

Alabama Public Service Commission

Orders

IN RE: IMPLEMENTATION OF THE UNIVERSAL SERVICE REQUIREMENTS OF SECTION 254 OF THE TELECOMMUNICATIONS ACT OF 1996.

DOCKET 25980

SECOND ORDER AND

NOTICE OF PROPOSED RULEMAKING

BY THE COMMISSION:

I. INTRODUCTION AND BACKGROUND

In our first Order and Notice of Proposed Rulemaking (first Order) entered in this cause on June 9, 1997, we adopted for purposes of the intrastate schools and libraries discount program the interstate discount matrix adopted by the Federal Communications Commission (FCC) in its May 8, 1997 Order No. 97-157, in CC Docket 96-45; In the Matter of Federal-State Board on Universal Service (the FCC=s Report and Order). We also sought comments from interested parties concerning any policies this Commission should adopt to ensure that the schools and libraries discount program operates efficiently. We specifically sought comment concerning the eligibility status of schools and libraries participating in consortia with ineligible private sector members and whether specific policies should be adopted to address disputes concerning a carrier=s lowest corresponding price (LCP) for intrastate purposes.

In this Second Order and Notice of Proposed Rulemaking, it is the intention of the Commission to address the comments received in response to our first Order. It is also our intention to establish with this Order a further rulemaking proceeding to seek comments on a number of other important issues--what, if any, tariff flexibility should be given to carriers bidding on services for schools, libraries and eligible consortia; whether this Commission should elect to develop our own forward-looking cost mechanism for purposes of determining the level of universal service support; the procedures by which this Commission should certify carriers which are eligible to receive universal service support; and the procedures which should be utilized to designate the service areas of carriers. Another of our objectives in promulgating this Order is to discuss the current status of the ongoing universal service workshop which was established as a part of the Commission=s Local Competition proceedings in Joint Dockets 24499, 24472, 24030 and 24865 and to render a determination as to the future status of those workshop proceedings.

II. DISCUSSION AND CONCLUSIONS

A. Comments Received in Response to the Commission=s First Report and Order

The only parties submitting comments in response to the Commission=s June 9, 1997 first Report and Order in this proceeding were BellSouth Telecommunications, Inc. (BellSouth) and GTE South, Inc. and Contel of the South, Inc. (collectively referred to as GTE). BellSouth correctly noted in its comments that the FCC did not actually publish its May 8, 1997 Report and Order in the Federal Register until June 17, 1997. The Federal Register publication of the FCC=s Report and Order included a request for comments from interested parties concerning the rules promulgated by the FCC in said Order. The comments in response to the FCC=s request are due at the FCC on or before July 17, 1997. BellSouth asserted that it would be most appropriate for the Commission to defer the adoption of any policies or rules addressing consortia eligibility, lowest corresponding price disputes or any other matters until such time as the FCC has issued an order addressing any and all concerns regarding its rules which will likely be raised in the comments filed with the FCC.

In its comments, GTE represented that it had some concerns with the services eligible for discounts under the schools and libraries program, but nonetheless maintained that GTE did not disagree with the action taken by the Commission to adopt the FCC's discount matrix for Alabama's schools and libraries. GTE recognized that adoption of the discount matrix on an expedited basis was critical.

GTE further noted that the Commission's inquiry regarding school and library consortia eligibility was only one of many issues concerning school and library consortia that were generated by the FCC's Order. GTE represented that it stood ready to work with the Commission concerning consortia eligibility matters, but urged the Commission to consider the additional complexities and administrative burdens that would be placed on schools and libraries, service providers, and the universal service fund administrator if the Commission adopts rules for intrastate services that are different than the FCC's interstate rules.

With regard to LCP disputes, GTE urged the Commission to rely on the competitive bidding process to establish rates for schools and libraries that are presumptively no higher than the rates charged to similarly situated non-residential customers for similar services. GTE asserted that LCP safeguards were only needed in situations where there was no competitive bidding. GTE suggested that certification by a service provider that its pre-discount rates comply with the lowest corresponding price rule would be such an appropriate safeguard. GTE asserted that schools and libraries alleging LCP violations should be required to demonstrate a reasonable basis for their allegations prior to having them pursued.

