Before the
Federal Communications Commission
Washington, D.C. 20544

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

COMMENTS OF TEXAS STATEWIDE TELEPHONE COOPERATIVE, INC.

Introduction and Summary

Please accept these comments of Texas Statewide Telephone Cooperative, Inc. ("TSTCI"), filed pursuant to sections 1.415 and 1.419[1] of the Federal Communications Commission's ("FCC") rules. TSTCI, an association representing 35 small, rural telephone companies and cooperatives in Texas (see Attachment 1) files these comments in response to the Federal-State Joint Board's ("Joint Board") request relating to high-cost universal service support and the eligible telecommunications carrier ("ETC") designation process.

TSTCI does not oppose competitive carriers receiving universal service support, if ETC designation is deemed to be in the public interest by the regulatory body and approval for ETC designation is granted. However, TSTCI recommends modifications to the FCC rules to maintain the viability of the universal service fund ("USF") by lessening the burden on the fund, while upholding Congress' universal service principles. TSTCI's comments address the rural company fund only.

TSTCI strongly recommends that the methodology for calculating support in competitive areas be modified so that a competitive ETC (CETC) would receive support based upon its own investment, rather than based upon the rural ILEC's investment. Also, TSTCI urges that a separate funding process and mechanism be established for CETCs. TSTCI opposes using auctions for awarding support in the high-cost areas of rural telephone companies because we believe this ultimately would jeopardize the principles of universal service for the rural consumer and would be detrimental to the financial stability of the rural telecommunications industry.

[1] 47 C.F.R. §§1.415, 1.419

Further, TSTCI opposes limiting universal support to a single connection or primary line. Limiting support in this manner would not be consistent with the universal service principle that access in rural and high-cost areas should "be reasonably comparable" to urban areas. Limiting this support would adversely affect network investment and have the unintended consequence of increasing the amount of per-line support. Also, the administrative costs required to make a primary line determination would outweigh the benefits. Attempting a change of this nature has the potential to create a costly administrative nightmare.

Finally, TSTCI supports the development of common principles for consideration when a regulatory body is making a "public interest" determination prior to designation of an ETC in a rural company's service area. The issue of whether the service area can support a competitive carrier should be addressed. There should also be standard minimum service qualifications and requirements for carriers being considered for ETC designation in a rural telephone company's service area.

A. State of the Marketplace and Universal Service Fund

TSTCI is concerned about the uncontrolled growth of the USF and the adverse affect this may have on the preservation of universal service principles as mandated and set forth in §254(B) of the Telecommunications Act, particularly as it affects consumers' service in rural America.

A recent study by NECA projects conservatively that by 2006, total universal service support funding will grow to over $7.1 billion from approximately $5.8 billion of support paid in 2002. From 2002 to 2006, support to competitive ETCs (wireless and wireline carriers) is projected to increase from $41.1 million to $395 million.[2] In just three years time, federal high-cost support to wireless ETCs alone has increased ninefold from a total of $11.27 million in 2001 to a projected $101.85 million in 2003.[3] This equates to a compound annual growth rate of approximately 108%. Although this may be a relatively small amount of the total high-cost fund, it is expected that high-cost support will continue to escalate, given the projected wireless customer growth rates and the ease of filing and receiving funds. The key question of concern is,

[2] *Trends in Telecommunications Cost Recovery: The Impact on Rural America*, October 2002, Appendix C
[3] OPASTCO's white paper, *Universal Service in Rural America: A Congressional Mandate at Risk,* A-4, Table 3.

by how much? Will support to wireless CETCs continue to grow at a 100% compound annual rate?

