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April 3, 1996

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RE: CC Docket No. 96-45 (FCC 96-93)
In the Matter of Federal-State Joint Board
On Universal Service

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To the Secretary:

Enclosed herewith for filing with the Commission are an original plus six copies of the Comments of the Public Utility Commission of Texas in the above captioned matter. By a copy of this transmittal, we are also providing an electronic copy of the filing as requested.

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Please acknowledge receipt by affixing an appropriate notation on the duplicate copy of this letter furnished herewith for that purpose and returning same to the undersigned in the enclosed, self-addressed envelope.

Sincerely,

Vicki Oswalt
Director, Office of Policy Development

cc: ITS, Inc.
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**Before the
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**COMMENTS OF THE
PUBLIC UTILITY COMMISSION OF TEXAS**

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Robert W. Gee, Commissioner
Judy Walsh, Commissioner**

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Executive Summary

The Public Utility Commission of Texas (Texas PUC) herein provides its Comments to the Federal Communications Commission (FCC) on the issue of universal service and the provision of federal support mechanisms for universal service. Just as the FCC has received a strong mandate from Congress in the form of the Telecommunications Act of 1996, so did the Texas PUC receive a totally revised telecommunications policy directive from the Texas Legislature in the Public Utility Regulatory Act of 1995. Many of the Texas PUC's comments to the FCC in response to this Notice of Proposed Rulemaking reflect the policy language enacted by the Texas Legislature, as certain portions seem particularly responsive to the myriad questions posed in the Notice.

These comments emphasize a cooperative partnership among federal and state regulators to create solutions and implement programs that will accomplish the goals set forth for the advancement of universal service. Parallel rules should be implemented by the FCC and state regulators to address issues such as service quality and affordability of rates. The Texas PUC also urges the creation of a two-tiered architecture of universal service funding programs, with high-cost assistance continuing to be provided by the federal USF, and specific rate affordability programs overseen primarily by state regulators.

The Texas PUC emphatically supports the continuation of an interstate high-cost assistance mechanism in some form. However, we recognize that the federal statutory mandate and emerging competitive forces dictate that the support contained within current pricing methods and jurisdictional separations processes must be made more explicit.

Proposals within this Notice, if enacted, may 1) reduce or retarget the level of federal USF support for high-cost areas, 2) increase the level of the monthly Subscriber Line Charge, and 3) allow for rate “rebalancing” plans, all of which may significantly increase rates for basic residential and rural services. The Texas PUC is concerned that these rate increases will create a need for additional low-income support programs (or retargeting of the existing ones) if this proceeding leads to significant increases in basic local monthly flat rates for consumers.

With respect to the Commission’s questions on support for education, libraries, and health care, the Texas PUC has provided copies of statutory directives from the Texas Legislature that appear to be directly on point.

Regarding changes to current interstate access charges, and the possible increase in the Subscriber Line Charge, the Texas PUC reminds the Commission that the local loop is necessary for the provision of virtually all telecommunications services. Costing and pricing questions must be resolved, and appropriate explicit support mechanisms -- if needed -- must be designed prior to further action by the Commission to alter the interstate access charge recovery plan. Until the states and the FCC are satisfied as to a plan for recovery of joint and common cost from the subscriber’s loop, it is not reasonable to force subscribers to bear an inordinate amount of the revenue recovery. We therefore urge that the Commission not increase the interstate Subscriber Line Charge at least until appropriate incremental costs are developed, additional determinations are made regarding the assignment of joint and common costs, and the components of the universal service funding program are in place.

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**COMMENTS OF THE
PUBLIC UTILITY COMMISSION OF TEXAS**

I. Introduction

1. In its Notice of Proposed Rulemaking and Order Establishing Joint Board (Notice) adopted on February 8, 1996,¹ the Federal Communications Commission (FCC or Commission) initiated a rulemaking to consider and implement regulatory changes involving universal service issues in response to Section 254 of the Telecommunications Act of 1996 (1996 Act).² The Public Utility Commission of Texas (Texas PUC), having been given general regulatory authority over public utilities within our jurisdiction in Texas, hereby submits these Comments on universal service issues most directly related to state regulatory policy.