The points raised in BellSouth's and GTE's comments are well taken. The FCC has indeed entered an Order on Reconsideration which clarifies some of the discrepancies that came to light following the publication of their May 8, 1997 Report and Order. We will accordingly defer the promulgation of any rules or policies governing the schools and libraries discount program until such time as the Commission has an opportunity to thoroughly review the FCC's Order on Reconsideration. We also deem it advisable to monitor all other proceedings before the FCC concerning universal services matters, including the FCC's consideration of any comments filed in response to their May 8, 1997 Order.

We would note at this juncture, however, that the Commission has received numerous informal inquiries as to whether carriers may, through the competitive bidding process, offer pre-discount rates to schools and libraries which are below their generally-tariffed rates. There are certainly public policy considerations which indicate that a policy of allowing carriers tariff pricing flexibility for purposes of serving schools, libraries and consortia thereof should be instituted by this Commission for those carriers who do not currently have the ability to enter into contract service arrangements. We nonetheless seek comments from interested parties concerning this subject and will consider such comments prior to rendering a decision on this matter if said comments are received on or before August 30, 1997.

We also note herein that the Commission has received inquiries as to whether carriers must file tariffs reflecting the discounts for schools and libraries. The FCC clarified in its May 8, 1997 Order that a carrier's tariffed rate would represent its lowest corresponding price in a geographic area in which that carrier has not negotiated rates that differ from its tariffed rates. The FCC is not requiring carriers to file new tariffs to reflect the discounts it has adopted for schools and libraries, but rather, discounts will be applied to existing tariff rates where appropriate. We believe this approach is appropriate for Alabama carriers as well. Accordingly, we will not require that tariffs reflecting the discounts for schools and libraries be filed.

B. The Determination of Forward-Looking Economic Costs

The FCC adopted the recommendation of the Federal-State Joint Board on Universal Service (the Joint Board) that universal service support should be calculated by determining the forward-looking economic cost of providing the supported services reduced by a nationwide revenue benchmark calculated on the basis of average revenue per line. Forward-looking economic cost will be determined at each state's election according to state-conducted, forward-looking economic cost studies approved by the state commission or cost models developed by the FCC in consultation with the Joint Board.

Non-rural carriers will begin to receive universal service support based on forward-looking economic costs

on January 1, 1999. The support rural carriers receive will not begin to be based on forward-looking economic costs until further review, but in any event no earlier than January 1, 2001. The FCC will not even commence a proceeding to determine a forward-looking economic cost mechanism for rural carriers until October 1998.

For non-rural carriers, however, the FCC noted the immediate importance of determining forward-looking economic costs for purposes of determining federal universal service support and recognized that its efforts must be coordinated with ongoing state efforts. The FCC invited states to submit cost studies consistent with the criteria prescribed by the FCC in its Order and indicated that state cost studies which were found to be consistent with the FCC's established criteria would be utilized for purposes of calculating federal universal service support for the state in question. The FCC specifically noted that state studies submitted must be based on forward-looking economic costs; must be consistent with the study used for the state Universal Service Program; and must not impede the provision of advanced services. States were encouraged, to the extent possible, to use the same cost methodology for both their Universal Service Program and their pricing of unbundled network elements.

States were requested by the FCC to elect by August 15, 1997 whether they will conduct their own forward-looking economic cost studies. States that elect to conduct their own studies must submit their studies to the FCC on or before February 6, 1998. The FCC will seek comments on studies so submitted and will render a determination as to whether those studies meet the criteria established by the FCC for use in calculating federal support for non-rural eligible carriers.

The FCC noted that some states may lack the resources to conduct an examination of forward-looking economic costs for universal service purposes. Accordingly, the FCC established that it would determine forward-looking economic costs for states electing not to conduct their own cost studies or states submitting cost studies that did not meet the criteria prescribed by the FCC.

The consensus of the industry participants at the June 24, 1997 universal service workshop which was conducted by the Commission in conjunction with the local competition proceedings of Dockets 24499, 24472, 24030 and 24865 was that the Commission should declare to the FCC an intention to develop our own forward-looking economic cost study. The option of attempting to develop our own cost study for non-rural carriers appears meritorious, but we seek comments from all interested parties prior to making a formal declaration to the FCC. In rendering a final decision on this matter, we will consider all comments from interested parties if said comments are received on or before August 6, 1997.

