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Before the
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Federal-State Joint Board on)
Universal Service)
)

CC Docket No. 96-45

COMMENTS OF CONTINENTAL CABLEVISION, INC.

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COMMENTS OF CONTINENTAL CABLEVISION, INC.

Continental Cablevision, Inc. ("Continental"), by its attorneys, hereby submits its comments in the above-captioned proceeding.^{1/} Continental is the third largest multiple cable system operator, serving approximately 4.2 million customers in some 900 franchise areas across the United States.

INTRODUCTION AND SUMMARY

In fashioning universal service mechanisms pursuant to the Telecommunications Act of 1996,^{2/} Continental believes that the Commission must balance the twin statutory goals of assuring affordable service to all citizens and promoting competition in all telecommunications markets.^{3/} These goals are complementary: fostering competition will enhance subscriber choice and lower the prices of telecommunications services and products. Striking the

^{1/}In the Matter of Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking, CC Docket No. 96-45 (released March 8, 1996) ("Notice").

^{2/}Pub. L. No. 104-104 (Feb. 8, 1996) ("1996 Act").

^{3/}See Notice at ¶ 8; H.R. Rep. No. 230, 104th Cong., 2d Sess. 1 (1996) ("Conference Report").

appropriate balance requires the establishment of a "specific, predictable" framework for universal service that ensures subsidies appropriate to meet both of these goals.^{4/}

Continental has a direct stake in ensuring that this balance is struck. The Company is already an active participant in the development of a competitive local telecommunications marketplace. Currently, the Company is certified to provide local exchange service in Florida and California, and has applied for certification in New Hampshire.^{5/} Through the upgrading of its cable facilities, Continental plans to expand its role in this market by offering telecommunications services throughout its service areas. To some extent, Continental's ability to succeed in these endeavors will be driven by policies governing the scope and distribution of the universal service fund.

A universal service fund that subsidizes services not in need of support would impose an unjustifiable financial burden on new entrants like Continental, whose contributions would flow largely to incumbents. The adverse consequences would be two-fold. First, the excessive financial advantage provided to incumbents would help secure the incumbents' market position at competitors' expense. Second, the additional drain on new entrants would reduce their ability to provide competing services, thereby depriving consumers of choice among service providers.

While these issues must be resolved generally in the universal service proceedings mandated by the 1996 Act,^{6/} Continental here focuses its comments on the appropriate treatment

^{4/}47 U.S.C. § 254(b)(5).

^{5/}Continental is also a minority owner of Teleport Communications Group.

^{6/}Continental endorses the framework proposed by the National Cable Television Association for addressing the range of additional issues raised in this proceeding. See Comments of National Cable Television Assn., CC Docket No. 96-45 (filed Apr. 12, 1996). There are
(continued...)

of advanced services for classrooms, libraries, and health care providers.²¹ As a franchised cable operator in more than 900 communities, Continental has long provided access to cable services on a universal basis in each of its local franchise areas, and has extensive experience

²¹(...continued)

several other critical issues Continental would like to highlight, however. For example, with respect to any services designated for support, the Commission should adopt a proxy model in which cost estimates are based on least-cost technology. Subsidy levels should be based not on the embedded costs of a still predominantly monopolistic market, but rather on forward-looking costs reflecting the anticipated effects of competition. See Comments of National Cable Television Assn.

In this regard, wire centers, rather than census block groups, are the most appropriate geographic units for developing the proxy model. See Notice at ¶¶ 32-33. The broader geographic scope of wire centers ensures that proxies reflect an appropriate averaging of high- and low-cost areas. On the other hand, census block groups are the more appropriate geographic units for determining eligibility for universal service support. Using wire centers (or a wire center-based service area) for this purpose would skewing eligible carrier determinations in favor of incumbent providers. The network architectures of new entrants may not necessarily utilize traditional "wire centers," and the territory served by a competitor's facilities is unlikely to match precisely the incumbent's geographic service area. Unlike wire centers, which reflect only the peculiarities of the incumbent LEC's network architecture, census block groups are competitively-neutral geographic units that would more accurately identify areas requiring universal service support.

If eligibility for universal service support requires that entities serve the incumbent LEC's wire centers, most new entrants would likely not qualify as eligible carriers. Such a result would frustrate the development of competition for at least two reasons. First, incumbent LECs eligible for support would be able to charge lower rates for their services than competitors not eligible for support. Second, the lack of universal service support for competitors could discourage the deployment of networks using different, and possibly more efficient architecture, than that deployed by incumbent LECs in a monopoly environment. The use of wire centers would also frustrate achievement of the universal service goals by possibly discouraging market entrants from providing core services and serving customers not otherwise profitable in the marketplace.

