

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	

ORDER

Adopted: April 6, 2000

Released: April 7, 2000

By the Commission: Commissioner Furchtgott-Roth dissenting and issuing a statement.

I. INTRODUCTION

1. In this Order, we deny to a limited extent requests by certain non-rural carriers¹ for confidential treatment of quarterly line count data at the wire center level filed pursuant to sections 36.611 and 36.612 of the Commission's rules.² Specifically, we deny requests for confidential treatment of such data to the limited extent that the number of lines in wire centers receiving support may be determined once we release statewide forward-looking support amounts, carrier-by-carrier hold-harmless support amounts, and the per-line support amounts available in a wire center. As discussed below, we find that the public availability of per-line and total support amounts is essential to ensure that support is portable to eligible telecommunications carriers.

2. We do not decide at this time, however, whether the line count data for wire centers that do not receive support from the Commission's high-cost universal service support mechanism should be afforded confidential treatment. We intend, in the near future, to initiate a proceeding to determine whether such data should be afforded confidential treatment. Pending our resolution of the issues raised by these confidentiality requests, the line count data for those wire centers not receiving support will be made available pursuant to the companion interim protective order released today.³

¹ Anchorage Telephone Utility, Bell Atlantic, BellSouth Corporation, GTE Corporation, SBC, Sprint, and U S West. *See infra* note 19.

² 47 C.F.R. §§ 36.611, 36.612.

³ Pursuant to section 0.459(g) of the Commission's rules, release of the line count data under the interim protective order will be delayed to permit the submitting parties to seek a judicial stay. 47 C.F.R. § 0.459(g). In addition, release of the per-line support amounts available for recipient wire centers will be delayed for five business days to afford the parties the opportunity to seek a judicial stay of this Order. Although today we release estimates of statewide total support amounts by carrier for the first quarter of the year 2000, it is not possible to "reverse engineer" the line counts for wire centers receiving support without the per-line support amounts and total

II. BACKGROUND

3. In the Communications Act of 1934 (Act),⁴ as amended by the Telecommunications Act of 1996 (1996 Act),⁵ Congress codified the Commission's historical policy of promoting universal service to ensure that consumers in all regions of the nation have access to telecommunications services. Specifically, in section 254 of the Act, Congress directed the Commission, after consultation with the Federal-State Joint Board on Universal Service (Joint Board) to establish support mechanisms for the preservation and advancement of universal service in the competitive environment that Congress envisioned.⁶

4. The Commission's initial steps were to adapt the existing universal service support mechanisms, which were designed for a monopoly environment, to make support explicit and portable. The Commission, as recommended by the Joint Board, had determined that the support mechanisms should be competitively neutral, i.e., they should neither unfairly advantage nor disadvantage one provider over another.⁷ Portability of support ensures competitive neutrality by providing that all eligible telecommunications carriers, not only incumbent carriers, are eligible to receive universal service support. Beginning January 1, 1998, the per-line support amount available to an incumbent for serving a high-cost area also became available to a competitive eligible telecommunications carrier for serving lines that it captures from an incumbent carrier, as well as any "new" lines that the competitive eligible telecommunications carrier serves in that

support amounts. *See Common Carrier Bureau Releases Estimated State-by-State Universal Service High-Cost Support Amounts for Non-Rural Carriers*, Public Notice, CC Docket 96-45, DA 00-774 (rel. April 7, 2000).

⁴ 47 U.S.C. § 151 et seq.

⁵ *See* Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁶ *See* 47 U.S.C. § 254(a), (d). According to the Joint Explanatory Statement, the purpose of the 1996 Act is "to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition . . ." Joint Explanatory Statement of the Committee of Conference, S. Conf. Rep. No. 230, 104th Cong., 2d Sess. at 113 (Joint Explanatory Statement).

