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No Lock On LEC-Like Cost Support For CETCs

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In one of the three Notices of Proposed Rulemaking recently released by the FCC on restructuring the federal universal service mechanisms, the Commission seeks comments on a proposal to eliminate the current “identical support” rule – also known as the “equal support rule” – which provides competitive eligible telecommunications carriers (CETCs) with the same per-line high-cost universal service support amounts that incumbent local exchange carriers (ILECs) receive, regardless of their actual costs. Instead, the FCC proposes to provide support to a CETC based on its own costs of providing the supported services. The Commission seeks comment on methodologies for determining a CETC’s relevant costs for universal service support purposes, how the support should be calculated, including the appropriate reporting obligations, and, importantly, whether such support should be capped at the level of the ILECs.

Under the Commission’s existing rules, a CETC that serves a customer in an ILEC’s service area receives the same per-line amount of high-cost universal service support that the incumbent LEC would receive for serving that same customer. High-cost support for competitive ETCs has grown rapidly over the last several years, placing extraordinary pressure on the federal universal service fund. In 2006, the universal service fund provided approximately \$4.1 billion per year in high-cost support. By contrast, in 2001, high-cost universal service support totaled approximately \$2.6 billion. In recent years, this growth has been attributed to increased support provided to competitive ETCs. While support to incumbent LECs has been flat, or has even declined since 2003, competitive ETC support, in the six years from 2001 through 2006, has grown from under \$17 million to \$980 million – an annual growth rate of over 100 percent. This rate of growth of federal support is seen as unsustainable by the Commission, and by many of the ILECs and interexchange carriers. On the other hand, the wireless carriers benefiting from this growth believe that they are getting no more than their fair share of support, and that policy makers are ignoring the rapid growth of wireless service not only as a supplement to wireline, but as a substitute.

In the NPRM, the Commission tentatively concludes that the identical support rule, which was originally enacted based on the principle of technology neutrality (equal amount of support for wireline and wireless service to a customer, in spite of unequal costs of providing service), has not been consistent with developments in the market: supported wireless carriers do not “capture” customers from supported wireline carriers, but merely supplement that service, leading to expensive duplication of support and unproductive growth of federal high cost support. In addition, the NPRM notes that the Commission never expected the vast majority of CETC support to go to wireless carriers; rather, it had apparently expected greater growth of wireline competition. Lastly, the Commission asserts that the identical support rule fails to create efficient investment incentives for competitive CETCs. Because a CETC’s per-line support is based solely on the per-line support received by the ILEC, rather than its own network investments in an area, the competitive ETC has little incentive to invest in, or expand, its own facilities in areas with low population densities, thereby contravening the Communications Act’s universal service goal of improving the access to telecommunications services in rural, insular and high-cost areas. Instead, the NPRM asserts, CETCs have a greater incentive to expand the number of subscribers, particularly those located in the lower-cost parts of high-cost areas, rather than to expand the geographic scope of their networks.

Accordingly, the NPRM follows the suggestion of the Federal-State Joint Board, and proposes that CETC high cost support be based on the individual CETC’s costs of providing service, and that CETCs seeking high-cost support should be required to file cost data demonstrating their costs of providing service in high-cost service areas. Specifically, the NPRM proposes that each competitive ETC should file cost data with the Commission or the relevant state commission – whichever approved, or subsequently approves, its ETC application – on an annual basis and line-count data on a quarterly basis. CETCs would have the option of updating their cost data on a quarterly basis, as do rural incumbents today. Only if the cost data were to be approved by the relevant state commission or the Commission could the CETC then file the cost data submission with the Universal Service Administrative Company (USAC) to obtain federal support. It is unclear why the costs so established should be capped at the same level as the ILEC’s costs since the whole concept is to get away from artificial “parity” and award support based on actual costs, but the Commission must be worried that CETC costs might possible come out *higher* than ILEC costs, and thus increase the support burden even more.

The NPRM seeks comments as to whether the FCC should establish a system of accounts for competitive ETCs, including wireless carriers, that mirror the Part 32 rules applicable to ILECs for such cost calculation purposes. The NPRM also seeks comment on whether, because competitive ETCs will, in general, operate in multiple study areas of incumbent carriers, it will be necessary to disaggregate each

CETC's cost by relevant CETC service area, and by the relevant incumbent LEC study area, wire center, or disaggregation zone. On an issue that is sure to be controversial, the NPRM tentatively concludes that wireless spectrum costs should be included in high-cost support cost submissions, but only to the extent that the competitive ETC actually paid for the spectrum, either through an auction or by purchasing it on the open market. There are more details regarding calculation and limits on cost support for CETCs, so please contact us if you need further information.

This proceeding, like the other two high cost support items, will be hard fought and fascinating to watch. Yet, while the Chairman may wish to create a legacy with a radical change in federal universal service programs before he leaves the Commission, these proceedings contain intractable problems that may take much longer to resolve than the Chairman wishes. We will keep you informed.