By the end of December 2001 mobile telephony had produced a national penetration rate of roughly 45 %, increasing subscribership in a twelve-month period from 109.5 million to 128.5 million.[4] According to the Public Utility Commission of Texas, "Demand for wireless phones remains relatively high and continues to grow."[5] As wireless carriers continue to offer calling plans that are meant to compete directly with wireline local telephone service and long distance providers, it is likely that requests for universal service high-cost support will increase. Although wireline competitive local exchange companies have barely penetrated rural telephone company service areas, wireless carriers are already offering attractive calling plans in most TSTCI member company territories. In some rural areas, wireless services may be viewed as a complementary service to wireline; however, it is not hard to imagine that wireless services in the near future may for many consumers replace wireline service, even in rural high-cost areas. If universal service support continues to function as a "subsidy" to competition, instead of the cost recovery program it was designed to be, the trend of wireless service replacing wireline is bound to increase.

The FCC noted a recent survey where 30% of wireless phone users stated they would rather give up their home wireline telephone than their wireless phone. The percentage increased to 45% among wireless users aged 18 to 34 years old.[6] Where wireless technology provides a competitive option for consumers, TSTCI is concerned that the USF is creating artificial competition in that universal service funds are being used to attract consumers to a "pricing plan".

The Joint Board has asked questions regarding line growth in high-cost areas. A sampling of eighteen of the TSTCI member companies showed that fourteen of these companies have experienced a <u>decrease</u> in the number of access lines from January 2002 compared to January

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[4] FCC, Seventh Report, Released July 3, 2002 in the matter of *Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, at 5.
[5] *Report to the 78th Texas Legislature Scope of Competition in Telecommunications Markets of Texas*, page 11.
[6] FCC, Sixth Report, Released July 17, 2001 in the matter of Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, at 32.

2003[7]. It is unknown whether this decrease is attributable to wireless services, the disconnection of secondary lines, or other reasons. However, as mentioned above, the decrease in access lines served by rural Texas ILECs is not due to competition from competitive wireline companies.

In regard to the Joint Board's question relative to the relationship between competitive entry and receipt of high-cost support, there is currently only one wireless ETC in Texas. There does not appear to be a direct relationship between competitive entry and the receipt of high-cost support by competitive wireless ETCs. Most wireless companies that provide service in the rural companies' service areas have been in service for several years. Most of these carriers have built-out in the more populated areas or along major highways and have made investment decisions without universal service funds. In recent years, it appears that more and more national wireless carriers have been requesting ETC designation as a way to subsidize their pricing plans versus making additional network investments and to enhance their appeal to the investment community.[8]

The entry into rural areas by wireless carriers, even without ETC designation, indicates that the economic and business considerations applicable to wireless providers are far different from the considerations applicable to wireline carriers.

For example, provisioning of wireline service is extremely capital intensive because of the necessity of providing a loop to every home. In contrast, capital build out requirements are significantly lower for wireless carriers. There are extensive state and federal regulatory requirements imposed on ILECs that are for the most part not applicable to wireless carriers. The ILEC industry accepted the build-out and carrier-of-last resort obligations that are an integral part of a regulatory system that included USF support. TSTCI does not believe that CETCs would accept these same regulatory obligations.

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[7] In the service areas of the four TSTCI member companies that saw a slight increase in the number of access lines, it is not known if the increase is the result of new end users or second lines.

[8] The April 25, 2003 edition of *TR Daily* reports that ALLTEL Corp, which already receives USF support as a rural ILEC has applied for ETC designation in three states as a wireless carrier, purely for business reasons. A source noted that "financial analysts have asked company executives directly why they have not sought such status during financial calls… 'The funding is available, and the right thing to do is seek it while it's there,' a spokesman for ALLTEL said."

B. Methodology for Calculating Support in Competitive Areas

TSTCI believes that CETCs should receive support based upon their own investment, rather than the rural ILEC's investment. Assuming the CETC is willing to accept uniform obligations, there should be a separate cost methodology established for CETCs. Under current methodology there are two sets of rules applicable to obtaining support from the high-cost fund; one set of rules applies to ILECs; another set of rules applies to CETCs. TSTCI believes the CETC industry should be required to justify their support needs just as the rural companies do today.

