The FCC and Rural Carriers

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Telecom Basics

- Telephone companies are capital intensive and have extremely high fixed costs.
- Cost recovery is thus important, particularly if the telco serves a low density area.
- Telcos recover their costs through a variety of mechanisms
  - End user charges: local charges; subscriber line charge
  - Access charges: intrastate and interstate interexchange service
  - Universal service subsidies: state and federal

What is a rural company?

- Distinguished from other carriers in two ways.
  - Under Act, specifically defined and eligible for exemptions from certain statutory requirements normally applicable to ILECs.
  - Also distinguished according to regulation of rates.

- Section 3 of the Communications Act defines a "rural telephone company" a a local exchange carrier that provides service
  - to any area that does not include either any incorporated place of 10,000 inhabitants or more based on the most recent statistics of the Census Bureau; or any territory included in an urbanized area, as defined by the Census Bureau;
  - to fewer than 50,000 lines;
  - to any local exchange area with less than 100,000 lines; or
  - has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996.

Rural Company Exemptions Under the Act

- Rural companies can qualify for exemption from local interconnection requirements.
- Section 251(f)(1)(A) exempts a "rural telephone company" from the requirements of 251(c), *i.e.* , the duty to negotiate, interconnection, unbundled access, resale, notice of changes, and collocation, until
  - (1) the rural telephone company receives "a bona fide request for interconnection, services, or network elements," and
  - (2) the state commission determines "that such request is not unduly economically burdensome, is technically feasible, and is consistent with Section 254 [on universal service]..."
- Section 251(f)(2) provides that any LEC "with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide" may request that a state commission suspend or modify the application of 251(c) as well as 251(b), which includes number portability, dialing parity, access to rights-of-way, and reciprocal compensation.

Rate Regulation of Rural Carriers

- Form of Regulation
  - Rural carriers – Rate of return regulation
    - Rates are targeted to recover actual costs plus the prescribed 11.25% rate-of-return
  - Non-rural carriers (*e.g.*, RBOCs) – Price cap regulation
    - Rates based on price ceiling; returns vary depending on the efficiency of the individual carrier
- Tariffs – all carriers file publicly available tariffs containing the rates, terms, and conditions for service offerings
  - Reduced burdens for rural carriers – NECA files single tariff for > 1100 rural carriers
- Local charges and intrastate access rates are subject to state regulation; subscriber line charges and interstate access rates are subject to federal regulation

Rural Telecom – Pricing Issues

Current Issues – Intercarrier Compensation

- Existence of multiple, disparate compensation regimes, each with different a pricing standard, invites arbitrage
- Ongoing *Intercarrier Compensation* proceeding examining when to apply, and whether to revise, the existing regimes (WC Docket No. 01-92)
  - FCC plans to consider at least 4 different proposals, including 2 by rural carriers, in forthcoming FNPRM
  - Rural carriers receive significantly larger percentage of revenues from access charges (intrastate and interstate) and universal service fund than do non-rural carriers

