

## Marks, Jason

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**From:** Steve Metts [smetts@gvnw.com]  
**Sent:** Saturday, February 05, 2005 11:04 PM  
**To:** Jason Marks  
**Subject:** Universal Service Fund

Dear Commissioner Marks:

I read your comments in the Albuquerque Journal today regarding SB 218. I was particularly struck by opinion that universal service funding would hurt competition. As I have told you in our face-to-face meetings, I am very impressed and encouraged by your efforts to educate yourself on these issues during your short time at the commission. I understand completely that there is a high likelihood that the Journal did not capture your thoughts entirely accurately; but assuming that they caught the general idea of your comments, I think you may be overlooking some key universal service concepts.

The concept of universal service has been in place since the original Telecommunications Act of 1934. The basic idea is to make local service affordable to everyone. Therefore, the long distance rates (which were considered a luxury) were priced high to keep local service (considered a necessity) affordable. In the monopoly environment that existed at that time, this meant one retail rate subsidized another retail rate.

In 1984 with the divestiture of AT&T, competition was introduced to the long distance market. The local companies started charging access charges to long distance companies to compensate them for the local company's portion of the network. The universal service concept was preserved by placing the subsidy to local service rates in the wholesale access charges versus retail long distance rates. Since all long distance companies were assessed the same access charges, and local service was still a monopoly, there was no problem with this concept being anti-competitive.

The passage of the Telecommunications Act of 1996 was designed to introduce competition for local service. Since local service was a monopoly service, it was no longer appropriate to subsidize local service rates. If local service rates are subsidized, it becomes very difficult for a new market entrant to compete. Understanding that state commissions and consumers would not stand for the huge local rate increases that would result by simply increasing local rates to cost, Congress and the FCC devised a system to remove the implicit subsidies from interstate access charges and create an explicit support mechanism to keep local service rates affordable. This is the current federal universal service fund. In order to accomplish this without hurting competition, the FCC and Congress made the federal universal service fund portable, meaning that it is available to competitive carriers as well as incumbent carriers, providing that the competitive carrier agrees to serve everyone in the designated service area.

This transition is what has led to New Mexico's access rates being so much higher than the FCC rates. The FCC has continued to reduce access rates while the NMPRC has not taken any action to do so. In New Mexico, the Commission still seems to be interested in keeping local service rates as low as possible which is understandable, however the commission is still relying on access charges to do so. Therefore, New Mexico is still relying on a wholesale rate (access charges) to keep a retail rate (local service) low. This will not be sustainable in the long term. The current process is what is anti-competitive rather than the concept of the universal service fund we are trying to implement. This is true for the following reasons:

1. Access charge pricing is discriminatory. Long distance carriers are charged much higher rates than their wireless competitors for use of the same network.
2. Long distance carriers are charged higher rates for an intrastate call than an interstate call using the same network.
3. Local service rates are priced below cost making it nearly impossible for a CLEC to survive.
4. Incumbent carriers are rate regulated and required to serve everyone, wireless carriers are not rate regulated by anyone and serve whoever they choose to.
5. Access revenues are declining do to minutes lost to wireless competitors who are not subject to the same rules and charges.

6. Emerging technologies like VoIP will further cause access minutes to decline.

7. The FCC is going to continue to reduce interstate access charges which will only increase the differential between state and interstate rates.

If you look closely at SB 218, it is nothing more than an attempt to give the commission a clearer direction to implement current state and federal law. The legislature has already directed the commission to identify and eliminate implicit subsidies from rates and replace them with revenue neutral rate rebalancing or payments from the universal service fund. The fund already exists in statute, the surcharge mechanism already exists including the fact that wireless carriers can be assessed a surcharge. The current statute already allows for competitive carriers to draw from the fund as well as incumbents and we are not proposing to change that aspect of the fund.

Access reform and a state universal service fund is necessary and will make the market more competitive by:

1. Reducing wholesale rates (access charges) will open up the long distance market to more competitors and better calling plans providing more consumer choice
2. Removing the subsidy from local rates and increasing local service rates opens the local market by making it easier for competitors to enter the market.
3. Universal service funding is a tool that the PRC will use to keep local affordable to all New Mexicans.
4. The portability requirement of the fund makes the fund available to competitors as well as incumbents. This allows more competitors to enter high cost markets.