Under the rural ILEC rules, the Universal Service High-cost Fund is a cost recovery program that provides the means and incentive for making network infrastructure investment in the rural areas where it would not otherwise occur, while providing affordable local rates.[9] In contrast, for CETCs, it is questionable whether the high-cost fund acts as a cost recovery program because CETCs receive funds based on another provider's costs and have not proven their own cost of providing service. The support received by a CETC is not determined by its investments and expenses, but on the rural ILEC's investments and expenses. The result is that since wireless companies have lower capital requirements than rural ILECs, high-cost support becomes a windfall to wireless CETCs. The fund serves as a subsidy to CETCs choosing to game the system. TSTCI believes the basic premise of receiving funds based on another party's investment is fundamentally flawed. This basic premise assumes the CETC's cost of providing service is the same or similar as the rural companies. TSTCI does not believe that is the case.

Under the rural ILEC rules, there is a fund supporting several different high-cost programs (e.g., as high-cost loop, local switching and Interstate Common Line), and support is capped for rural ILECs. Under the CETC rules, there is neither a separate fund nor are there caps for CETCs. As referenced above, TSTCI is concerned with the escalating growth of the USF. Consequently, at a minimum, capping the CETC subsidy is a logical way to mitigate the growth of the fund.

Under the rural ILEC rules, the rural ILEC's support is based on embedded network investment and expense. Under the CETC rules, the support received is based upon the number of customer lines receiving service from the CETC, and the rural ILEC's embedded network investment and

[9] OPASTCO White Paper, **Universal Service in Rural America: A Congressional Mandate at Risk, January 2003,** page 4.

expenses. The result is that a wireless CETC receives support for wireless customers who are not subscribing to supported services based on the rural ILEC's embedded investment and expenses.

Because the USF is a recovery method for rural ILEC embedded network investment and expenses, the ILEC's total support does not change under the current rules. An increase in the number of lines would not increase the total support, since it is capped. In the event of access line losses for whatever reason, the total support would not decrease; however, the amount of per-line support would increase. Thus, the CETC's support that is based upon the rural ILEC's per-line support would also increase, with no relationship to its own costs of providing service and the result is an ever-expanding high-cost fund. Clearly this system creates an obvious anomaly that does not appear to be sound public policy, and the result is an ever expanding high-cost fund.

Receiving support based upon an ILEC's costs creates a competitive advantage for CETCs with lower costs**.** For instance**,** wireless carriers designated as ETCs are not required to provide equal access; however, these carriers are receiving USF support based, in part, on the ILEC's costs of providing equal access. As stated by some Joint Board members in the Federal-State Joint Board on Universal Service Recommended Decision, Released July 10, 2002, in such a case, "…wireless ETCs may receive a windfall vis-à-vis wireline ETCs."[10] In some states, wireless carriers seeking ETC designation are wanting to serve only part of a rural telephone company's service area, which would greatly impact their costs when compared to the rural ILEC's costs of serving the whole service area.[11] Also, a wireless provider does not have the same build-out requirements to the end user as the rural ILEC. A CETC does not have the same carrier-of-last resort, regulatory and service quality obligations as a rural ILEC, which also results in lower costs of providing service to the same customers for CETCs.

Each CETC's actual booked network investments and associated operating expenses used in the provision of service to rural customers should be taken into account when determining their

[10] Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Released July 10, 2002, para. 83.
[11] Kansas Corporation Commission, Docket 03-RCCT-293-ETC, RCC Minnesota, Inc.'s application for ETC designation; Colorado Public Utilities Commission, Docket 03A-061T.

appropriate support amount. CETC ***s***upport should be based on the CETC's historical embedded cost.

When determining the methodology to be used to calculate CETC support, TSTCI does not suggest that CETCs should be held to the same exact accounting and separations requirements[12] of the ILEC, in order to receive support. However, TSTCI believes that the CETC's existing accounting and financial records should be made available to a regulatory body that identifies the CETC's embedded network investments and associated operating expenses used to provide universal service to rural customers. TSTCI suggests that one potential method that would entail less stringent reporting requirement, is use of a surrogate amount. For example, a simple surrogate methodology, assuming it is cost justified, could be one-third of the rural ILEC's support as the surrogate cost for CETCs. The surrogate could be calculated based on the national industry relationship of wireless to wireline costs of service in the rural areas.

