Before the
Federal Communications Commission
Washington, D.C. 20554

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

Adopted: July 9, 2002 **Released: July 10, 2002**

By the Federal-State Joint Board on Universal Service: Commissioners Abernathy, Thompson, and Dunleavy issuing separate statements; Commissioner Rowe concurring in part, dissenting in part, and issuing a statement; Commissioner Martin approving in part, concurring in part, and issuing a statement; and Commissioner Copps approving in part, dissenting in part, and issuing a statement.

I. INTRODUCTION

1. In this Recommended Decision, the Federal-State Joint Board on Universal Service ("Joint Board") provides the Commission its recommendations regarding whether any services should be added to or removed from the definition of services supported by universal service. The Joint Board recommends that the Commission retain the existing list of services supported by universal service. Generally, we conclude that no new service satisfies the statutory criteria contained in section 254(c) of the Communications Act of 1934, as amended ("Act"), and that the public interest would not be served by expanding the scope of universal service at this time.[1] We have been unable to reach agreement, however, on whether equal access satisfies the statutory criteria and should be recommended for inclusion. Accordingly, in this document, we provide for the Commission's consideration a description of the two positions on this issue. Similarly, we conclude that the existing services satisfy the statutory criteria and should remain in the definition of supported services. The Joint Board continues to believe that the definition of universal service must strike the appropriate balance between ensuring the availability of fundamental telecommunications services to all Americans and maintaining a federal universal service fund of sustainable size.

[1] 47 U.S.C. § 254(c).

II. BACKGROUND

2. Section 254 of the Act codified the Commission's historic commitment to advancing universal service by ensuring the affordability and availability of telecommunications services for all Americans. Specifically, section 254(c) directed the Joint Board to recommend and the Commission to establish a definition of the telecommunications services that will be supported by the Federal universal service support mechanisms.[2] Section 254(c) states that when choosing this list of telecommunications services, the Joint Board and Commission "shall consider" whether the service is (1) essential to education, public health, or public safety; (2) subscribed to by a substantial majority of residential consumers; (3) being deployed by telecommunications carriers in public telecommunications networks; and (4) consistent with the public interest, convenience and necessity.[3] The Commission and Joint Board have concluded that each of these criteria must be considered, "but not each necessarily met, before a service may be included within the general definition of universal service, should it be in the public interest."[4]

3. Section 254(b) also sets forth principles upon which the Joint Board and Commission shall base policies for the preservation and advancement of universal service. These principles include: 1) quality services should be available at just, reasonable, and affordable rates; 2) access to advanced telecommunications and information services should be provided in all regions of the Nation; and 3) consumers in all regions of the Nation should have access to telecommunications and information services that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.[5] In addition, the Commission adopted another principle not identified in section 254(b), competitive neutrality.[6] The Joint Board and Commission have stated that universal service policies should strike a fair and reasonable balance among the principles identified in section 254(b) and the additional principle of competitive neutrality.[7]

4. Section 254(e) states that only eligible telecommunications carriers ("ETCs") designated pursuant to section 214(e) shall be eligible to receive federal universal service support.[8] To be designated an ETC pursuant to section 214(e), a carrier must throughout its service area "offer the services that are supported by Federal universal service support mechanisms under section 254(c)."[9] Thus, providing the services included within the definition

[2] *See Id.*

[3] *Id*.

[4] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8809, para. 61 (1997) ("*First Report and Order*") (subsequent history omitted).

[5] *See* 47 U.S.C. § 254(b).

[6] *First Report and Order*, 12 FCC Rcd at 8801, paras. 46-48.

[7] *Id.* at 8803, para. 52.

[8] 47 U.S.C. § 254(e).

[9] 47 U.S.C. § 214(e).

of supported services is a prerequisite to being eligible for federal support. Moreover, section 254(e) states that ETCs shall use support "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." Pursuant to section 254(b), federal universal service funds are intended to support the services included within the "definition of the services that are supported by Federal universal service support."[10]

5. On May 8, 1997, the Commission adopted the Joint Board's recommendation to define "telecommunications services" in a functional sense, rather than limit the definition to tariffed services. The Commission generally adopted the Joint's Board's recommendations and defined the "core" services that will be supported by universal service as the following services or functionalities: single-party service; voice grade access to the public switched network; DTMF signaling or its functional equivalent; access to emergency services; access to operator services; access to interexchange services; access to directory assistance; and toll limitation services for qualifying low-income consumers.[11]

6. Section 254 also permits the Joint Board to recommend and Commission to alter or modify the list of supported services "from time to time."[12] On December 21, 2000, the Commission requested the Joint Board to "review the definition of the 'core' services supported by the Commission's high-cost and low-income universal service support mechanisms under section 254(c)(1) of the Act."[13] In response to the *Referral Order*, the Joint Board released a public notice seeking comment on the services, if any, that should be added to or removed from the list of core services.[14] The *Public Notice* specifically sought comment on whether advanced services, soft dial tone, intrastate or interstate toll, expanded area service, and prepaid calling plans should be added to the list of core services and whether the definition of voice grade access should be modified.

III. DISCUSSION

7. For the most part, we agree with the vast majority of comments received from interexchange carriers, local exchange carriers ("LECs"), wireless carriers, and state public utility commissions that the current list of supported services should not be expanded because no services proposed in this record sufficiently satisfy the statutory criteria contained in section 254(c). Generally, the Joint Board does not recommend that the Commission expand the existing definition of services that are supported by federal universal service at this time.[15]

[10] 47 U.S.C. § 254(b).

[11] *First Report and Order*, 12 FCC Rcd at 8809, para. 61.

[12] *See* 47 U.S.C. § 254(c).

[13] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 15 FCC Rcd 25257, 25258, para. 3 (2000) ("*Referral Order*").

[14] *Federal-State Joint Board on Universal Service Seeks Comment on Review of the Definition of Universal Service*, CC Docket No. 96-45, Public Notice, FCC 01-J-1, 66 FR 46461 (rel. Aug. 21, 2001) ("*Public Notice*").

[15] *See, e.g.,* AT&T Comments; BellSouth Comments; Cellular Telecommunications and Internet Association Comments; Florida PSC Comments; Maryland PSC Comments; Sprint Comments; USTA Comments. As discussed in paragraph 17 below, this recommendation is not intended to suggest either a contraction of currently allowable costs or a contraction of currently allowable uses.

However, we have been unable to reach agreement on whether equal access should be recommended for inclusion in the list of core service. We provide two positions on this issue for the Commission's consideration. We also believe the current list of core services continue to satisfy the section 254(c) criteria and do not recommend that the Commission remove any of them from the list. We support the Commission's conclusions in the *First Report and Order* that the current definition of universal service is necessary to ensure that all consumers have access to the fundamental telecommunications services that are necessary to utilize and enjoy the public telecommunications network.

8. As part of our consideration of the public interest criteria and the principle of competitive neutrality, the Joint Board considered the impact of adding a service to carriers' eligibility for ETC status when determining its recommendations. Changes to the definition of universal service affect the requirements for eligibility to receive support, because federal universal service support may only be provided to ETCs[16] that must, among other things, be able to offer all of the services included in the definition throughout its service area.[17] Requirements that do not unduly prevent new entities from achieving ETC status may serve the public interest and be competitively neutral because they may increase competition, which may lead to innovative new services and lower prices. Moreover, changes that eliminate all potential ETCs in a given area would undermine the goal of providing universal service to all areas. Accordingly, we conclude that it is appropriate to consider the impact of adding a service to carriers' eligibility for ETC status under the public interest criteria and the principle of competitive neutrality when determining whether to modify the existing definition of universal service.

A. Advanced or High-Speed Services

1. Background

9. In the Public Notice, the Joint Board sought comment on whether advanced or high-speed services should be included within the list of core services.[18] Although most comments refer to both of these services as "advanced services," for purposes of our recommendation, we will use the terms "advanced" and "high-speed" in the same manner as did the Commission in its section 706 inquiries.[19] The vast majority of commenters do not support the addition of "advanced services" to the definition of services supported by universal service.[20] A small

[16] *See* 47 U.S.C. § 254(e).

[17] *See* 47 U.S.C. § 214(e).

[18] *Public Notice* at 3.

[19] The Commission has used the term "advanced services" to describe services and facilities with an upstream (customer-to-provider) and downstream (provider-to-customer) transmission speed of more than 200 kbps. In addition, the Commission has used the term "high-speed" to describe services with over 200 kbps capability in at least one direction. *See Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, CC Docket No. 98-146, Report, FCC 02-33 (rel. Feb. 6, 2002) at paras. 8-12 ("*Third 706 Report*"). Advanced and high-speed services enable "users to originate and receive high-quality voice, data, graphics, and video telecommunications." *Third 706 Report* at para. 8.

[20] *See, e.g.,* Ad Hoc Comments at 5-13; AT&T Comments; AT&T Wireless Comments; BellSouth Comments at 6; Competitive Universal Service Coalition Comments at 9-13; State of Florida Comments at 1; Illinois Commerce

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number representing small or rural telephone companies, however, express support for including "advanced services" to ensure that such services are deployed in rural and high-cost areas.[21]

2. Discussion

10. Section 254(c)(1) states that '[u]niversal service is an evolving level of telecommunications services" and that the Commission shall "tak[e] into account advances in telecommunications and information technologies and services."[22] Moreover, the 1996 Act's legislative history shows that the Commission has "specific authority to alter the definition from time to time" in order to "take into account advances in telecommunications and information technology."[23]

11. Since the Act passed in 1996, there have been significant changes in the uses of the telecommunications network. The Internet has evolved rapidly and is now widely used in personal and business communications. Not only has Internet connectivity become commonplace, but broadband and other advanced services are becoming much more available. Nevertheless, based on our consideration of the record and the relevant statutory criteria, we conclude that advanced and high-speed services currently do not meet the Act's criteria for inclusion in the list of supported services. Therefore, the Joint Board does not recommend that the Commission expand the definition of supported services to include advanced or high-speed services at this time.

12. We recognize that high-speed or advanced services can be extremely beneficial to some consumers by enabling subscribers to rapidly access Internet resources that may be related to education, public health, or public safety. However, the issue for universal service is whether such access is "essential" to consumers generally and residential consumers particularly. Advanced or high-speed services do not appear to be "essential" for consumers to access such resources.[24] In fact, many such resources are readily accessible through alternative means, such as by voice telephone or dial-up connections to the Internet. We also observe that students and others have significant access to advanced telecommunications services at schools and libraries, in part due to federal universal service funding through the schools and libraries support mechanism.[25] After considering all of these factors, we decline to find that high-speed or

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Commission Comments at 4; Iowa Utilities Board Comments at 3-6; Maryland Public Service Commission Comments at 3; New York State Department of Public Service Comments at 4-5; Qwest Comments at 4; SBC Communications Comments at 8-11; Sprint Comments at 3-8; United States Cellular Corporation Comments at 2-7; Verizon Comments at 6-7; Verizon Wireless Comments at 4; Worldcom Comments at 2-3.

[21] *See, e.g.*, Montana Telecommunications Association Reply Comments at 2; NTCA Comments at 6; Valor Telecommunications Comments at 3.

[22] 47 USC § 254(c)(1).

[23] Joint Explanatory Statement at 131.

[24] *See, e.g.,* Ad Hoc Comments at 6; AT&T Wireless Comments at 2-3; New York State Department of Public Service Comments at 5; Worldcom Comments at 12.

advanced services at this time satisfy the criterion that supported services be essential to education, public health, or public safety at this time.

13. Moreover, advanced and high-speed services are not subscribed to by a substantial majority of residential consumers.[26] The Commission's *Third 706 Report* reveals that only seven percent of American households subscribed to advanced or high-speed services as of June 2001.[27] The Commission's data is consistent with data from the Department of Commerce, which shows that 10.8 percent of the population subscribe to high-speed or advanced services.[28] In addition, the Department of Commerce indicates that only 56.5 percent of all households have computers and could benefit from advanced or high-speed services.[29] Furthermore, only slightly more than half of all households (50.5 percent) subscribe to any form of Internet access.[30] Based on this information, we find that advanced or high-speed services fail to satisfy the "subscribed to by a substantial majority of residential consumers" criterion.

14. At this time, advanced and high-speed services are being deployed by many telecommunications carriers in their networks. According to Commission information, high-speed Internet access service is now available to approximately 75-80% of all the homes in the United States via DSL or cable modem service.[31] Thus, although such services are available, there is no evidence that they have been subscribed to by a substantial majority of residential consumers, as noted above.

15. In addition, the record suggests that adding advanced or high-speed services to the definition of supported services would be contrary to the public interest due to the high cost of requiring the deployment of such services.[32] Several commenters reference the National

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[25] By 2000, 77% of public schools used dedicated lines, including 56 kb, T1/DS1, fractionalized T1, T3/DS3 & fractionalized T3, to access the Internet. 24% used other continuous connections, such as ISDN, wireless and cable modems. *See* Office of Educational & Research Improvement, U.S. Department of Education, Pub. No. 2001-071, Internet Access in U.S. Public Schools and Classrooms: 1994-2000 (May 2001).

[26] *See, e.g.,* Ad Hoc Comments at 6-7; AT&T Comments at 2; AT&T Wireless Comments at 3-4; Florida Public Service Commission Comments at 1; New York State Department of Public Service Comments at 4; N.E. Colorado Cellular Reply Comments at 3; Qwest Comments at 3-4; Sprint Comments at 3; Verizon Wireless Comments at 4.

[27] *Third 706 Report* at para. 119.

[28] *See* U.S. Department of Commerce, Economics and Statistics Administration, National Telecommunications and Information Administration, *A Nation Online: How Americans are Expanding Their Use of the Internet* (Feb. 2002) at 39-40 ("*A Nation Online*").

[29] *Id.* at 5.

[30] *Id.*

[31] *See Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities, Internet Over Cable Declaratory Ruling, Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, GN Docket No. 00-185, CS Docket No. 02-52, Declaratory Ruling and Notice of Proposed Rulemaking, FCC 02-77 (rel. March 15, 2002) at para. 9 ("*Cable Declaratory Ruling*") and *Third 706 Report* at para. 28.

[32] *See, e.g.*, Competitive Universal Service Coalition Comments at 12; Iowa Utilities Board Comments at 4; United States Cellular Corporation Comments at 7; Verizon Comments at 6 ("Moreover, the cost of upgrading the telephone (continued....)

Exchange Carrier Association's (NECA) Rural Broadband Cost Study, which estimated that it would cost $10.9 billion to upgrade the rural study area lines in NECA's common line pool to DSL capability to meet an assumed demand of only 20 percent of the population.[33] As noted by the Iowa Utilities Board, this estimate did not include other expenditures necessary to provide high-speed services, such as digital subscriber line equipment, transport, or maintenance.[34] Qwest says it would cost approximately $2 billion to offer DSL throughout its service areas in four states - Colorado, South Dakota, Washington, and Wyoming.[35] If advanced or high-speed services were added to the list of supported services, it could dramatically increase the financial burden placed on carriers and, ultimately, consumers. Consequently, because market forces continue to encourage the deployment of advanced and high-speed services, we do not believe that it would be in the public interest to substantially increase the support burden by expanding the definition of universal service to include these services.

16. Moreover, inclusion of advanced or high-speed services in the list of supported services might violate the principle of competitive neutrality at this time.[36] The advanced and high-speed services market, along with the technology capable of providing and utilizing such services, is continuing to evolve and grow at a rapid pace. Several commenters express concern that if advanced or high-speed services were added to the list of core services, only a limited segment of the providers of such services would be eligible for support, as many (e.g., cable, satellite, wireless) do not provide the other core telecommunications services.[37] Consequently, because some advanced or high-speed service providers would be ineligible for universal service support, adding these services to the list of core services might skew market trends by creating financial incentives to deploy advanced or high-speed services over certain platforms. Therefore, were advanced or high-speed services supported at this time, we fear that we may discourage providers from participating in public-private partnerships or other market driven approaches that have proven effective thus far, as indicated in the Commission's *Third 706 Report*.[38]

17. Furthermore, adding advanced or high-speed services to the list could jeopardize support currently provided to some carriers. For example, some carriers, such as wireless carriers and some small wireline LECs, would no longer be eligible for universal service support because a significant number are not now capable of providing advanced or high-speed services

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network to provide advanced and high-speed access services would more than triple the size of the universal service fund."); Verizon Wireless Comments at 6; SBC Comments at 8; Worldcom Comments at 18-20.

[33] *See* National Exchange Carrier Association, NECA Rural Broadband Cost Study - Executive Summary (2000) at 2.

[34] Iowa Utilities Board Comments at 4.

[35] Qwest Comments at 2, n.7.

[36] *See, e.g.,* Ad Hoc Comments at 11-12; Illinois Commerce Commission Comments at 4; Sprint Comments at 4-6; United States Cellular Corporation Comments at 2-4.

[37] *See, e.g.,* Florida Public Service Commission Comments at 7; Worldcom Comments at 17-18.

[38] The Commission concluded in the *Third 706 Report* that advanced telecommunications capability is being deployed to all Americans in a reasonable and timely manner. *Third 706 Report* at para. 1.

or do not do so throughout their service areas.[39] This would reduce the number of providers eligible for universal service support and might reduce consumer choice in rural and high-cost areas. Accordingly, we believe that inclusion of advanced or high-speed services in the list of core services could stifle competition among various types of eligible telecommunications carriers and would not serve the public interest.