Universal Service -- High Cost Support

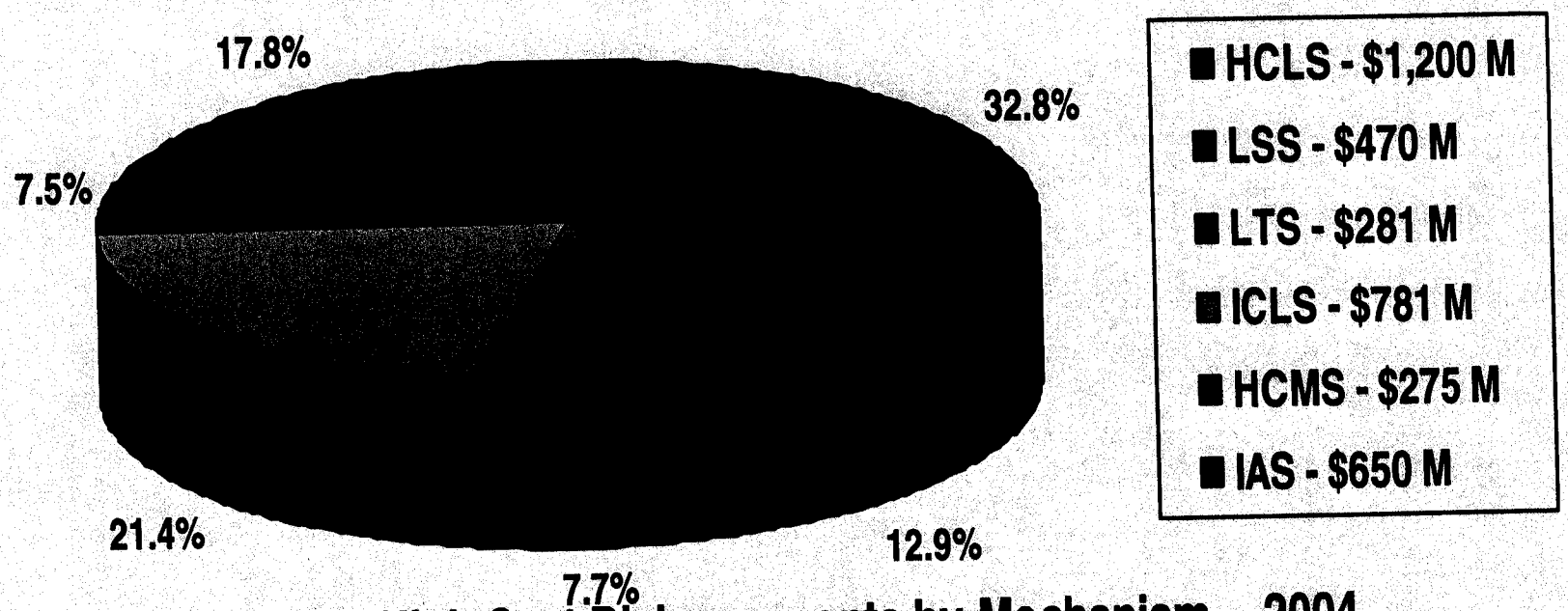
- High Cost is one of four federal universal service programs and provided $3.4 billion in support in FY2004:
  - Provides support to enable carriers to provide telephone service in high-cost areas at affordable rates
  - Provides different levels of support depending on the size of the provider and the level of cost
  - Provides support to eligible competitive carriers on an equal per-line basis as the incumbent carrier

Universal Service -- High Cost Support

- There are five primary federal high-cost support mechanisms:

	Interstate	Intrastate
Rural/ Rate-of-return	Interstate Common Line Support	High-Cost Loop Support Local Switching Support
Non-Rural/ Price Cap	Interstate Access Support	High-Cost Model Support

High Cost



Projected High Cost Disbursements by Mechanism -- 2004

- Approx. 3/4 of high-cost support goes to rural and/or rate-of-return LECs.
- Beginning July 1, 2004, the Commission merged LTS into ICLS

Pending Proceedings Affecting Rural Carriers before the Commission

- **Review of Universal Service Support for Rural Carriers:** The FCC referred issues concerning how rural support is calculated (e.g., embedded vs. forward-looking costs) to the Federal-State Joint Board for their consideration. The Joint Board is having a hearing on this subject 11/17/04 in Nashville. The Joint Board is expected to issue a recommended decision to the FCC in mid- to late-2005. The FCC has one year within which to act on a Joint Board recommended decision.
- **ETC/Portability Proceeding:** The FCC will act on a Joint Board recommended decision concerning the portability of universal service support in competitive service areas by 2/27/05. Among other things, the Joint Board recommended that the FCC limit high-cost support to a single connection that provides a subscriber access to the public telephone network.
- **Contribution Methodology:** Next year, the FCC is expected to revisit the method by which contributions are made to the universal service fund. Under the current system, providers of interstate telecommunications services (which includes international services) contribute to the fund based on a formula that the FCC applies every quarter. The current contribution factor is 8.9%; thus, a provider currently contributes 8.9% of its interstate/international revenues to the fund .

