

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

In the Matter of

Federal-State Joint Board on
Universal Service

CC Docket No. 96-45

**COMMENTS OF
THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER
ADVOCATES
REGARDING JOINT BOARD RECOMMENDED DECISION
ON SUPPORTED SERVICES**

I. Introduction

The National Association of State Utility Consumer Advocates (“NASUCA”)¹ submits these comments on the Recommended Decision of the Federal-State Joint Board on Universal Service (“Joint Board”) regarding the definition of services supported by universal service (“Recommended Decision.”)² The Federal Communications Commission (“FCC”) has issued a request for comments on the Recommended Decision.³

In the Recommended Decision the Joint Board proposed generally that the Commission not modify the list of services supported by the federal universal service support mechanisms. Recommended Decision, ¶ 2. The Joint Board was unable to reach a

¹ NASUCA is an association of 42 consumer advocates in 40 states and the District of Columbia. NASUCA’s members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts.

² FCC 02J-1 (rel. July 10, 2002).

³ Notice of Proposed Rulemaking, FCC 03-13 (rel. February 25, 2003) (“NPRM”), 68 Fed. Reg. 12020 (March 13, 2003).

recommended decision on one issue: whether equal access should be included in the list of supported services.

For the most part, the Recommended Decision that specific services not be added to the supported list is correct. Certain of these services deserve further study, however. Contrary to the Recommended Decision, flat rate local service should be included on the list of supported services. Finally, the members of the Joint Board who recommend including equal access on the list of supported services state the better case.⁴

At the outset, it is important to understand that the Joint Board gave inappropriate weight to the impact of adding a service on carriers' eligibility for universal service support. The federal universal service support mechanism is intended to support the services found by the Commission to qualify under 47 U.S.C. 254(c).⁵ If a carrier chooses not to offer one or more of those services, that is the carrier's business decision. For example, the Commission has decided that access to emergency services should be on the list of supported services; a carrier that decides -- for whatever reason -- not to offer access to emergency service, has forfeited its claim to universal service support.

The Competitive Universal Service Coalition ("CUSC") proposes reducing the current list of services. Recommended Decision, ¶ 87. The Joint Board gives too much credence to "this commenter's desire to encourage creative new packages of voice grade services...." *Id.*, ¶ 88. "Creative new packages" that do not include, *inter alia*, single party service or access to interexchange service, or the other services on the list, should not be supported by federal universal service funds. If the Commission determines that a

⁴ NASUCA takes no position on whether Braille TTY and 2LVCO service should be included. Recommended Decision, ¶ 51.

⁵ The currently-supported services are listed in ¶ 5 of the Recommended Decision.

service meets the criteria of Sec. 254(c), it should be added to the list, without hesitation due to the resultant ineligibility of certain carriers based on their business decisions.

II. Equal access to interexchange carriers should be added to the list of supported services.

Equal access to interexchange carriers is a feature deployed in the public switched telephone network pursuant to Commission order, Court orders, and federal law. *Id.*, ¶ 76, n.163; 47 U.S.C. 251(c)(2)(A). It has enhanced competition in interexchange markets.

The principal argument raised by those who oppose including equal access on the list of supported services is that wireless carriers generally do not offer equal access and thus those carriers would generally not be eligible for ETC status. Recommended Decision, ¶ 70. Those who oppose including equal access allege that doing so would violate 47 U.S.C. 332(c)(8), which forbids the Commission from requiring wireless carriers to provide equal access. *Id.* This view confuses placing conditions on wireless carriers that want to receive universal service support funds with imposing a requirement for equal access on all wireless carriers. *Id.*, ¶ 76.

The Joint Board members who support including equal access on the list of services demonstrate at length that this is in the public interest. *Id.*, ¶¶ 77-85. By contrast, the arguments of the opponents (*id.* at 71-73) focus almost exclusively on the impact on wireless carriers rather than on the overall public interest. For the same reasons that CUSC's proposal to limit the list in the name of competition should be rejected, equal access should not be rejected merely because it would make a class of carrier ineligible for universal service support *because of the carriers' marketing or other business decisions.*

III. Unlimited local usage should be added to the list.

The Joint Board's analysis of this issue (Recommended Decision, ¶ 43-45) overlooks the key aspect of unlimited local usage (also referred to as "flat rate service") that qualifies it as a service to be supported: The fact that, where market forces have been allowed to operate -- that is, where residential customers have a choice between flat rate service and some form of measured service -- the customers have overwhelmingly subscribed to the service that allows unlimited local usage. 47 U.S.C. 254(c)(1)(B).

The Joint Board finds that flat rate service is not essential. Recommended Decision, ¶ 44.⁶ As noted above, this alone should not disqualify a service from the list. Like adequate local calling areas (see below), flat rate service meets at least three of the statutory criteria.

It is true that the marketplace has developed numerous wireless calling plans (*id.*, ¶ 43). It may be that the cost structure of the wireless industry does not favor flat rate service, or simply that the wireless carriers' marketing plans make metering service more profitable. Failure to support a carrier that does not offer all of the services is not anti-competitive; rather, it is consistent with the universal service principles contained in 47 U.S.C. 254. Otherwise, carriers could pick and choose among the services, which would not be in the public interest.

⁶ The Joint Board does recommend that some amount of local usage be specified as supported (*id.*), but is forced to recognize that the Commission has, since the time of the *First Report and Order*, failed to establish that amount. If the Commission does not place unlimited local usage on the list, it should at least establish the minimum amount of supported usage.