TSTCI believes that alternative support methodologies do not have to be a complicated or burdensome process for CETCs. If a surrogate mechanism is not adopted, various methods could be used to determine the rural costs of CETCs; i.e., accounting records, financial statements, billing records, tower and switching investments and locations, RSA versus MSA actual customers, etc. Any process selected could be simplified enough to calculate, based on any CETC's individual costs, but detailed enough that if an entity requested support, their cost of providing service could be verified.

Reporting requirements for a CETC should be based upon information from existing financial statements and records required to produce annual audit reports unless a surrogate or comparable method is adopted. Based on GAAP standards in place today, sufficient accounting and financial information should be available and easily obtainable in a cost effective manner. TSTCI recommends an annual review process for CETCs comparable to that of the rural ILECs. Existing audit mechanisms in place today could be used to administer a reporting and review process.

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[12] 47 C.F.R. §§ 32, 36.

The Joint Board asks if CETC support should be calculated on a per-line basis and if so, should per-line amounts reflect solely the CETC's line count or some combination of the line counts reported by all area ETCs? TSTCI believes that a CETC's support should be calculated based on its own investment and expenses and not on an average amount per line of another service provider. Since the CETCs should receive support on the basis of their own embedded rural cost, it would not be appropriate to reflect any combination of all ETCs' line counts in the area.

The Joint Board also asks if per-line support amounts available to rural ILECs and CETCs should be frozen. The original intent of freezing high-cost loop support on a per-line basis was to limit excessive growth in the fund because of the introduction of CETCs in rural study areas. If modifications are made to the rules as TSTCI recommends, including: 1.) funding based on each ETC's individual costs; 2.) adopting more stringent standards for defining the "public interest" in the ETC designation process; and 3.) requiring similar regulatory standards and service obligations for ETC designation of all providers, this issue becomes moot.

Paying different amounts per "customer" or per line to each CETC should have no adverse affect on competition. It would serve as a cost recovery method as originally intended based upon investments of the particular CETC, just as is done for rural ILECs. If the associated rural ILEC and CETC have their own funding mechanism and draw support based on their individual network investment and expenses, frozen per-line support should not be an issue. Current concerns about projected fund amounts give rise to this question but if the CETC mechanism has established rules and boundaries, freezing the support amount per line becomes a moot issue

The Joint Board also asks if support in competitive areas should be based on the lowest-cost provider's costs in order to promote efficiency? TSTCI strongly believes that support should <u>not</u> be based upon the lowest cost provider's costs in rural telephone company service areas. Rural ILECs are the only providers of ubiquitous, high-quality, facilities-based telecommunications services throughout their service areas. A CETC, in all likelihood, does not have the same carrier-of-last resort obligations, as well as other regulatory and service quality obligations as the ILEC, which equates to lower costs for a CETC.

In addition, an ILEC has build-out requirements to the end user and has already incurred significant investment in the embedded network, something that a CETC may not have by virtue of the technology used (e.g., wireless) or the type of provisioning method chosen (e.g., UNE loops). Without the requirement to provide service within a designated time frame established by a regulatory body, as well as service quality obligations, to provide a few examples of the differences in providers, it stands to reason the CETC's costs may be lower. In reality, this methodology would serve to punish the incumbents or compel them to seek regulatory relief. TSTCI's recommendation to establish a separate CETC mechanism appears to be a logical solution. If rural ILECs are deprived of the ability to continue investing in their networks because their USF support is based on the lowest-cost provider's costs, an unintended consequence would be that consumers in some rural areas may eventually be deprived of basic universal service.