⁷ In addition to the universal service principles specified in the 1996 Act, Congress directed that the Joint Board and the Commission be guided by such other principles as they determine to be consistent with the Act, and necessary and appropriate for the protection of the public interest, convenience, and necessity. 47 U.S.C. § 254(b)(7). As recommended by the Joint Board, the Commission adopted competitive neutrality as an additional principle for universal service. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8801 (1997), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Erratum, FCC 97-157 (rel. June 4, 1997), *aff'd in part, rev'd in part, remanded in part sub nom. Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999), *petition for stay granted in part* (Sept. 28, 1999), *petitions for rehearing and rehearing en banc denied* (Sept. 28, 1999) (*First Report and Order*). The Fifth Circuit affirmed in relevant part the Commission's decisions regarding implementation of the high-cost universal service support mechanism.

high-cost area.⁸ Also beginning January 1, 1998, all providers of telecommunications carriers were required to contribute to universal service support on an equitable and non-discriminatory basis.⁹

5. On October 21, 1999, the Commission completed its implementation plans for a new high-cost universal service support mechanism for non-rural carriers, which became effective January 1, 2000.¹⁰ The Commission, based on the Joint Board's recommendation, had determined that high-cost support should be based, not on a carrier's embedded costs, but on the forward-looking economic cost of providing the services eligible for support,¹¹ as determined by the cost model.¹² The forward-looking support mechanism takes the costs generated by the Commission's cost model, compares them to a national benchmark, and provides support for costs exceeding that benchmark.¹³ In addition to the new forward-looking high-cost support

⁸ See 47 C.F.R. § 54.307; see also *First Report and Order*, 12 FCC Rcd at 8932-34.

⁹ 47 U.S.C. § 254(e). The Commission has exercised its authority provided in section 254(e) to require other providers of interstate telecommunications services to contribute to universal service. See also 47 U.S.C. § 254(b)(4). Section 254(b)(4) provides that "[a]ll providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service."

¹⁰ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ninth Report & Order and Eighteenth Order on Reconsideration, FCC 99-306 (rel. Nov. 2, 1999) (*Ninth Report and Order*); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Forward-Looking Mechanism for High-Cost Support for Non-Rural LECs*, CC Docket No. 97-160, Tenth Report and Order, FCC 99-304 (rel. Nov. 2, 1999) (*Tenth Report and Order*).

¹¹ The services eligible for federal universal service support are listed in section 54.101 of the Commission's rules. 47 C.F.R. § 54.101.

¹² The Commission's cost model consists of: (1) a model platform, which contains a series of fixed assumptions about network design and engineering; and (2) input values for the model platform, such as the cost of network components, e.g., cables and switches, as well as various capital cost parameters. The Commission adopted the model platform in the *Fifth Report and Order* released in October 1998. See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Forward-Looking Mechanism for High-Cost Support for Non-Rural LECs*, CC Docket No. 97-160, Fifth Report and Order, 13 FCC Rcd 21323 (1998) (*Fifth Report and Order*). In the *Tenth Report and Order*, we adopted the input values to be used in the model. See *Tenth Report and Order*, FCC 99-304. In the *Ninth Report and Order*, we adopted the methodology for calculating support amounts based on these forward-looking costs. See *Ninth Report and Order*, FCC 99-306.

¹³ Specifically, for each state, the cost model calculates the average forward-looking cost per line incurred by non-rural carriers to provide supported services. The forward-looking support mechanism provides support to non-rural carriers in those states that have a statewide average forward-looking cost per line greater than the national benchmark, which is set at 135 percent of the national average forward-looking cost per line. See *Ninth Report and Order*, FCC 99-306 at paras. 10, 55. The forward-looking support mechanism provides support for all intrastate costs that exceed the benchmark. *Ninth Report and Order*, FCC 99-306 at paras. 60-63. Intrastate costs account for 76 percent of all forward-looking costs estimated by the model. *Ninth Report and Order*, FCC 99-306 at para. 63. Therefore, the forward-looking mechanism provides support for 76 percent of the forward-looking costs that exceed the benchmark. *Ninth Report and Order*, FCC 99-306 at para. 63.

mechanism for non-rural carriers, the Commission also adopted an interim hold-harmless provision. Under this transitional provision no non-rural carrier will receive less support under the forward-looking mechanism than it would have received if we had continued to provide support under the previous high-cost support mechanism based on a carrier's book (embedded) costs.¹⁴

6. To ensure that support is provided to the areas that need it most, the Commission determined that both forward-looking support and hold-harmless support should be targeted to high-cost wire centers.¹⁵ Under the targeting approach, the amount of support available per line in a particular wire center depends on the relative costs in that wire center, as estimated by the cost model. If support were not targeted, the same amount of federal support would be available for any line served by a competitor within the state. For example, support could be available to competitors that serve only low-cost, urban lines, which would create uneconomic incentives for competitive entry. The targeting approach provides support in an amount commensurate with the cost of service, thereby encouraging carriers to serve high-cost areas and avoiding the inefficiencies and potential market distortions that could be caused by distributing support on a uniform statewide basis.