²¹See 47 U.S.C. § 254(h)(2).

servicing schools and health care providers.^{8/} More recently, Continental and other cable operators have begun offering access to advanced services to schools and other public institutions without government funding.^{9/} Cable companies in many franchise areas have also built institutional networks that link government offices, schools, and other public institutions.^{10/}

Continental agrees with the Commission's tentative conclusion^{11/} to make "core" telecommunications services^{12/} available to schools and libraries at the discount contemplated by section 254(h)(1)(B). If the Commission wishes to exercise its authority to designate certain other "special services" and associated facilities for the discount under section 254(c)(3), it should do so judiciously. At this juncture, however, there appears to be no need to designate access to advanced services as a "universal service" eligible for subsidy. While superficially attractive, a subsidy for this capability would unnecessarily inflate the size of the universal service fund and effectively shift moneys from the least-cost providers of advanced capabilities

^{8/}Since 1984, cable operators have been under a statutory obligation to ensure that "access to cable services is not denied to any group of potential residential subscribers because of the income of the residents of the local area in which such group resides." 47 U.S.C. § 541(a)(3).

^{9/}Continental's activities are discussed in Section I, *infra*. In addition, Time Warner's Social Contract commits that company to wire the public schools in its franchise areas. Social Contract for Time Warner, FCC 95-478 (rel. Nov. 30, 1995), at ¶ 65.

Continental and other cable operators also contributed more than \$1 billion in franchise fees to franchising authorities in 1995. A portion of these funds could be earmarked for the provision of advanced services to schools.

^{10/}See 47 U.S.C. § 531(b) (permitting franchising authority to require the designation of channel capacity on institutional networks for educational and governmental use); id. § 541(b)(3)(D) (restating franchising authority right to require institutional network as a condition of the grant of a franchise).

^{11/}Notice at ¶ 77.

^{12/}See id. at ¶¶ 15-23.

to the incumbent local exchange carriers. If the Commission determines that access to advanced services should be provided on a universal basis, then in those areas where no company has come forward to provide access to advanced services, a subsidy should be awarded to the low bidder in a competitive process. Continental urges that whatever policy the Commission adopts with respect to these services and capabilities should be binding on the States.

I. ENHANCING ACCESS TO ADVANCED SERVICES FOR SCHOOLS, LIBRARIES AND HEALTH CARE PROVIDERS DOES NOT REQUIRE UNIVERSAL SERVICE SUPPORT

The 1996 Act gives special emphasis to the delivery of services, including "advanced" services, to schools, classrooms, libraries, and health care providers.^{13/} In particular, section 254(h)(2) requires the Commission to establish "competitively neutral" rules "to enhance, to the extent technically feasible, access to advanced telecommunications and information services" for these institutions.^{14/} Notably, however, the statute does not require the Commission to designate any "advanced services" for universal service support. Rather, the Commission's mission is to develop competitively neutral rules to enhance access to these services, to the extent technically feasible and economically reasonable.^{15/} There should be no subsidy unless the Commission affirmatively determines that access to advanced services should be available on a universal basis, and that existing market and other mechanisms are inadequate to ensure that availability.

^{13/}See 47 U.S.C. §§ 254(b)(6), 254(c)(3).

^{14/}Id. § 254(h)(2)(A).

^{15/}See 47 U.S.C. § 254(h)(2)(A) (emphasis added). See also Conference Report at 133 (indicating that the Commission "could determine" that advanced services include "dedicated data links" and the ability to obtain information "carried over the Internet" (emphasis added).

Today, Continental and other cable companies are providing or have committed to provide broadband facilities capable of delivering advanced services to schools and health care providers in many of their franchise areas. Continental's commitment to provide these network capabilities is a function of a blend of market forces and business-government initiatives, such as local franchise agreements and the Social Contract amendment that Continental recently negotiated with the Commission. As the examples below demonstrate, there are substantial incentives in place today which are driving companies such as Continental to accelerate the pace of providing access to a range of new, advanced services. There is simply no need to inflate the universal service fund to subsidize the construction of duplicate facilities by "eligible carriers." Indeed, doing so would effectively force cable companies and other new entrants to defray the costs of incumbents' network upgrades, thereby frustrating the statutory directive of competitive neutrality. Including access to advanced services in the universal service fund would be far less efficient and far more intrusive to the communications marketplace than relying on current means for bringing these advances to schools and libraries.^{16/}

Continental has entered into a series of government-business partnerships that will facilitate a rapid deployment of advanced services to schools and health care institutions. For example, pursuant to the recent amendment to its Social Contract with the Commission, Continental has made an extensive commitment to provide Internet access and to wire and serve elementary and secondary schools in Continental-served areas.^{17/} Within one year after

^{16/}Indeed, unnecessary Commission mandates would contravene the deregulatory intent of the 1996 Act. Notice at ¶ 8; Conference Report at 1.