In summary, while the idea of providing support based on the lowest-cost provider' costs may sound politically appealing, TSTCI contends that is not sound policy to compare the costs of one provider who has made investments based upon a different set of rules and different technology platforms available, at a different point in time, to the costs of new entrants in the market who may be operating and determining their network investments on a different set of regulatory requirements. TSTCI believes its rural market companies would be penalized for making investment decisions based on regulatory policies developed and approved by the FCC and state commissions over a long period of time. If support to a rural ILEC is reduced based upon a lower-cost provider's costs, TSTCI is concerned about the rural ILEC's continuing financial viability and ability to provide the critical network infrastructure necessary to meet universal service objectives -- not to mention assurance that a reliable telecommunications network is in place in the event of a national, regional or local emergency. TSTCI opposes basing support on the lowest-cost provider's costs; TSTCI recommends that support for each ETC be based upon each individual ETC's costs.

In addition, TSTCI is opposed to the utilization of auctions for awarding support in the highly capital intensive areas served by the rural telephone companies. Competition for competition's sake is not necessarily in the public interest, especially in rural service areas where the market cannot sustain two carriers. The overall density of most of the TSTCI companies' service areas ranges from a low of approximately 0.8 customers per route mile to up to six customers per route mile. If the low-cost bidder “wins” the auction does that mean that support goes only to the “winner”? In response to the Joint Board’s question regarding the responsibilities that should be imposed on the ETC that receives the high-cost support, the ETC should be willing to take on the same obligations as are currently imposed on the rural ILEC, including carrier-of-last-resort obligations and quality of service obligations. TSTCI contends that if the rural ILECs, the current carriers-of-last-resort, are not able to recover their embedded costs, the rural consumer will be the one who ultimately pays the price either through significantly higher local exchange rates, poor quality of service or no service in an area.

To experiment with auctions in the rural ILECs’ service areas is something that requires careful consideration. Auctions would be extremely risky and detrimental to the carriers-of-last resort who are also the only providers of ubiquitous, high-quality, facility-based service throughout their given service areas. As a result, significant decreases in universal service high-cost support to rural ILECs would threaten the principles of universal service. Universal service high-cost support has historically been a cost recovery program to promote network investment in areas where it would otherwise not be feasible to provide quality service at affordable rates. Without the necessary support, rural ILECs most likely could not recover their investment, could not upgrade facilities, and would experience difficulty in obtaining external financing. If rural ILECs lose the ability to continue investing in their networks, or their future existence is at risk, some rural areas will be deprived of affordable, reliable basic service, not to mention advanced services. This could become a national security issue if reliable, ubiquitous telephone service is compromised because maintenance of the telecommunications network infrastructure is no longer viable.

The investments required to provision and maintain the networks of small rural companies are not insignificant. In 2001 alone the TSTCI member companies invested over $69 million in network additions. Universal service support is critical to encourage the continued infrastructure investment necessary to achieve universal service objectives. The use of auctions to determine support based upon the lowest-cost provider’s costs would mean the demise of the rural telecommunications industry as we know it, as well as the demise of universal service principles. Auctions are not a logical alternative in the rural service areas.

C. Scope of Support

TSTCI believes that limiting support to a single connection would not be consistent with the universal service principle that states access to telecommunications services and information services in rural and high-cost areas should be “reasonably comparable” to urban areas. Support is based upon total network investment, not on the number of connections or type of residence or business services provided. A decrease in support may result in a rural ILEC’s need to curtail investment; thereby, restricting upgrades or new network facilities to consumers in rural areas. Also, many rural consumers use a second line for dial-up access to the Internet. Would these consumers have to bear the burden of higher rates for second lines to recover the lost universal service support? This would not be consistent with basic universal service principles, as stated above. A customer in a rural, high-cost area would not have access to telecommunications services and information services comparable to the access available to a customer in an urban area. Besides not being in accordance with universal service goals, limiting support for these lines could have the unintended consequence of reducing rural network infrastructure.