18. Although we do not believe advanced or high-speed services satisfy the statutory criteria necessary for inclusion in the definition of supported services at this time, the Joint Board shares the Commission's commitment to ensuring that appropriate policies are in place to encourage the successful deployment of advanced services. Indeed, section 254(b) of the Act provides that the Joint Board and the Commission shall base policies for the preservation and advancement of universal service on several principles, including the ability to access advanced telecommunications and information services in all regions of the nation.[40] Accordingly, we fully support the Commission's conclusion that "our universal service policies should not inadvertently create barriers to the provision or access to advanced services, and believe that our current universal service system does not create such barriers."[41] Thus, even though advanced services are not directly supported by federal universal service, "[Commission] policies do not impede the deployment of modern plant capable of providing access to advanced services."[42] We believe that the Commission's policy of not impeding the deployment of plant capable of providing access to advanced or high-speed services is more appropriate than directly supporting such services at this time. As a result, we agree that it is appropriate to make clear that the facilities installed by carriers should not create barriers to the future deployment of advanced services, and that the actual deployment of advanced services should be monitored, along with possible universal service implications.[43] Currently, however, we do not recommend that the Commission add advanced or high-speed services to the list of core services.

19. Finally, we observe that the Commission is currently seeking comment regarding the appropriate classification for wireline broadband Internet access services.[44] In the *Wireline*

[39] *See, e.g.,*AT&T Wireless Comments at 5; Competitive Universal Service Coalition Comments at 3.

[40] *See* 47 U.S.C. § 254(b).

[41] *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket Nos. 96-45, 00-256, Fourteenth Report and Order, Twenty Second Order on Reconsideration, 16 FCC Rcd 11244, 11322, para. 199 (2001) ("*Fourteenth Report and Order*").

[42] *Id*. at 11323, para. 200.

[43] Although this proceeding is primarily focused on the definition of supported services, the Joint Board recognizes that a common network is built and used to provide a variety of services. The Joint Board believes that the network supported by universal service funding is an evolving platform which must be built in an integrated fashion so as not to impede the provision of new or advanced services.

[44] *See Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Universal Service Obligations of Broadband Providers, Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, CC Docket Nos. 02-33, 95-20, 98-10, Notice of Proposed Rulemaking, FCC 02-42 (rel. Feb. 15, 2002) ("*Wireline Broadband Notice*").

Broadband Notice, the Commission tentatively concluded that wireline broadband Internet access service is an "information service" and that the transmission component of that service is "telecommunications."[45] Should the Commission reach such a final conclusion, broadband Internet access services could not be included within the definition of supported services, because section 254(c) limits the definition of supported services to telecommunications services.[46]

B. Modifying Voice Grade Access Bandwidth

1. Background

20. The Commission's rules define voice grade access as "a functionality that enables a user of telecommunications services to transmit voice communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal indicating there is an incoming call."[47] The Commission originally adopted a voice grade frequency bandwidth of 500 to 4,000 Hertz, but later reduced it to 300 to 3,000 Hertz, because the latter definition was more consistent with industry practices and guidelines.[48] Although the definition does not reference the transmission of data, the Joint Board and Commission noted in the *First Report and Order* that voice grade access to the public network usually enables customers to secure access to an Internet Service Provider ("ISP"), and thus, to the Internet.[49] The Commission declined to support "a network transmission component of Internet access beyond voice grade access," however, after it concluded that access to Internet services is not essential to education, public health or public safety and that the record failed to demonstrate that a substantial number of residential consumers subscribe to Internet access services above dial up links.[50] In 1999, the Commission's Common Carrier Bureau sought comment on requests by the Rural Utilities Service and three state commissions to revise the bandwidth requirement to 200 to 3,500 Hz, based on concerns that the current definition does not ensure that subscribers using 28.8 kbps modems for Internet access in rural areas can achieve data transmission speeds reasonably comparable to those achieved by subscribers using the same modems in non-rural areas.[51] The *Referral Order* instructed the Joint Board to consider the comments filed in response to the *Common Carrier Voice Grade Public Notice* when issuing its recommendation in this proceeding. The *Public Notice* specifically invited commenters to

[45] *Id.* at para. 17.

[46] *But see Fourteenth Report and Order*, 16 FCC Rcd at 11322, para. 200.

[47] 47 C.F.R. § 54.101(a)(1).

[48] *Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge, Fourth Order on Reconsideration*, CC Docket No. 96-45, Report and Order, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 5318 (1997) ("*Fourth Order on Recon*").

[49] *First Report and Order*, 12 FCC Rcd at 8822, para. 83.

[50] *Id.* at 12 FCC Rcd at 8811-12, 8823, paras. 64 and 83.

[51] *Common Carrier Bureau Seeks Comment on Requests to Redefine "Voice Grade Access" for Purposes of Federal Universal Service Support*, CC Docket No. 96-45, Public Notice, DA 99-2985 (rel. December 22, 1999) ("*Common Carrier Voice Grade Public Notice*").

update the record on the definition of voice grade access, including whether support for a network transmission component of Internet access beyond the existing definition of voice grade access is warranted at this time.[52]

21. While most commenters oppose any change, several representing small rural LECs suggest that the definition of voice grade access bandwidth be expanded to 300 to 3,500 Hertz.[53] These commenters raise concerns that the existing definition is insufficient to enable consumers in rural areas to experience dial-up modem speeds of 28.8 kbps. They assert that changes to the definition are necessary to ensure the comparability of dial-up speeds in rural and urban areas.

2. Discussion

22. The Joint Board recommends that the Commission retain the existing definition of voice grade access. Although we believe the commenters who have proposed to expand the bandwidth to 300 to 3,500 Hertz intend to improve dial-up modem speeds in rural areas, it is not certain that commenters' proposed modification will accomplish this goal. Moreover, we agree with commenters that argue the proposed modification does not satisfy the statutory criteria contained in section 254(c).[54]

23. We conclude that expanding the bandwidth of voice grade access to 300 to 3,500 Hertz to improve dial-up speeds would not serve the public interest. We do not believe universal service policies should require carriers to invest additional funds in mature narrowband technologies. The record indicates that upgrading networks to comply with the expanded bandwidth requirement would significantly increase the size of the universal service fund, which would increase the cost of the core services to all consumers.[55] According to comments in the record, however, even if carriers complied with the expanded bandwidth requirement, consumers would not necessarily experience improved dial-up connection speeds, because modem speeds are also dependent on other factors that are outside of carriers' control, such as signal to noise ratio, CPE, location of the ISP, and inside wiring.[56] Consequently, the purported benefits of expanding the bandwidth of voice grade access may be illusory. Moreover, these upgrades might degrade voice quality over long loops and divert carrier funds from investments in

[52] *Public Notice* at 3.

[53] *See* Montana Universal Service Task Force Comments at 19; Montana Telecommunications Association Reply Comments at 2; RUS Reply Comments at 5.

[54] *See, e.g.,* BellSouth Comments at 5-6; Florida PSC Comments at 8-9; SBC Comments at 6-8; Verizon Comments at 5-6.

[55] *See, e.g.,* AT&T Comments to *Common Carrier Voice Grade Public Notice* at 9 (estimating that the cost of replacing line cards and line units serving over 170 million lines could exceed $10 billion); USTA Comments to *Common Carrier Voice Grade Public Notice* at 5 (changes would be "extremely costly"); NECA Comments to *Common Carrier Voice Grade Public Notice* at 3 (costs are likely to be substantial, cost of load coil removal alone estimated to be as high as $1,400 per loop).

[56] See, e.g., AT&T Comments to *Common Carrier Voice Grade Public Notice* at 10-11; GTE Comments to *Common Carrier Voice Grade Public Notice* at 8-13; Nortel Comments to *Common Carrier Voice Grade Public Notice* at 4; USTA Comments to *Common Carrier Voice Grade Public Notice* at 6-10; BellSouth Comments at 5-6; Florida PSC Comments at 8-9; SBC Comments at 6-8.

advanced services. Therefore, we conclude that the public interest would not be served by increasing substantially the cost of universal service to all consumers merely to gain the potential to increase incrementally dial-up modem speeds.

24. Furthermore, the record is unclear on whether telecommunications carriers have deployed loops that meet the proposed 300 to 3,500 Hertz bandwidth. Previously, the Commission adopted a bandwidth of 300 to 3,000 Hertz because it was consistent with then-current industry practices and guidelines.[57] Commenters in this proceeding have not provided information indicating that these standards have changed or statistics on deployed plant that would demonstrate that wireline loops are generally capable of providing 300 to 3,500 Hertz of bandwidth today.[58] Because the record does not demonstrate that wireline carriers currently meet the expanded bandwidth throughout their service areas, we are concerned that a modification to the bandwidth of voice grade access could render many existing wireline ETCs ineligible for federal support. The record also indicates that most wireless technologies are unable to provide 300 to 3,500 Hertz of bandwidth.[59] Therefore, modification of the definition would preclude most wireless carriers from being designated ETCs, even though they may be able to provide acceptable voice service. We conclude that neither of these outcomes would serve the public interest.

25. In addition to questions surrounding the efficacy of the proposal and its impacts, the Joint Board concludes that the modification was proposed solely to increase modem speeds to access the Internet and that this functionality fails to satisfy two additional statutory criteria. Although consumers are increasingly utilizing the Internet to access information, a network transmission component of Internet access, whether it is 14.4, 28.8, 56, or some other speed, is not "essential to education, public health, or public safety" at this time, because no community or public services agencies are available exclusively over the web.[60] Neither is the network transmission component of Internet access "subscribed to" by a substantial majority of residential consumers.[61] Even if consumers that subscribe to Internet access are deemed "subscribers" to the network transmission component of Internet access, this proposal would fail to satisfy this criterion because only 50.5 percent of US households use computers to access the

[57] *Fourth Order on Recon*, 13 FCC Rcd at 5329, para. 16.

[58] RUS noted that 3Com's website indicates that a vast majority of phone lines in North America can support 56k. RUS Comments to *Common Carrier Voice Grade Public Notice* at 7. However, Montana Universal Service Task Force stated that at least some carriers cannot provide the expanded bandwidth throughout their entire service areas. Montana Universal Service Task Force Reply Comments at 12. A recent study of twenty-five regions in Michigan conducted by the Michigan Economic Development Corporation supports Montana Universal Service Task Force's assertions. That study found that six of the twenty-five regions tested experience dial-up speeds between 20-28 kbps. *See* Michigan's Dial-up Speeds: How Slow Can You Go? (rel. Feb. 13, 2002) <http://medc.michigan.org/news/combo.asp?ContentId=3AB56B3F-4BE7-47BF-92B4-CE1E44B36FCD&QueueId=1&ContentTypeId=7>.

[59] *See* US Cellular Corporation Comments at 2-3.

[60] *See* 47 U.S.C. § 254(c)(1)(A).

[61] *See* 47 U.S.C. § 254(c)(1)(B).

Internet.[62]

26. Although we do not recommend that the Commission modify the current definition of voice grade access at this time, we recognize that Internet access is becoming increasingly important to consumers' daily lives. Accordingly, we will continue to monitor the development and usage of the network transmission component of Internet access. If usage of this service continues to grow, the Commission might, in the future, wish to seek comment on the need for and associated costs of including a specific data speed for the network transmission component of Internet access to the definition of supported services. However, we find that the circumstances at this time do not warrant a recommendation that the Commission alter the definition of voice grade access.

C. Soft Dial Tone or Warm Line Services

1. Background.

27. Soft dial tone or warm line services enable an otherwise disconnected line to be used to contact emergency services (911) and the local exchange carrier's central business office. In the *Public Notice*, the Joint Board sought comment on whether soft dial tone or warm line services should be included in the list of core services.[63] Specifically, we invited comment on the extent to which these services are essential to the public health or safety, and how such connections to eligible telecommunications carriers could be provided consistent with the principles of competitive neutrality.[64] Although several commenters support the addition of soft dial tone or warm line services to the list of core services,[65] a majority of commenters object to adding such services to the definition of supported services.[66]

2. Discussion

28. The Joint Board does not recommend that the Commission expand the definition of supported services to include soft dial tone or warm line services at this time. Rather, we conclude that the establishment of soft dial tone or warm line programs would be better resolved by individual states. In fact, the record shows that several states, including California, Vermont, and New York, have already implemented successful soft dial tone or warm line programs.[67] We accordingly agree with commenters who suggest that individual states may be in the best position to determine whether soft dial tone or warm line is necessary and to establish attendant

[62] *A Nation Online* at 5.

[63] *Public Notice* at 3.

[64] *Id.*

[65] *See, e.g.,* California Public Utilities Commission Comments at 3-5; Iowa Utilities Board Comments at 7; United States Conference of Catholic Bishops, *et al*. Comments at 5-8.

[66] S*ee, e.g.*, AT&T Wireless Comments at 4-5; BellSouth Comments at 7; New York State Department of Public Service Comments at 6; Sprint Comments at 9.

[67] *See* Ad Hoc Comments at 14-15; California Public Utilities Commission Comments; New York State Department of Public Service Comments at 6.

programs.[68] Moreover, because states have closer ties to local public safety agencies and local carriers, we believe states may be better suited to develop operational standards for soft dial tone/warm line service and define incumbent and competitive carriers' and 911 agencies' respective responsibilities. Several commenters assert that, absent such operational standards, the addition of soft dial tone or warm line services to the list of core services would likely result in confusion among carriers, 911 agencies, and public safety answering points.[69] We conclude that it would not serve the public interest for the Commission to develop a national soft dial tone/warm line operational standard at this time, because such action could conflict with existing state programs and would eliminate state flexibility to establish programs that meet local needs. In addition, we find that the development of a single operational standard is outside the scope of this proceeding. Although we do not recommend inclusion in the list of supported services, we fully encourage states to continue to experiment with various soft dial tone and warm line programs and implementation alternatives.

29. We also find the record unclear regarding the impact that the addition of soft dial tone and warm line services would have on the size of the universal service fund. Because we believe it is important for us to weigh carefully the costs of such services, we conclude that the addition of soft dial tone or warm line services would be contrary to the public interest at this time.[70] In comments to the Joint Board, several commenters assert that the cost of providing soft dial tone or warm line services would be minimal.[71] For example, the California Public Utilities Commission indicates that the state of California was able to implement a soft dial tone program with little or no cost.[72] Alternatively, some commenters claim that implementing soft dial tone on a national basis would have a large impact on the universal service fund.[73] Specifically, Verizon states that the addition of soft dial tone services to the list of core services "[w]ould reduce the overall utilization of outside plant loop facilities and switch line ports…[which] would have to be taken into account in the cost inputs and assumptions for the Commission's universal service proxy cost model, resulting in higher per-line support costs."[74] BellSouth also details a variety of administrative costs that would result from the addition of soft dial tone or warm line services such as "systems modification, billing modification, dedication of scarce numbering resources, and the development of new intercarrier and customer maintenance

[68] *See, e.g.,* AT&T Wireless Comments at 5; BellSouth Comments at 7; New York State Department of Public Service Comments at 6; WorldCom Reply Comments at 4.

[69] *See* Texas 9-1-1 Agencies and National Emergency Number Association Comments at 3 ("…in states where there is not an adopted state or local law or state PUC requirement related to the provision of soft dial tone/warm line service, the provision of this service on a case-by-case basis by carriers without consistency or agreement on the 9-1-1 operational standards processes can potentially create confusion."); SBC Comments at 11-14.

[70] *See* 47 U.S.C. § 254(c)(1)(D).

[71] *See, e.g.,* Ad Hoc Comments at 14; California Public Utilities Commission Comments at 3-5; United States Conference of Catholic Bishops *et al*. Comments at 10-13.

[72] California Public Utilities Commission Comments at 4.

[73] *See, e.g.,* New York State Department of Public Service Comments at 6; BellSouth Reply Comments at 2-3; SBC Comments at 12-14; WorldCom Reply Comments at 4.

[74] Verizon Reply Comments at 5.

methods and procedures."[75] Other commenters, however, agree that the costs of implementation are unclear and urge the Commission to first initiate a study to determine the costs of providing soft dial tone or warm line services and before determining whether carriers should be required to provide such services.[76]

30. Moreover, we are concerned that the implementation of soft dial tone or warm line services raises many unanswered administrative questions that may impact the cost of providing soft dial tone or warm line services. In particular, we believe it is important to consider whether soft dial tone or warm line services would include call-back capability.[77] Call-back capability would enable emergency operators to return calls made from an otherwise disconnected line. Although this feature would arguably have additional public safety benefits, it would require maintaining the pre-existing assigned phone numbers for the disconnected lines, which would possibly strain scarce numbering resources.[78] Other commenters express concerns regarding the length of time that the service would be offered on a line[79] and the interaction between soft dial tone and number portability.[80] Indeed, depending on how these issues are resolved, the overall cost of soft dial tone or warm line services could vary significantly. Accordingly, because the ultimate cost of soft dial or warm line services to the fund is unknown at this time, we conclude that it would not presently be in the public interest to add these services to the list of core services.

31. Additionally, we conclude that the expansion of the definition of supported services to include soft dial tone or warm line services might be inconsistent with the principle of competitive neutrality.[81] Soft dial tone and warm line services are generally considered to be wireline services offered out of the local exchange carrier's central office. The record indicates that, currently, wireless providers are not capable of providing a continuous connection to public safety answering points for all unactivated handsets.[82] Moreover, the Commission recently concluded that it is technically infeasible at this time for wireless carriers to develop and implement technical solutions that would provide public safety agencies with a call-back number

[75] BellSouth Reply Comments at 2.

[76] *See, e.g.,* Ad Hoc Comments at 14; General Services Administration Comments at 11.

[77] *See, e.g.,* Texas 9-1-1 Agencies Comments at 3-4.

[78] *See, e.g.*, SBC Communications Comments at 12.

[79] *See, e.g.*, New York State Department of Public Service Comments at 6.

[80] *See, e.g.,* Verizon Reply Comments at 5 ("It would also complicate the administration of local number portability, because numbers that had been ported to another carrier would no longer be returned when a line was disconnected."); SBC Communications Comments at 12-13.