^{17/}Continental Cablevision, Inc. Proposed Amendment to Social Contract, Public Notice, FCC 96-76, rel. March 6, 1996 ("Proposed Amendment").

Continental's on-line service for personal computers becomes commercially available, Continental will, upon request, provide schools with one free cable modem, additional modems at cost, one free connection to the on-line service with guaranteed access to the Internet, and unlimited access to the on-line service during the school year.^{18/} Specifically, Continental has committed to providing a free cable connection to all public schools (grades K through 12) located within 200 feet of its cable plant in each of its systems.^{19/} Continental also will provide connected schools with any necessary internal wiring installation at cost or for free "if Continental can coordinate with other comparable electrical wiring installation in cases of new construction or substantial rehabilitation of existing schools in Continental's franchise areas."^{20/} To each outlet in all connected public and private schools, Continental will provide basic tier service, cable programming services, monthly educational program listings, and teaching materials free-of-charge.^{21/}

The Social Contract commitments are in addition to Continental's construction of a substantial number of institutional networks ("I-Nets") that serve educational institutions.^{22/} Many cable companies have constructed these I-Nets which are discreet interactive broadband

^{18/}Id. at 3-4.

^{19/}Id. at 3. Furthermore, Continental will provide a cable connection at cost to all public schools (grades K through 12) located beyond 200 feet of the cable plant and to all private secondary school in Continental franchise areas receiving funding under Title I of the Elementary and Secondary Education Act of 1965. Id.

^{20/}Id.

^{21/}Id.

^{22/}See Letter from Continental Cablevision, Inc. to Representative Edward J. Markey, January 21, 1994.

networks provided for governmental, educational, or business use. They are separate from the home subscriber's cable network and can carry point-to-point voice, data and video signals. I-Nets usually serve specific schools, municipal offices (police and fire departments), or hospitals in a franchise area and vary from community to community depending upon the technical configuration of the cable system. They are used for data distribution, distance education projects, training sessions, or any other application that requires one or two-way communications.

I-Nets can be very efficient in providing cost effective educational services and distance learning programs. For example, in Continental Cablevision's New England region, more than 100 municipalities and 500 schools can use the I-Net free of charge for their video needs. These comments highlight only a few of the numerous types of projects Continental and other cable operators are providing. For example, Continental Cablevision of Jacksonville has been a key leader in the formation of the Northeast Florida Distance Learning Consortium which includes a university, two colleges, four school districts, a private school, a drop-out prevention program, a PBS affiliate, Continental Cablevision and Alternet. Recently, the Consortium received a State University System Grant for Distance Learning. Through the grant, the Consortium has implemented a demonstration program which delivers conflict resolution strategies to students, teachers and parents via distance learning. Six middle schools were selected as pilot schools, involving approximately 2,000 students and 250 teachers in northeast Florida.

In another project, Continental and Digital Equipment Corporation teamed up in Winchester, Massachusetts with elementary schools to allow interactivity between elementary school children at several schools. Students can interact and access electronic information,

including software and live video stored at Continental's local programming facility and at the high school. The project features the use of an ethernet communications link that runs on the I-Net that creates a seamless bridge between the local area networks of both schools. Future goals include connecting five other elementary schools in the Winchester area, serving more than 1,000 students.

After a year of planning and substantial investment, Continental created a fiber optic system for Lincoln High School, Brookside Elementary School, and the San Joaquin County School Administrative offices to transmit data from place to place. The network allows for multi-point data transmission among science classrooms, the Library, the Administrative Building and the Performing Arts Building, as well as traditional downstream data transmission. In addition, a local area network and wide area network were created to enable Internet connections to every classroom as well as the interactive video network. These projects are another type of foundation upon which Continental is already building its effort to enhance access to enhanced services.

