M E M O R A N D U M

March 8, 1999

To: Chairman Cotten
Commissioner Hanley
Commissioner Ornquist
Commissioner Cook
Commissioner Posey

From: Lori Kenyon, Common Carrier Specialist

Re: Rural Health Care Eligible Carrier Dockets
Dockets U-97-173; U-97-206; U-97-207; U-97-212; U-97-216
Stipulation regarding LEC resale of IXC services

Recommendation

Staff recommends the Commission accept the stipulation proposing that local carriers be allowed to resell interexchange services for the limited purpose of ensuring rural health care providers receive the benefits of federal universal service funding. The Commission should also require:

a) All effected economically regulated LECs to file a tariff revision to their local tariff to explain how they will charge for the resold IXC services and what terms and conditions would apply. The tariff information would be of sufficient detail so that a rural health care provider (RHCP) reviewing the tariff would have a reasonable idea of what the resold services would cost and the entity responsible for quality of service. The Commission should encourage the industry to develop a "boilerplate" tariff as a response to this requirement.

i) Those local exchange carriers (LECs) already providing resold or repackaged IXC services should file a tariff amendment as soon as possible, with each tariff to be filed by a set deadline (e.g., two weeks).

ii) Those LECs not already reselling or repackaging IXC service should file a tariff revision so that their local tariffs are updated prior to provision of the IXC services.

iii) LECs filing such tariff revisions should be allowed waiver of the public notice requirement *provided* the LEC is only reselling services, on a pass-through basis, at terms and conditions already approved under the selling interexchange carrier's existing intrastate tariff or special contract with the specific RHCP. If a LEC assesses an additional surcharge or rate, or wishes a change in condition, term, or rate of service, from that already under the selling carrier's tariff then standard LEC tariff noticing procedures apply.

b) Request all "non-regulated" certificated LECs to file a letter describing how they will charge RHCPs for resold IXC services. Staff recommends the Commission address the terms and conditions of such services upon complaint or upon the Commission's own motion.

c) The LECs and IXCs should timely report any difficulties in obtaining federal support as a result of Commission rural health care policies.

d) The order accepting the stipulation should affirmatively state why acceptance of the stipulation and the implicit waiver of the various regulations (e.g., certification requirements) is necessary for the public interest in this unique case and that no precedence is created by accepting the stipulation.

This recommendation should be released to the industry, key members of the rural health care organizations, and the public with comments on the memorandum to be filed two weeks later.

Background

Under the Telecommunications Act of 1996 (the Act) at Section 214(e), only "eligible" carriers may receive federal universal service support. After investigation of issues, the Commission granted eligible carrier status to all incumbent local exchange carriers and to GCI Communication Corp. d/b/a General Communication, Inc. (GCI) for its local operations. Several interexchange carriers were denied eligible carrier status as they were deemed not to meet minimum requirements specified through the Act and by the Federal Communications Commission (FCC).

An issue arose regarding how rural health care providers could receive the benefits of federal funding for otherwise qualifying interexchange services[1] when interexchange carriers were not eligible to receive federal funding. As a solution, in a December 1997 decision,[2] the Commission adopted a system based on a LEC proposal where an eligible LEC would act as a middle-man or packager of the interexchange rural health care services and would do whatever necessary to arrange for the federal funding:

> [T]he proposal submitted by the Rural LECs will serve as the general outline for the provision of such [IXC] services to RHCPs [rural health care providers]. That is, the RHCPs will submit requests for service to the RHCC [Rural Health Care Corporation]. The RHCC will publish the requests for service through its Internet website. All

[1] Under 47 CFR 54.613, federal support is provided for "the most cost-effective, commercially-available telecommunications service using a bandwidth capacity of 1.544Mbps, at a rate no higher than the highest urban rate, as defined in this subpart, at a distance not to exceed the distance between the eligible health care provider's site and the farthest point from that site that is on the jurisdictional boundary of the nearest large city, as defined in § 54.605(c)." For purposes of Section 605(c), the only "large city" in Alaska is Anchorage. Federal support is also provided for some Internet services.

[2] See Order U-97-173(2) et. al., dated December 31, 1997.