[81] *See, e.g.,* CTIA Comments at 6; Competitive Universal Service Coalition Comments at 7 ("It also may be a good idea to require wireline ILECs to provide "soft dial tone" or "warm line" features, but these are patently inappropriate for carriers using other technologies, and should not be included in the minimum list of functionalities that all ETCs must provide."); SBC Reply Comments at 2-3; Verizon Comments at 7-8.

[82] *See* United States Cellular Corporation Comments at 7.

for calls from non-initialized phones.[83] Consequently, by adding soft dial tone or warm line services to the list of core services, wireless carriers would no longer be able to qualify as ETCs. We therefore find that the inclusion of such services in the definition of supported services would have a negative impact on competition.

32. Finally, we are concerned that soft dial tone or warm line services may not be telecommunications services subscribed to by residential consumers.[84] Several commenters assert that because individuals do not request soft dial tone or warm line service from a carrier, do not have any established contractual relationship with a carrier, and do not pay fees to a carrier, individuals who receive these services may not "subscribe" to them. However, it is unnecessary for us to resolve this question at this time, because, even if soft dial tone or warm line services were subscribed to by a substantial majority of residential consumers, we do not recommend that the Commission include these services within the definition of supported services for the reasons discussed above.

D. Toll or Expanded Area Service

1. Background

33. In the *Twelfth Report and Order*, the Commission adopted measures to promote subscribership and infrastructure deployment in tribal communities.[85] Concerned with the cost of intrastate toll charges for low-income consumers in tribal lands, the Commission also asked the Joint Board to make a recommendation as to whether intrastate or interstate toll services or expanded area service should be included within the list of supported services.[86] In the *Public Notice*, we explicitly sought comment on whether intrastate or interstate toll or expanded area services ("EAS") should be supported.[87]

34. Only two commenters suggest that support should be provided for EAS or intrastate toll for low-income consumers.[88] The state of Alaska argues that some amount of intrastate toll should be supported for low-income consumers in areas with no more than 500 to 1000 access lines to enable them to access critical community services that may not be located within the local calling area. Similarly, US Conference of Catholic Bishops ("USCCB") asserts that EAS would allow low-income rural and tribal customers to access critical services located in a

[83] *See Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, WT Docket No. 94-102, *Non-Initialized Phones*, RM 81-43, Report and Order, FCC 02-120 (rel. April 29, 2002).

[84] *See* 47 U.S.C. 254(c)(1)(B). *See, e.g.,* Verizon Comments at 7; BellSouth Comments at 7; New York State Department of Public Service Comments at 6, n.13.

[85] *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Notice of Proposed Rulemaking, 15 FCC Rcd 12208 (2000) ("Twelfth Report and Order").

[86] *Id.* at 12238.

[87] *Public Notice* at 3-4.

[88] *See* State of Alaska Comments at 27-41; USCCB Comments at 13-20.

community of interest outside of the local calling area. Several other commenters, however, argue that EAS and intrastate toll should not be included within the definition because they do not satisfy the statutory criteria.[89]

2. Discussion

35. The Joint Board does not recommend that EAS or toll services be added to the list of supported services at this time. Although we believe that some consumers may have limited ability to access critical services at affordable and comparable rates and without incurring toll charges, the record is insufficient to explain the actual extent of the problem, the cost of remedy, or what critical services, if any, should be supported. Moreover, the record has not provided definitions of EAS and local calling area that would take into account the varied ways in which states have implemented EAS. Accordingly, we cannot recommend at this time that the Commission expand the definition of supported services to include toll or EAS and require all ETCs to provide these services.

36. The United States Court of Appeals for the Tenth Circuit, among other things, concluded the Commission failed to adequately define the statutory terms "reasonably comparable" and "sufficient" in the *Ninth Report and Order*[90] and remanded these issues to the Commission for further consideration.[91] The Commission, in turn, released a Notice of Proposed Rulemaking and concurrently referred these issues to the Joint Board.[92] We believe that EAS and toll services may be related to the issues referred to the Joint Board. EAS and toll service support are means of expanding a customer's effective local calling area and ability to access basic essential health, safety, and educational resources. To the extent that EAS and toll services are related to the definitions of "reasonably comparable" and "sufficient," the Joint Board may consider them in the context of our recommendation in response to the *Ninth Report and Order* remand referral.

E. Prepaid Calling Plans

1. Background

37. In the *Twelfth Report and Order*, the Commission asked the Joint Board to consider the advisability of including prepaid calling plans within the definition of supported services. Specifically, the Commission asked the Joint Board to examine whether support for such plans may give carriers sufficient financial resources to extend service to low-income individuals whose service has been disconnected.[93] In the *Public Notice*, we explicitly sought comment on

[89] *See, e.g.,* AT&T Wireless Comments at 4; California PUC Comments at 5-6; Cellular Telecommunications and Internet Association Comments at 5.

[90] *Federal State Joint Board on Universal Service*, CC Docket No. 96-45, Ninth Report & Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432 (1999).

[91] *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001).

[92] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Notice of Proposed Rulemaking and Order, FCC 02-41 (rel. Feb. 15, 2002).

[93] *Twelfth Report and Order* at 12238, n. 153.

whether prepaid calling plans should be added to the list of core services.[94]

2. Discussion

38. The Joint Board does not recommend that the Commission include prepaid services within the definition of supported services. No commenters to this proceeding discussed the merits of adding prepaid services generally to the definition of supported services. Thus, we conclude that we have insufficient evidence to determine whether it is necessary as a legal matter or desirable as policy matter to add prepaid services to the definition of supported services.

39. While comments did not address prepaid services generally, USCCB suggests that support equal to Lifeline amounts be provided for prepaid wireless service to qualifying low-income consumers who lack access to residential wireline service, *e.g.,* people who lack permanent residences, or, in the alternative, that support be provided for metered local usage plus voicemail.[95] As a threshold matter, we note that voicemail services are ineligible for federal universal service support because they are information services, not telecommunications services.[96] Thus, the Commission may not include prepaid local usage plus voicemail in the list of core services. In addition, we conclude that the USCCB prepaid wireless proposal fails to satisfy the principle of competitive neutrality.[97] Any requirement that an ETC provide a wireless service would render carriers that utilize wireline technologies ineligible for federal support. This would drastically reduce the number of entities able to provide all of the core services in high-cost areas and could leave many communities without an ETC and basic service. We conclude that this result would be inconsistent with the goal of promoting the universal availability of the core services and would not serve the public interest. Therefore, we do not recommend that the Commission adopt USCCB's specific prepaid wireless proposal.

F. Other Services

40. Several commenters proposed expanding the list of core services to include services not explicitly raised in the *Public Notice*. As discussed above, we recommend that the Commission reject these proposals and not add any services to the definition of supported services at this time. We discuss the proposals raised in the comments below.

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[94] *Public Notice* at 4.

[95] USCCB Comments at 20-39.

[96] Voicemail and voice messaging services have been classified as enhanced or information services. *See Bell Operating Companies Joint Petition for Waiver of Computer II Rules*, Order, 10 FCC Rcd 13,758, 13,770-74 (1995); *Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with* Disabilities, WT Docket No. 96-198, Report and Order and Further Notice of Inquiry, 16 FCC Rcd 6417, 6452 (1999).

[97] *See, e.g.,* AT&T Reply Comments at 12-13; BellSouth Reply Comments at 4; Worldcom Reply Comments at 4. We note that USCCB specifically proposed to include prepaid *wireless* services in the definition of supported services. We acknowledge, however, that many carriers currently offer prepaid wireline services that may be of benefit to low-income people who lack access to residential wireline service.

1. Unlimited Local Usage

a. Background

41. In the *First Report and Order*, the Commission agreed with the Joint Board that ETCs should provide some minimum amount of local usage as part of the "basic service" package of supported services.[98] The Commission stated that, absent a requirement to provide some specified amount of local usage, a carrier might be able to receive universal service support, which is designed to promote affordable use of the network, without in turn reducing its per-minute rates. The Commission also agreed with the Joint Board that the Commission should determine the level of local usage to be supported by federal universal service mechanisms.[99] The Commission stated in the *First Report and Order* that it would subsequently quantify the amount of local usage that carriers receiving universal service support will be required to provide. In subsequent notices of proposed rulemakings, the Commission sought comment on whether some minimum amount of local usage should be included in basic service packages, and if so, how to determine that minimum amount.[100] Although the Commission's rules define "local usage" as "an amount of minutes of use of exchange service, prescribed by the Commission, provided free of charge to end users," the Commission has not specified a number of minutes of use.[101]

42. Several commenters representing small rural LECs suggest that local usage be defined as unlimited local calling for a flat fee.[102] In general, they argue that this definition more properly matches consumer expectations for local service and that many consumers currently receive unlimited local usage. The Nebraska Rural Independent Companies (NRIC) suggested that competitive neutrality and equivalence of service offered by carriers eligible for support is an important dimension that the Joint Board should not overlook. NRIC asserted that because they are required by Nebraska law to offer unlimited flat rated local service, other carriers should have to meet the same standards in order to be competitively neutral.[103] Wireless carriers expressly oppose this requirement, arguing that it would not be technologically neutral and would unnecessarily limit consumer choice.[104] They suggest that the market place has already addressed this issue by providing various calling plans that include substantial amounts of local

[98] *First Report and Order*, 12 FCC Rcd at 8813, para. 67.

[99] *First Report and Order*, 12 FCC Rcd at 8812, para. 65. The Commission also agreed with the Joint Board that the states should determine the local usage component for purposes of state universal service mechanisms. *Id.*

[100] *See Federal-State Joint Board on Universal Service; Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, CC Dockets No. 96-45 and 97-160, Further Notice of Proposed Rulemaking, 12 FCC Rcd 18514 (1997) and *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 21252 (1998) ("*Local Usage Further Notice*").

[101] *See* 47 C.F.R. §54.101(a)(2).

[102] *See* Montana Universal Service Task Force Comments at 19; Nebraska Rural Independent Companies Comments at 5-7; Montana Telecommunications Association Reply Comments at 2.

[103] *See* Nebraska Rural Independent Companies Comments at 6.

[104] *See, e.g.,* Competitive Universal Service Coalition Comments at 14-17 and Reply Comments at 10-13, Cellular Telecommunications and Internet Associations Comments at 6.

and long distance usage. Moreover, consumers' choices will identify which calling plans, technologies, and networks best meet their needs.[105]

b. Discussion

43. The Joint Board does not recommend that unlimited local usage be added to the list of core services. Commenters indicate and we acknowledge that unlimited local usage is widely subscribed to by many residential customers.[106] Some states, however, may require or encourage local metered pricing for local service because it may, for example, encourage subscribership among low-income or low-volume customers.[107] If we were to impose a federal unlimited local usage requirement, we could, in effect, force carriers to forego ETC status in order to meet the state requirement of offering metered pricing. Given that states are in a better position to determine whether limited local usage offerings are beneficial in certain circumstances, we find mandating unlimited local usage as a requirement for ETC status would not be in the public interest. Moreover, we conclude that market forces appear to have addressed this issue as evidenced by the numerous calling plans with large or unlimited amounts of local calling offered by carriers. We find the public interest would best be served by allowing states to make the threshold determination on the appropriateness of requiring local metered service options as well as monitoring the impact of new and varied calling plan packages that continue to emerge in the marketplace.

44. We also find that unlimited local usage is not essential to education, public health, or public safety. While some minimum amount of local usage may be "essential," consumers need not have the ability to make an unlimited number of calls for purposes of education, public health, or public safety. Some degree of "free of charge" usage for "Universal Service" is already required by Commission rules and further expansion to mandate unlimited calling is not necessary.[108] Therefore, we do not recommend that unlimited local usage be added to the list of core services at this time.

45. In addition, some commenters suggest that requiring unlimited local usage may be inconsistent with the principle of competitive neutrality by undercutting competition and reducing consumer choice.[109] In the *First Report and Order*, the Commission noted that requiring a level of flat-rated local usage in order to be eligible to receive universal support might affect carriers differently.[110] The Commission concluded, "[i]n general, establishing a

[105] *See, e.g.,* Competitive Universal Service Coalition Comments at 16 and Reply Comments at 12-13.

[106] *See* Montana Universal Service Task Force Comments at 19; Nebraska Rural Independent Companies Comments at 5-6; Competitive Universal Service Coalition Reply Comments at 12.

[107] Many states require or permit carriers to offer local metered service options. *See Reference Book of Rates, Price Indices, and Household Expenditures for Telephone Service,* Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, July 2002. *See also, e.g.,* Vermont PSB Tariff No. 1, § 4.13 at p. 21 (effective July 7, 1998); Verizon New York, PSC NY No. 2 – Communications, Section C.

[108] *See* 47 C.F.R. § 54.101(a)(2).

[109] *See* Competitive Universal Service Coalition Reply Comments at 10-12.

[110] *First Report and Order* at 8814, para. 69. *See also* Competitive Universal Service Coalition Comments at 10-11; CTIA Comments at 6.

very high level of local usage would give a competitive advantage to wireline carriers, and establishing a very low level of local usage would give a competitive advantage to mobile wireless carriers."[111] The record in this proceeding has not provided any information regarding the cost structures of wireline and wireless technologies to respond to the Commission's concerns that a high or unlimited amount of local usage would advantage wireline carriers. Moreover, although some wireless carriers may offer unlimited local usage packages, this does not appear to be the case for most wireless carriers.

2. Payphone Lines

a. Background

46. Community Voicemail and American Public Communications Council ("APCC") suggest that the Commission provide support for payphones, because they provide access to the network for all segments of society, especially people who do not have residential voice grade access.[112] These commenters further assert that support is necessary because payphones are being removed from public places due to decreasing call volumes and profitability associated with increasing wireless usage. APCC proposed a support mechanism for payphones whereby carriers would receive support in an amount equal to the federal subscriber line charge for all payphone lines. Payphones lines located in high-cost areas would receive additional monthly support in the amount of $5 per line. APCC estimated that its proposal would cost an additional $169 million per year.[113]

b. Discussion

47. Although we agree that payphones play an important role in the public communications network, and, as discussed below, we believe the issue of payphone deployment warrants further study, the Joint Board does not recommend including payphone lines in the definition of supported services at this time. As an initial matter, payphones have not "been subscribed to by a substantial majority of residential customers."[114] Although virtually every American has used a payphone from time to time, we are not sure that payphones are the kind of service intended to be supported by any of the existing federal universal service mechanisms.[115] Moreover, while payphones arguably are "essential to education, public health, or public safety,"[116] and "are being deployed in public telecommunications networks by

[111] *Local Usage Further Notice*, 13 FCC Rcd at 21278-79, paras. 47-49.

[112] Community Voicemail did not provide a detailed proposal. American Public Communications Council, however, suggested that support in the amount of the end user common line charge be provided to carriers for every payphone line. Moreover, carriers in high-cost areas should receive an additional $5 per payphone line. APCC Reply Comments attachment at 12-13.

[113] APCC Reply Comments attachment at 12-14.

[114] 47 U.S.C. § 254(c)(1)(B).

[115] We note that payphone lines provided by ETCs in high cost areas are currently eligible for per line support, on the same basis as all other lines. We understand the APCC proposal to call for creation of new mechanism to support payphone lines, regardless of their location and regardless of their provider.

[116] 47 U.S.C. § 254(c)(1)(A).

telecommunications carriers,"[117] we do not believe that the public interest supports the proposal by APCC.

48. Pursuant to section 276 and to facilitate the growth of competition in the payphone market, the Commission established a per-call compensation plan to ensure that all payphone service providers are fairly compensated for each completed call using their payphones.[118] Therefore, any amount of universal service support arguably would represent a windfall to payphone service providers.[119] While certain payphones may be becoming less profitable, there is no evidence in the record that federal support in the amount of the end user common line charge plus an additional $5 for payphone lines in high cost areas is needed for all payphone lines or would be necessary to ensure the continued viability of particular payphones. We are also concerned that including payphones in the list of core services could reduce the number of potential competitive providers of those core services, because competitive local exchange carriers and CMRS carriers that do not offer payphone service throughout their service areas could not be designated ETCs if payphone service were added to the list of supported services.[120]

49. Even though we do not recommend that the Commission adopt APCC's proposal at this time, we acknowledge that there has been a decline in the overall number of payphones in the United States and that this decline may have had a detrimental impact on access to essential phone services. In 1999, the Commission found that the then-current number of payphones — 2.15 million — was "consistent with Congress's goal of widespread deployment of payphones."[121] Since that time, the number of payphones has declined substantially. As of March 31, 2001, the Commission reports that there were only 1,919,640 payphones deployed.[122] It appears that the decline in payphones will continue.[123] We are concerned that this decline in the availability of payphones might reduce access to emergency services, especially in remote areas, and might adversely impact the ability of low-income citizens to have continued access to phone service.

50. We agree with Community Voicemail and APCC's assertions that payphones play a

[117] 47 U.S.C. § 254(c)(1)(C).

[118] *See Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation*, CC Docket Nos. 96-128, 91-35, Report and Order, 11 FCC Rcd 20541 (1996) (*Payphone Report and Order*).

[119] Although the ETC providing the payphone line would receive the support, APCC's proposal assumes the amount of support will be passed through to payphone service providers.

[120] We are aware that payphone manufacturers are now capable of providing payphones that can support wireless "last mile" facilities. The impact of these new capabilities on the ability of all eligible telecommunications carriers to deploy payphones within their designated service territory should be scrutinized in the notice of inquiry we recommend below.

[121] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Third Report and Order, 14 FCC Rcd 2545, 2609, para. 141 (1999).

[122] FCC Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service*, Table 8.5 (May 2002).