II. Goals and Principles of Universal Service Support Mechanisms

A. General Principles Enumerated in the 1996 Act

2. The Notice requests comments on seven principles enumerated in Section 254 of the 1996 Act, specifically how each of the principles should influence the Commission's policies on

¹ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Notice of Proposed Rulemaking and Proposed Order Establishing Joint Board, FCC 96-93 (March 8, 1996).

² Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (to be codified at 47 U.S.C. §§ 151 et seq.).

universal service.³ The Texas PUC enthusiastically supports the direction of Congress in giving such an emphatic endorsement to universal service principles in the 1996 Act, and urges the Commission to work in cooperation with state regulators to develop practical implementation procedures in our respective jurisdictions. We are currently attempting in Texas to answer many of the same questions that the Commission is examining, in rulemakings and other proceedings related to competition, service costing and pricing, incentives for the deployment of advanced services, and the evaluation of universal service issues.

B. Principles of Quality and Affordable Rates

3. The Notice seeks comments on how the Commission can assess whether quality services are being made available, and on the utility of performance-based service quality measurements.⁴ The Texas PUC would note that most state regulatory agencies have employed service quality regulations and programs in telecommunications for many years. The Texas PUC has had telephone service quality requirements in place since 1976, and has used these requirements in evaluating the level of service provided by LECs in Texas. The National Association of Regulatory Utility Commissioners (NARUC) has published Model Telecommunications Service Quality Rules⁵ and a Telephone Service Quality Handbook⁶ for use by regulators in their programs. The 1992 Handbook indicated that 37 of the states had performance-based rules in place for telecommunications service quality at that time.⁷ In recent years, both technology and regulatory methods have evolved significantly, and many states have

³ Notice, para. 4.

⁴ Notice, para. 4.

⁵ Model Telecommunications Service Quality Rules, NARUC, 1987.

⁶ NARUC Telephone Service Quality Handbook, NARUC, 1992.

⁷ Id. Appendix H.

at least informally considered the extent to which service performance can be one of the factors included in the design of an incentive-based regulatory program.

4. In 1995, the 74th Texas Legislature enacted the Public Utility Regulatory Act of 1995 (PURA 95), making substantial revisions to the regulatory framework for telecommunications in our state.⁸ The goal of PURA 95 is to create an environment in which consumers will reap the benefits of competition in telecommunications. These benefits include making available to all customers a choice of providers for all telecommunications services. Customer choice is an essential part of providing high quality telecommunications service in a competitive environment.

5. A fully competitive market provides its own incentives for each carrier to maintain and even improve its service quality. However, transitional regulatory flexibility plans provide incentives for telecommunications carriers to reduce operating expenses, often including those associated with maintenance activities, and may result in reductions in the level of service quality. During the transition to a fully competitive market, and for areas or services where competition has not yet emerged, regulators should continue to 1) monitor service performance, 2) provide rules or incentives for the serving carrier to maintain service levels, and 3) require carriers to provide levels of service quality in areas where consumers do not have competitive choices that are reasonably comparable to the service available in areas where competition is thriving. Such concepts could be incorporated into the checklist for eligibility to receive universal service or high cost support funding.

6. The Commission seeks comment on whether there are appropriate measures that could help us assess whether “affordable” service is being provided to all Americans.⁹ This is an

⁸ Public Utility Regulatory Act of 1995, Tex. Rev. Civ. Stat. Ann. art. 1446c-0(Vernon Supp 1996).

⁹ Notice, para. 4.

especially daunting task since what is affordable to one citizen may not be affordable to another. In addition, Congress has correctly recognized that quality and affordability fall into a category of shared responsibility between the FCC and state regulators, and has directed that these issues be referred to a Federal-State Joint Board for resolution.