C. The Designation of Eligible Carriers

47 U.S.C. '254(e) provides that following the effective date of the FCC's regulations implementing '254, A only an eligible telecommunications carrier designated under 47 U.S.C. '214(e) shall be eligible to receive specific federal universal service support.@ '254(e) further prescribes that a carrier receiving universal service support shall use that support only for the provision, maintenance and upgrading of facilities and services for which the support is intended.

47 U.S.C. '214(e) provides that:

A common carrier designated as an eligible telecommunications carrier under ['214(e)(2) or '214(e)(3)] shall be eligible to receive universal service support in accordance with '254 and shall throughout the service area for which the designation is received --

(A) Offer the services that are supported by federal universal service support mechanisms under '254(c) of this title either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(B) Advertise the availability of such services and the charges therefor using

media of general distribution.

Pursuant to '214(e)(2), state commissions must either upon their own motion or upon request designate a common carrier that meets the requirements of '214(e)(1) as an eligible telecommunications carrier for a service area designated by that state commission. '214(e)(2) provides for the designation of more than one eligible telecommunications carrier per each service area served by non-rural carriers. The designation of more than one eligible carrier in areas served by rural telephone companies is discretionary with state commissions. Specifically, '214(e)(2) states:

. . . Upon request and consistent with the public interest, convenience and necessity, the state commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the state commission, so long as each additional requesting carrier meets the requirements of '214(e)(1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the state commission shall find that the designation is in the public interest.

'214(e)(4) contains provisions governing a carrier=s relinquishment of its eligible carrier designation in areas served by more than one eligible carrier. In areas served by more than one eligible carrier, the statute requires states to permit eligible carriers to relinquish their designation after giving notice sufficient to permit the remaining carriers the opportunity to construct or purchase the facilities necessary to serve the customers of the relinquishing carrier.

After consideration of the foregoing statutes, the FCC concluded in its May 8, 1997 Order that the plain language of '214(e) precluded the adoption of additional eligibility criteria for universal service support beyond the criteria specifically enumerated in that section. Accordingly, the FCC adopted without expansion the statutory criteria set out in '214(e) as the rules governing eligibility for universal service support.

Similarly, this Commission is required by the provisions of '214(e)(2) to designate a common carrier as an eligible carrier if we determine that the carrier in question has met the requirements of '214(e)(1) (regardless of the technology that carrier utilizes). We are precluded from imposing additional prerequisites for designation as an eligible telecommunications carrier although other requirements unrelated to a carrier=s eligibility to receive federal universal service support which are otherwise consistent with federal statutory requirements may be imposed. In addition, '214(e) does not prohibit this Commission from establishing criteria for the designation of eligible carriers in connection with the operation of an Alabama intrastate universal service mechanism consistent with '254(f).

We herein seek comment from interested parties concerning the procedure this Commission should utilize to designate eligible carriers. We specifically solicit comments regarding the criteria which should control future decisions as to whether more than one common carrier should be designated as an eligible carrier for areas served by rural telephone companies; the notice which carriers relinquishing their eligible status will be required to give; any requirements unrelated to a carrier=s eligibility to receive universal service support which should be imposed; the FCC=s conclusion that nothing in '214(e)(1) requires that a carrier be subject to the jurisdiction of a state commission in order to be designated as an eligible telecommunications carrier; and whether any guidelines governing the advertising of universal services offered/provided by carriers should be promulgated. All comments concerning these and other related matters will be considered if filed with the Commission on or before August 30, 1997.

D. Service Areas

1. Designation of Service Areas in General

With regard to the establishment of service areas, '214(e)(5) defines the term Aservice area@ as a geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms. For areas served by a rural telephone

company, '214(e)(5) provides that the term Aservice area@ means the rural telephone company=s study area unless and until the FCC and the states, after taking into account the recommendations of a Federal-State Joint Board instituted under 47 U.S.C. '410(c), establish a different definition of service area for such company.

The FCC adopted in its May 8, 1997 Order the Joint Board=s finding that "214(e)(2) and 214 (e)(5) require state commissions to designate the area throughout which a non-rural carrier must provide universal service in order to be eligible to receive universal service support. The FCC agreed with the Joint Board=s recommendation that states should exercise this authority in a manner that promotes the pro-competitive goals of the 1996 Act as well as the universal service principles of '254.