[123] APCC Reply Comments attachment at 11.

vital role in ensuring consumers' access to the network. Some parties assert that the states are more appropriate forums to address payphone issues.[124] Pursuant to section 276(b)(2), the Commission released guidelines for use by the states in establishing public interest payphones in locations where a payphone is needed for public health and safety reasons but as a result of market forces is not present.[125] The establishment of these public interest payphones could satisfy Community Voicemail and APCC's concerns that payphones continue to remain available for use by people who do not have residential voice grade access. Although we agree that the states are in the best position to determine where payphones are needed and the amount of support necessary to maintain them, we are also aware that there are relatively few "public interest payphones" in the United States.[126] Many states do not currently have public interest payphone programs, and some states may not be empowered to establish such programs. Although we do not recommend that payphones or payphone lines be added to the list of supported services, we recommend 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.

3. Braille TTY and Two Line Voice Carry Over (2LVCO)

a. Background

51. Telecommunications for the Deaf, Inc. ("TDI") requests that we provide federal support to offset the cost of Braille TTYs, which print text messages in Braille for people who are deaf-blind, and Two Line Voice Carry Over (2LVCO), which allows hearing impaired consumers to read text messages and respond verbally to a relay operator.[127] 2LVCO is a service that hearing-impaired consumers provide for themselves by purchasing a special TTY and combining it with a second line and conference calling.

b. Discussion

52. Although we agree with TDI that the communications needs of people with disabilities are a priority for state and federal communications regulators, federal universal service support mechanisms, pursuant to section 254(c), cannot support customer premises equipment ("CPE"). As stated previously, section 254(c) expressly limits the definition of universal service to "telecommunications services." A Braille TTY is clearly CPE, and not a telecommunications service. Therefore, we cannot recommend that the Commission ignore the statutory language and adopt this proposal. Although universal service cannot address Braille TTY issues, we do note that the Commission has taken other action that may increase access to the network for people who are deaf-blind. The Commission recently concluded that Internet Relay services fall within the statutory definition of Telecommunications Relay Service

[124] *See, e.g.*, WorldCom Reply Comments at 4.

[125] *Payphone Report and Order*, 11 FCC Rcd at 20674-679, paras. 277-286.

[126] *See* APCC Reply Comments, Attachment at 5.

[127] TDI Comments at 10-14.

("TRS").[128] Internet relay can provide consumers who are deaf-blind an alternative means to access the network, because many computers are accessible via screen reader software and/or refreshable Braille displays. In addition, many states have already developed equipment distribution programs that provide CPE, such as Braille TTYs, to qualifying individuals with disabilities.

53. We also do not recommend that the Commission support the service components of 2LVCO at this time. Unlike section 255, which is explicitly designed to ensure the accessibility of telecommunications services, section 254 does not mention disabilities and provides no guidance on how the Joint Board and Commission should evaluate requests for separate universal service programs for people with disabilities or any other population within the United States. Thus, we must evaluate all services against the section 254(c) criteria. We do not believe second lines with conference calling are "essential" because people who are deaf or hard of hearing can reach public safety agencies and other parties through traditional relay services using one line. Moreover, although we believe that 2LVCO would enhance the communications experience of people who are deaf or hard of hearing and the party with whom they are speaking, the record fails to provide an estimate of the increased cost of such action and the resulting burden on other consumers of basic services. Therefore, we do not recommend supporting these proposed services at this time. We do note, however, that second and other non-primary lines are eligible for support under the high cost support mechanism. Accordingly, universal service may already support a portion of second lines for consumers using 2LVCO.

54. While universal service is not the appropriate forum to resolve TDI's proposals, other governmental programs may address accessibility issues relating to 2LVCO. For example, in a pending proceeding, the Commission sought comment on whether TRS centers should be required to support 2LVCO.[129] Internet Relay may also allow consumers to utilize 2LVCO service without requiring a second line and conference capability.[130] We applaud the Commission and states for their efforts to ensure the accessibility of telecommunications services and encourage them to continue to develop programs that enhance access and functional equivalency to the network for consumers with disabilities.

4. Transport Costs

a. Background

55. Two commenters recommend changes to the definition of universal service related to transport. First, Sandwich Isles Communications, Inc. ("Sandwich Isles") proposes that the definition of "access to interexchange service" be modified to include the use of transport

[128] *Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Petition for Clarification of WorldCom, Inc.*, CC Docket No. 98-67, Declaratory Ruling and Second Further Notice, FCC 02-121 (rel. April 22, 2002) ("*Declaratory Ruling*").

[129] *Telecommunications Relay Services and Speech-To-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 5140, 5197, para. 138 (2000).

[130] *Declaratory Ruling* at para. 9.

facilities in insular areas.[131] Sandwich Isles alleges that the cost of providing transport is high in remote areas of Hawaii and Alaska and has the potential to make telephone service rates inordinately high or services unavailable.[132] Sandwich Isles proposes that Insular Area Transport Support be an added element of rural universal service funding. Second, the State of Alaska ("Alaska") requests forbearance from enforcement of section 254(e) as applied to interexchange carriers operating in Alaska to permit them to receive universal service funding for transport costs needed to support 56 kbps data transmissions. Alaska alleges that high transport costs hinder access to the Internet in rural Alaska because in Alaska transport from an end office to the switched network IXCs is provided by the IXC relying on satellite-based communications services.[133]

b. Discussion

56. We agree with AT&T and Verizon that we should not recommend that the Commission adopt either of these proposals at this time.[134] The record before us is inadequate to determine the scope of the problem alleged by Sandwich Isles, nor does it suggest what the cost of potential remedies might be. As noted by AT&T, the Commission has relatively recently adopted, for a five-year period, a support mechanism deemed sufficient for rural telephone companies. Sandwich Isles has provided no specific evidence to demonstrate its asserted need for additional support. Also, in view of our recommendation above that the Commission not include a specific data transmission rate (such as 56 kbps) in the definition of supported services, it would be inappropriate to approve Alaska's request to enable its IXCs to receive support to enable them to provide 56 kbps transport services.

57. The Joint Board recognizes that issues related to the cost of transport facilities are important and may be of particular concern in rural areas of rural and non-rural companies. Transport may be a necessary element of a carriers' provision of services eligible for federal universal service support. In some remote communities, customers must use the interexchange network to access essential community services such as law enforcement, health care, schools and libraries. The extent to which these costs should be supported is best addressed in our recommendation on the decision remanded from the Tenth Circuit where we will analyze reasonable comparability and sufficiency of support. In that proceeding, we will consider the level of support necessary to ensure that all citizens of the United States have access to reasonably comparable communications services.

5. Rural Wireless ETC Category

a. Background

58. Rural Cellular Association suggests that the Commission create a new rural wireless ETC category to enable wireless carriers to receive support for implementation of CALEA and

[131] Sandwich Isles comments at 1.

[132] Sandwich Isles comments at 8.

[133] State of Alaska comments at 24.

[134] *See* AT&T Reply Comments at 14-15; Verizon Reply Comments at 6-8.

E911 solutions.[135] Similarly, RUS asserts that mobile services satisfy the statutory criteria and should be eligible for federal support as a separate stand-alone service.[136]

b. Discussion

59. We agree with Nebraska Rural Independent Companies that we should not recommend creation of a new rural wireless ETC category.[137] As discussed above, section 254(e) requires entities to be designated ETCs pursuant to section 214 in order to receive universal service support. Section 214, in turn, states that a carrier must provide all of the services included in the definition of universal service established pursuant to section 254(c). Thus, because we believe reduced requirements for a subset of ETCs may be contrary to the intent of section 214 and may not be competitively neutral, we do not recommend that the Commission adopt RUS and Rural Cellular Association's proposals.

6. Technical and Service Quality Standards

a. Background

60. Consistent with the recommendation of the Joint Board, the Commission in the *First Report and Order* declined to establish federal technical or service quality standards as a condition to receiving universal service support.[138] The Commission acknowledged the strong role that states have historically played in this arena and concluded that federal standards would largely duplicate state efforts. The Commission stated it would rely upon service quality data provided by the states in combination with data that the Commission collects in order to monitor service quality trends.

61. The Commission also stated in the *First Report and Order* that "states may adopt and enforce service quality rules that are neutral, pursuant to section 253(b), and that are not otherwise inconsistent with the rules adopted herein."[139] Section 253(a) forbids states and local governments from erecting barriers to entry, while section 253(b) clarifies that "[n]othing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers."[140]

62. The Montana Universal Service Task Force ("MUST") suggests that the Joint Board and Commission reverse its decision and add technical and service quality standards to the

[135] Rural Cellular Association Comments at 2.

[136] RUS Reply Comments at 7.

[137] Nebraska Rural Independent Companies Reply Comments at 4.

[138] *First Report and Order*, 12 FCC Rcd at 8831-8833

[139] *First Report and Order*, 12 FCC Rcd 8833, para. 101.

[140] 47 U.S.C. § 253(a) and (b).

definition of universal services.[141] In addition, MUST requests that the Commission clarify that states are free to impose their own technical and service quality standards as a prerequisite for ETC designation.

b. Discussion

63. The Joint Board does not recommend that the Commission impose federal technical or service quality standards as a condition to receive universal service support. We agree with the Commission that many states have already implemented service quality standards and that federal technical requirements would largely be duplicative of state efforts. MUST has not provided any evidence or data indicating that state technical standards are not adequate to ensure that consumers receive quality services. Therefore, we conclude there is insufficient justification to recommend that the Commission reverse its earlier findings and develop federal technical standards. Moreover, we agree with the Commission's conclusion that states may adopt and enforce service quality rules that are competitively neutral, do not act as a barrier to entry, and are not otherwise inconsistent with the federal universal service rules.[142] While the Commission may have an important role in collecting data and suggesting standardized measurements for service quality indicators, it is the states that have for many years carried the principal burden of ensuring that carrier service quality is maintained. We recommend 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.

7. N11 Codes

a. Background

64. The Iowa Utilities Board (Iowa Board) supports designating access to public interest N11 codes as basic communications services and including them in the definition of universal service. The Iowa Board argues that the Commission has previously found N11 codes to be imbued with a public interest, such that they have been assigned nationally for special purposes. Moreover, the Iowa Board claims that these services cannot be purchased on a competitive basis; and therefore concludes that under these circumstances, community expectations and the public interest require that N11 codes be classified as basic communications. Iowa Board further recommends that with the exception of 411 services, that the N11 codes be included in the definition of services covered under the Universal Service Fund (USF).[143]

b. Discussion

65. N11 codes are abbreviated dialing arrangements of which the first digit may be any digit other than 0 or 1, and the last two digits are both 1.[144] These codes enable callers to

[141] MUST Reply Comments at 8.

[142] We also note that the 5th Circuit vacated a Commission rule that prohibited the states from imposing additional eligibility criteria for ETC status. *Texas PUC v. FCC*, 183 F.3d 393 (5th Cir. 1999).

[143] Iowa Board Comments at 6.

[144] The following N11 Codes are currently in use: 211 – community information and referral services; 311 – nationwide non-emergency police and other government services; 411 – local directory assistance; 511 – traffic and (continued....)

complete a telephone call to various services that require the dialing of a seven or ten digit telephone number. In order for consumers to access these services using the N11 code, the telephone network must be pre-programmed to translate the three-digit code into the appropriate seven or ten-digit telephone number to route the call.

66. Outside of 911 access to emergency services, N11 codes do not satisfy the statutory criteria outlined in section 254(c). Neither N11 codes nor the services that they are associated with are subscribed to by a "substantial majority" of residential consumers. Rather, these codes offer callers only access to the various providers' information services (e.g., community referral, transportation and directory assistance), non-emergency and emergency services, telephone service repair, local exchange carrier business offices and Telecommunications Relay Services**.** Additionally, N11 codes, in general, may not be essential to education, public health, or public safety. Although N11 codes offer some benefit to callers by reducing the number of digits dialed to the groups to which these codes have been allocated, they do not provide the sole means for consumers to access these service providers. Therefore, the Joint Board does not recommend that the Commission include N11 Services (with the exception of 911) in the definition of universal service.

8. Equal Access

a. Background

67. Equal access to interexchange service permits consumers to access the presubscribed long distance carrier of the consumer's choice by dialing 1+ the phone number and is sometimes referred to as dialing parity. In the First Recommended Decision, the Joint Board recommended that equal access not be included in the list of supported services. Consistent with the Joint Board recommendation, the Commission declined to include equal access in the list of supported services established in the *First Report and Order*, explaining that "including equal access to interexchange service among the services supported by universal service mechanisms would require a Commercial Mobile Radio Service (CMRS) provider to provide equal access in order to receive universal service support."[145] The Commission concluded that "such an outcome would be contrary to the mandate of section 332(c)(8) [of the Act],[146] which prohibits any requirement that CMRS providers offer 'equal access to common carriers for the provision of toll services.'"[147] Further, the Commission found at that time that the requirement would "undercut local competition and reduce consumer choice, and thus, would undermine one of

(...continued from previous page)
transportation information; 611 – repair services; 711 – Telecommunications Relay Service; 811 – local exchange carriers business office use; and 911 – emergency services. *See Petition by the United States Department of Transportation for Assignment of an Abbreviated Dialing Code (N11) to Access Intelligent Transportation (ITS) Services Nationwide, et al,* NSD-L-99-24, Docket No. 92-105, Third Report and Order and Order on Reconsideration, 15 FCC Rcd 16753 (2000).

[145] *First Report and Order,* 12 FCC Rcd at 8819, para. 78.

[146] *See* 47 U.S.C. § 332(c)(8).

[147] *First Report and Order,* 12 FCC Rcd at 8819, para. 78.

Congress's overriding goals in adopting the 1996 Act."[148]

68. Several commenters representing small or rural incumbent carriers, however, suggest that equal access should now be included on the list of core services.[149] They argue equal access satisfies the statutory criteria. Other commenters, however, dispute that equal access satisfies the criteria.[150] The Joint Board has not developed a majority position concerning equal access. The Joint Board offers two positions for consideration by the Commission as set forth below.

b. Discussion by Members in Opposition to Adding Equal Access[151]

69. The addition of equal access to the list of supported services would be inconsistent with the intent of Congress, as expressed in section 332(c)(8), and in any event is not supported by the factors set forth in section 254(c). Indeed, equal access obligations were established to address competitive concerns in the interexchange market — at a time when the competitive landscape was quite different from that of today — rather than to promote the universal availability of basic telephone services. To the extent that CMRS carriers that do not provide equal access are receiving universal service support that is based, in part, on the costs of providing equal access, that raises a legitimate question concerning the distribution of federal support, but one that has nothing to do with whether a service should be added to the list of supported services. That is also a question that the Commission has stated its intention to address in an upcoming rulemaking.

70. Section 332(c)(8) states that CMRS providers "shall not be required to provide equal access."[152] This section does permit the Commission to require unblocked access through the use of carrier identification codes or other mechanisms, if it determines that consumers are being denied access to their telephone toll service provider of choice, and such denial is contrary to the public interest. However, the statute provides no other exception to its general prohibition of any requirement to provide equal access. Including equal access within the definition of universal service would create an additional requirement for universal service support that would adversely affect CMRS carriers, *i.e.,*CMRS carriers would have to provide equal access in order to be eligible for support. Such a condition would impose a requirement on CMRS carriers if they wish to be an ETC that cannot be imposed directly. Therefore, we support the Commission's conclusion in the *First Report and Order* that inclusion of equal access in the definition of supported services would be inconsistent with the legislative intent underlying section 332(c)(8).

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[148] *Id.* at 8820, para. 79.

[149] *See* Montana Universal Service Task Force Comments at 20; National Telephone Cooperative Association Comments at 2-6; Nebraska Rural Independent Comments at 6-7; OPASTCO Comments at 3-4; GVNW Reply Comments at 2-3; Montana Telecommunications Association Reply Comments at 3; Sandwich Isles Reply Comments at 7-9.

[150] *See, e.g.,* AT&T Reply Comments at 13-14; BellSouth Reply Comments at 4; Competitive Universal Service Coalition Reply Comments at 5-8.

[151] Commissioners Abernathy, Dunleavy, Jaber, and Thompson oppose recommending the addition of equal access to the list of supported services.

[152] *See* 47 U.S.C. §332(c)(8).

71. Moreover, we continue to support the Commission's conclusion in the *First Report and Order* that the addition of equal access as a required service for all ETCs would not serve the public interest because it would likely reduce competition in rural and high cost areas.[153] Given the cost associated with deploying loops, CMRS carriers may provide a lower cost source of competition for local service in some rural and high cost areas. CMRS services may also provide benefits to consumers, such as buckets of minutes that may be used for local or long distance calling, that outweigh the lack of 1 + dialing to a presubscribed IXC. If equal access were added to the definition of supported services, CMRS carriers would be ineligible to receive universal service support unless they provided equal access and might choose not to provide services competitive with local exchange service in rural and high-cost areas. Thus, including equal access on the list of supported services might reduce consumer choice in rural and high-cost areas, while excluding equal access would not jeopardize consumers' continued access to their presubscribed long distance carrier of choice, because local exchange carriers are required to provide it.[154] We also note that some local exchange carriers serving remote rural areas do not currently provide equal access. If equal access were added to the definition of supported services, such local exchange carriers would also be ineligible for federal support, unless they provided equal access, which could jeopardize the provision of services in these remote areas.

72. In addition, although local exchange carriers have deployed equal access in their networks, equal access requirements arose outside of the context of universal service.[155] Thus, no ETC is currently required to provide equal access to receive federal support. We do not believe the public interest would be served by adding equal access to the definition of universal service and requiring CMRS carriers to provide it if they seek universal service support merely because local exchange carriers provide it as a result of other, wholly unrelated regulations. Further, we support the Commission's conclusion in the *First Report and Order* that competitive neutrality does not require CMRS carriers to provide equal access merely because incumbent local exchange carriers provide it.[156]

73. We also conclude, in agreement with many commenters, [157] that equal access fails to satisfy the statutory criterion of being essential to education, public safety, or public health. Consumers can call community service organizations located outside of the calling area without

[153] *See* 47 U.S.C. § 254(c)(1)(D). *See, e.g.,* AT&T Reply Comments at 13-14; Competitive Universal Service Coalition Reply Comments at 8-9. *See also First Report and Order*, 12 FCC Rcd at 8820, para. 79.