7. It is the Texas PUC's position that on the matter of service quality and affordability, parallel federal and state rules must work in harmony to ensure the continued availability of quality services at just, reasonable, and affordable rates. Federal regulations should contain overarching regulations and guidelines, as well as specific rules that apply to interstate services. Each state regulatory agency, then, would continue to be responsible for rules and regulations that focus on local conditions, including the affordability of local rates for its citizens. The Texas statute establishes an intrastate Universal Service Fund with the following mandate:

“The commission shall adopt and enforce rules requiring local exchange companies to establish a universal service fund to assist local exchange companies in providing basic local telecommunications service at reasonable rates in high cost rural areas, to reimburse local exchange companies for revenues lost as a result of providing tel-assistance service under this Act, to reimburse the telecommunications carrier providing the statewide telecommunications relay access service for the hearing-impaired and speech-impaired as authorized in Section 3.604 of this Act, and to reimburse the Texas Department of Human Services and the commission for costs incurred in implementing the provisions of this subtitle.”¹⁰

8. Using the current regulatory format as an example, one can see that the interstate USF mechanism provides funds to LECs with high loop costs; in association with this funding, each state designs its own intrastate rates and may have its own unique USF mechanism. Lifeline services are provided through a joint arrangement overseen by the FCC, state regulators, and other agencies. Close coordination should continue in the future, even though the algorithms may

¹⁰ PURA 95, §3.608(a).

change. Affordability of basic telecommunications service should continue to be left in large measure to the regulatory laboratories in the states, with federal oversight and monitoring. The Texas PUC urges the continuation of a two-tiered architecture of universal service funding programs, with high-cost assistance continuing to be provided by the federal USF, and specific rate affordability programs overseen primarily by state regulators.

III. Support for Rural, Insular, and High-Cost Areas and Low-Income Consumers

A. Goals and Principles

9. The Notice requests comment on whether the Act requires that all regions of the country have access to advanced telecommunications and information services, and on how such access can be effectuated.¹¹ The Texas PUC believes that it does, and we suggest that future Commission decisions be made with this goal in mind in order to create incentives and requirements that will benefit not only the high-density urban areas, but also make state-of-the-art services available to rural areas as well. The promotion of infrastructure development in an era of emerging competition is difficult, and appears to be best handled through incentives. As an example, a local carrier might be eligible for USF payments only if it has met a checklist that includes the availability of advanced services. The other incentive that has been used in states involves the funding of major projects or grant programs targeted toward providing technology-rich public uses of advanced services, thus “pulling” technology deployment from the demand side. An additional benefit of demand-side incentives for infrastructure modernization is that they are competitively neutral, coaxing new technologies into our communities without regard to which carrier provides the facilities.

¹¹ Notice, para. 14.

10. In PURA 95 §3.358, the Texas Legislature enacted the following policy goals addressing infrastructure development:

- “(a) It is the goal of this State to facilitate and promote the deployment of an advanced telecommunications infrastructure in order to spur economic development throughout Texas. Texas should be among the leaders in achieving this objective. The primary means of achieving this goal shall be through encouraging private investment in the state's telecommunications infrastructure by creating incentives for such investment and promoting the development of competition. The best way to bring the benefits of an advanced telecommunications network infrastructure to Texas communities is through innovation and competition among all the state's communications providers. Competition will provide Texans a choice of telecommunications providers and will drive technology deployment, innovation, service quality, and cost-based prices as competing firms seek to satisfy customer needs.
- (b) In implementing this section, the commission shall consider the following policy goals of this State:
- (1) ensure the availability of the widest possible range of competitive choices in the provision of telecommunications services and facilities;
 - (2) foster competition and rely on market forces where competition exists to determine the price, terms, availability, and conditions of service in markets in which competition exists;
 - (3) ensure the universal availability of basic local telecommunications services at reasonable rates;
 - (4) encourage the continued development and deployment of advanced, reliable capabilities and services in telecommunications networks;
 - (5) assure interconnection and interoperability, based on uniform technical standards, among telecommunications carriers;
 - (6) eliminate existing unnecessary administrative procedures which impose regulatory barriers to competition and assure that competitive entry is fostered on an economically rational basis;
 - (7) assure consumer protection and protection against anticompetitive conduct;
 - (8) regulate providers of services only to the extent they have market power to control the price of services to customers;
 - (9) encourage cost-based pricing of telecommunications services so that consumers pay a fair price for services that they use; and

- (10) subject to Section 3.353 of this Act, develop quality of service standards for local exchange companies as it deems appropriate to place Texas among the leaders in deployment of an advanced telecommunications infrastructure except that the 10 percent limitation specified in Section 3.353 of this Act shall not include the requirements of Subsections (c)(1)-(4) of this section.”¹²

We offer these goals for additional consideration and insight by the Commission.