Application of the Anti-Deficiency Act to the Universal Service High-Cost Mechanism

- The Anti-Deficiency Act, 31 U.S.C. § 1341, prohibits "an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation...."
- The FCC has determined that the requirements of this Act apply to the USF. In August 2004, USAC temporarily halted issuance of funding commitment decision letters to schools and libraries, and rural health care providers due to concerns about having adequate unobligated cash available to cover new commitments. We anticipate that USAC will resume issuing these letters by mid-November.
- Several trade associations are advocating legislation that would exempt the USF from the requirements of the Anti-Deficiency Act. Such legislation would permit the USF to incur obligations prior to the receipt of cash intended to cover those obligations

Current Issues – Other

- Deemed lawful forbearance petition (WC Docket No. 03-256, deadline 3/2/2005)
  - Tariffs filed on 15 days' notice are "deemed lawful," unless rejected or suspended by FCC
  - If later determined that a carrier over-earned (*i.e.*, exceeded the maximum allowable rate-of-return), refunds are not available to carrier customers (*e.g.*, long distance companies)
  - If forbearance granted, carriers might be liable for refunds if they over-earn.
- MAG 2nd FNPRM (WC Docket No. 00-256) – Considering 2 possible changes to rate-of-return regulation:
  - Whether to develop elective new forms of alternative regulation
  - Whether to permit carriers that provide service in multiple locations to elect rate of return regulation for some areas and incentive regulation for other areas

Current Issues – Other

- **Mid-Rivers Petition**. Over the past several years, a number of small rural ILECs have built transmission facilities (transport and loops) into neighboring ILEC service areas, typically serving the new locations using their existing switching facilities. They often deploy a complete over-build, meaning they use none of the target ILEC's facilities.
  - One rural ILEC, Mid-Rivers, an ILEC in eastern Montana that overbuilt facilities into a neighbor ILEC's (Qwest's) exchange and acquired approximately 93% of the access lines, has requested that the Commission declare it to be the ILEC, pursuant to section 251(h)(2) of the Act.

- **Independent ILEC Separate Affiliate Requirement**. The Commission has a pending proceeding to consider whether the benefits outweigh the costs of requiring independent ILECs to use a separate corporate subsidiary when they provide facilities-based, in-region interexchange service.
  - This proceeding will also consider whether there are alternative safeguards that are just as effective but impose fewer regulatory costs.
  - In addition, the Commission has sought comment on the appropriate classification (*i.e.*, dominant or non-dominant) of the provision of in-region, interstate and international interexchange services by both the BOCs and independent ILECs.

Current Issues – Other

- **Provision of Broadband Services by Rural ILECs.** The Commission has a pending proceeding to consider whether it should apply traditional Title II wireline competition regulation to ILEC-provided broadband telecommunications services. Within this proceeding, rural ILECs have argued that the Commission should adopt a two-path approach: one for price-cap LECs and one for rate of return LECs.
  - Because most rural areas cannot support multiple wireline broadband providers due to the significant costs associated with deployment, they argue that the FCC should not consider deregulation of small rate of return ILECs that serve the rural broadband service market at this time.

- **IP-Enabled Services.** In the *IP-Enabled Services NPRM*, the Commission initiated a proceeding to examine issues relating to services and applications making use of Internet Protocol (IP), including but not limited to voice over IP (VoIP) services. The Commission set forth the legal framework against which it would consider the appropriate regulatory treatment, if any, for these services. The Commission noted that it has historically not adopted one-size-fits-all policies that might impede rather than support the provision of affordable service by rural carriers.
  - The Commission invited commenters to address whether its policies for IP-enabled services have implications for rural communities and the providers which serve them.