IV. Most of the services discussed should not be included on the list of supported services.

The Joint Board considered a long list of services. NASUCA agrees that the following services are not appropriate for inclusion on the list of supported services:

- Advanced services (Recommended Decision, ¶ 12)

Advanced services are not subscribed to by a substantial majority of residential customers. *Id.*, ¶ 13. Further, the cost of including advanced services on the list makes inclusion not consistent with the public interest. *Id.*, ¶ 15.

- Modifying voice grade bandwidth (*id.*, ¶ 20)

Consistent with the treatment of advanced services, supporting an expanded bandwidth would not be in the public interest due to its cost (*id.*, ¶ 23), especially where this would be investment in a mature technology that might not be of benefit to consumers anyway. *Id.*, ¶ 23.

- Prepaid calling plans (*id.*, ¶ 37)

The record does not support adding such plans to the list of supported services. *Id.*, ¶ 38.

- Transport costs (*id.*, ¶ 55)

The record does not support adding transport costs to the list. *Id.*, ¶ 56.

- Rural wireless Eligible Telecommunications Carriers (“ETCs”) (*id.*, ¶ 58)

For the reason mentioned in the Recommended Decision (*id.*, ¶ 59) and as further discussed below, allowing “reduced requirements for a subset of ETCs” (*id.*) is contrary to the intent of 47 U.S.C. 214.

- N11 codes (Recommended Decision, ¶ 64)

N11 codes “do not satisfy the statutory criteria outlined in section 254(c).” *Id.*, ¶ 66.

- Minimum-service packages (*id.*, ¶ 87)

The CUSC proposal that the list of supported services be reduced by requiring only that a carrier offer voice-grade connectivity to public telecommunications networks in order to receive federal universal service support (*id.*) is unreasonable and unlawful. CUSC’s proposal essentially reads the factors in 47 U.S.C. 254(c) out of the statute in the name of promoting competition. Carriers can come up with “creative new packages of voice-grade services” (Recommended Decision, ¶ 88) without universal service support.

V. Some of the services discussed deserve further study.

Some of the services discussed by the Joint Board need not be added to the list of supported services at this time, but should be further studied. These services may be appropriate to add to the list upon such study.

- Soft dial tone/ warm line service (*id.*, ¶ 27)

The Joint Board recommended against including these services. *Id.*, ¶ 28. Although certain states have successfully adopted warm line programs (*id.*),⁷ this does not mean that it is inappropriate for warm line to be included on the list of supported services. The Joint Board’s concerns focused on possible conflicts between a national standard and state efforts (Recommended Decision, ¶ 28)⁸ and on the lack of detail in the

⁷ Ohio should be added to the states with warm line programs. Ohio Adm. Code 4901:1-5-17(I) requires that when a customer’s service is disconnected for non-payment, access to emergency services must be retained for 15 days.

⁸ It is not necessarily true that addition of warm line to the list would require “development of a single operational standard....” *Id.*

record on the cost of adding warm line service to the federal list. *Id.*, ¶ 29-30. These are issues that should be further studied.⁹

- Payphone lines (*id.*, ¶ 46)

The Joint Board was correct in recommending that the Commission “initiate a notice of inquiry to investigate the current status of payphones, including the extent to which states are able to support the establishment of public interest payphones and whether additional steps need to be taken to ensure the widespread availability of payphones for the benefit of the public.” *Id.*, ¶ 50.

- Technical and service quality standards (*id.*, 62)

The Joint Board was also correct in recommending that “the Commission seek comment on whether states lack jurisdiction over certain ETCs and, if so, whether the Commission may or should adopt service quality standards for such carriers.” *Id.*, ¶ 63.¹⁰

VI. Expanding rural local calling areas should be further studied.

The vast majority of residential customers -- those who live in urban areas -- subscribe to service that includes a large local calling area. They very seldom pay extra for this calling area. For this reason alone, a minimum local calling area should be included as a supported service. In a substantial majority of instances around the country, customers who have a choice to expand their local calling area do so.

⁹ The Joint Board’s concern that adding warm line to the list would be inconsistent with the principle of competitive neutrality (*id.*, ¶ 31) again gives inappropriate weight to competitive neutrality.

¹⁰ The wireless industry has consistently argued that any attempt by states to impose service quality standards on it violates the prohibition in 47 U.S.C. 332(c)(3) against regulation of entry or rates of CMRS carriers.

The Commission has found that a supported service need not meet all four of the § 254(c)(1)(A) through (D) factors.¹¹ Establishing adequate local calling areas meets at least three of the four, (B), (C) and (D) criteria, if not all four.

Rural customers who live close to an urban area should have the urban area included as local calling.¹² Whether or not there is an urban area nearby, all customers should be able to reach all contiguous exchanges and their county seat as a local call.¹³

The Joint Board recommends that toll and extended area service not be included on the list, but acknowledges that this is primarily due to the lack of record on the subject in this proceeding. Recommended Decision, ¶ 35. The Commission should seek comment to create such a record.

The Joint Board also defers this issue to the Commission's consideration in the remand from *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001). Adequate local calling areas are indeed an issue of whether rural service is "reasonably comparable" to urban service, as pertinent to the remand. Yet an adequate local calling area is also a minimum requirement of service that should be supported, where necessary, by the federal universal service support mechanism. Further, offering an adequate local calling area should be a criterion for receiving federal universal service support.

¹¹ Report and Order, 11 FCC Rcd 7920 (1996), ¶ 61.

¹² As discussed below, this local calling area should be flat rate. Carriers in states that require measured-rate extended area service should request waivers from the state policy in order to receive federal universal service support.

¹³ It could be impracticable to make rural customers' local calling areas as numerically large as those in urban areas.

VII. Conclusion

For the reasons stated herein, the Commission should adopt the Joint Board recommendations that certain services should not be added to the list of supported services, and that other services should be further studied. Flat rate service and equal access should both be added to the list.

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