B. Support for Rural, Insular, and High Cost Areas

11. In our Comments¹³ to the Notice of Inquiry regarding the USF in CC Docket 80-286 in 1994¹⁴, and again in our Comments¹⁵ on the Notice of Proposed Rulemaking¹⁶ in that same proceeding in 1995, we highlighted the fact that Texas has many unique geographic and demographic properties that cause our telecommunications carriers to be faced with complex universal service challenges. Despite being the second most populous state, Texas has an incredibly large rural area, containing many local exchanges that are very costly to serve. Hundreds of thousands of our state’s citizens currently rely on the interstate USF mechanism to keep their local rates “affordable,” as they have come to know them. Removal of the interstate USF support would cause some rural customers to face local rates well above \$50 per month, absent some alternate bill relief mechanism. Many of these areas have a population density of well under one household per square mile; in fact, 89 of Texas’ 254 counties have a population density

¹² PURA 95 § 3.358.

¹³ Comments of the Public Utility Commission of Texas; *Amendment of Part 36 of the Commission’s Rules and Establishment of a Joint Board*, Notice of Inquiry, CC Docket No. 80-286; October 27, 1994 (1994 Comments).

¹⁴ *Amendment of Part 36 of the Commission’s Rules and Establishment of a Joint Board, Notice of Inquiry*, 9 FCC Rcd 7404 (1994).

¹⁵ Comments of the Public Utility Commission of Texas; *Amendment of Part 36 of the Commission’s Rules and Establishment of a Joint Board*, Notice of Proposed Rulemaking, CC Docket No. 80-286; September 27, 1995 (1995 Comments).

¹⁶ *Amendment of Part 36 of the Commission’s Rules and Establishment of a Joint Board, Notice of Proposed Rulemaking*, 10 FCC Rcd 12309 (1995).

of less than 10 persons per square mile.¹⁷ It is for our citizens residing in these sparsely populated areas of our state and our nation that we support the continuation of an explicit federal support mechanism.

12. The Notice requests comment on the nature of the “core” services that should receive universal service support.¹⁸ The Texas Legislature defined “basic local telecommunications service” in Section 3.002 of PURA 95 as follows:

- (A) flat rate residential and business local exchange telephone service, including primary directory listings;
- (B) tone dialing service;
- (C) access to operator services;
- (D) access to directory assistance services;
- (E) access to 911 service where provided by a local authority or dual party relay service;
- (F) the ability to report service problems seven days a week;
- (G) lifeline and tel-assistance services; and
- (H) any other service the commission, after a hearing, determines should be included in basic local telecommunications service.

We offer this listing as an appropriate selection of services to be considered as “core” telecommunications services for the purpose of receiving universal service support. In addition to the Texas statute’s listing, the Texas PUC had previously defined “basic telecommunications service” as those items listed above, but had also included access to toll services and equal access to interLATA interexchange services serving the area.¹⁹

13. The Notice seeks comment on the calculation and application of support for rural, insular, and high-cost areas.²⁰ As presented in our 1994 Comments, the Texas PUC continues to

¹⁷ 1993 estimates; 1994 Comments, para. 4 & Att. II.

¹⁸ Notice, para. 15-23.

¹⁹ Texas PUC Sub. R. 24.32(b).

²⁰ Notice, paras 24-39.

believe that it is important to have a national policy on universal service. That policy should include explicit support mechanisms, narrowly targeted to avoid cross-subsidization and uneconomic bypass -- situations that generally arise when costs and rates are averaged over a large area.²¹ We continue to advocate targeting of support as narrowly as is practical -- on the basis of individual subscriber locations, if a workable plan can be devised.²² We would also support the use of census block groups as areas to be used to facilitate targeting, as they offer the benefits of being relatively small and independent of the incumbent LEC service area.