[154] Section 251(g) states that local exchange carriers shall comply with equal access requirements in effect prior to the enactment of the Telecommunications Act of 1996, until such requirements are removed by the Commission. Section 251(b)(3) also requires all local exchange carriers to provide dialing parity. The Commission recently released a Notice of Inquiry examining the continued importance of equal access and the nondiscrimination obligations of section 251(g). *See Notice of Inquiry Concerning a Review of the Equal Access and Nondiscrimination Obligations Applicable to Local Exchange Carriers*, CC Docket No. 02-39, Notice of Inquiry, FCC 02-57 (rel. Feb. 28, 2002).

[155] Equal access requirements were imposed by the Modification of Final Judgment (MFJ), the consent decree that settled the Department of Justice's antitrust suit against AT&T and required divestiture of the Bell Operating Companies. *See United States v. American Tel. and Tel.*, 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983). *See also* 47 U.S.C. § 251(g).

[156] *See First Report and Order*, 12 FCC Rcd at 8819-8820, para. 79.

[157] *See* 47 U.S.C. § 254(c)(1)(A). *See, e.g.,*AT&T Reply Comments at 13-14; BellSouth Reply Comments at 4.

equal access because access to interexchange service is already included within the definition of universal service. The fact that consumers do not have an unlimited choice of IXCs (leaving aside the availability of dial-around services) could perhaps be argued to constitute a barrier to competition among IXCs,[158] but the absence of an equal access requirement for all ETCs does not impair universal service. Therefore, we do not recommend that the Commission expand the list of supported services to include equal access.

74. We note that commenters supporting inclusion of equal access in the definition of supported services claim that the current system unfairly advantages CMRS carriers because they may receive portable support amounts based on incumbents' costs, which they allege also include the cost of providing equal access.[159] This particular issue, however, is unrelated to the definition of supported services. Rather, this issue raises questions regarding the appropriateness of the Commission's current policy of calculating portable support based on the support amounts that incumbents receive. Therefore, we agree with commenters that claim this issue involves the calculation of support, is outside of the scope of this proceeding, and should not serve as justification for adding equal access to the list of core services.[160]

c. Discussion by Members in Support of Adding Equal Access[161]

75. We recommend including equal access as a defined service that receives universal service support. Our recommendation is premised on our findings that equal access satisfies the criteria set forth in section 254(c) and that section 332(c)(8) presents no obstacle to the inclusion of equal access in the list of core services supported by universal service funding.

76. First, we conclude that no legal obstacle exists to the addition of equal access to the list of supported services. We agree with those commenters that hold section 332(c)(8) does not prohibit the inclusion of equal access in the list of supported services.[162] Section 332(c)(8) prevents the Commission from requiring CMRS carriers to provide equal access simply because the CMRS carriers provide telecommunications services.[163] Including equal access in the definition of supported service does not in any manner require any CMRS carrier to provide

[158] Notably, however, no IXC supports adding equal access to the list of supported services.

[159] *See* MUST Comments at 7-8; OPASTCO Reply Comments at 2-5. We note, however, that equal access is not currently included within the definition of supported services.

[160] *See* Competitive Universal Service Coalition Reply Comments at 15-17. *See also Referral Order*.

[161] Commissioners Martin, Copps, and Rowe, and consumer advocate Gregg support recommending the addition of equal access to the list of supported services.

[162] *See* OPASTCO Comments at 5; NTCA Comments at 4-6.

[163] Equal access obligations were imposed on the RBOC's and GTE as a result of the decisions in cases of *United States v. AT&T*, 552 F. Supp. 131 (D.D.C. 1982), and *United States v. GTE Corp*., Civil Action No. 83-1298, 1984 WL 2869 (D.D.C. 1985). Equal access requirements were first imposed on non-Bell companies by the Commission in *MTS and WATS Market Structure Phase III*, CC Docket No. 78-72, Report and Order, 100 FCC 2d 860 (1985). The case of *Puerto Rico Telephone Company Equal Access Conversion Schedule*, Memorandum Opinion and Order, 5 FCC Rcd 5830 (1990), contains comprehensive cites to Commission equal access decisions. Section 251(g) of the Act continued these equal access and non-discrimination requirements crafted by the Commission. Equal access rules for landline carriers are currently found at 47 CFR §51.211.

equal access as part of its obligations as a common carrier. However, we believe that if a carrier wishes to seek ETC status and receive universal service support, then all ETCs — including CMRS providers — should offer all of the supported services, including equal access.[164]

77. Second, we agree also with the commenters that equal access reasonably satisfies the requirements of section 254(c)(1) of the Act.[165] We believe that equal access is essential to education, public health and public safety.[166] Access to interexchange service is essential and competitive interexchange service enhances the provision of interexchange access. Equal access also clearly advances customer choice. Furthermore, equal access facilitates comparable access to telecommunications services, including access to interexchange services, in all regions of the nation as required by section 254(b). Although dial-around may provide an alternative to equal access, these services may not be readily accessible on wireless phones at all times.

78. Equal access is used by a substantial majority of residential customers as indicated by section 254(c)(1)(B). Since the mid-1990's virtually all landline phones have provided equal access to interexchange carriers.[167] Like voice grade service, equal access is a functionality that customers receive automatically when they subscribe to basic exchange service. While equal access is not a separately tariffed service, neither is access to either interexchange or operator services a separately tariffed service.[168] Again, they are rolled into the basic exchange service. As OPASTCO notes, equal access is required of all local exchange carriers today under section 51.211 of the Commission's rules, and is universally available from those carriers.[169]

79. As indicated by section 254(c)(1)(C), equal access is universally deployed, except in the case of CMRS carriers. Landline consumers have had competitive access to carriers in the interLATA and intraLATA markets for some time, and have come to expect such equal access as a part of basic, universally available phone service.

80. We also find that designating equal access as a supported service is consistent with the public interest, convenience and necessity under section 254(c)(1)(D) for several reasons.

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[164] In addition, Section 332(c)(8) further states that "[i]f the Commission determines that subscribers to such services are denied access to the provider of telephone toll services of the subscribers' choice and that such denial is contrary to the public interest, convenience and necessity, then the Commission shall prescribe regulations to afford subscribers unblocked access to the provider of telephone toll services of the subscribers' choice through the use of a carrier identification code assigned to such provider or other mechanism." Another "mechanism" that "unblocks" access, that avoids the inconvenience of 10-XXXX dialing, and that is an essential lifeline in emergency conditions is equal access.

[165] *See, e.g.,* NTCA Comments at 3; OPASTCO Comments at 3.

[166] 47 U.S.C. § 254(c)(1)(A).

[167] *See*, *Distribution of Equal Access Lines and Presubscribed Lines*, FCC Industry Analysis Division (Nov. 1997).

[168] Touch tone service is now also commonly provided as a part of basic service.

[169] 47 C.F.R. § 51.211. We are aware that there are still a small number of rural carriers in remote locations that have never implemented equal access because they have never received a bona fide request for such access from a competing interexchange carrier. We believe that these limited situations can be handled by a reasonable waiver process to ensure that such carriers do not inadvertently become ineligible for universal service support. This would be similar to the waiver process that existed during the implementation of equal access for rural carriers.

First, requiring equal access will empower individual consumers and enhance customer choice. This in turn will promote competition, and lead to lower prices and better services. As the Commission affirmed in 1994, "equal access promotes the important objectives of customer choice and enhances competition in the interexchange market."[170]

81. Second, we note that since the earlier decision by the Commission on this matter, the wireless industry has matured and grown substantially, and that the question of equal access must be reexamined in this light. When the Commission adopted the *First Report and Order* in May 1997, there were approximately 48.7 million wireless subscribers in the United States.[171] Today, there are in excess of 135 million wireless subscribers[172], an increase of 2.7 times in the number existing in 1997. Some have argued that the prohibition on equal access for CMRS providers contained in section 332(c)(8) has allowed wireless carriers to offer creative "bundles" of local and long distance services, and to develop "all you can eat" flat-rate calling plans which have benefited consumers. This may be entirely correct. As indicated by the statistics cited above, the wireless industry has experienced phenomenal growth since the passage of the Act, which indicates consumer satisfaction. Nothing in our recommendation today, however, will alter the legal framework within which the wireless industry has grown and wireless calling plans have been allowed to flourish. Nor does the recommendation impact the existing statutory prohibitions on requiring wireless carriers to provide equal access simply because they provide telecommunications services. All that would be changed under our ruling would be the requirements under which any carrier — including wireless carriers — would qualify to draw from the explicit subsidies provided by the universal service fund.

82. Third, we believe the principles of competitive and technological neutrality are better achieved if we require wireless and wireline carriers to each provide equal access for universal service funding purposes. To not require the same of all ETCs advantages wireless ETCs over wireline ETCs.

83. Fourth, all ETCs — including wireless ETCs — will have access to portable support based on the costs of the incumbent rural and non-rural carriers. A portion of this portable support — IAS and ICLS — relates directly to the provision of interstate access. Because a wireless ETC does not have to provide equal access, but receives universal service funding for equal access based on the ILEC's costs, wireless ETCs may receive a windfall vis-à-vis wireline ETCs. We believe it is fundamentally unfair for any ETC to receive support based in part upon the costs of providing equal access, while not having an obligation to provide such equal access.

84. Fifth, it is important to establish fair and equal rules for all ETCs at this time, because consistent with the overall growth in wireless subscribership, it appears that wireless ETCs will soon begin to receive a substantial share of high-cost support from the universal service fund. In 1997 when the Commission adopted the First Report and Order, no wireless carriers drew support from the universal service fund. By the beginning of 2002, a total of only $15.3 million

[170] *Equal Access for CMRS Carriers*, CC Docket No. 94-54, Notice of Proposed Rulemaking, 9 FCC Rcd 5408, 5469, para. 144 (1994).

[171] Table 12.2, *Trends in Telephone Service*, FCC Industry Analysis Division (August 2001).

[172] *See* Cellular Telecommunications and Internet Association, http://www.wow-com.com

in annual support was paid out to three wireless carriers.[173] However, during 2002 new wireless carriers have qualified as ETCs and high-cost support for wireless carriers has more than quadrupled to $64.4 million on an annual basis.[174] Because under current Commission rules, multiple lines to a home or business are eligible for support, it is likely that high-cost support will increase substantially as more wireless providers achieve ETC status in high-cost states. While we encourage all carriers, including wireless carriers, to assume the responsibilities of ETC status, we believe strongly that the rules should now establish equal obligations for all carriers that wish to draw from the limited pool of universal service monies. Establishing fair and consistent ground rules now will provide clear guidance for all carriers, and will prevent the development of unsound business plans based on the prospect of a potential windfall from universal service funding.

85. Finally, we believe that designating equal access as a supported service is consistent with the overarching goal of increasing competition in telecommunications markets without jeopardizing universal service. As the Nebraska Rural Companies note, including equal access is competitively neutral. As the Montana Universal Service Task Force argues, since IXCs are the largest contributors it is only fair to allow wireless carriers' customers choice to pick their IXC. We have seen the positive impacts equal access has had on increased competition in toll markets. If wireless carriers offer a service package that includes equal access, customers' choices will be enhanced. In addition, as the MTA notes, in rural areas toll calling is important to reach the customers community of interest. Again, equal access enhances customer choice and is in the public interest. Contrary to the assertions of some, including equal access in the definition of advanced services will not result in a reduction in the number of carriers offering service in rural areas. Properly targeted universal service support should provide the appropriate incentives to all carriers to serve rural and high-cost areas. Different carriers have different underlying cost advantages and disadvantages. Requiring all carriers that wish to draw from the universal service fund to provide the same services will put all carriers on all equal footing and directly benefit customers.

86. Because we are aware that several wireless ETCs are currently drawing high-cost support based on the previous definition of supported services, we believe it is only fair that a reasonable amount of time should be provided for compliance if the definition is expanded to include equal access to interexchange carriers. Accordingly, we recommend that if equal access is added to the definition of supported services, then all ETCs which are currently receiving high-cost support should have until July 1, 2003, to bring their services into compliance with the new definition of supported services by providing equal access. Until that time, these carriers should be allowed to continue receiving high-cost support based on the previous definition. We believe that these carriers will be aided in complying with the equal access requirement by the substantial amounts of money they are now receiving from the universal service fund. Other carriers that have not yet achieved ETC status, or that have not yet begun receiving universal service support should not be allowed to draw from the fund until they have complied with the new requirement to provide equal access.

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[173] Universal Service Administrative Company, *Federal Universal Service Support Mechanisms Fund Size Projections for the First Quarter 2002* (Nov. 2, 2001), Appendicies HC 1, HC 3 and HC12.

[174] Universal Service Administrative Company, *Federal Universal Service Support Mechanisms Fund Size Projections for the Third Quarter 2002* (May 2, 2002), Appendix HC 1.

9. Removal of Services

a. Background

87. The Competitive Universal Service Coalition suggests that the Commission define universal service in such a way as to permit any carrier that provides, at a minimum, voice-grade connectivity to public telecommunications networks to qualify as an ETC.[175] Specifically, they request that the Commission remove toll limitation for qualifying low-income consumers, local usage, dual tone multi-frequency signaling, and single-party service from the current definition because they are based on existing technologies and rate structures and limit carriers' creativity to create new packages of voice-grade services.

b. Discussion

88. The Joint Board does not recommend that the Commission remove any of the existing services from the definition of universal service at this time. While we share this commenter's desire to encourage creative new packages of voice-grade services, we do not believe circumstances have changed significantly with regard to the core services since the Commission adopted the original definition. Therefore, we believe that the current definition of supported services continues to satisfy the statutory criteria and sets an appropriate minimum level of universal service.

89. In addition, the Commission explicitly considered the principle of competitive neutrality when establishing the list of core services to facilitate competition by non-incumbent carriers and carriers utilizing non-wireline technologies. Indeed, the Commission declined to include services, such as unlimited local usage, because they would not be competitively neutral and could hinder the entrance of competitive wireless ETCs. We have reviewed this matter and concur with the Commission's past findings. Accordingly, we disagree with the Competitive Universal Service Coalition that the existing definition of supported services may disadvantage or discourage carriers using non-wireline technologies from seeking ETC status.

IV. RECOMMENDING CLAUSE

90. For the reasons discussed herein, the Federal-State Joint Board on Universal Service, pursuant to sections 254 and 410(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 254, 410(c), recommends that the Commission consider the Joint Board's recommendations regarding the definition of services supported by federal universal service, including the positions regarding equal access.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[175] Competitive Universal Service Coalition Comments at 4-7.

APPENDIX A

PARTIES FILING COMMENTS AND REPLY COMMENTS

Commenter	**Abbreviation**
Alaska, Regulatory Commission	RCA (late filed on 11/13)
State of Alaska	State/Alaska
Alaska Telephone Association	
ACUTA, Inc.: The Association for Telecommunications Professionals in Higher Education	ACUTA
Ad Hoc Telecommunications User Committee	Ad Hoc
Alliance for Public Technology	APT
AT&T Corp.	AT&T
AT&T Wireless Services, Inc.	AWS
BellSouth Corporation	BellSouth
People of the State of California and California Public Utilities Commission	California/CPUC
Cellular Telecommunications & Internet Association	CTIA
Community Voice Mail	
Competitive Universal Service Coalition	CUSC
Converging Industries Research Foundation	CIRF
Florida Public Service Commission	FPSC
General Services Administration	GSA
GVNW Consulting, Inc.	GVNW
Illinois Commerce Commission	ICC
Iowa Utilities Board	Board
Judycki, Stephen A.	
Maryland Public Service Commission	MD PSC
Montana Universal Service Task Force	MUST
National Telephone Cooperative Association	NTCA (late filed on 11/13)
Nebraska Rural Independent Companies	
New York State Department of Public Service	
Organization for the Promotion and Advancement Of Small Telecommunications Companies	NYDPS OPASTCO
Qwest Communications International Inc.	Qwest
Rural Cellular Association	RCA
Sandwich Isles Communications, Inc.	Sandwich Isles
SBC Communications Inc	SBC
Sprint Corporation	Sprint
TDS Telecommunications Corporation	TDS Telecom
Telecommunications for the Deaf, Inc.	TDI
Texas 9-1-1 Agencies and National Emergency Number Association	NENA
United States Cellular Corporation	USCC
United States Conference of Catholic Bishops, *et al*.	USCCB *et al*
United States Telecom Association	USTA

Valor Telecommunications Enterprises, LLC	Valor
Verizon	
Verizon Wireless	
WorldCom, Inc.	WorldCom

Reply Commenter	**Abbreviation**
Ad Hoc Telecommunications User Committee	Ad Hoc
American Public Communications Council	APCC
AT&T Corp.	AT&T
BellSouth Corporation	BellSouth
Competitive Universal Service Coalition	CUSC
General Communications Corp.	GCI
General Services Administration	GSA
GVNW Consulting, Inc.	GVNW
Mid-Rivers Telephone Cooperative, Inc.	Mid-Rivers
Montana Telecommunications Association	MTA
Montana Universal Service Task Force	MUST
N.E. Colorado Cellular, Inc.	NECC
Nebraska Rural Independent Companies	NRIC
Organization for the Promotion and Advancement	NYDPS
Of Small Telecommunications Companies	OPASTCO
Rural Utilities Service	RUS
Sandwich Isles	SIC
SBC Communications Inc	SBC
TDS Telecommunications Corporation	TDS Telecom
US Cellular Corporation	USCC
United States Conference of Catholic Bishops, *et al*.	USCCB *et al*
Verizon	
WorldCom, Inc.	WorldCom

SEPARATE STATEMENT OF
COMMISSIONER KATHLEEN Q. ABERNATHY

Re: Federal-State Joint Board on Universal Service, Recommended Decision (released July 10, 2002).