I understand that the wireless carriers have spent a lot of time lobbying the commission and are lobbying hard against this bill. Quite frankly, they are taking a very narrow and one-sided view about the intent of the bill and the affect that it will have on the telecommunications market in New Mexico. On the issue of wireless carriers contributing to the fund, I would offer the following; 1) The ability of the commission to assess a surcharge on wireless carriers to help fund the fund is in current statute. If this bill fails, the Commission will still have that authority; and 2) The Telecom Act of 1996 Section 254 (f) is very clear that if a state implements a fund to preserve and advance universal service that all telecommunications contribute to the fund in an equitable basis. In fact, the FCC has ruled that not requiring all competitors to contribute to the fund would give an unfair advantage to the segment that did not contribute. The wireless carriers are using possible local rate increases as a tool to lobby against it is simply a scare tactic to commissioners and legislators. Why would a company care if their competitor raised rates? The simple fact of the matter is that they have a huge advantage in the marketplace due to the regulatory constraints on the wireline companies and the current access charge discrepancies and they are trying to preserve it. That is why most of them essentially did not participate in the most of the commission's workshops on this issue and that is why they are opposing this bill.

As we have discussed before, the rural wireline companies may not be as efficient as a wireless carrier. They do, however, provide the best telecommunications service in New Mexico. They are generally small, locally owned companies with relatively small service areas in sparsely populated areas, yet their deployment of advanced services and lack of service related problems is unmatched by Qwest or any wireless carrier. On the other hand, the wireless carriers are generally very large national or international companies. While they offer some service in rural areas, their construction is driven solely by the number of minutes they are going to generate on a cell site. If you look closely at their coverage areas, they mainly follow the interstates, major highways, and higher population areas. They are not likely to put up a tower to serve a handful of rural customers.

When wireless carriers do have good coverage in rural areas, it is virtually impossible for the small companies to compete with them. Part of this is simply due to the fact that a small company cannot compete with a large corporation. This is worsened when the small company is regulated more heavily than the larger competitor which is the case in New Mexico.

Some individuals at the commission seem to have a negative opinion of the universal service fund. They view it simply as a huge revenue stream to the companies. The fact of the matter is that universal service funding is what currently makes the provision of local service possible at affordable rates in New Mexico. Without the contributions to this fund from the larger states, New Mexico and the other rural states would have extremely high local service rates or no service at all. Universal service funding benefits consumers in rural states. The NMPRC should do everything possible to advocate for continued universal service funding because it benefits the state as a whole.

The industry has been trying to resolve this issue in varying ways since 1997. The workshop participants, including the PRC staff, dedicated a lot of time and effort over the past two years to developing a workable solution to this problem. There was a significant amount of give and take during these discussions and negotiations. On behalf on NMECG, I can say that our membership put a lot of faith in the rulemaking process that will take place at the PRC if this legislation passes. If we had it all our way, the statutory language would be much more specific and the entire process would have a much more predictable outcome. Since we have the most to lose in this process and are willing to use the PRC rulemaking process to resolve the details, we believe the wireless carriers should be willing to do the same.

I believe that the solution we have proposed is as close to a consensus between the industry, the staff, and consumer groups that you will ever see on this issue. The problem will only get worse if we continue to wait. Even under the proposed solution, we are looking at a three-year transition to the interstate rates. In the telecommunications industry, that is an eternity. As we see it, the only other solution is to entirely de-regulate the rates of incumbent carriers. We have not proposed that solution. Instead, we are offering a way for the commission to make the telecommunications market more competitive while keep local service rates affordable in the long term. We are also offering a solution that closely matches the solutions the FCC and several other states have developed to address these issues. I urge you to place this issue on the agenda for Tuesday and reconsider your position and support our efforts to resolve this problem for the betterment of New Mexico.

I apologize for the lengthy letter and, as always, if you have any questions or wish to discuss this or any other issue further, please contact me at your convenience.

Respectfully,

Steven D. Metts  
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