TSTCI also believes that the administrative costs required to make a primary line determination would outweigh the benefits of limiting support. Current telephone records do not necessarily track the number of lines per customer, and definitely do not track the number of lines per household. Methods to modify existing systems would be expensive to establish, maintain, and audits or regulatory oversight would be difficult, if not impossible. Regardless of whether a decision is made to limit support to a primary line per customer or per household, the process to make the determination would be at best cumbersome and at worst, fraught with fraud. Obtaining lines through different carriers would only compound the problem. First, a second carrier would have no record of another line into the premises unless a customer tells them or it is determined through a premises visit. Second, who would make the determination as to which carrier would receive the support? Third, if the primary line is disconnected but not the second line, is it incumbent upon the customer to advise the other carrier, so the carrier providing the second line could receive the support? Or would the carrier have to develop a procedure for periodic reviews or surveys to see if there is any change in the line counts for which they can receive support?

The Joint Board's request for comments poses questions that point out the difficulty (or near-impossibility) of administering support only to a primary line. Determination of support to primary lines would have to be based upon factual records to prevent fraud. In areas with multiple carriers, the administrator would require a database with information from all carriers to make such determinations. Such a proposition would probably necessitate the use of a third party administrator. The concerns about the proprietary nature of the information, along with the cost of implementation would make this a very costly undertaking, and the system would be fraught with fraud. As stated previously, TSTCI concludes that the cost of implementing such a change in the universal support rules would far outweigh the desired benefit.

D. Process for Designating ETCs

Sections 214(e)(2) and (e)(6) of the Act establishes that ETC designations in rural telephone company areas be treated differently than ETC designations in non-rural telephone company areas. The state commission or FCC must find that the designation of another carrier in a rural telephone company area is in the "public interest." This is recognition that competition for competition's sake will not necessarily be appropriate in areas that lack economies of scale necessary to sustain competition. TSTCI recommends that in rural telephone company service areas, there be minimum qualifications and requirements for ETC designation. TSTCI supports the qualifications, requirements and policies recommended by the Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO") in its white paper released in January 2003, as follows:[13]

A carrier seeking ETC designation in a rural ILEC service area must demonstrate to the state commission or FCC that it meets and will abide by the following:

1. *A carrier must demonstrate its ability and willingness to provide all of the services supported by the federal High-Cost program throughout the service area*. (A carrier must demonstrate upon designation as an ETC, it will be capable of and committed to providing all of the supported services to all consumers in the service area upon reasonable request. Local usage should be no less than that required of the ILEC by the state commission. Equal access should be added to the list of supported services; mobile service providers do not have this requirement at present.)

2. *In fulfilling the requirement to advertise its services and rates, an ETC must emphasize its universal service obligation to offer service to all consumers in the service area.* (A

[13] OPASTCO's white paper, *Universal Service in Rural America: A Congressional Mandate at Risk*, at 31-39.

carrier cannot target its advertising only to certain segments of the service area, but to all consumers in the service area including the most remote regions. This must be vigorously enforced. State commissions must make sure that ETCs publicize the availability of Lifeline services, as required by FCC rules.)

3. *A carrier must have formal arrangements in place to serve customers where facilities have yet to be built out*. (Purchase UNEs and/or resell services.)

4. *A carrier must have a plan for building out its network once it receives ETC designation and must make demonstrative progress toward achieving its build-out plain in order to retain ETC designation.* (Progress should be monitored to ensure that infrastructure build-out commitments are being timely fulfilled. A carrier should be evaluated on the ability of its network to remain functional in times of emergency and the extent of its dependence on other carriers' networks to function.)

5. A carrier must demonstrate that it is financially stable.

Additional policies that should be adopted by FCC and state commissions for ETC designations in rural telephone company service areas, as recommended by OPASTCO and supported by TSTCI are:

1. *ETC designations in rural telephone company service areas should be made at the study area level.* (Some states believe that disaggregation justifies designating CETCs for smaller service areas. Disaggregation addresses only one component for arbitrage an unregulated competitor has in comparison to a rate-regulated ILEC. With access rates and local rates generally averaged throughout the study area, competitors whose rates can reflect cost differences with greater granularity disadvantage ILECs. TSTCI believes that disaggregation should have no bearing on designation of a CETC. If it is in the public interest, and the CETC determines it is financially viable for them to provide service throughout the study area, they should not be allowed to receive support for service provided below the study area level.)