> interested telecommunications service providers will respond to the requests for service with bid proposals. The RHCPs will evaluate the bid proposals submitted and will select the proposal that best serves the needs of the RHCP. The RHCP will notify the Rural LEC of the bid proposal selected. The Rural LECs will be responsible for repackaging the successful bid proposal to provide end-to-end service to the RHCP. The Rural LECs will also be responsible for the billing and collections required to provide service to the RHCPs. Such billing and collection functions include billing the RHCP for service, billing the RHCC for federal subsidies, collecting the federal subsidies from the RHCC and distributing the subsidies to the telecommunications carriers providing service.[3]

The Commission also indicated that further procedural details regarding the above might be needed at a later time.

On March 5, 1998, the FCC released a document[4] entitled Additional Frequently Asked Questions on Universal Service for Rural Health Care Providers (FAQ). This FAQ raised doubts as to whether the Commission's decision on interexchange services to rural health care providers would be deemed consistent with federal policy. Specifically, the FAQ stated:

> If an eligible telecommunications carrier that signs a contract for service with a rural health care provider must partner with an ineligible telecommunications carrier to complete the circuit the rural health care provider has ordered, universal service support will not be allocated for that portion of the circuit that is served by an ineligible telecommunications service provider.[5]

A letter from Chairman Kennard ultimately confirmed that the Commission's method was consistent with FCC policy. The Kennard letter however was based in part on an FCC Staff memorandum. The FCC Staff concluded the Commission's method was acceptable since the LECs were "reselling" IXC services (an incorrect assumption).[6]

---

[3] Order U-97-173(2), et.al., at p. 16-17, December 31, 1997.

[4] See DA 98-457.

[5]CC Docket No. 96-45, DA 98-457, Additional Frequently Asked Questions on Universal Service for Rural Health Care Providers, at 8, March 5, 1998.

[6]Historically the Commission has required incumbent local exchange carriers to offer interexchange services only through a separate subsidiary.

Similarly the RHCC at its Internet site states:

> On Wednesday, September 23, 1998, the FCC approved the approach outlined in the Alaska PUC's Order U-97-216, which would permit local exchange carriers that are ETCs [eligible telecommunications carriers] to repackage the services of interexchange carriers in order to provide end-to-end service to a rural health care provider. The proposal would result in ETCs reselling interexchange carrier services in Alaska. However, since Section 271 of the 1996 Act prohibits Bell Operating Companies (BOCs) from providing interLATA service until they meet specific criteria, they are currently prevented from reselling interexchange carrier service across LATA boundaries. Because NO BOC serves Alaska, this statutory prohibition does not affect the implementation in Alaska.
> In essence, this solution solves the ETC problem for Alaska, but for the "lower 48" those areas served by a BOC, there is no change and the ETC problem still exists.

At issue is what action, if any, should be taken to ensure federal funding for Alaska rural health care services given the FCC's and RHCC's misconception regarding resale and how LECs and IXCs were to coordinate for rural health care funding in Alaska. A proposed stipulation has been filed by members of the industry to address this issue.

Discussion

On January 6, 1999, all of the IXCs and LECs that were a party[7] to the IXC rural health care eligibility dockets and a few other carriers filed a stipulation. The stipulation asks the APUC to allow any "rural local exchange carrier" the ability to resell IXC services[8] for the limited purpose of insuring rural health care providers receipt of federal funding and for preventing LECs from inadvertently violating FCC rules. The IXCs signing the stipulation agreed not to contend that such resale by a rural LEC to an rural health care provider violated any provision of Alaska statute or regulation or any order of the Commission. The stipulation contemplates no other change in the Commission directives on rural health care service eligibility and funding as identified in the December 1997 order quoted earlier in this memorandum.

---

[7]Alascom, Inc. d/b/a AT&T Alascom; GCI Communication Corp. d/b/a General Communication, Inc. and d/b/a GCI; Bristol Bay Telephone Coop. Inc.; Cordova Long Distance; Cordova Telephone Coop.; Interior Telephone Company; King Salmon Communications, Inc.; Matanuska Telephone Assoc. Inc.; MTA Long Distance, Inc.; Mukluk Telephone Company, Inc.; Nushagak Long Distance; Nushagak Telephone Coop.; OTZ Telephone Coop., Inc.; OTZ Telecommunications, Inc.; TelAlaska Long Distance, Inc.; and United Utilities, Ind. all signed the stipulation.

[8]Under this provision, the LEC could sell services of its IXC subsidiary.

