real opportunity for gaming with the primary line designation. The problem here is greater than with residential SLCs because there is potentially more money at stake. Carriers would have incentives to "slam" customers, and consumers would have incentives to game the system in order to maximize their household's funding. Past

[14] If the cost of acting as COLR is definable, the FCC should consider it as part of a funding system that bases support on provider costs.

problems with slamming in long distance competition will pale in comparison to those that could arise when carriers can collect funding for winning primary line designations. Rather than competing to best serve customers, providers will compete for new ways to win designation as the primary carrier.

Basis of Support

We are disappointed that the Joint Board did not make greater progress on the issue of the basis of support. We believe that we have a sufficient record to recommend a policy goal that the amount of universal service support paid to competitive providers should not be based on the incumbent's costs.[15] We understand that our record does not support a final decision on how we would fairly administer support based on the competitors' costs.[16] We are pleased that our Joint Board colleagues recognize the need to consider modifying the basis of support.[17] However, we believe that a clear policy statement here would better guide the development of the record and better enable the FCC to resolve sooner this complex issue.

Equal Access

Commissioner Adelstein deferred his vote on the inclusion of equal access in the list of supported services to this proceeding because he believed that there was intent to address and resolve the basis of support question. We should at least have addressed the issue of the funding impact of equal access.[18]

Under the MAG plan, the Commission reduced access charges, and to make the universal service mechanism more explicit, moved that amount into the universal service fund. This was responsive to the need to make explicit, as far as possible, those federal universal service subsidies that were implicit, as intended by Congress. The resulting program, Interstate Common Line Support (ICLS) includes the cost of providing equal access. At the very least, this Joint Board should recommend to the Commission that, pending determination of the appropriate basis of support, competitors that do not provide equal access should not receive at least that portion of ICLS that is based upon equal access costs.

[15] Commissioners Adelstein and Rowe recommend that carriers receive support based on their own costs. Commissioner Thompson would not yet rule out the options that in high cost competitive markets support be based on a forward looking methodology or a bidding process.

[16] For example, we need to understand how support will be calculated when providers use different technologies to serve customers, have different accounting systems and varying levels of service. We would consider specific interim measures to address immediate concerns, like a rigorous, interactive workshop to develop an appropriate costing regime. We suggest that the FCC ask for comments on whether reopening the "Path 3" window for self-certification of disaggregation would address cream-skimming concerns until a new basis of support is implemented.

[17] The deadline for review of the use of embedded costs to determine rural carrier support looms, and providers in those markets are better served by as much advance notice of possible changes as we can provide so that they can make reasonable planning decisions.

[18] Commissioner Thompson opposed including equal access in the list of supported services. Commissioner Rowe supported its inclusion.

For these reasons, we approve in part and dissent in part. We concur in the portion of the recommended decision relating to certification of eligible telecommunications carriers, but dissent from the portion relating to designation of primary lines.