14. The Notice specifically seeks comments on the continuation of the Commission's jurisdictional separations rules to provide high-cost support.²³ While the Texas PUC emphatically supports the continuation of an interstate high-cost assistance mechanism in some form, it is clear that sooner or later the support mechanism made possible within the current jurisdictional separations process must be converted to a more explicit system. It is also clear that the incumbent LECs' embedded costs are not the appropriate basis for determining universal service support to competitive LECs for serving high-cost areas.

15. In the Commission's 1995 Notice of Proposed Rulemaking in CC Docket No. 80-286, you proposed the consideration of four primary principles in evaluating the universal service issue: that assistance should be properly targeted, that assistance should promote efficient investment and operation, that assistance should not impose excessive subsidy costs upon interstate carriers and ratepayers, and that the assistance should not impose barriers to competitive entry into local telecommunications.²⁴ In our Comments in response to that Notice of

²¹ 1994 Comments, para 12.

²² 1994 Comments, para 11.

²³ Notice, para. 30.

²⁴ 1995 Notice of Proposed Rulemaking, CC Docket 80-286.

Proposed Rulemaking, the Texas PUC proposed four additional principles to be used in the evaluation of the universal service program. We suggested that the Commission also consider the following: the support mechanism should be simplified from its current form, it should be easily verifiable, it should minimize reliance on carriers' reported costs, and it should be targeted to the narrowest practical geographic level that requires assistance.²⁵ Frankly, we had hoped that, during the pendency of the USF proceedings in CC Docket 80-286, a simplified method of determining USF disbursements could be developed, a method not based on the reported costs of incumbent LECs and applicable to a small geographic area such as a census block group or to individual customers. However, the Benchmark Costing Model²⁶ that was filed in CC Docket 80-286 is extremely complex and even so does not appear to adequately model the relative costs of serving low-density areas. We have seen no other proxy models that appear to adequately address the principles offered by our agency.

16. The Notice asks for comment regarding the need for additional measures to ensure that carriers do not use services that are not competitive to subsidize services that are subject to competition.²⁷ As will be discussed further in Section VI of these Comments, the Texas PUC encourages further study into the incremental costs of telecommunications services, without which we cannot determine whether cross-subsidization exists. In addition, the Commission must not hastily abandon current monitoring programs such as ARMIS that can aid in tracking the revenue streams of carriers which continue to offer monopoly services.

²⁵ 1995 Comments, para. 5.

²⁶ Notice, paras 31-32.

²⁷ Notice, para. 41.

C. Support for Low-Income Consumers

17. The Notice describes the use of toll limitation and toll blocking services in several states.²⁸ Many LECs in Texas have offered customer-initiated, voluntary toll blocking at tariffed rates for many years. There are no toll *limitation* plans currently offered in Texas, although one such plan is pending.

18. The Notice requests comments on support for low-income consumers, specifically whether changes may be required in current low-income support programs such as Link Up and Lifeline.²⁹ The current federal lifeline programs, along with state programs such as Texas' Tel-Assistance plan,³⁰ are narrowly targeted and have a relatively small number of subscribers. Even at Texas' current subscribership level of 90.9%, approximately 611,000 households in our state do not have a telephone. The Lifeline program, through which most of Texas' LECs match federal funds to reduce charges by the amount of the current Subscriber Line Charge, currently benefits fewer than 115,000 customers served by Southwestern Bell, our largest LEC. Our intrastate low-income support program, Tel-Assistance, provides a 65% reduction in the customer's service rate if he or she is the head of household, disabled, and has an income at or below the poverty level. Currently, there are approximately 37,000 subscribers to Tel-Assistance service within Southwestern Bell's service area.

19. Proposals within this Notice, if enacted, may 1) reduce or retarget the level of federal USF support for high-cost areas, 2) increase the level of the monthly Subscriber Line Charge, and 3) allow for rate "rebalancing" plans, all of which may significantly increase rates for basic residential and rural services. The Texas PUC is concerned that these rate increases will create a

²⁸ Notice, para. 54.

²⁹ Notice, para 64.