States were accordingly encouraged not to adopt, as service areas, the study areas of large incumbent local exchange companies (ILECs or incumbent LECs). The FCC reasoned that such service areas would be unreasonably large, thereby increasing start-up costs for new entrants and discouraging competitors from providing service throughout an area. The FCC concurred in the Joint Board=s conclusion that if a state commission adopts as a service area for its state the existing study area of a large incumbent LEC, such action could erect significant barriers to entry insofar as study areas usually comprise most of the geographic area of a state, geographically varied terrain, and both urban and rural areas. The FCC further emphasized that state designation of an unreasonably large service area could be inconsistent with the FCC=s rules to preserve and advance universal service and could also violate 47 U.S.C. '253 if such a designation prohibits (or has the effect of prohibiting) the ability of an entity to provide any interstate or intrastate telecommunications service, is not competitively neutral, and is not necessary to preserve and advance universal service.

The FCC concluded with respect to rural service areas that '214(e)(5) dictates that neither the FCC nor the states may act alone to alter the definition of a service area served by a rural carrier. The FCC established procedures which mandate that a state commission or an affected carrier must seek the agreement of the FCC if the state commission concludes that the service area definition of a rural telephone company should be different from that rural company=s existing study area in order to serve the principles of '254(b). Upon receipt of such a proposal, the FCC will issue a public notice within 14 days. If the FCC does not act upon the proposal within 90 days of the release date of the public notice, the proposal will be deemed approved and may take effect according to the state commission=s procedure. If the FCC determines that further consideration is necessary, it will notify the state commission and the relevant carrier(s) and initiate a proceeding to determine whether it can agree to the proposal. A proposal subject to further consideration by the FCC may not take effect until both the state commission and the FCC agree to establish a different definition of a rural service area as required by '214(e)(5).

Similarly, if the FCC initiates a proceeding to consider a definition of a rural service area that is different from the incumbent LEC=s study area, it will seek the agreement of the relevant state commission by submitting a petition to said commission according to that commission=s procedures. No definition of a rural service area proposed by the FCC will take effect until both the state commission and the FCC agree to establish a different definition.

The FCC reasoned that the retention of the study areas of rural telephone companies as the rural service areas was consistent with '214(e)(5) and the policy objectives underlying '254. The FCC agreed with the Joint Board=s reasoning that if competitors must, as a condition of eligibility, provide services throughout a rural telephone company=s study areas, the competitors will not be able to target only the customers that are the least expensive to serve and, thus, undercut the incumbent LECs ability to provide service throughout the area.

The FCC further concluded, however, that universal service policy objectives would be best served if states define rural service areas to consist only of the contiguous portion of rural study areas rather than the entire rural study areas. The FCC concluded that requiring a carrier

to serve non-contiguous service areas as a prerequisite to eligibility might impose serious barriers to entry, particularly for wireless carriers. The FCC strongly encouraged the states to determine whether rural service areas should consist of only the contiguous portions of an ILEC's study area and to submit such a determination to the FCC according to the aforementioned procedures established for changes to a rural telephone company's existing study area.

We herein seeks comments concerning the procedures this Commission should utilize to define service areas of both a rural and non-rural nature. We specifically seek comment concerning the issue of whether rural service areas should consist of only the contiguous portions of existing rural study areas rather than entire existing rural study areas. All comments concerning these and other related matters will be considered if filed with the Commission on or before August 30, 1997.

2. Support Areas

The FCC agreed with the Joint Board's conclusion that it would be consistent with the Act for the FCC to base the actual level of universal service support that carriers receive on the cost of providing service within sub-units of a state-defined service area such as a wire center or a census block group. The FCC concurred with the Joint Board's reasoning that calculating support over small geographic areas would promote efficient targeting of support. The FCC accordingly adopted the Joint Board's recommendation that after January 1, 1999, it calculate the amount of support that carriers receive over areas no larger than wire centers. The FCC noted, however, that it would continue to use study areas to calculate the level of high cost support that carriers receive until January 1, 1997 because it had concluded that such an approach was consistent with the 1996 Act.