Other projects in which Continental participates to provide advanced services to educational institutions include Cable in the Classroom and Schools of the Future. Through Cable in the Classroom Continental provides free cable wire drops to more than 60,000 public and private elementary and secondary schools in the United States and students receive thousands of hours of commercial-free cable programming. Schools of the Future works with schools to

design and implement distance learning projects using the latest in video, computer, and telecommunications technology.^{23/}

Just beyond these business-government partnerships, Continental has now launched the commercial provision of advanced services, with a particular focus on educational and health care institutions. These activities clearly demonstrate marketplace alternatives for enhancing access to advanced services. For example, Continental, in conjunction with Boston College, has installed a broadband communications network at the campus in Newton, Massachusetts. Although not a service to a K-12 school, the Boston College project involves precisely the type of advanced services that can be delivered to educational institutions without government subsidy. Using cable modems and an asynchronous transfer mode backbone, the Boston College network provides video and high-speed data services, including full access to library resources and the Internet, to more than 6,600 students, 150 classrooms, and 250 administrative offices and locations across the campus.^{24/} Five channels on the network are devoted to in-house programming specific to the Boston College community, and the currently 80-channel analog system could be upgraded to a 720-channel digital interactive system. This is not a market or technology final; it is rather an example of a successful commercial operation for both Continental and its customer, which placed substantial value on this early deployment of advanced services as an adjunct to Continental's cable service. Continental also is discussing

^{23/}Many local franchising authorities assign a substantial dollar value to Continental's commitment to bring advanced services to schools and other public institutions. That value is included in the local government's assessment of the company's contributions to the community in excess of franchise fees.

^{24/}See Continental Cablevision, *Continental Cablevision Deploys Advanced Technology at Boston College*, News Release, Sep. 20, 1995.

the provision of similar services to additional educational and other institutions.^{25/} Continental intends to offer Internet access and other advanced services to these types of customers regardless of whether or not they subscribe to Continental's other cable services.

In the health care field, Continental is currently providing point-to-point high-speed data transfer to Exeter Health Resources, Inc. in Exeter, New Hampshire.^{26/} The service permits administrative data processing groups to send and receive from their offices patient records and other information at speeds 500 to 700 times faster than conventional dial-up telephone lines. The service is expected in the near future to include more advanced medical services such as remote examination of x-rays and fetal monitoring.^{27/} This, too, is an example of a successful commercial distribution of a valued advanced service with no necessity for government funding or subsidy.

As these extensive programs and similar projects elsewhere demonstrate, companies such as Continental are strongly committed to enhancing access makes good business sense and is a successful component of business-government partnerships. But universal service support is not necessary to induce the provision of capabilities that afford health care providers, educational institutions, and libraries with access to high-speed data and Internet-based services. Not only is it unnecessary to inflate the fund to subsidize the provision of these capabilities, but in fact such inclusion in a universal service fund will deter competition by using the universal service mechanisms to exact transfer moneys from prospective competitors to incumbents. Nothing in

^{25/}*Continental Eyes Northeast I-NET*, at 57. Continental will soon announce an agreement to provide similar services in another of its service areas.

^{26/}Phillip's CableFAX Daily, Jan. 12, 1996.

^{27/}Id.

the statute compels such a result; indeed, it is contrary to the goal of establishing "specific, predictable, and sufficient" mechanisms for universal service support that are "competitively neutral."^{28/}

^{28/}Nor should States be permitted to require the subsidization of access to advanced services. Such a requirement would be inconsistent with the goal of "specific" and "predictable" universal service mechanisms and would undermine the policy of competitive neutrality established in the 1996 Act. Cf. 47 U.S.C. § 254(f) (permitting a State to augment the definition of universal service, but only to the extent that its regulations are "not inconsistent with the Commission's rules" and the means for supporting these additional services "do not . . . burden Federal universal service support mechanisms").

States are preempted from exercising jurisdiction over the services themselves, particularly information services, because the interstate and intrastate components of such services are inseverable. Louisiana Pub. Serv. Comm'n v. F.C.C., 476 U.S. 355, 375 n.4 (1986); California v. F.C.C., No. 94-70197 (9th Cir., Jan. 31, 1996); Illinois Bell Tel. v. F.C.C., 883 F.2d 104 (D.C. Cir. 1989); see also National Ass'n of Regulatory Util. Comm'rs v. F.C.C., 880 F.2d 422 (D.C. Cir. 1989). By their nature, Internet access services operate without regard to State lines. Through the Internet, end users have the ability to send and receive transmissions to and from points in-state, out-of-state, and around the globe over a single interlocking set of facilities. To the extent that Internet access service is a cable service, see Conference Report at 169, State authority over it is limited by the Cable Act. 47 U.S.C. § 152(a) (provisions of Communications Act "apply with respect to "cable service . . . and to the facilities of cable operators which relate to such service, as provided in title VI").