7. In order to implement the wire center targeting approaches for both the forward-looking support mechanism and the interim hold-harmless provision, the Commission must know the number of lines served by a carrier in a particular wire center. That is, we need disaggregated line counts so we can disaggregate support amounts. Accordingly, the Commission required non-rural carriers and competitive eligible telecommunications carriers seeking to receive support to report on a quarterly basis the number of lines they serve in each wire center in their service areas.¹⁶ In an order on reconsideration, also adopted today, we clarify the method by which wire center line count data will be incorporated in the new high-cost universal service support mechanism for purposes of calculating and targeting support amounts.¹⁷

¹⁴ *Ninth Report and Order*, FCC 99-306 at paras. 78-88. Existing high-cost support for non-rural carriers is provided pursuant to Part 36 and sections 54.301 and 54.303 of the Commission's rules. See 47 C.F.R. Part 36, §§ 54.301, 54.303.

¹⁵ *Ninth Report and Order*, FCC 99-306 at paras. 70-75, 82-85.

¹⁶ *Ninth Report and Order*, FCC 99-306 at para. 87, 92, Appendix C; see also 47 C.F.R. §§ 36.611, 36.612, 54.307. Competitive eligible telecommunications carriers only need to file such data if they want to receive universal service support. Specifically, we amended sections 36.611, 36.612, and 54.307 of the Commission's rules to require non-rural carriers to file line count data quarterly at the wire center level. See 47 C.F.R. §§ 36.611, 36.612, 54.307. Previously, section 36.611 required all incumbent local exchange carriers to report lines annually by study area, rather than by wire center. Section 36.612 permitted, but did not require, incumbent local exchange carriers to update the annual line count data on a quarterly basis. Previously, section 54.307 required competitive eligible telecommunications carriers, in order to receive universal service support, to report lines annually, but did not permit quarterly updates.

¹⁷ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Twentieth Order on Reconsideration, FCC 00-126 (rel. April 7, 2000).

8. The first submissions containing line counts at the wire center level were filed with the National Exchange Carrier Association (NECA) and the Universal Service Administrative Company (USAC) on December 30, 1999,¹⁸ and most carriers sought confidential treatment of these data pursuant to section 0.459 of the Commission's rules.¹⁹ Based on the line count and cost data filed with NECA, USAC estimates the amount of high-cost universal service support that will be needed in the following quarter and files this information with the Commission. On May 1, 2000, USAC will file information related to the distribution of support in the third quarter of the year 2000. The quarterly USAC filings also include the estimated cost of all the federal universal service programs and the revenue projections on which contributions from telecommunications providers will be based.²⁰ The quarterly USAC filings are posted on the Commission's Web site and include the projected high-cost support amounts by carrier and the number of lines reported by each carrier at the study area level.²¹

III. DISCUSSION

9. In this Order, we deny only those requests for confidential treatment of wire center line count data filed pursuant to sections 36.611 and 36.612 of the Commission's rules to the

¹⁸ Under section 36.611 and 36.612 of the Commission's rules, incumbent local file loop count data with NECA. NECA filed the data with the Commission on Feb. 1, 2000. Competitive eligible telecommunications carriers, in order to receive universal service support, file loop count data with USAC pursuant to section 54.307 of the Commission's rules. See 47 C.F.R. §§ 36.611, 36.612, 54.307.