I commend my colleagues on the Joint Board for their thorough consideration of the important issues raised in this proceeding and for their valuable contributions to this Recommended Decision. As Chair of the Joint Board, I am pleased that the processes we have put in place are enabling us to engage in efficient and effective decisionmaking.

I write separately to elaborate on my reasons for opposing the addition of equal access to interexchange services to the list of supported services. In short, the arguments advanced in support of adding equal access are wrong on the law, wrong on the facts, and wrong on policy. While the vote by the Joint Board Members could not have been closer, I believe this issue is actually fairly straightforward: Congress made crystal clear that CMRS carriers "shall not be required to provide equal access." 47 U.S.C. § 332(c)(8). Because adding equal access to the list of supported services would require CMRS carriers to provide that functionality as a condition of becoming eligible telecommunications carriers, *id.* § 214(e), such a requirement plainly would violate congressional intent. Moreover, equal access fails to satisfy the criteria in section 254(c). Indeed, because all consumers *already* are ensured of access to interexchange services, equal access has little, if anything, to do with universal service. Finally, while rural LECs have raised a legitimate concern about our portability rules — because CMRS carriers that do not provide equal access may be receiving universal service support that is allegedly based in part on the cost of providing equal access — the Commission, with my strong support, intends to address that issue in an upcoming rulemaking proceeding. Especially in light of that upcoming proceeding, we should not manipulate the definition of universal service as a backdoor means of responding to concerns about the manner in which competitive ETCs receive support.

1. Equal Access Is Inconsistent with Section 332(c)(8).

In 1994, the Commission issued a Notice of Proposed Rulemaking concerning the potential imposition of an equal access obligation on CMRS carriers.[176] Positing that such a requirement "would increase competition in the interexchange and mobile services marketplace, and also foster regulatory parity between wireline and wireless services," the Commission tentatively concluded that "equal access obligations should be imposed on cellular licensees."[177] Congress disagreed. In the 1996 Act, Congress enacted section 332(c)(8), which expressly bars the Commission from requiring CMRS carriers to provide equal access to toll services.[178]

[176] *Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services*, Notice of Proposed Rulemaking and Notice of Inquiry, CC Docket No. 94-54, 9 FCC Rcd 5408 (1994) ("*CMRS Equal Access NPRM*").

[177] *Id.* at 5411 ¶ 3.

[178] Pub. L. No. 104-104, § 705 (1996), codified at 47 U.S.C. § 332(c)(8).

Proponents of an equal access argument contend that by conditioning eligibility for universal service support on compliance with an equal access requirement, rather than imposing an equal access obligation on CMRS carriers directly, the Commission could comply with the letter of section 332(c)(8). That is a questionable proposition at best, since denying or revoking a CMRS carrier's ETC designation for its failure to provide equal access seems tantamount to imposing a "requirement" on the carrier. But even if such an indirect obligation could skirt the statutory prohibition, that misses the point. In response to the Commission's previous effort to impose equal access on CMRS carriers, Congress spoke loudly and clearly in opposition to such a requirement. We should be faithful to that plain statement of legislative intent, rather than seeking ways around it.

Moreover, it is no answer to say that CMRS carriers can avoid being subject to an equal access requirement by foregoing universal service support. Presenting CMRS carriers with such a Hobson's choice would undercut the core procompetitive goals of the 1996 Act.[179] Because all wireline carriers already are obligated to provide equal access,[180] the only consequence of adding equal access to the list of supported services would be to require CMRS carriers seeking ETC status to provide equal access. The costs of complying with such a requirement undoubtedly would deter competitive entry in high-cost areas where service can be provided economically only if explicit universal service support is available. Because Congress wanted *both* to exempt CMRS carriers from equal access obligations *and* to promote competition in all telecommunications markets, the only reasonable conclusion is that making the provision of equal access a prerequisite to obtaining (or retaining) ETC status is fundamentally at odds with congressional intent.[181]

2. Equal Access Fails To Satisfy the Criteria in Section 254(c) and in Particular Would Not Serve the Public Interest.

Even if Congress had not made plain its intention to exempt CMRS carriers from equal access obligations, the factors set forth in section 254(c) would not support adding equal access to the list of supported services. Section 254(c) directs the Commission to consider whether the telecommunications services at issue

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[179] *See Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 8820 ¶ 79 (1997) ("*Universal Service First Report and Order*") (noting that imposition of an equal access requirement would "undercut local competition") (citing Joint Explanatory Statement of the Committee of the Conference, H.R. Rep. No. 104-458 at 113 (1996)). *See also* 47 U.S.C. § 214(e) (defining "eligible telecommunications carrier" without regard to technology).

[180] The equal access obligations grew out of the Bell System divestiture decree (the Modification of Final Judgment, or MFJ), and later were extended to all wireline carriers by the Commission. *See CMRS Equal Access NPRM*, 9 FCC Rcd at 5412-13 ¶¶ 6-9.

[181] As the Commission explained in the *Universal Service First Report and Order*, 12 FCC Rcd at 8819-20 ¶ 79, declining to add equal access to the list of supported services does not run afoul of the Commission's principle of competitive neutrality. Indeed, the Commission noted that the competitive neutrality principle is intended to ensure that universal service policy is not "biased toward any particular technologies," *id.*, and, in this context, *adding* equal access to the list of supported services, rather than refraining from doing so, would bias universal service policy against a particular class of carriers — CMRS carriers.

> (A) are essential to education, public health, or public safety;
> (B) have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential consumers;
> (C) are being deployed in public telecommunications networks by telecommunications carriers; and
> (D) are consistent with the public interest, convenience, and necessity.[182]

First, the fact that access to interexchange service already is a supported service — and therefore one that all ETCs must provide — undermines any argument that equal access is "essential" to education, public health, or public safety. In other words, since access to interexchange service already is universal, adding equal access to the list of supported services is not necessary to ensure such access.

Proponents of requiring equal access focus on the procompetitive benefits it supposedly would entail. But enhancing competition in the already-competitive interexchange market — assuming for the moment that forcing CMRS carriers to provide equal access in fact would have such an effect — is entirely distinct from our task here, the preservation and advancement of universal service. The history of our existing equal access requirements for wireline carriers is instructive. When the MFJ court ordered the breakup of AT&T, it was concerned that, absent judicial intervention, AT&T would squelch competition from other IXCs.[183] The court accordingly ordered the BOCs to offer to all IXCs access to the local exchange network that is "equal in type, quality, and price" to that offered to AT&T and its affiliates.[184] The Commission extended the equal access obligation to all wireline carriers in 1985 as a further means of ensuring unfettered competition in the developing interexchange market.[185] Thus, equal access was established as an antitrust remedy — not as a universal service policy. And today, the focal point of the debate over equal access remains competition, rather than universal service. When proponents of imposing an equal access requirement speak of "advanc[ing] customer choice," Recommended Decision at ¶ 77, they are essentially expressing a desire to promote greater interexchange competition, not to support universal access to a critical residential service; again, such access *already* is universal.

Moreover, I do not agree with the premise that imposing an equal access requirement on CMRS carriers would be beneficial for competition or consumers. As noted above, we should not even be having this debate, because Congress settled this policy call in the text of section 332(c)(8) of the Act. But if I were to make a decision based on policy considerations, I would agree with Congress that allowing wireless carriers to offer consumers innovative service packages including bundles of any-distance minutes promotes, rather than harms, consumer

[182] 47 U.S.C. § 254(c).

[183] *CMRS Equal Access NPRM*, 9 FCC Rcd at 5412 ¶ 6.

[184] *United States v. AT&T*, 552 F. Supp. 131, 227 (D.D.C. 1982), *aff'd sub nom Maryland v. United States*, 460 U.S. 1001 (1983).

[185] *CMRS Equal Access NPRM*, 9 FCC Rcd at 5413-14 ¶ 9.

welfare. There can be little question that both the interexchange and mobile wireless markets are highly competitive, and that wireless carriers' innovative offerings have led to extensive intermodal competition. And if a wireless subscriber seeks to use the services of a particular IXC, she can presubscribe to that IXC over her landline phone and also can reach the IXC on a wireless phone on a dial-around basis.

Tellingly, none of the IXCs that participated in this proceeding — the would-be beneficiaries of an equal access requirement — supported imposition of such a requirement. For example, AT&T argued that subjecting CMRS carriers to an equal access requirement "would thwart competition from alternative providers in rural areas."[186] "Rather than adopt requirements that exceed the Communications Act and have nothing to do with a particular carrier's or class of carrier's ability to offer universal service," AT&T contends, "the Commission's eligibility criteria should promote competition from as many sources and technologies as possible."[187] Similarly, WorldCom argues that an overly expansive definition of universal service would thwart competition.[188]

Equal access also lacks support under the remaining factors in section 254(c). The second criterion is whether the service at issue has been subscribed to by a substantial majority of residential consumers through the operation of market choices by customers, and the third is whether it is being deployed in public telecommunications networks by telecommunications carriers. 47 U.S.C. § 254(c)(1)(B), (C). It is difficult to gauge whether equal access satisfies these criteria, because the existence of a regulatory mandate has both precluded the exercise of market choice and necessitated deployment by all wireline carriers. But to the extent that the deployment of equal access has been left to voluntary market choices — that is, in the wireless arena — it has neither been subscribed to by a substantial majority of consumers nor deployed by carriers. Moreover, applying the second criterion literally, the fact that consumers do not "subscribe" to equal access suggests that it is not the kind of service that Congress envisioned as part of the definition of universal service; indeed, equal access is not a "service" at all. Overall, these factors are probably not dispositive, but they certainly cannot be said to support adding equal access to the list of supported services.

The final factor — the public interest, convenience, and necessity — weighs heavily against requiring equal access for the reasons discussed above and because of the competitive state of the interexchange marketplace. As noted above, requiring CMRS carriers to provide equal access as a condition of becoming ETCs (or retaining existing ETC status) would frustrate local competition by deterring entry. I also believe that the imposition of substantial costs on wireless carriers that choose to implement equal access would be pointless, because it is unlikely that consumers would choose a different interexchange carrier than their wireless provider. Most wireless carriers now offer bundles of minutes that include long distance at no extra charge. In light of the widespread availability of such beneficial packages, it seems doubtful that a consumer would choose to pay an additional charge to obtain service from a different long

[186] Reply Comments of AT&T Corp. at 14.

[187] *Id.*

[188] Reply Comments of WorldCom at 4 (citing Comments of Bell South at 5). *See also* SBC Reply Comments at 2; Verizon Reply Comments at 6.

distance provider. IXCs presumably have made the same judgment, as evidenced by their conspicuous lack of support for a new equal access requirement.

Looking at the telecommunications marketplace as a whole — which is more competitive than ever before, and which is moving away from artificial service-category distinctions based on geographic boundaries — I am frankly puzzled by the argument that we need to adopt an intrusive and backward-looking regulatory requirement for CMRS carriers. Indeed, as the Commission is considering whether equal access obligations continue to be necessary even for *LECs*,[189] I would think that the case against extending equal access obligations to CMRS carriers would be far less controversial.

3. The Commission Will Address Concerns About the Provision of Support to Competitive ETCs in an Upcoming Rulemaking.

In light of the overwhelming arguments against adding equal access to the list of supported services, I believe that proponents of such a requirement are allowing their concerns about the manner in which CMRS carriers receive universal service support — *i.e.*, our portability rules — to complicate what otherwise would be a straightforward matter.[190] I agree that the question whether CMRS carriers should receive support based on incumbent LECs' costs — including the cost of providing equal access — is a legitimate one.[191] Indeed, I have repeatedly urged the Commission to initiate a rulemaking proceeding focused on that question, something the Commission is now planning.[192] That is the forum we should use to address potential inequities in our portability rules. While it may be several months before the Commission is able to launch that proceeding, and there is no assurance that the Commission ultimately will modify its rules, that uncertainty does not justify using this definitional proceeding to saddle wireless carriers and consumers with new costs under the guise of regulatory parity.

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[189] *See Notice of Inquiry Concerning a Review of the Equal Access and Nondiscrimination Obligations Applicable to Local Exchange Carriers*, CC Docket No. 02-39, Notice of Inquiry, FCC 02-57 (rel. Feb. 28, 2002).

[190] *See, e.g.*, Recommended Decision at ¶¶ 82-86.

[191] Notably, however, there is considerable debate over whether wireline carriers in fact receive support associated with providing equal access. *Compare* Ex Parte Presentation of GVNW Consulting, June 19, 2002 (contending that rural ILECs receive universal service support for providing equal access) *with* Ex Parte Presentation of Competitive Universal Service Coalition, June 12, 2002 (contending that rural ILECs do *not* receive any support for providing equal access).

[192] *See, e.g.*, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, FCC 02-171, CC Docket Nos. 96-45, 00-256, ¶ 15 (rel. June 13, 2002).

SEPARATE STATEMENT OF COMMISSIONER G. NANETTE THOMPSON, REGULATORY COMMISSION OF ALASKA

Re: Federal-State Joint Board on Universal Service, Recommended Decision (released July 10, 2002).

I am writing separately to further explain my vote on the equal access issue. Imposing the requirement that all ETCs provide equal access will limit the number of carriers able to serve the rural and remote parts of our nation and increase the cost of service. There are still some communities in Alaska where local providers do not provide equal access because no competing interexchange carrier directly provides service. Making equal access a condition of ETC status will present these local carriers with the choice of not receiving high cost support or prematurely upgrading their equipment and increasing the cost of service.

I am also concerned that requiring an ETC to provide equal access may discourage or delay provision of non-wireline services in high cost rural areas. Rural and remote areas should not be left behind as the rest of the country realizes the benefits of recent dramatic advances in telecommunications technology. If a new technology can provide service to unserved and underserved areas at a lower cost than the existing network, then the universal service programs should encourage the deployment of that technology. The long term viability and sustainability of the universal service fund is dependent on its efficient use to assure affordable access to the national network.

The equal access debate has often focused on whether inequities will occur if wireline ETCs are required to maintain equipment necessary to provide equal access while wireless ETCs are not. I believe that this debate misses the key problem we must face to balance the policy objectives of competition and universal service in the rural parts of our nation; the portability of universal service support. Current rules allow competitors to receive support based on the incumbents' costs, capped by the UNE rate if the competitor is using the incumbent's network to provide service. 47 CFR 54.307. This portability rule, coupled with the remainder of the FCC's universal service regulations, appropriately encourages the deployment of more cost efficient technologies, but may lead to excessive growth of the fund as the competitor adds new lines and as incumbents' costs are redistributed over a reduced number of lines.[193] Universal service fund rules need to be modified to insure that the appropriate costs of the carrier providing service are recovered, but that the support intended to equalize the cost of service to consumers nationally is not being used to create artificially competitive markets. I hope that the joint board has the opportunity to address these issues in the near future.

[193] See Fourteenth Report and Order, Twenty-Second order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, FCC 01-157, released May 23, 2001, at paragraph 207. The FCC states:

> [S]upport provided to competitive eligible telecommunications carriers is not subject to the overall cap on the high-cost loop fund. During the five-year period, excessive growth in the fund is thus possible if incumbent carriers lose many lines to competitive eligible telecommunications carriers, or if competitive eligible telecommunications carriers add a significant number of lines.

SEPARATE STATEMENT OF
COMMISSIONER BOB ROWE, MONTANA PUBLIC SERVICE COMMISSION
CONCURRING IN PART AND DISSENTING IN PART

Re: Federal-State Joint Board on Universal Service, Recommended Decision (released July 10, 2002).

I. INTRODUCTION.

I greatly respect the care, thoughtfulness and hard work that underlie the majority's Recommendation, both by the Joint Board members and by the staff. This is an exceptionally committed joint board.[194] I concur in the great majority of the Recommendation. I write separately because I dissent from significant portions of the Recommendation, because I wish to explain my reasons for joining in other portions, and because in too many places the tone and analysis used to reach specific conclusions strike me as unintentionally adverse to rural interests. I support Commissioners Martin and Copps suggestion for further proceedings, and encourage that one foundation for such proceedings be the "No Barriers" recommendation of the Rural Task Force.

Section 254 of the Act is perhaps the section of the Act that has best proven its value. Today many customers served by small rural companies receive the benefits of High Cost Fund support in the form of significantly higher quality service than could possibly be available without support. Efforts to improve or reform universal service should start with this recognition. Section 254 is not the problem. Rather, it provides powerful tools to ensure that rural and high cost areas receive services and rates that can reasonably be compared with urban areas.[195]

I am concerned that this Recommended Decision may lead to harm to rural areas through a simplistic application of section 254 that fails to recognize the complexity of calculating cost-based universal service support. I am concerned by the approach that the majority seems to take regarding the issue of fund size. I am concerned that the majority fails to take sufficient account of widespread public access to and use of the Internet and the importance of digital communications to all citizens. Finally, I am concerned that the Joint Board is here bypassing an opportunity to recognize transport as an essential element in providing local exchange service in remote areas. Taken together, these problems prevented me from fully concurring in this Recommendation.

II. FUND SIZE.

[194] Appropriate to the high level of Joint Board members' engagement with referrals, I suggest the deliberation process be modified to allow some more formal "discovery" or data request and response process to develop the record on subjects that are raised but not adequately developed to decide through the comment and reply process. Such a process would have given us a much better record to address a range of issues in this proceeding. The recent contribution method en banc was a notably successful effort to enrich the deliberative process.

[195] The Members of Congress who labored so hard to craft Section 254 would likely be surprised by the majority's assertion (in Paragraph 2) that Section 254 merely "codified the Commission's historic commitment." It did much more.