To Staff's knowledge, neither the RHCC nor the FCC have contacted the Commission indicating a problem with federal support for rural health care services. In addition, as of September 1998, the RHCC had approved 210 Form 465 applications for rural health care support, with only one form denied. Even though forms have been approved, funding has yet to be provided to Alaska or any other state. The RHCC stated that funding for rural health care services will be retroactive starting January 1, 1998, or the day the service began, whichever is later.[9] Given the above, the "resale" misconception problem does not appear at this time to have materially impacted rural health care funding in Alaska.

Staff believes however, that the parties have accurately presented the current situation where the FCC may have approved the Commission's rural health care procedures based in part on a misunderstanding of how the plan would work. As such, there may be a risk that either this or in future years, the FCC or the RHCC will question the special procedures applied in Alaska and provision of funding to IXCs. Acceptance of the January 6, 1999, stipulation would appear to mitigate this risk while not harming either the public, the rural health care providers, or the industry. Staff therefore recommends the Commission accept the stipulation.

The stipulation does not address all issues necessary for the Commission to understand how the LECs will resell long distance services. For example, the stipulation does not address whether the LECs will file a tariff to cover the resold services, whether and how the LECs may assess additional surcharges to cover administrative costs, whether the LECs may attach conditions to provision of IXC services, or which entity is responsible for quality of service for the interexchange leg. Staff would recommend the Commission take the following position regarding these issues:

a) Require all effected economically regulated LECs to file a tariff revision to their local tariff to explain how they will charge for the resold intrastate IXC services and what terms and conditions would apply. The tariff information would be of sufficient detail so that a RHCP reviewing the tariff would have a reasonable idea of what the resold services would cost and which entity would be responsible for quality of service. The Commission should encourage the industry to develop a "boilerplate" tariff as a response to this requirement.

i) Those LECs already providing resold or repackaged IXC services should file a tariff amendment as soon as possible, with each tariff to be filed by a set deadline (e.g., two weeks).

ii) Those LECs not already reselling or repackaging IXC service should file a tariff revision so that their local tariffs are updated prior to provision of the IXC services.

---

[9]For new contracts, funding will begin the 29th day after the health care providers' Form 465 was posted on the Rural Health Care Corporation web site.

iii) LECs filing such tariff revisions should be allowed waiver of the public notice requirement *provided* the LEC is only reselling services, on a pass-through basis, at terms and conditions already approved under the selling IXC's existing intrastate tariff. If a LEC assesses an additional surcharge or rate, or wishes a change in condition, term, or rate of service, from that already under the selling IXC's tariff then standard LEC tariff noticing procedures apply.

b) Request all "non-regulated" certificated LECs to file a letter describing how they will charge RHCPs for resold IXC services. Staff recommends the Commission address the terms and conditions of such services upon complaint or upon the Commission's own motion.

c) Require that LECs and IXCs timely report any difficulties in obtaining federal support as a result of Commission rural health care policies.

The Staff believes that clarity in how the LECs and IXCs implement RHCP services is essential. All parties must be aware of how service will be provisioned and which entities are responsible for quality of service. Staff notes that some RHCPs have informally alleged problems in obtaining health care services from LECs in Alaska. Specifically, some RHCPs have indicated difficulty in finding an individual at the LEC who was aware of the rural health care program and how supported services could be ordered. Other RHCPs were concerned that some LECs may not be filing the appropriate federal forms to ensure support would be available. Staff's recommendation to require LECs to provide rural health care services under tariff will help clarify for all concerned how rural health care services will be provided and the responsibilities of the LEC and the IXC. The Alaska Telephone Association has also agreed to provide a list of utility contact names to the RHCPs to facilitate communications regarding rural health care services.

Last, this stipulation is different from most other stipulations filed with the Commission in that a) it has the potential to effect every LEC and IXC in the state providing or planning to provide rural health care services, and b) the stipulation creates implicit industry wide waiver of key regulations (e.g., certification). Staff recommends the Commission release this memorandum for two week public notice to allow comments to be filed on this matter. Staff may modify its recommendation and if necessary, file a second memorandum, in light of comments filed on this matter. Staff also recommends that if the Commission ultimately accepts Staff's recommendation and adopts the stipulation, that the order doing so be very clear as to the reasons why accepting the stipulation and the implicit waiver of the various regulations is necessary for the public interest given the unique circumstances and that no precedence is created by the decision.