¹⁹ See 47 C.F.R. § 0.459; Letter from Steven R. Beck, Senior Attorney, U S WEST, Inc., to Magalie Roman Salas, Secretary (Jan. 7, 2000) (U S WEST 1st Quarter Request); Request for Confidential Treatment of Anchorage Telephone Utility (Jan. 11, 2000) (ATU Request); letter from Richard M. Sbaratta, General Attorney, BellSouth Corporation, to Magalie Roman Salas, Secretary (Jan. 7, 2000) (BellSouth Request); letter from Hope Thurott, Senior Counsel—External Affairs-FCC, SBC to Magalie Roman Salas, Secretary (Jan. 7, 2000) (SBC 1st Quarter Request); letter from Hope Thurott, Senior Counsel—External Affairs-FCC; letter from Gail L. Polivy, Assistant General Counsel, GTE Corporation, to Magalie R. Salas, Secretary (Jan. 13, 2000) (GTE 1st Quarter Request); Response of Bell Atlantic to Data Request (Jan. 7, 2000) (Bell Atlantic 1st Quarter Request); letter from Jay C. Keithley, Vice President, Law & External Affairs, Sprint, to Magalie Roman Salas (Dec. 30, 1999) (Sprint 1st Quarter Request). The some carriers also sought confidential treatment of the data filed with NECA on or before March 30, 1999. See SBC to Magalie Roman Salas, Secretary (March 30, 2000) (SBC 2nd Quarter Request); letter from Gail L. Polivy, Assistant General Counsel, GTE Corporation, to Magalie R. Salas, Secretary (March 20, 2000) (GTE 2nd Quarter Request). letter from Jay C. Keithley, Vice President, Law & External Affairs, Sprint, to Magalie Roman Salas (March 31, 2000) (Sprint 2nd Quarter Request); Response of Bell Atlantic to Data Request (March 31, 2000) (Bell Atlantic 2nd Quarter Request); Letter from Steven R. Beck, Senior Attorney, U S WEST, Inc., to Magalie Roman Salas, Secretary (April 6, 2000) (U S WEST 2nd Quarter Request). The BellSouth Request, filed January 7, 2000, sought confidential treatment for the first quarter and subsequent data submissions, so BellSouth did not file a separate request for confidential treatment for the second quarter of 2000.

²⁰ See, e.g., Federal Universal Service Support Programs Fund Size Projections and Contribution Base For the Second Quarter 2000 (filed by USAC Feb. 1, 2000) (*USAC Filing for Second Quarter 2000*).

²¹ See http://www.fcc.gov/ccb/univrsal_service.

limited extent that the number of lines in wire centers receiving support may be determined once we release statewide forward-looking support amounts, carrier-by-carrier hold-harmless support amounts, and the per-line support amounts available in a wire center. We find that the public availability of per-line and total support amounts is essential to ensure that support amounts are portable and to maintain a mechanism that is competitively neutral, as required by the Act.

10. *Carriers' Requests for Confidentiality.* Seven carriers, out of the approximately thirteen non-rural carriers that filed wire center line count data, have asked for confidential treatment of the submissions. Although the requests for confidential treatment of these data vary in detail depending on the submission,²² we understand their claims to be based on the disaggregated nature of the data, i.e., the filing of the number of lines in individual wire centers, as opposed to total lines in the study area.²³ We note that, since the inception of the Commission's high-cost loop support program, carriers have been required to file line count and cost data at the study area level and such data always have been publicly available. We assume, therefore, that it is the submission of line counts at the wire center level that the carriers claim is confidential, and that it is the disclosure of this information that the carriers claim would put them at a competitive disadvantage.

11. *Standards for Disclosure.* The Commission's rules permit disclosure of commercially sensitive information upon a "persuasive showing" of the reasons in favor of releasing the information.²⁴ Consistent with the United States Supreme Court's decision in *FCC v. Schreiber*,²⁵ the rules also contemplate that the Commission will engage in a balancing of the interests favoring disclosure and non-disclosure. In balancing these public and private interests, the Commission has been sensitive to ensure that the fulfillment of its regulatory responsibilities does not result in the unnecessary disclosure of information that might put its regulatees at a

²² See, e.g., SBC Request, at 2 (the data "would permit competitors to identify high concentrations of customers that may be valuable to a competitor's market approach"); ATU Request at 2 (stating that competitors would "gain an unfair competitive advantage over ATU in the local exchange market" because data could be used for pricing and marketing); BellSouth Request at 1 (disclosure would permit competitors to target narrow geographic area); GTE Request at 1 (data could be used to evaluate operational and business plans); Bell Atlantic Request at 2 (data could allow competitors to target area of highest concentration of customers).

