

**DISSENTING STATEMENT OF  
COMMISSIONER KEVIN J. MARTIN**

*Re: Federal-State Joint Board on Universal Service; Virginia Cellular, LLC, Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia.*

Today's decision designates Virginia Cellular, LLC (Virginia Cellular) as an eligible telecommunications carrier (ETC) in areas served by five rural telephone companies and two non-rural telephone companies in the State of Virginia. The Commission finds the designation of Virginia Cellular as an ETC to be in the public interest and furthers the goals of universal service by "providing greater mobility" and "a choice" of providers in high-cost and rural areas of Virginia.<sup>1</sup> I object to this Order's finding that the goals of universal service are to "provide greater mobility" and "a choice" of providers in rural areas. Rather, I believe the main goals of the universal service program are to ensure that all consumers—including those in high cost areas have access at affordable rates.

During the past two years, I have continued to express my concerns with the Commission's policy of using universal service support as a means of creating "competition" in high cost areas.<sup>2</sup> As I have stated previously, I am hesitant to subsidize multiple competitors to serve areas in which costs are prohibitively expensive for even one carrier. The Commission's policy may make it difficult for any one carrier to achieve the economies of scale necessary to serve all of the customers in rural areas.

I am troubled by today's decision because the Commission fails to require ETCs to provide the same type and quality of services throughout the same geographic service area as a condition of receiving universal service support. In my view, competitive ETCs seeking universal service support should have the same "carrier of last resort" obligations as incumbent service providers in order to receive universal service support. Adopting the same "carrier of last resort" obligation for all ETCs is fully consistent with the Commission's existing policy of competitive and technological neutrality amongst service providers.

First, today's decision fails to require CETCs to provide equal access. Equal access provides a direct, tangible consumer benefit that allows individuals to decide which long distance plan, if any, is most appropriate for their needs. As I have stated previously, I believe an equal access requirement would allow ETCs to continue to offer

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<sup>1</sup> Order at para. 12.

<sup>2</sup> Separate Statement of Commissioner Kevin J. Martin, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Second Report and Order and Further Notice of Proposed Rulemaking*, CC Docket (No. 00-256)(rel. October, 11, 2002).

bundled local and long distance service packages, while also empowering consumers with the ability to choose the best calling plan for their needs.<sup>3</sup>

Second, the Commission redefines several rural telephone company service areas where Virginia Cellular's proposed service areas do not cover the entire service area of the incumbent rural telephone company. Given the potential for creamskimming, I do not support this redefining of the service areas of incumbent rural telephone companies. The Commission's decision to permit service area redefinition relies solely on an analysis of population densities of the wire centers that Virginia cellular can and cannot serve to determine whether the effects of creamskimming would occur, but fails to justify the decision based upon any cost data to verify whether Virginia Cellular is serving low-cost, high revenue customers in the rural telephone company's area.

Finally, I am concerned that the Commission's decision on Virginia Cellular's application may prejudge the on-going work of the Federal-State Joint Board regarding the framework for high-cost universal service support. Today's decision provides a template for approving the numerous CETC applications currently pending at the Commission, and I believe may push the Joint Board to take more aggressive steps to slow the growth of the universal service fund such as primary line restrictions and caps on the amount of universal service support available for service providers in rural America.

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<sup>3</sup> Separate Statement of Commissioner Kevin J. Martin, *Federal-State Joint Board on Universal Service*, CC Docket No.96-45, (rel. July 10, 2002); Separate Statement of Commissioner Kevin J. Martin, *Federal-State Joint Board on Universal Service, FCC 03-170*, CC Docket No. 96-45, (rel. July 14, 2003).