If the Commission determines that access to these services should be subsidized, the subsidy mechanism must be exclusively interstate. Given the inherent inseverability of Internet access, for instance, it would be impossible to determine what portion a carrier's revenues from that service should be contributed to State universal service funds and what portions should be contributed to the national universal service fund. The reverse is also true: it would be impossible to determine the amount of support a carrier should receive from State funds for the provision of such services versus the amount of support a carrier should receive from the national fund.

II. IF NECESSARY, SUBSIDIZIES FOR PROVIDING ACCESS TO ADVANCED SERVICES SHOULD BE AVAILABLE TO COMPETITORS AS WELL AS INCUMBENTS

To the extent that access to advanced services is not available to schools, libraries, or health care providers within a reasonable time after implementation of the 1996 Act, some targeted subsidization might be appropriate. To preclude this subsidization from benefiting only the incumbent, however, Continental recommends that the level of and eligibility for any funding should be determined through a competitive bidding process. Eligibility should not be conditioned on the expansion of a carrier's services or facilities beyond the area which the carrier is readily able to serve.

Under a competitive bidding process, competing carriers would submit bids setting forth the subsidy they would require to provide the designated advanced facilities. Bidding to provide such facilities should be flexible: while an eligible carrier must offer "core" services throughout a designated service area, any carrier should be permitted to bid to provide advanced services to particular schools within or outside its service area. The lowest bidder with respect to each location would be eligible for support.

This process would balance the need to ensure the availability and affordability of universal services with the underlying statutory goal of encouraging competition. Competitive bidding would also minimize the level of funding necessary to assure the provision of access by ensuring that carriers utilize the most efficient means of providing this capability, and that only the most efficient providers receive subsidies.

If access to advanced services are designated for support, a new entrant's eligibility for funds should not be conditioned on its provision of core services or facilities or the provision

of any facilities or services outside its telephone service area. Such a result is precluded by the 1996 Act, which provides specifically that any provider of universal services to schools and libraries is eligible for funding without being designated as an "eligible telecommunications carrier."^{29/} The imposition of such conditions would effectively reinstate that requirement, and undermine the efficient provision of additional services by skewing the availability of funds overwhelmingly in favor of the incumbent local exchange carriers.

Incumbent LECs are likely to be the first carriers with the ability to provide access to both core and advanced services; given their century-long headstart, their service territories are apt to be significantly larger than a competitors'. A requirement that new entrants such as Continental provide the same mix of services throughout the incumbent's territory as a condition of support for designated advanced capabilities would effectively preclude eligibility.^{30/} Ultimately, such a requirement could deter the new entrant from offering its own high-speed access or capabilities at all because it would be unable to compete with the subsidized incumbent. Consumers would be deprived of an alternative provider of access to advanced services, with the benefits in price and quality that competition would make possible.

^{29/}47 U.S.C. § 254(h)(1)(B)(ii).

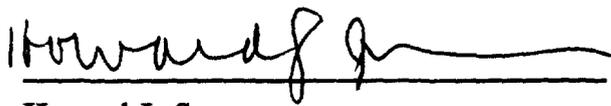
^{30/}Only by engaging in massive resale would new market entrants be able to provide the range of services and serve the number of customers necessary to gain eligibility for subsidization. This is not a viable option, however. Resale would simply provide additional revenues to incumbents. By forcing new entrants to incur the costs of resale in order to provide extraterritorial services, such a policy would also inhibit their ability to invest in the development of new, more efficient networks.

CONCLUSION

For the foregoing reasons, Continental believes that there is no reason to include advanced services or the capabilities for delivering these as "additional" universal services for health care providers, educational institutions, and libraries. Companies such as Continental are already providing or planning to provide such services, and the competitive environment fostered by the 1996 Act itself will foster access to advanced services for schools, libraries, and health care providers. Consistent with the mandates of the 1996 Act, the Commission should establish a carefully defined universal service mechanism that ensures the availability of affordable core services and fosters the growth of the competitive marketplace that will ultimately be the most efficient guardian of universal service.

Respectfully submitted,

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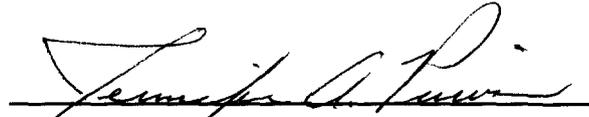
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I, Jennifer A. Purvis, hereby certify that a copy of the foregoing Comments of Continental Cablevision, Inc. was served on the following by either first class mail, postage pre-paid, or by hand delivery, this 12th day of April, 1996.



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