²³ Generally, but not always, a study area corresponds to an incumbent local exchange carrier's entire service area within a state. See 47 C.F.R. Part 36 App. (definition of "study area").

²⁴ 47 C.F.R. §§ 0.457, 0.457(d)(1), 0.457(d)(2). While exemption 4 of the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b)(4), which pertains to trade secrets and commercial or financial information, allows an agency to withhold business competitive information from public disclosure, the Trade Secrets Act acts as an affirmative restraint on an agency's ability to release such information, except as "authorized by law." See 18 U.S.C. § 1905, and see *CNA Fin. Corp. v. Donovan*, 830 F.2d 1132, 1151-52 (D.C. Cir. 1987), cert. denied, 485 U.S. 977 (1988). Section 0.457 of the Commission's rules, 47 C.F.R. § 0.457, and section 254 of the Communications Act, 47 U.S.C. § 254, constitute the requisite legal authority for such disclosure of competitively sensitive information. See *Chrysler Corp. v. Brown*, 441 U.S. 281, 301-03 (1979).

²⁵ 381 U.S. 279, 291-92 (1965).

competitive disadvantage. Accordingly, the Commission generally has exercised its discretion to release to the public competitively sensitive information in limited circumstances, such as where the Commission has identified a compelling public interest in disclosure.²⁶

12. *Publication of Universal Service Support Amounts.* As discussed above, under the Commission's high-cost universal service mechanisms, support is targeted to high-cost wire centers based on the relative costs among wire centers in a state.²⁷ Because support under the new forward-looking mechanism (as well as the interim hold-harmless provision) is now targeted to individual high cost wire centers, USAC must publish per-line support amounts for recipient wire centers in order to ensure that the support is available to any eligible telecommunications carrier that serves a customer in that wire center. As discussed in greater detail below, competitive eligible telecommunications carriers must have access to information regarding the available per-line support amounts when evaluating whether to provide service in a particular area.

13. We have determined that, by using the per-line support amount available in a particular wire center, the applicable total support amount (either statewide forward-looking support or carrier-by-carrier hold-harmless support) and the information available in the Commission's universal service cost model, it may be possible to determine the number of lines that a carrier serves in that wire center. The disclosure of line counts in wire centers receiving support by means of such "reverse-engineering" could be avoided only by nondisclosure of either per-line support amounts for recipient wire centers or nondisclosure of total statewide carrier-by-carrier support amounts, on the one hand, or by abandonment of our decision to target support to the highest-cost wire centers, on the other hand. Neither of these means for protecting this information is a viable alternative: each would be inconsistent with the principles underlying sections 254 and 214 of the Act and adverse to the public interest.²⁸

²⁶ See, e.g., *MCI Telecommunications Corp.*, 58 RR 2d 187, 189-190 (1985) (although certain shared network facilities agreements contained confidential trade or financial information and thus fell within exemption 4 of FOIA, permitting the Commission lawfully to withhold disclosure of the documents under FOIA if it chose to do so, petitioner made a sufficient showing that disclosure would further the public interest to warrant the discretionary release of that information to the petitioner). See also, *AT&T Information Systems, Inc. v. General Services Administration*, 627 F. Supp. 1396 (D.C. D.C. 1986), rev'd on other grounds, 810 F.2d 1233, 1236 (D.C. Cir. 1987)(public interest in release of unit prices outweighs potential contractors' competitive interests in nondisclosure).

²⁷ Under the Commission's high-cost support mechanism for non-rural carriers, the relative costs are determined using the Commission's cost model, which is available on our Web site, see <http://www.fcc.gov/ccb/apd/hcpm>. Since the model platform was adopted, it has been publicly available on the Commission's Web site. See *Common Carrier Bureau to Post on the Internet Modifications to the Forward-Looking Economic Cost Model for Universal Service Support*, Public Notice, CC Docket Nos. 96-45, 97-160, DA 98-2533 (rel. Dec. 15, 1998). Prior to adoption of the model platform, earlier versions on the Commission's in-house Hybrid Cost Proxy Model were available on the Web site.