³⁰ PURA 95 Section 3.601-2.

need for additional low-income support programs (or retargeting of the existing ones) if this proceeding leads to significant increases in basic local monthly flat rates for consumers. The Commission should therefore plan to reevaluate the need for revisions to its lifeline programs after it has determined the steps to take with respect to the other universal service programs within this proceeding. The Commission should continue to work in cooperation with state regulators to develop effective programs for lifeline support.

D. Ensuring that Supported Services for Rural, Insular, and High-Cost Areas and Low Income Consumers Evolve

20. The Notice seeks advice on the methods to be used to monitor telephone service quality and the availability of advanced services in rural areas to ensure that they are reasonably comparable to those provided in urban areas.³¹ The 1996 Act is specific in requiring that “[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services that are reasonably comparable to those services provided in urban areas ...”³² The goals developed by the Texas Legislature and highlighted in paragraph 10, above, express a similar desire to promote the deployment of advanced services throughout the state through the use of incentives to encourage private investment.

21. In order to monitor the availability of high quality, advanced telecommunications services throughout the nation, the Commission and its state regulatory counterparts must employ a number of techniques. As correctly recognized in the Notice, most of the incumbent LECs do not provide network or service quality data to the FCC. Further, all regulators must recognize

³¹ Notice, para 68-70.

³² 1996 Act, §254(b)(3).

that our federal and state regulatory jurisdiction over competitive carriers is generally restricted, and that even the basic act of collecting and publishing comparative performance data of competitive carriers as described in the Notice³³ may not be possible. Both state and federal regulators must use “all the arrows in the quiver” to develop and implement monitoring instruments that properly describe the status of infrastructure deployment.

22. The Texas PUC has published two types of monitoring reports that address the evolution of competition and the deployment of infrastructure within our state. The Texas Legislature requires that our agency prepare a biennial “Report on the Scope of Competition”, in which we describe the issues and activities that have taken place within the two year span, and we provide data that attempts to describe the level of competition in various telecommunications markets. In the four reports that have been prepared (1989, 1991, 1993, 1995), we have observed that as competition is allowed in a market, the carriers become increasingly reluctant to provide information -- even under confidentiality agreements -- about their participation in that market. The second report is entitled “Inventory of Telecommunications Services”, and attempts to identify the types of services offered by the state’s LECs. This report is not required by statute, and therefore has been done only on an ad hoc basis. As we progress further into the realm of competitive telecommunications, federal and state regulators will need to be innovative and flexible in designing monitoring procedures and reports that will reveal the true impact of competition on the industry and its customers in all areas. Special consideration should be given to attempting to ascertain the choices that are available to consumers in both urban and rural communities.

³³ Notice, para. 69.

IV. Schools, Libraries, and Health Care Providers

A. Goals and Principles

23. The Notice seeks comment on issues pertaining to the implementation of the 1996 Act relating to support mechanisms that would enable eligible schools, libraries, and rural health care providers to receive both core and advanced telecommunications services.³⁴ The Texas PUC would highlight for the Commission's consideration several sections of our enabling statute (PURA 95), containing specific incentives for the provision of advanced services to certain public entities, including educational institutions, libraries, and certain health care locations. The intent of the Texas statute on this issue is clearly identified in Section 3.358 of PURA 95:

It is the intent of this section to establish a telecommunications infrastructure that interconnects public entities described in this section. The interconnection of these entities requires ubiquitous, broadband, digital services for voice, video, and data within the local serving area. The ubiquitous nature of these connections must also allow individual networks of these entities to interconnect and interoperate across the broadband digital service infrastructure. The delivery of these advanced telecommunications services also will require collaborations and partnerships of public, private, and commercial telecommunications service network providers.

B. Schools, Libraries, and Health Care Providers

24. The Commission asks parties to address the types of services to be provided in response to the 1996 Act's directives to provide services to public entities such as schools, libraries, and health care providers at preferred rates.³⁵ Subtitle H of Texas' PURA 95 requires all LECs that elect into the statute's incentive regulation plan to provide advanced services (up to 45 megabits per second), upon a request made by such public entities, at 105% of the long run incremental cost (LRIC) of those services. (See Attachment I) LECs that do not elect into the incentive regulation plan, but that elect into an infrastructure development plan, may do so under

³⁴ Notice, Section IV.