2. *State commissions and the FCC should ensure that competitive ETCs will be capable of providing high-quality service to all of the customers in the service area should the rural ILEC find it necessary to relinquish its own ETC designation.* (Rapidly changing business and economic conditions make the possibility of an ILEC relinquishing its ETC designation not as remote as it once was. A CETC's capability and commitment to serve all customers in a service area should be evaluated before ETC designation is granted.)

3. *Any service quality standards, reporting requirements and customer billing requirements established by the state commission should be applied equally to all ETCs in the state*. (This would serve the public interest as well as being competitively neutral.)

4. *State commissions have the authority to decertify any ETC that is not meeting any of the qualifications or requirements enumerated above*. (If any of the above requirements and qualifications isn't met, the public interest is not being served, and the ETC should be decertified by the state commission. State commissions should be required to certify annually to the FCC that they are applying the established standardized list of minimum

qualifications, requirements and policies to potential and existing ETCs in rural ILEC service areas. In addition, the FCC should direct the administrator of the USF support mechanisms to develop auditing procedures for reported lines.)

The Joint Board questions the effect the current ETC designation system has on the emergence of competition. It does not appear to have any adverse affect on competition as far as wireless technology goes. Wireless carriers have been operating in rural areas for several years without universal service support. The entry of wireless carriers in rural, high-cost areas, unlike wireline competition, indicates that the costs associated with wireless technology are not prohibitive to market entry in the rural areas. However, as stated above, the wireless carriers generally build out in the populated areas or along a major highway. It is questionable whether a rural area can be designated as a "competitive area." In a sparsely populated area, it is unlikely that a market could sustain two providers when universal service high-cost support is required in order for one carrier to provide quality service at affordable rates. Any "competition" would most likely be artificial competition.

Currently there are no established criteria for state commissions to consider when making a public interest determination. Reviewing recent state decisions to grant ETC designations in rural telephone company areas seem to indicate that bringing competition to these areas appears to be the most important criteria in determining public interest.[14] TSTCI is concerned that equal weight has not been given to determine if the costs of supporting multiple networks exceeds the benefits derived from supporting multiple carriers to promote competition. TSTCI believes Congress recognized that some rural areas may not be financially able to sustain more than one service provider when it included the rural exemption provision of Section 251 (f)(1).

[14]In Texas, an Administrative Law Judge states, "… The Commission's rules are silent as to the criteria for measuring the public interest. TTA/TSTCI argued that 'the inquiry required is to determine the effect of competition upon the rural area and its incumbent rural telephone company. Otherwise, the addition of the public interest standard to the eligibility criteria for ETP status would be meaningless.' The Commission disagreed with TTA/TSTCI….The Texas Legislature and the United States Congress have clearly articulated a policy in favor of competitive telecommunications choices for citizens in all areas of the country – not just in urban areas." Public Utility Commission of Texas, Docket Nos. 22289 and 22295, *Application of WWC Texas RSA Limited Partnership or Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider*, Proposal for Decision, Page 46.
See also, State of North Dakota Public Service Commission, *Western Wireless Corporation Designated Eligible Carrier Application*, Case No. PU-1564-98-428, Order on Remand (rel Oct. 3, 2001), para. 19.

TSTCI recommends that the Commission should provide guidance to states when evaluating whether ETC designation is in the public interest. These guidelines would help determine if providing financial support to competition in a rural service area is truly in the public interest of rural consumers and consumers nationwide, who are the contributors to the universal service fund.

As a guideline for making the public interest determination, TSTCI supports the principles proposed by OPASTCO.[15] The public interest principles are as follows:

1. *Rural consumers should receive access to affordable, high-quality telecommunications and information services, including advanced services, that are reasonably comparable to those services provided in urban areas and at reasonably comparable rates.* (This principle is in accordance with Section 254(b) of the 1996 Act. CETC designation must not have the potential to degrade or inhibit this access.)