²⁸ 47 U.S.C. §§ 214(e), 254(e). Section 214(e) provides that eligible telecommunications carriers meeting the requirements of this section shall be eligible to receive support in accordance with section 254.

14. We conclude, as discussed more fully below, that public availability of per-line support amounts in individual wire centers and total statewide carrier-by-carrier support amounts serves the public interest. Because we conclude that the public interest in disclosure would outweigh any interest in non-disclosure, we do not need to make a finding at this time as to whether wire center line count data are commercially sensitive information. We conclude that the public availability of support amounts is essential to implement a competitively neutral universal service support mechanism, and to ensure availability of support amounts to any eligible competitive telecommunications carrier, consistent with sections 254(e) and 214(e) of the Act.²⁹ We therefore deny carriers' requests for confidentiality only to the extent that disclosure of line counts in wire centers that are receiving universal service support results from the publication of the support amounts described above.

15. *Section 254 and the Principle of Competitive Neutrality.* We conclude that the public availability of per-line support amounts in individual wire centers is essential to any competitively neutral universal service support mechanism that provides portable support to any eligible telecommunications carrier. According to the principle of competitive neutrality adopted by this Commission and recommended by the Joint Board, universal service support mechanisms and rules should neither unfairly advantage nor disadvantage one provider over another.³⁰

16. Consistent with this principle, the Commission implemented the universal service provision in section 254 of the 1996 Act to ensure that federal universal service high-cost support is "portable," i.e., available to all eligible telecommunications carriers, not only incumbent carriers.³¹ Under the Commission's high-cost universal service mechanisms, a competitive eligible telecommunications carrier will receive the same per-line, high-cost support for lines that it captures from an incumbent carrier, as well as for any "new" lines that the competitive eligible telecommunications carrier serves in high-cost areas. Thus, a competitive eligible telecommunications carrier receives support for each line it serves based on the support the incumbent local exchange carrier would receive for serving that line.³²

17. Currently, high-cost support is provided almost exclusively to incumbent local exchange carriers. If per-line support amounts were kept confidential, an incumbent could easily determine the per-line support amounts it receives in its high-cost wire centers,³³ but a competitor

²⁹ 47 U.S.C. §§ 214(e), 254(e).

³⁰ See *supra* note 7.

³¹ See *First Report and Order*, 12 FCC Rcd at 8932-34. The portability rules became effective January 1, 1998.

³² 47 C.F.R. § 54.307.

³³ An incumbent local exchange carrier could calculate its per-line support amounts by using the information in the model about relative costs to determine how much state support is allocated to each of its wire centers. It could then divide the wire center support amount by the number of lines in a particular wire center to determine the per-line support amount.

would only be able to determine the per-line support amounts after it began serving customers in high-cost wire centers. It is unreasonable to expect a competitive eligible telecommunications carrier to enter a high-cost market and compete against an incumbent carrier that is receiving support, without first knowing the amount of support that it too is eligible to receive. Moreover, a competitive eligible telecommunications carrier cannot reasonably be expected to make the substantial financial investment required to provide the supported service without information regarding the amount of federal universal service support it is eligible to receive in a particular wire center. Unless a competitive eligible telecommunications carrier has access to the per-line support amounts that are available for providing service to customers served in particular wire centers, it may be unable to formulate a business strategy that includes entry into high-cost areas.

18. Thus, we find that there are compelling pro-competitive reasons for making per-line support amounts publicly available and targeting support to the highest-cost wire centers.³⁴ One of the primary goals of section 254 is to ensure that all Americans, including those in high-cost areas, have access to affordable telecommunications services. As discussed above, targeting support to high-cost wire centers encourages carriers to serve high-cost areas and avoids the inefficiencies and potential market distortions that could be caused by distributing support on a uniform statewide basis.³⁵ Because the amount of support available per line in a particular wire center depends on the relative costs of providing service in that wire center, targeting sends the appropriate signals for competitive entry. If support were averaged throughout the state, competitors that serve only low-cost, urban areas, could receive support that exceeds their costs. That is, a competitor may enter a low cost market, not because it is an efficient provider, but because it will receive support. On the other hand, if support were averaged throughout the state, competitors could not afford to enter high-cost areas, where the costs exceed expected revenues. Unless a competitive eligible telecommunications carrier knows the amount of support it will receive for serving customers in a particular high-cost wire center, it will not be likely to enter such high-cost areas. We conclude that the public availability of per-line support amounts is necessary for encouraging competition in the high-cost wire centers targeted to receive support.