³⁵ Notice, paras. 77-106.

Subtitle I, and those carriers are also required to provide advanced services to those public entities at preferred rates. (Attachment II) Finally, all LECs are required under PURA 95 Section 3.605 to offer tariffs with discounted rates to educational institutions and information sharing programs offered by libraries. (See Attachment III)

V. Enhancing Access to Advanced Services for Schools, Libraries, and Health Care Providers

25. As discussed above, a portion of the Texas approach is to drive implementation from the “supply” side, by requiring carriers to provide specific infrastructure upgrades and discounted rates for advanced services for public entities. In addition, the Texas statute creates a “demand” side incentive through the Telecommunications Infrastructure Fund,³⁶ which will offer grants and loans to public schools for purchases of equipment such as computers, printers, video equipment, wiring, and for program development and training. Section 3.606 of PURA 95 is provided as Attachment IV to these comments. The Telecommunications Infrastructure Fund is designed, in part, to coax infrastructure development into all areas of the state by focusing on public educational units. The fund is administered by a board that is independent from the Texas PUC. That board is currently evaluating details in the implementation of the fund and the criteria for awarding the grants and loans.

³⁶ PURA 95, Section 3.606.

VI. Other Universal Service Support Mechanisms

The Role of the Subscriber Line Charge

26. The Notice seeks comment on whether to continue the existing subsidy on subscriber loop costs so as to preserve reduced end user common line charges.³⁷ The interstate Subscriber Line Charge (SLC) recovers a portion of the cost of the local loop that serves customer locations. Revenue is collected to offset the cost of the loop both from subscribers (through local monthly rates and the interstate SLC) and from interexchange carriers (through Carrier Common Line (CCL) charges.)

27. The local loop is necessary for the provision of virtually all telecommunications services. Many parties argue that each subscriber loop is placed only for the benefit of the end user it serves, and all of the costs of that loop should be borne only by that subscriber. However, many entities derive a benefit from the existence of the subscriber loop. For example, interexchange carriers could neither aggregate originating calls from, nor deliver terminating calls to subscribers if the local loop were not in place. The subscriber loop therefore becomes a critical element of the overall network, and its cost should be the object of shared responsibility. The loop is also a critical part of the provision of ancillary and advanced services, and the providers of those services should not be able to use the subscriber loop without bearing a portion of its cost.

28. The cost of subscriber loops constitutes a significant portion of the embedded cost of each incumbent LEC, and represents the single largest economic barrier to the introduction of facilities-based competition into the local exchange. With the new federal statutory directive to make support or subsidy mechanisms explicit, the recovery of loop costs becomes the keystone with which a reasonable and effective pricing architecture must be built.

³⁷ Notice, para 114.

29. Two regulatory determinations will assist in clarifying the dilemma presented by the cost of subscriber lines. First, there must be a more thorough definition of the long-run incremental costs of all unbundled telecommunications services and functions. Second, regulators must determine the manner in which common costs should be recovered from various services. The first step is currently in progress in Texas, where we have adopted rules requiring the calculation of long-run incremental costs for over 100 basic network functions of the largest local exchange carriers. These studies are in progress now, and will be completed in late 1996. We are including our Substantive Rule 23.91 (Attachment V), which describes our costing process. Following the computation of costs, we will be proposing a rule that will contain pricing guidelines which will for the first time establish an overall rate design framework for unbundled telecommunications services based on incremental costs.

30. The Texas PUC has previously taken a position in rate proceedings, rulemakings, and previous comments before the Commission that interstate and intrastate Subscriber Line Charges should be minimized or avoided. Implicit in our state ratemaking decisions of the past is the recognition that a portion of the cost of the subscriber loop should be borne by the end user, and that recovery occurs in the flat-rated monthly charges paid by customers of the incumbent LECs in Texas. However, the introduction of competition and the directives of the 1996 Act leave no question that implicit support flows of the past must be restructured and that service rates must be more closely reflective of their costs.