The general consensus of the industry representatives who participated in the June 24, 1997 universal service workshop conducted by the Commission pursuant to the Local Competition proceedings in Docket 24499, 24472, 24030 and 24865 was that there should be consistency between the pricing of unbundled network elements and universal service compensation in order to prevent inequities in the distribution of universal service funding and to further the objectives underlying the universal service program. The general agreement reached by the participants at the workshop was that the actual level of universal service support carriers receive should be calculated on the wire center level within Commission-defined service areas. We herein seek comment from all interested parties as to whether the wire center designation for purposes of universal service support is appropriate. All comments concerning this and related matters will be considered by the Commission if received on or before August 30, 1997.

3. Unserved Areas

'214(e)(3) provides that if no common carrier is willing to provide the services supported by universal service support mechanisms to a community or a portion of a community that requests such services, the FCC, with respect to interstate services, or a state commission with respect to intrastate services, shall determine which common carrier or carriers are able to provide such services to the requesting unserved community or portion thereof and shall order such carrier or carriers to provide the requested services. Any carrier ordered to provide service to an unserved community is to be designated as the eligible telecommunications carrier for that community or portion thereof.

The FCC opted not to adopt rules in its May 8, 1997 Order governing the designation of carriers for unserved areas. The FCC concluded, as did the Joint Board, that there was an insufficient record from which to fashion a cooperative federal/state program to select carriers for unserved areas. Competitive bidding was noted as a possible method for selecting carriers for unserved areas, but was not adopted. For purposes of the future development of a

federal/state cooperative program to select carriers for unserved areas, the FCC strongly encouraged state commissions to file with the FCC's Common Carrier Bureau, reports detailing the status of unserved areas in their states and specifically sought the assistance of state commissions with respect to this issue.

We herein seek comment concerning the procedures that should be utilized by this Commission to determine which common carriers should provide services to unserved communities or portions thereof which request service. All comments on this and related matters will be considered by the Commission if received on or before August 30, 1997.

E. Status of the Universal Service Workshop Proceedings established pursuant to the Commission's September 20, 1995 Order in Joint Dockets 24499, 24472, 24030 and 24865

The informal universal service workshop proceedings which have been ongoing at the Commission since the promulgation of our September 20, 1995 Order in Joint Dockets 24499, 24472, 24030 and 24865 have for the most part been productive. The workshops have been well attended by representatives from each segment of the telecommunications industry and the information provided to the Commission has been invaluable in the formulation of policy.

It appears at this juncture, however, that the universal service issues which are left to be considered by the Commission will require resolution in a more formal setting. It is, therefore, our intention to fulfill the remaining universal service responsibilities the Commission has under our September 20, 1995 Local Competition Order and the ongoing universal service proceedings before the FCC through future proceedings in this docket. All interested parties will, of course, be given advance notice of all proceedings conducted herein and are encouraged to participate fully.

III. ORDERING CLAUSES

IT IS, THEREFORE, ORDERED BY THE COMMISSION, That carriers will not be required to file tariffs reflecting the discounts adopted for schools and libraries.

IT IS FURTHER ORDERED BY THE COMMISSION, That comments concerning whether the Commission should declare to the FCC an intention to develop our own, state-specific, forward-looking economic cost mechanism for non-rural carriers will be considered if received on or before August 6, 1997.

IT IS FURTHER ORDERED BY THE COMMISSION, That all comments concerning tariff flexibility for pre-discount prices offered to schools, libraries and eligible consortia; eligible carrier designation; service area designation; the designation of universal service support areas; and procedures for the designation of carriers to serve unserved areas will be considered by the Commission if received on or before August 30, 1997.

IT IS FURTHER ORDERED BY THE COMMISSION, That jurisdiction in this cause is hereby retained for the issuance of any further order or orders as may be deemed just and reasonable in the premises.

IT IS FURTHER ORDERED, That this Order shall be effective as of the date hereof.

DONE at Montgomery, Alabama, this 18th day of July, 1997.

ALABAMA PUBLIC SERVICE COMMISSION

Jim Sullivan, President

Jan Cook, Commissioner

Charles B. Martin, Commissioner

ATTEST: A True Copy

Walter L. Thomas, Jr., Secretary

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