2. *The high-cost mechanisms should not be used to incent uneconomic competition in the areas served by rural telephone companies.* (Competitive entry motivated only by the prospect of USF support unnecessarily swells the Fund and weakens the ability of the ILEC to continue to provide quality service at reasonably comparable rates, especially in the most remote locations. USF subsidization of multiple carriers to serve areas that are extremely expensive for even one carrier may make it difficult for even one carrier to achieve the economies of scale necessary to serve all customers.)

3. *The USF is a scarce national resource that must be carefully managed to serve the public interest.* (USF should be used to serve the purposes stated in the 1996 Act, not to create artificial competition. State commissions have determined in many cases that competition needs to be "jump-started" in rural areas using limited federal high-cost support. Consumers should not be unnecessarily burdened with excessive universal service surcharges.)

4. *Rural universal service support reflects the difference between the cost of serving high-cost rural areas and the rate levels mandated by policymakers.* (Any attempts to artificially limit the size of the fund or amounts that individual carriers will receive, will affect the ability of ILECs to provide service at the established rates. Universal service must not be a subsidy for carriers that seek only the most lucrative customers.)

5. *The public interest is served only when the benefits from supporting multiple carriers exceed the costs of supporting multiple networks.* (Costs include increased funding for any additional ETC, and decreased network efficiency when multiple carriers serve sparsely populated areas. It is not in the public interest to provide USF support to carriers that serve only low-cost or high-volume customers. Local presence and community economic development must also be considered.)

[15] OPASTCO's white paper, *Universal Service in Rural America: A Congressional Mandate at Risk*, at 28-31.

6. *In areas where the costs of supporting multiple networks exceed the public benefits from supporting multiple carriers, the public interest dictates providing support to a single carrier that provides critical telecommunications infrastructure*. (Congress anticipated that some rural areas exhibit the classic characteristics of a natural monopoly and provided for different ETC policies (i.e., public interest determination) in rural markets.)

7. *The cost of market failure in high-cost rural America could be severe*. (There may not be alternative carriers to serve the most remote and highest-cost customers if the ILEC is forced into bankruptcy or is no longer able to serve throughout the area. The need for a ubiquitous telecommunication infrastructure to serve the public safety and national security requires caution.)

TSTCI urges the Commission to establish the guidelines described above for both the states and the Commission to consider when making a public interest determination. These guidelines are appropriate and should be followed in rural telephone company service areas, regardless of whether or not the rural exemption has been lifted.

Respectfully submitted,
Texas Statewide Telephone Cooperative, Inc.

Cammie Hughes

By: Cammie Hughes
Director - Member Services

ATTACHMENT I

TEXAS STATEWIDE TELEPHONE COOPERATIVE, INC.

Brazos Telecommunications, Inc.
Brazos Telephone Coop., Inc.
Cameron Telephone Company
Cap Rock Telephone Coop., Inc.
Central Texas Telephone Coop., Inc.
Coleman County Telephone Coop., Inc.
Colorado Valley Telephone Coop., Inc.
Comanche County Telephone Company, Inc.
Community Telephone Company, Inc.
Cumby Telephone Coop., Inc.
Dell Telephone Coop., Inc.
E.N.M.R. Plateau Communications, Inc.
Eastex Telephone Coop., Inc.
Electra Telephone Company
Etex Telephone Coop., Inc.
Five Area Telephone Coop., Inc.
Ganado Telephone Company, Inc.
La Ward Telephone Exchange, Inc.
Lake Livingston Telephone Company
Lipan Telephone Company
Livingston Telephone Company
Mid-Plains Rural Telephone Coop., Inc.
Nortex Communications, Inc.
North Texas Telephone Company
Panhandle Telephone Coop., Inc.
Peoples Telephone Coop., Inc.
Riviera Telephone Company, Inc.
Santa Rosa Telephone Coop., Inc.
South Plains Telephone Coop., Inc.
Tatum Telephone Company
Taylor Telephone Coop., Inc.
Wes-Tex Telephone Coop., Inc.
West Plains Telecommunications, Inc.
West Texas Rural Tel. Coop., Inc.
XIT Rural Telephone Coop., Inc.