31. It is the Texas PUC's position that the costing and pricing questions discussed in this section must be resolved, and appropriate explicit support mechanisms -- if needed -- must be designed prior to further action by the Commission to alter the interstate access charge recovery plan. Until the states and the FCC are satisfied as to a plan for recovery of joint and common cost

from the subscriber's loop, it is not reasonable to force subscribers to bear an inordinate amount of the revenue recovery. In addition, it is not clear to us that the time deadlines imposed on the FCC and the Joint Board for the resolution of issues directly related to universal service support would clearly apply to access charge restructuring. We therefore urge that the Commission not increase the interstate Subscriber Line Charge at least until appropriate incremental costs are developed, additional determinations are made regarding the assignment of joint and common costs, and the components of the universal service funding program are in place.

VII. Administration of Support Mechanisms

32. The 1996 Act states that "[a]ll providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service" through "specific, predictable and sufficient Federal and State mechanisms."³⁸ To accomplish this charge, the Act stipulates that "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service." It further stipulates that "[e]very telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State."³⁹ The Notice requests comment on how financial responsibility should be divided between the interstate and intrastate jurisdictions, and specifically whether the statute should change existing assumptions about the sources of universal service support.⁴⁰ The

³⁸ 1996 Act, §254(b).

³⁹ 1996 Act, §254(f).

⁴⁰ Notice, para. 117.

Notice also requests comment on which carriers should bear the obligation of support of the fund.⁴¹

33. As repeated often throughout these comments, the Texas PUC strongly believes that there must be two different layers of Universal Service funding: one federal and one state. These funds may well be targeted at different aspects of support, and in some cases they may overlap (e.g., Lifeline, Relay Service), but each jurisdiction must be responsible for its own mechanism. We believe that the interstate fund should focus on national high-cost support, along with the interstate portion of lifeline, relay, and other federal policy mechanisms. Each state should be charged with establishing -- to the extent it wishes to do so, and within limited federal guidelines - - intrastate universal service programs that would focus on explicit local rate averaging mechanisms, along with the intrastate portion of lifeline, relay, and other state policy programs. Essentially, state programs should address concerns that can best be defined, resolved, and monitored at the local or state level. We urge the Commission to work cooperatively with the Joint Board and the states to develop and implement programs that work in harmony with one another.

34. As to the allocation of the financial obligation, the Texas Legislature was clear in its requirement that:

[t]he universal service fund shall be funded by a statewide uniform charge, at rates and on services determined by the commission, payable by all telecommunications providers that have access to the customer base. In establishing the uniform level of the charge and the services to which it will apply, the commission may not make or grant an unreasonable preference or advantage to a telecommunications provider or subject a telecommunications provider to unreasonable prejudice or disadvantage. The charge shall be paid in accordance with procedures approved by the commission.⁴² [emphasis added]

⁴¹ Notice, para. 119.

⁴² PURA 95, § 3.608(c)

35. The Texas statute defines “telecommunications provider” as follows:

[A] certificated telecommunications utility, a shared tenant service provider, a nondominant carrier of telecommunications services, provider of radio-telephone service authorized under the Commercial Mobile Service under Sections 153(n) and 332(d), Communications Act of 1934 (47 U.S.C. Section 151 et seq.), Federal Communications Commission rules, and the Omnibus Budget Reconciliation Act of 1993, a telecommunications entity that provides central office based PBX-type sharing or resale arrangements, an interexchange telecommunications carrier, a specialized common carrier, a reseller of communications, a provider of operator services, a provider of customer-owned pay telephone service, and other persons or entities that the commission may from time to time find provide telecommunications services to customers in this state. The term does not include a provider of enhanced or information services, or another user of telecommunications services, who does not also provide telecommunications services or any state agency or state institution of higher education, or any service provided by any state agency or state institution of higher education.⁴³

36. Within the context of the administration of universal service support mechanisms, the Texas PUC supports further exploration of methods that might be effective in educating consumers on the nature of support mechanisms. While we believe that the level of support should be made known to consumers, we advocate that the manner in which the information is provided to the consumer should be left to the retail regulator.

⁴³ PURA 95, § 3.002(11).