The Act prescribes in several places that support to rural, high-cost and insular areas must be sufficient.[196] Nowhere does the Act say that more than sufficient support is good or bad. Yet, beginning in the first paragraph where the Recommendation "balances" fund size against the availability of "fundamental" telecom services, the majority nearly makes limiting the fund size the lodestar that orients the work of this entire proceeding. Many decisions have been influenced by the desire to avoid increasing the amount of support that might follow an addition to the list of supported services.[197]

While legitimate as a consideration, I want to note that this concern may in some cases be entirely misplaced. The majority seems to assume that increased services lead inexorably to both increased cost and a larger universal service fund. The former is probably true, but the latter could easily be false. The existing support system for large carriers is based upon the distribution of costs among the states. A carrier gets support only if its state average costs exceed 135 percent of the national average. If no state had costs above 135 percent of the average, support would fall to zero.[198] Only eight states are now above this threshold. A new service that adds costs would affect the amount of support based on how it affects the distribution of costs. It may seem a seeming paradox to some, but adding certain kinds of costs could actually reduce fund size, because it increases the national average cost.[199] This may be precisely the kind of cost increases that are at stake with plant to support advanced services.[200]

In the key area of advanced services, the majority has taken a negative view of the record, emphasizing the incremental costs of completing a broadband rollout. The majority overlooks, for example, the substantial progress that many small rural companies have already made in providing their customers with broadband service. According to the several year-old NECA

[196] 47 U.S.C. § 252(b)(5), (e).

[197] For example, the majority expressly states that adding soft dial tone would be contrary to the public interest because the Joint Board is unclear about the effect it would have on the size of the universal service fund. ¶ 29.

[198] The hold-harmless provisions would delay the effect, however.

[199] For example, if every large carrier's cost increased by $10 per line per month, the distribution would be compressed. Fewer carriers would be above 135% of the new and higher national average cost, and fund size would decrease.

[200] In his written statement (pp. 3-4) to the Joint Board's recent en banc concerning the universal service contribution method, Dr. Bill Gillis, an economist specializing in rural economic development, who chaired the Rural Task Force, made the following related point:

"The unanimous agreement of Rural Task Force members representing RLECS, CLECs, consumer advocates, and IXCs was not forged simply on a desire that advanced services be more widely available in areas served by Rural Telephone Carriers. More broadly, the members recognized that public interest and Congressional intent expressed in Sections 254(b)(2) and (3) is served by ensuring the universal availability of a network capable of providing a wide array of profitable information services. To the extent an upgraded plant within the public switched network enables a higher proportion of necessary revenues to be achieved directly through market transactions and smaller subsidies are required to justify the business case for investment, the future cost of universal service can be reduced. However, if public policy including sufficient universal service funding hampers the deployment of advanced service capable infrastructure in high cost rural locations, consumers are more likely to be required to pay a higher level of universal service dollars over the long-run as profitable information service options are not available to produce critical revenues to 'buy-down' necessary universal service support. In short, the 'no-barriers to advanced services' recommendation is intended to maximize potential private market leverage to support rural telecommunication needs and minimize the cost of future subsidies."

Rural Broadband Cost Study, about 65 percent of the lines served by small rural carriers will be capable of providing broadband service by 2002. This fact, coupled with the ambitious rollout of data-network services by rural carriers, show that rural telephone companies are trying to meet their customers' needs for high-speed lines.[201]

I do not support spending universal service funds for items that do not provide increased value to end-users. I do think the principal concern of the Joint Board should be to ensure that support is at least sufficient to achieve the goals of section 254.

III. COSTS OF SUPPORTED SERVICES.

The Recommended Decision recites the statutory sections governing the list of supported services. Perhaps because they believe the statutory interpretation straightforward, however, the majority does not discuss how those sections should be applied to the present task. Upon consideration, the required analysis is less straightforward and more complex. I do not believe the Joint Board can make sensible recommendations about what services should be on the list without first clarifying how the list will be used. I would have included more discussion about how adding a service to the list, or withholding a service from the list, affects costs and universal service support.

The list of services can potentially answer three different questions:

1. *What services must a telecommunications carrier offer before it can be certified as an ETC and receive federal support?*
2. *When support is calculated, what costs are included*? (Today, federal support is based on costs.)
3. *To what purposes may carriers apply federal support?*

Some believe that "the list" of supported services simply and directly answers all three questions in the same way. I believe a more nuanced approach is required, particularly in answering the first two questions.[202] Ignoring the difference between the questions could ultimately harm rural customers and universal service goals.

[201] In Paragraph 15, the majority presents the worst-case view of the NECA study, citing only the $10.9 billion total cost. That study also describes how many rural carriers have upgraded plant, shortened loops, and stand ready to deploy DSL to most of their exchanges for a relatively small incremental cost. For the 1.6 million lines within the Central Dial Office Serving Area (CDOSA), the incremental cost of upgrading to DSL was estimated at $.8 billion. For the one million lines outside the CDOSA, the estimated incremental cost of upgrading was $4.5 billion. The $10.9 billion total was driven by the $5.6 billion cost of providing DSL access to .6 million "isolated" customers. The Rural Broadband Cost Study is available at http://www.neca.org/bband3.asp. Further, the NECA study expressly did not model non-DSL last mile access paths, which might be particularly useful in serving isolated customers.

[202] I regret that our notice in this proceeding did not more fully explore this issue. If it had, we would likely have received more informed and understandable comments. As it stands, comments of the parties are occasionally difficult to parse. Many comments appear to be based on implicit assumptions about the effect of adding a service to the list, but without clearly explaining whether the argument was addressed to the minimum requirements for ETC eligibility or the mechanics of calculating support.

The great majority of the Recommended Decision is properly about the first question. Our recommendations here, and the FCC's final action on the list, will define the minimum service requirements for certification as an Eligible Telecommunications Carrier (ETC). No carrier should receive federal support that does not offer this floor level of services.

Yet even as to this simple issue, there is some ambiguity because the list is not really a list of services. In most locations, a consumer may not be able to purchase separately a single "service" now found on the existing list.[203] I am not aware that any customer, for example, can elect not to interconnect with the interexchange network or to waive emergency coverage. In that sense the list essentially describes the minimum permissible features or elements of local exchange service.[204] The Recommended Decision acknowledges this by characterizing the services list as a "functional" definition. The list describes the functions that the network must perform for local exchange customers.

It is as to the second question, allowable costs, where I see risk from today's Recommendation. The Recommendation recites the Act's requirement that support be provided only to those services that are supported[205] and thus that are "on the list." In my view, the Joint Board and the Commission must apply this section in a way that makes sense in light of the overall purpose of that statute and the practical workings of existing support programs. I would have preferred that this Recommended Decision explain that the costs that are allowed in calculating support cannot be determined directly and solely by considering the "*services"* on the list.

Fundamentally, this is because support today and for the foreseeable future is based on the cost of purchasing, installing and operating *facilities*. This is true whether the support calculation is based on embedded costs or forward-looking cost. The existing cost-based support systems are necessarily complex.[206]

A second important fact is that nearly all telephone equipment is used in common. Loops provide not only "listed" local exchange, operator and emergency services but also "unlisted" toll and broadband services. Switches provide not only "listed" services such as dial tone and DTMF signaling but also the "unlisted" service of equal access to interexchange carriers. As a result, a support calculation today includes some method to allocate cost between listed and unlisted services. The "list" of supported services can provide a guide to that cost allocation, [207] but the mapping is inexact. The outcomes are based on dozens, possibly hundreds, of decisions about what costs should be allowed in support calculations. Judgment is required to align the list of services with facilities and facility costs with support.

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[203] Tone dialing at least may in some areas still be an elective service, but in many other areas is available without charge.

[204] I know of no customers, for example, who may elect individually to pay or refrain from paying an E-911 surcharge. Nor may any customers waive connection to the interexchange network, another item on the list.

[205] 47 U.S.C. § 254(b).

[206] The Recommendation's discussion in footnote 43 gives hope that this concern may be more fully addressable in the future.

[207] For example, the Commission's Synthesis Cost Model performs calculations to exclude a portion of the interoffice trunking network to account for toll usage, an unlisted service.

I would have recognized this complexity in the Recommended Decision because a decision to include or exclude a service from the list might be read in the future as endorsing changes in allowable costs, possibly leading to support reductions in rural and high-cost areas. The majority implicitly recognizes this problem for advanced services, where the problem arises most conspicuously. Both rural and nonrural carriers today receive support based on cost calculations that include at least some broadband facilities. For large nonrural carriers, support is based on the Synthesis Cost Model, which includes some loop facilities beyond that required merely for voice communications.[208] For rural carriers, support is based on embedded costs. Some costs of broadband plant can legitimately be,[209] and frequently are, the basis for federal support to these rural carriers.

IV. A "NO BARRIERS" PATH FORWARD.

I am pleased that, in Paragraph 18, the Joint Board here endorses the Commission's earlier statement from the Rural Task Force order that Commission policy should not impede the deployment of plant capable of providing access to advanced or high-speed services.[210] This should minimize the risk that this Recommended Decision will be used in the future to eliminate costs or reduce support for advanced services. It should also provide some encouragement to carriers to continue investing in forward-looking technology.

The Commission's Rural Task Force statement was a paraphrase and abridgement of the more detailed Rural Task Force recommendation.[211] I am disappointed that the majority has not endorsed the Rural Task Force recommendation in full. To the extent that the Joint Board does not deal here with the "no barriers" issue in detail, I hope that it will do so in another context in

[208] That model's parameters are set to design loops suitable for some DSL services, even though such loops may be more costly than those needed merely to provide voice service. The model limits loop length at 18,000 feet, thereby enabling "ADSL1" services but not "ADSL2" services. 5th Report and Order ¶ 70.

[209] Rural carriers receive loop support based on costs that, under Parts 32 and 36 of the Commission's rules, qualify as category 1.3 cable and wire (loop) or category 4.13 central office equipment (circuit equipment).

[210] In its Rural Task Force Order the Commission agreed with the Rural Task Force that the FCC's "universal service policies should not inadvertently create barriers to the provision of access to advanced services," and stated that "[we] believe that our current universal service system does not create such barriers." 14th R&O (Rural Task Force) Executive Summary.

[211] The Rural Task Force "no barriers to advanced services" policy including the following principles:

a) Universal service funding should support plant that can, either as built or with the addition of plant elements, when available, provide access to advanced services. State commissions could facilitate this infrastructure evolution and may make an exception for carriers with functional but non-complying facilities.

b) Telecommunications carriers should be encouraged by regulatory measures to remove infrastructure barriers relating to access to advanced services.

c) The 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. Specifically, to remain "sufficient" under the 1996 Act, the fund should be sized so that investment in rural infrastructure will be permitted to grow.

the immediate future.[212] "No barriers" should be the basis for the further proceeding suggested by Commissioners Martin and Copps. To the extent high cost fund and other support facilitates the construction of robust, forward looking networks, in many cases it is probably less important that specific services or "applications" residing on a network be supported. However, this is a topic to be explored, I hope, in the called-for proceeding.

The scope problem applies to more than advanced services. For example, the Joint Board here recommends that soft dial tone should not be a supported service. Yet some states now require that their local exchange carriers must provide soft dial tone. Providing this service can increase the carriers' loop investment. I agree with the majority that providing soft dial tone should not be a minimum qualification for certification as an ETC. At the same time, however, I am concerned about the possible effect of this recommendation on cost recovery. In states where soft dial tone is required, the Joint Board should say that any incremental costs associated with soft dial tone should continue to be included in federal support calculations.[213]

In order to reduce the risk of such unintended results, I would have included in today's Recommended Decision a broader discussion of the differences between ETC designation and calculating support. In my view, the "floor" or "core list of services" for ETC certification under question #1 need not be, should not be, and realistically cannot be the "ceiling" for cost recovery under question #2. The floor standard is a level below which no ETC may venture, but above which costs often are and should be recognized. I would also have said that the size of the difference between the floor and the ceiling can be affected by a variety of factors, such as the difficulty of including or excluding certain costs, the need to recognize legitimate state requirements on local exchange carriers and the desire to encourage broadband deployment.

If this Recommended Decision had clarified these issues, I think the groundwork would have been laid for a more sensible policy on promoting advanced services, particularly in rural areas. By failing to clarify this difference, the Recommended Decision not only passes this opportunity by, but it leaves rural areas vulnerable to future exclusions for costs associated with services that, for other reasons, we have recommend here should not be added to the list.

V. DIGITAL CONNECTIVITY.

The Recommended Decision does not respond adequately to the dramatic evolution of the network and of consumer usage of the network to digital communications. While I agree with the majority's ultimate recommendation not to include specific advanced services in the list of minimum services at this time, today's recommendation leaves undisturbed an outdated concept of universal service from 1997 that is based entirely on traditional voice service. Today's recommendation does not alter the list of core services in any way that reflects the increased importance of the Internet, and of digital communications generally, to residential

[212] In the Rural Task Force Order the Commission "commit[ted] to further consideration of the Rural Task Force's proposed 'no barriers to advanced services' policy in the future." 14th R&O (Rural Task Force) Executive Summary.

[213] Similarly, the majority concludes here that Expanded Area Service should not be a supported service. I agree that providing EAS should not be a minimum requirement for ETC certification. But EAS calling is required in some states as a part of the duties of local exchange carriers. I am concerned that, where EAS is required, today's decision may be the basis of a future decision to allocate away loop and switching costs associated with EAS facilities.

customers. Nor does it acknowledge that some customers still cannot reliably access the Internet because of inadequate analogue local or interexchange facilities.

Section 254(c)(2) states, "[t]he Joint Board may, from time to time, recommend to the Commission modifications in the definition of the services that are supported by Federal universal service support mechanisms."[214] Section 254(c)(1) also states that "[u]niversal service [is] an evolving level of telecommunications services" and that the Commission shall "tak[e] into account advances in telecommunications and information technologies and services."[215] Moreover, the Act directs the Joint Board to base its policies on principles that ensure that all parts of the country have access to telecommunications and information services that are reasonably comparable to those services provided in urban areas.[216] Finally, the 1996 Act's legislative history shows the Commission has "specific authority to alter the definition from time to time" in order to "take into account advances in telecommunications and information technology."[217] These statutes read together suggest a broad conclusion. Universal service policies should not lead the parade to deploy advanced services; but neither should they fall so far behind that the parade is altogether out of sight. (And, in Section 254, Congress made clear that citizens in underserved and unserved areas shouldn't be the shovel brigade at the technology parade's end.)

The Commission last acted on the question of Internet connectivity in 1997. At that time, it determined that voice grade access to the public switched network "usually" enables customers to secure access to an Internet Service Provider, and, thus, to the Internet. It declined to add higher quality links to the list of required services, in part because the record did not show that a substantial majority of residential customers then subscribed to Internet access using high-speed access links.[218] As a result, the list of supported services is today entirely silent on digital transmission. In 2002, a carrier can receive federal support even though it does not provide a method for its customers to connect to the Internet.

As the majority recognizes, the situation has changed significantly since 1996 when the Act passed. Not only has Internet connectivity become commonplace, but broadband is more widely available. As noted by the majority, 56.5 percent of all households have computers and could benefit from advanced or high-speed services. Also, about half of all households today subscribe to some form of Internet access. I agree that this is not yet the "substantial majority" of residential customers mentioned in the statute. However, it does provide a solid basis for a recommendation of some form of digital connectivity.[219] Even broadband service is now

[214] 47 U.S.C. § 254(c)(2).

[215] 47 U.S.C. § 254(c)(1).

[216] 47 U.S.C. § 254(b)(3).

[217] Joint Explanatory Statement at 131.

[218] First Report and Order, ¶ 83.

[219] The Commission has already determined that all four criteria enumerated in section 254(c)(1) must be considered, but not each necessarily met, before a service may be included within the general definition of universal service, should it be in the public interest. The Commission has flexibility to establish a definition of services to be supported, after it considers the criteria enumerated in section 254(c)(1)(A)-(D). *First Report and Order*, ¶ 61. For this reason, the Commission today could establish a minimum digital connectivity standard, if it wished, even though something like a bare majority of customers today uses that service.

reportedly widespread. High-speed Internet access service is now reportedly available to approximately 75-80 percent of all the homes in the United States via DSL or cable modem service.[220]

These data illustrate the contrast between the digital "haves" and "have nots." The majority of customers not only has availability of Internet access, but also has availability of broadband Internet access. By contrast, in some parts of the country carriers can provide marginally satisfactory voice service, but their networks do not support modem use. A modem connected to such a telephone line does not work. It is still usually true, as the Commission noted in 1997, that a voice grade circuit allows digital communication using a modem. But it is still not universally true. This is precisely the kind of difference that Congress tasked the Joint Board to eliminate. The problem is exacerbated by the fact that the Commission and Joint Board may leave this question undisturbed for another five years.

Both the Congress and the Commission are also currently seeking ways to expand broadband deployment. In a ruling earlier this year, the Commission declared that cable modem service is an "information service." The Commission explained that its "overarching goal" in this decision was "to "encourage the ubiquitous availability of broadband to all Americans".[221] Bills pursuing the same goal have been considered in the Congress. If it is important to make broadband Internet available to the last 25 percent of the population, I think it should be urgent to provide rudimentary digital access to the fewer people who cannot today connect to the Internet at any speed.

The notice here asked about analog bandwidth, but not digital throughput.[222] As a result, the record offers little concerning the costs or benefits of a digital throughput requirement, and not enough is yet known about costs or benefits to make a specific recommendation. Customers today typically buy modems capable of speeds of 56,600 bps, and throughput rates on voice lines in urban areas increasingly exceed 28,800 bps.[223] However, the record here is not adequate to form conclusions on the prevailing level of service in urban areas. Moreover, it might be unduly expensive or disruptive to adopt a 28.8 or 56.6 standard without a longer delay for implementation. Perhaps a more appropriate, although conservative, minimum standard would be the older modem standard of 14,400 bps.