19. We further find that any pro-competitive and competitively neutral universal support mechanism that we could have adopted inevitably would have required carriers to submit data disaggregated at a level smaller than a study area. For example, even if we had continued the embedded cost support system, we would need cost and line count data below the study area level in order to target support to areas identified as high-cost areas. Publication of a “per-unit” (such

³⁴ The United States Court of Appeals for the Fifth Circuit upheld the Commission’s adoption of a high-cost universal service methodology that serves the dual purposes of preserving universal service and encouraging local competition. *Texas Office of Public Utility Council v. FCC*, 183 F.3d at 412. The Commission sought to encourage local competition by adopting a pro-competitive universal service mechanism that is based on non-rural carriers’ forward-looking economic costs of providing service, which are the basis for prices in a competitive market.

³⁵ See *supra* para. 5.

as per-line or per-customer) amount of support is essential to the operation of any universal service support mechanism that makes support available to any eligible telecommunications carrier.

20. We note that the publication of per-line support amounts in individual wire centers will result in the ability to determine line counts only in those wire centers that are receiving support. Thus, line counts in wire centers that are not receiving support (i.e., lower-cost wire centers that generally face greater competition) will not be disclosed unless and until the Commission makes a final determination as to the competitive sensitivity of such data. Because non-rural carriers receive federal universal service support based on their line counts in the high-cost wire centers, we believe that their interest in concealing those line counts is outweighed by a greater federal interest in making such per-line support amounts publicly available.

21. Finally, we believe that non-rural carriers should have anticipated that the Commission and USAC would make publicly available the per-line support amounts available for wire centers that are receiving support. Since the Commission's initial implementation of section 254's universal service provision in 1997, USAC has made publicly available portable per-line support amounts at the study area level.³⁶ During the course of the Commission's proceeding to establish a high-cost universal service mechanism that is consistent with the development of local competition, the Commission indicated its objective to calculate and distribute support at a level more disaggregated than the study area level. From the beginning of the development of the Commission's cost model, the Commission signaled its intent to estimate costs at the wire center level.³⁷ Consequently, the industry-sponsored cost models and the model that was adopted by the Commission always have estimated costs at the wire center level.³⁸ As discussed above, the calculation and distribution of support on a level more disaggregated than the study area level is essential to the implementation of a mechanism that is competitively neutral and consistent with the development of local competition. Under these circumstances, non-rural carriers should reasonably have expected that per-line support amounts at the wire center level would be made publicly available.

22. *Publication of Statewide Support Amounts.* We further conclude that, even though statewide carrier-by-carrier support amounts may be used to reverse engineer line counts for recipient wire centers, the public interest requires publication of the total support received by each carrier in a state, either forward-looking or hold-harmless support. This information must be made public to enable states that wish to receive federal support for non-rural carriers to comply

³⁶ Specifically, USAC has made available the projected support amounts by study area and the number of reported lines by study area. One can calculate the per-line support amount by dividing the total support amount by the total number of lines.

³⁷ For example, based on the Joint-Board's recommendations, the Commission required that the model include the incumbent local exchange carriers' wire centers in the design of the outside plant. See *First Report and Order*, 12 FCC Rcd at 8913.

³⁸ The HAI model also is capable of estimating costs by density zone.

with the certification requirement in section 54.313 of the Commission's rules.³⁹ In order to complete the annual certification and receive federal support for non-rural carriers serving high-cost areas in the state, state commissions must know the amount of support such carriers will receive in that state. Public release of total statewide support information by carrier is also important in states where non-rural carriers are not receiving support, because it enables state commissions in non-recipient states to understand and verify the mechanism that distributes federal support. Finally, we conclude that the public interest is served generally by the publication of total statewide carrier-by-carrier support amounts. Public availability of these support amounts will enable contributors to the fund, consumers, and state commissions to provide the Commission feedback regarding whether the mechanism is operating in a manner that ensures that rates and services are affordable and reasonably comparable among the states, consistent with section 254.

