

**SEPARATE STATEMENT OF BILLY JACK GREGG,
DIRECTOR OF THE CONSUMER ADVOCATE DIVISION,
PUBLIC SERVICE COMMISSION OF WEST VIRGINIA**

Re: Federal-State Joint Board on Universal Service, Recommended Decision

The most important aspect of our recommendation today is the decision to limit support to primary lines. Not only will this action slow the growth of the high cost fund stemming from support of multiple lines of multiple networks within the same area, but it will also fundamentally change the calculus for designating additional eligible telecommunications carriers (ETC's) in areas served by rural carriers. Since current Commission rules provide support to all lines of all ETC's, states have been faced with the perverse incentive of gaining more federal universal service support the more ETC's they approve.¹ By limiting support to primary lines, we eliminate this incentive and return to the original concept of universal service in a competitive environment: namely, that carriers will compete for the universal service subsidy,² and that competition will eventually drive down the overall cost of subsidizing service in high-cost areas.³

Several of my colleagues on the Joint Board have expressed concern over the fate of small, rural incumbent carriers if support is limited to primary lines. I share these concerns. However, under the Act, the proper place for these concerns is at the point when the decision is made whether to designate an additional ETC in an area served by a

¹ This perverse incentive is especially strong in areas served by rural carriers since these areas generally receive higher levels of federal support.

² See *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776 (May 8, 1997) (*First Report and Order*) at ¶¶19; 287-289; 311-312; “The [FCC’s universal service] order provides that the universal service subsidy be portable so that it moves with the customer, rather than stay with the incumbent LEC, whenever the customer makes the decision to switch local service providers... .” *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 621 (5th Cir. 2000) (*Alenco*).

³ See House Report No. 104-204 (I)(1995), Arnold & Porter Legislative History P.L. 104-104 (*A&P*) at 60: “...as the current system of internal and external subsidies is replaced by a system consisting primarily of external subsidies, the total amount of subsidies collected from low-cost customers and passed on to high-cost customers would not change significantly. Over time, CBO expects that the operating costs of telephone companies would tend to fall as a result of competitive pressures and the total amount of subsidies necessary would decline.” This view was also expressed by Senator Stevens during debate on the Act: “[The Act] opens up the local market to competition while still preserving the concept of universal service. It does so by taking advantage of new technologies which are intended to reduce the cost of all services, including universal service. In fact, I find it interesting that the Congressional Budget Office has said that this bill will reduce the cost of universal service from the existing system by at least \$3 billion over the next five years.” 141 Congressional Record S7881 (1995), *A&P* at 210. See also Senate Report No. 104-23, *A&P* at 254 (1995): “...competition and new technologies will greatly reduce the actual cost of providing universal service over time, thus reducing or eliminating the need for universal service support mechanisms as actual costs drop to a level that is at or below the affordable rate for such service in an area... .”

rural carrier.⁴ If a state or the Commission believes that a particular rural area or a particular rural carrier cannot stand the loss or dilution of current levels of support, then under Section 214(e)(2) of the Act, it should find that additional ETC's are not "in the public interest."⁵ If, on the other hand, states or the Commission find that multiple ETC's are appropriate in a particular area, then the portability rules should apply equally to all ETC's, regardless of the technology used, and regardless of whether the ETC is an incumbent or a new-comer. Proposals to reserve some support as the exclusive province of incumbent ETC's - regardless of previous public interest decisions under Section 214(e)(2) - violate, in my judgment, the principle of competitive neutrality.⁶

I believe that there are certain areas of this country where it is so expensive to provide service that it makes no sense to have more than one carrier subsidized by the federal universal service fund.⁷ Moreover, I believe that it is relatively easy to determine where these areas are. The universal service fund provides various levels of support to over 1400 incumbent study areas in this country. At root, these support levels are based on the cost to provide service to the number of customers within each area. By comparing the average levels of per line support provided to each study area, the Commission should be able to determine per line support benchmarks that divide study areas where multiple ETC's are presumably in the public interest, and those areas where they are not.

⁴ It should be pointed out that under the integrated approach to primary line support outlined in the Recommended Decision, there would be no change in current support for a rural carrier unless and until an additional ETC is designated within the rural carrier's study area by the state or Commission.

⁵ See *Alenco*, at 621-622: "To the extent petitioners argue Congress recognized the precarious competitive positions of rural LEC's, their concerns are addressed by 47 U.S.C. §214(e), which empowers state commissions to regulate entry into rural markets."

⁶ The Commission has defined "competitive neutrality" as "...universal service support mechanisms and rules [that] neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another." *First Report and Order*, ¶47. In *Alenco* the 5th Circuit found competitive neutrality to be an integral component of portability: "...portability is not only consistent with predictability, but also is dictated by principles of competitive neutrality and the statutory command that universal service support be spent 'only for the provision, maintenance, and upgrading of facilities and services for which the [universal service] support is intended.'" *Alenco*, at 622. The Commission has also previously addressed the inappropriateness of support programs available only to incumbents: "We have previously held, in interpreting section 254 of the Communications Act, that 'competitive neutrality in the collection and distribution of funds and determination of eligibility in universal service support mechanisms is consistent with congressional intent and necessary to promote a procompetitive, de-regulatory national policy framework.' As discussed above, it is doubtful that a universal service funding program that restricts eligibility to ILECs could be considered competitively neutral. Thus, a program of this nature may well be found to be inconsistent with and to impede the achievement of important Congressional and Commission goals." *In the Matter of Western Wireless Corp. Petition for Preemption*, Memorandum Opinion and Order, File No. CWD 98-90, 15 FCC Rcd 16227 (Aug. 28, 2000) at ¶11.

⁷ Indeed, but for explicit subsidies from the universal service fund and other federal programs, there would be no telephone service in large areas of this country.

Adoption of such benchmarks will provide guidance to competitors and incumbents, will introduce a degree of certainty into the telecommunications marketplace, and will greatly simplify ETC decisions for state commissions. After further development in proceedings before the Commission, I hope that this benchmarking concept is adopted to guide public interest determinations under Section 214(e)(2) of the Act.