As to both the speed required and implementation of the requirement, a variety of options are available. Most of them would have been greatly preferable to the status quo.

I disagree with much of the reasoning offered by the majority for its conclusions on broadband and analog bandwidth. For example, the majority asserts that adding advanced or high-speed services to the list could jeopardize support currently provided to some carriers.[224]

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[220] The data also show that relatively few customers purchase broadband, even where it is available.

[221] *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, GN Docket No. 00-185, *Declaratory Ruling and Notice of Proposed Rulemaking*, rel'd Mar. 15, 2002, ¶ 4.

[222] Bandwidth is a more neutral metric, more consistent with a "no barriers" approach, and in my view more relevant to what we should really be considering.

[223] To many, 28,800 bps is considered functionally inadequate for increasingly data-intensive Internet communications.

[224] Para. 17. From my experience, it is also difficult to conceive of substantial material risk that investments in "mature narrowband technologies" (Paragraph 23), either wireline or wireless, will become obsolete or stranded any time soon.

(continued....)

This problem could be easily avoided by granting a reasonable delay for implementation, something that has often been done in the past when new services were required[225] and that (on a divided issue) the Recommended Decision itself suggests for equal access.[226]

The majority states that a network transmission component of Internet access, whether it is 14.4, 28.8, 56, or some other speed, is not "essential to education, public health, or public safety" at this time, because no community or public services agencies are available exclusively over the web.[227] It would almost certainly be incorrect to state that the Internet is not a primary means for accessing many essential services, although the record is not well developed. The notice here never asked about the implications of a digital transmission standard, only analog bandwidth. As the majority notes, analog bandwidth has several additional complicating factors. Therefore many of the comments received focused on the technical issues surrounding analog bandwidth, and little was said about the value of digital connections.

Moreover, the majority does not properly apply the statutory test. The question should not be whether community or public service agencies are available exclusively over the Internet. The statute does not require the Joint Board to prove this much. One problem is that the majority test is overbroad. If applied consistently, it could sweep more than Internet connections off the list of supported services. Basic telephone service itself could be suspect, since few community or public agencies are known to conduct transactions only over the telephone.

The more fundamental problem is that the majority does not adequately recognize the important benefits that the Internet today provides to its users. Those benefits span all three categories listed in the statute, education, health and safety. It is not hard to see that at least under at least some circumstances these uses can be "essential." Education is available online in locations not served by traditional institutions, and the Internet allows students in remote rural areas to obtain basic and even advanced education to which they would otherwise have no access. Detailed health information can be obtained online, and Internet users frequently use this information to augment the advice of the family doctor, sometimes even to avoid an unnecessary visit. Public safety warnings are now routinely posted on the Internet for weather events, and in a national or regional emergency the Internet could prove to be as important a means of communication as the radio, providing additional functions not available through broadcast communications.[228] In addition, the importance of Internet connectivity is now recognized by

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Here and elsewhere, parts of the Recommendation almost assume a "lowest common denominator" approach to reconciling competition and universal service policy. From the perspective of rural telecommunications users, encouraging competition to provide excellent service might produce more noticeable benefits.

[225] In 1997, the Commission granted in three limited instances a reasonable period during which otherwise eligible carriers were allowed to complete network upgrades required for them to begin offering certain services that they were initially incapable of providing. First Report and Order, para. 89. Rural Utility Service programs also provide relevant examples of encouraging the phased upgrade of telecommunications networks.

[226] Para. 86.

[227] Para. 25.

[228] The Internet could be used, for example, to coordinate volunteers after a natural disaster or to provide detailed information about the progress of a forest fire.

the Commission's recent decision affecting the telecommunications relay service program.[229] I would have preferred that this Recommended Decision conclude that Internet connectivity, at some speed, is essential to education, public health or public safety.

In sum, it may not yet be time to make advanced services a floor service required of all carriers. But it is long past time to make Internet connectivity, at some speed, a minimum standard for telephone service everywhere in this country. Widespread Internet usage, extensive broadband availability, and broad support for ubiquitous broadband deployment all argue for adding a modest digital connectivity requirement to the list. In my view, the Joint Board should ask the Commission to make an explicit commitment to address this matter by issuing a further notice.

VI. TRANSPORT.

The majority has chosen not to address fully here the question of providing support for carriers with very high transport costs. I would recommend examining this issue as soon as possible because very high unsupported transport costs are the primary barrier to establishing telephone service in certain remote areas.[230]

Transport facilities are a part of the public switched network. They are a network functionality and thus are not a consumer service or "function" that has previously been listed under section 254(e). Nevertheless, transport facilities are essential to many of the functions that are on the list, including: voice grade access to the public switched network; access to emergency services; access to operator services; access to interexchange services; and access to directory assistance. Moreover, the value of local exchange service would be almost totally undermined without transport. In many areas, interoffice transport is used even for "local" calls that involve two switches in the same local calling area. Thus without transport, some customers could only call other customers in their immediate community.

Transport costs are not uniform, and they are particularly high in some very remote areas. Where customers are clustered but are otherwise remote from other communities, transport costs can even exceed loop costs, which ordinarily dominate rural local exchange costs.

The current support mechanism for rural and non-rural carriers does not recognize all transport costs. For rural carriers, there is no transport support at all. Thus, even though supported services depend upon the transport function, not all or in some cases none of the high costs of providing the transport function are covered. As a result, a carrier with high transport costs may be unable to provide all of the services required to maintain its eligibility for support and at the same time keep rates at affordable and comparable levels. This can produce high toll rates in areas where transport costs are pooled and the continued absence of any telephone service in areas where they are not. High transport costs may also be a critical impediment to the

[229] *Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Petition for Clarification of WorldCom, Inc.*, CC Docket No. 98-67, Declaratory Ruling and Second Further Notice, FCC 02-121 (rel. April 22, 2002) ("*Declaratory Ruling*").

[230] See my separate statement in the Joint Board's Recommendation concerning the Rural Task Force Report, Part B, "Unserved and Underserved Areas," for additional discussion of this issue.

ability to provide larger local calling areas to customers in remote communities at a reasonable cost.[231]

Despite its importance to some remote areas, I concur with the majority that support for transport costs is not an issue that can be addressed here. Here the question is which services should be required of each Eligible Telecommunications Carrier, and which services and facilities are eligible for support, not which facilities generate the costs recognized in the support calculation. Still, I think the problem is so significant that it needs to be addressed promptly. I recommend that the Commission initiate a proceeding to address supporting the transport costs of rural and non-rural carriers and the effect of that support on availability of services and the comparability and affordability of rates. The Joint Board should address the issue as soon as practicable, considering the other issues before it.[232]

VII. CONCLUSION.

I appreciate the Joint Board's hard work on this referral. The Joint Board has an ambitious and important agenda before it. I hope it will be able to address the matters raised in this opinion, and look forward to participating in that work.

[231] This would also be a partial, constructive response to comments received in this proceeding by, among others, the US Conference of Catholic Bishops and the State of Alaska. Further, transport is a key, but often-neglected element in Internet access. Last year's NECA Middle Mile study, concerning the cost of transporting rural Internet traffic from an ISP to an Internet backbone provider is relevant and useful, http://www.neca.org/midmile.htm.

[232] The Recommendation, states that the Joint Board will take up transport costs in the pending referral of the remand of the Ninth Report and Order, following the remand from the Tenth Circuit Court of Appeals. Para. 57. I note the Ninth Report and Order concerns the large "nonrural" carriers and thus is unlikely to address transport issues for small rural carriers. Further, reply comments in that proceeding were due earlier this Spring. I trust the Joint Board is prepared in that proceeding specifically to consider the effects of the lack of support for transport on both large and small carriers, and also to develop an adequate record concerning transport, including reopening the record if necessary.

SEPARATE STATEMENT OF
COMMISSIONER KEVIN J. MARTIN
APPROVING IN PART AND CONCURRING IN PART

Re: Federal-State Joint Board on Universal Service, Recommended Decision (released July 10, 2002).

I wish to thank all my colleagues on the Federal-State Joint Board for their hard work and contributions in the effort to reach consensus on the important issue of determining which services should be supported by the federal universal service program.

Today's recommended decision reaffirms our commitment to preserve and advance universal service by ensuring the affordability and availability of telecommunications services in all regions of the Nation. Moreover, the Joint Board's recommendations in this item are consistent with our statutory mandate to protect the sufficiency of the universal service support mechanisms.

While I generally support the recommendations in the decision, I would have been willing to also recommend a further Notice to obtain more data on how, and to what extent, the federal universal service support mechanism could assist the deployment of advanced services, or at least the removal of barriers to such deployment, particularly in rural, remote and high cost areas throughout the country.

Congress did not envision that services supported by universal service would remain static. Instead, it views universal service as an evolving level of telecommunications services. With each passing day, more Americans interact and participate in the technological advances of our digital information economy. Deployment of these telecommunications and information technologies support and disseminate a greater amount of services essential to education, public health and safety. A modern and high quality telecommunications infrastructure is essential to ensure that all Americans, including those residing in rural communities, have access to the economic, educational, and healthcare opportunities available on the network. Our universal service program must continue to promote investment in rural America's infrastructure and ensure access to telecommunications services that are comparable to those available in urban areas, as well as provide a platform for delivery of advanced services.

As such, it is imperative that the Commission have adequate and updated information on the state of technological developments, network infrastructure deployment, and any potential barriers that may exist in order to ensure that the services designated for support reflect the evolving nature of technology.

In my view, pursuing a further Notice at this time would assist the Commission in its continuing effort to ensure that all Americans, including those in rural and high cost areas, have access to these services.

SEPARATE STATEMENT OF
COMMISSIONER THOMAS J. DUNLEAVY, NEW YORK PUBLIC SERVICE COMMISSION

Re: Federal-State Joint Board on Universal Service, Recommended Decision (released July 10, 2002).

With this Recommended Decision the Federal-State Joint Board on Universal Service completes its first comprehensive re-examination of the list of services that may be supported by federal universal service mechanisms. It is a distinct honor and privilege to have had the opportunity to participate in these deliberations with the other members of the Joint Board. After thorough and thoughtful review of the record in this proceeding, the Joint Board has not recommended expanding that list at this time. I wholeheartedly concur in that outcome.

In enacting the universal service provisions of the Telecommunications Act of 1996, Congress clearly articulated the goal of ensuring that Americans in all regions of the country continue to have access to, and affordable use of, an evolving set of fundamental telecommunications capabilities. We must, therefore, be prepared to add services to, and perhaps delete them from, that definition of fundamental or "core" capabilities as technologies improve and our uses of telecommunications evolve.

Equally clearly, however, Congress strictly limited the Joint Board and Commission in how they may define that set of core capabilities. To be included in that list, services or capabilities must be 1) "essential to education, public health, or public safety," 2) "subscribed to by a substantial majority of residential subscribers," 3) "deployed in public telecommunications networks," and 4) "consistent with the public interest, convenience, and necessity." [233] Congress did not give us free rein to provide federal support to whatever service or capability we might personally find compelling; we must follow the lead of the majority in the marketplace in determining what is so essential and widely used that it should be made universally available.

The broad-based federal universal service programs (high-cost and low income) at issue here are not about simply ensuring widespread deployment of services in case some customers find them beneficial. They are aimed at getting every household actually subscribed to the defined basic level of telecommunications. We measure our universal service success by measuring subscription, not homes passed or facilities deployed. Adding any service to the definition of universal service implies that we expect every household to actually subscribe to and pay for that service. In addition, most customers will probably pay higher universal service fees to cover the additional cost of making that service "universal." Hence, the cost of adding a service to the definition is not simply the potential greater burden on the universal service fund, but the potentially higher price of an expanded level of "basic" service for all consumers. It is this cost, potentially huge, that in my view we must consider when evaluating whether adding a capability or service would be "consistent with the public interest, convenience, and necessity."[234]

[233] 47 U.S.C. § 254(c)(1)(A-D)

[234] 47 U.S.C. § 254(c)(1)(D)

Various parties have made appealing cases for adding a variety of capabilities to the list of supported services. Some meet one or more of the Act's criteria; some would enhance worthy social causes; but none meet all four of the required criteria. I am pleased that, in the end, the Joint Board's Recommended Decision, consistent with the views expressed by the majority of commentators, is faithful to the universal service framework established by Congress.

SEPARATE STATEMENT OF
COMMISSIONER MICHAEL J. COPPS
APPROVING IN PART, DISSENTING IN PART

Re: Federal-State Joint Board on Universal Service, Recommended Decision (released July 10, 2002).

This Decision is one of the most important that the Joint Board will consider this year. As the Commission and the Joint Board move forward with other universal service proceedings during the coming months, including an examination of the contribution methodology, it is important that we develop a consensus on the definition of universal service and how to achieve Congress' goals.

Universal service is a critical pillar of the Telecommunications Act of 1996. Congress clearly concluded that a core principle of federal telecommunications policy is that all Americans, no matter who they are or where they live, should have access to reasonably comparable services at reasonably comparable rates. Congress also wisely anticipated that the definition of universal service would evolve and advance over time.

I want to thank my colleagues on the Joint Board for their frank discussions on this Recommended Decision. The Decision is the product of much hard work by dedicated Joint Board members and equally dedicated staff. Nevertheless, I am concerned that today's Decision is not always forward-looking in its analysis. For example, as discussed below, the Joint Board seemingly discounts the importance of access to broadband services and to the Internet. In addition, the Joint Board seems overly constrained in its analysis by concerns about any increases to the fund or about the possibility that any change could disadvantage one industry sector or another. I write separately to highlight a few principal areas in which I have significant concerns with the Decision.

Advanced Services

I respectfully disagree with a fundamental premise of the majority in its discussion of advanced services. The majority concludes that advanced services are not essential to education, public health, or public safety because "many such resources are readily accessible through alternative means, such as by voice telephone or dial-up connections to the Internet." By this same logic, maybe telephones should never have been deemed essential because we had the telegraph.

I believe that advanced services *are* essential. Indeed, they are becoming more so with each passing day. Already, broadband is a key component of our nation's systems of education, commerce, employment, health, government and entertainment. Congress recognized the importance of broadband access in the Telecommunications Act of 1996. Not only did Congress give the FCC and the state commissions the statutory mandate to advance the cause of bringing access to advanced telecommunications to each and every citizen of our country, but it also directed that one of the guiding principles of universal service is that "access to advanced telecommunications and information services should be provided in all regions of the Nation." There is no doubting, in my mind, that Congress looks forward to the advancement of advanced services all across our country. But this important objective will not be achieved without such

technologies eventually being included as eligible for universal service support. The majority's seeming conclusion that market forces alone will accomplish this flies in the face of reality and is contrary to what many business leaders tell me. The Joint Board does little to advance the broadband effort when it concludes that advanced services are not essential.

I am also troubled by the conclusion that we cannot include broadband in the definition of universal service because some broadband providers do not also offer core telecommunications services. This rationale could prevent us from *ever* supporting broadband. The appropriate analysis should focus on the statutory directive to ensure that all consumers receive comparable services, not whether we should lower the standard so that more providers qualify.

Although it may be true that broadband is not yet completely ripe for inclusion in the list of supported services, it is my firm belief that broadband will satisfy the statutory criteria in the near future. In the meantime, universal service should not create barriers to broadband deployment. I am pleased that the Joint Board *does* endorse the concept that universal service should support infrastructure capable of providing broadband services. Although there is more we should do to promote broadband, my hope is that affirming this commitment will encourage carriers to undertake necessary investment to modernize infrastructure in their communities. In addition, I support launching a proceeding to examine steps we should take to promote the deployment of advanced services, and the role of universal service in that effort. This should be a priority matter.

As a final matter, I note with interest the Joint Board's conclusion that, if the Commission were to adopt its tentative conclusions that broadband Internet access is an information service with a telecommunications component, then broadband Internet access could never be supported by universal service. The law of unintended consequences can inflict terrible damage some times, and if this is an outcome of the Commission's *Wireline Broadband Notice*, the damage could be irreparable.

Other Issues

I am troubled by the Joint Board's conclusion that the states carry the principal burden of ensuring that quality services are maintained. Both the states and the Commission need to work together to confront the challenges of service quality in a changing marketplace. Our objective is to bring the best communications system to all of our people. Rural, insular, and low-income consumers have a right to services that are as reliable as those provided to other consumers. The Commission must not abdicate its statutory responsibility to ensure that quality services are available at just, reasonable, and affordable rates.

I am also concerned that the Joint Board fails to take adequate account of the substantial impact of today's Decision on the access of low-income consumers to telecommunications services. For example, the Joint Board recognizes that low-income consumers in rural and tribal areas may be unable to access basic essential health, safety, and educational resources using the current list of supported services, but it does not take steps to address this problem. I urge the Joint Board to consider these issues further in its proceeding on the low-income mechanisms.

Finally, although I supported inclusion of equal access in the list of supported services, I recognize that this issue is a close call as demonstrated by the lack of consensus in the Joint Board. I look forward to reading the comments on this Recommended Decision and, in particular, a discussion of the impact on consumers of including or excluding equal access. For example, if universal service is about connecting all Americans, is it the consumer or the carrier who decides on the services and the identity of the provider that the consumer can access through that connection? In addition, some parties extol the benefits of wireless carriers offering consumers service packages that include bundles of any-distance minutes, but I look in vain for an explanation of how inclusion of equal access would preclude such plans. As for the competition issues, some opponents of including equal access state that these issues are relevant to the discussion but are more properly addressed in a future, but as yet unlaunched, proceeding. When the equal access issue is addressed by the Commission, I hope we will have the benefit of sufficient analysis on the competition issues to inform our decision-making.

Again, my gratitude goes out to all who worked so diligently to produce this document which now goes to the Commission. There it will receive, I am confident, the careful attention and high priority it so clearly merits.