23. *Future Proceeding to Resolve Confidentiality Requests.* We reiterate that we do not, at this time, make a final determination as to whether confidential treatment should be afforded to line count data in wire centers that are not receiving support. Such a determination is not required at this time, because this line count information will not be disclosed nor be ascertainable upon publication of a carrier's per-line and statewide total support amounts. In the near future, we will initiate a proceeding to determine whether wire center line count data are competitively sensitive and therefore warrant confidential treatment, or whether such data are generally available from other sources.

24. Consistent with the Commission's rules and practice, carriers' wire center line count data for those wire centers not receiving support will be afforded confidential treatment while the carriers' requests for confidential treatment remain pending before the Commission. Unless and until the Commission makes a final determination on the carriers' requests for confidential treatment, such wire center line count information will be made available only pursuant to the interim protective order adopted by the Common Carrier Bureau today. This will enable state commissions, interested parties, and members of the public to verify support amounts available and distributed under the new mechanism. Carriers that have requested confidential treatment of line count data submitted pursuant to sections 36.611 and 36.612 need not request confidential treatment for subsequent submissions of the data. We will treat in the same manner any subsequent wire center line count submissions for those carriers that have pending requests for confidential treatment of such data.

IV. ORDERING CLAUSE

25. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1-4, 201-205, 214, 218-220, 254, 303(r), 403, and 410 of the Communications Act of

³⁹ To ensure that non-rural carriers in a given state use the support provided by the federal support mechanism in a manner consistent with section 254(e) of the Act, section 54.313 of the Commission's rules requires states that wish to receive federal support for such carriers to file an annual certification stating that all federal high-cost funds flowing to non-rural carriers in that state will be used in a manner consistent with section 254(e). 47 C.F.R. § 54.313. Section 254(e) requires that carriers receiving high-cost support "use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." 47 U.S.C. § 254(e).

1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 214, 218-220, 254, 303(r), 403, and 410, and sections 0.457 and 0.459 of the Commission's rules, 47 C.F.R. §§ 0.457, 0.459, the requests for confidential treatment, filed December 30, 1999, by Sprint; filed January 7, 2000, by Anchorage Telephone Utility, Bell Atlantic, BellSouth Corporation, GTE Corporation, SBC, U S West, Inc.; filed March 20, 2000, by GTE; filed March 30, 2000, by SBC; filed March 31, 2000, by Bell Atlantic and Sprint; and filed April 6, 2000, by U S West, Inc., ARE DENIED IN PART to the extent described in this Order, and otherwise DEFERRED until further consideration and resolution by the Commission.

26. IT IS FURTHER ORDERED that, pursuant to section 0.459(g) of the Commission's rules, 47 C.F.R. § 0.459(g), Anchorage Telephone Utility, Bell Atlantic, BellSouth Corporation, GTE Corporation, SBC, Sprint, and U S West, Inc., will be afforded five (5) working days in which to seek a judicial stay of this ruling.

27. IT IS FURTHER ORDERED that the Common Carrier Bureau shall, upon release of this Order, furnish immediate notice by telephone of our determination and of the time for seeking a judicial stay to Anchorage Telephone Utility, Bell Atlantic, BellSouth Corporation, GTE Corporation, SBC, Sprint, and U S West, Inc., and shall follow up by serving a copy of this Order on such parties.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

**CONSOLIDATED DISSENTING STATEMENT
OF COMMISSIONER HAROLD FURCHTGOTT-ROTH**

Re: Federal-State Joint Board on Universal Service, Twentieth Order on Reconsideration and Order in CC Docket No. 96-45.

As I have made quite clear, I do not support this Commission's approach to implementing section 254's universal service provisions. The line-count data that is the subject of the two orders released today will be incorporated into a universal service support mechanism that is inherently flawed. I therefore disagree with the Commission's requirement that carriers submit these line-count data, with the manner in which the Commission has decided to use this information, and with its decision to make these data public.