Office of the
Ohio Consumers' Counsel

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APR 12 1996

April 11, 1996

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

Re: CC Docket No. 96-45

Dear Secretary:

Enclosed please find the original and four (4) copies of the Office of the Ohio Consumers' Counsel's Initial Comments to be filed in the above referenced proceeding.

Please date-stamp and return the additional copy in the pre-addressed, postage prepaid envelope to acknowledge receipt.

Thank you for your attention to this matter.

Sincerely,

Andrea M. Kelsey

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AMK/pjm

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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APR 12 1996

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

THE OFFICE OF THE OHIO CONSUMERS' COUNSEL'S INITIAL COMMENTS

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I. INTRODUCTION

The Office of the Ohio Consumers' Counsel (OCC), the statutory representative of Ohio's residential telecommunications consumers (*see* Ohio Rev. Code Chapter 4911), is pleased to submit these comments on the scope of universal service as set forth in the Telecommunications Act of 1996 (Act).[1] This Notice of Proposed Rulemaking (NPRM) is wide-ranging, and the Federal Communications Commission (Commission) has imposed a strict page limit on these comments. Therefore, OCC has targeted its comments to the universal service issues it believes are most important to its clients. While realizing that the provision of telecommunications services in schools and libraries, as well as those provided to rural health providers, will assist residential consumers, particularly low-income consumers, OCC has left those areas to other advocates whose primary concern is low-income consumers. OCC's failure to comment on other issues, such as standards for equitable treatment for telecommunications providers, standards for the affordability of telecommunications services other than local exchange voice-grade service, formulas for calculating support amounts, and distribution of support for high cost, rural and insular areas,[2] should not be viewed as a waiver of OCC's right to address these issues in Reply Comments.

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[1] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), *to be codified at* 47 U.S.C. §§ 151 *et seq*. OCC has adopted the Commission's method of citing to the Act. *See* NPRM at footnote 1.

[2] This list is not intended to be exclusive.

II. THE EXTENT, IF ANY, TO WHICH THE ACT BROADENS THE COMMISSION'S JURISDICTION WILL NOT BE SETTLED FOR SOME TIME TO COME.

As the Commission itself points out, its authority in defining universal service has been broadened by the Act. NPRM at ¶ 2. The Commission now has the responsibility for defining universal service as it evolves and embraces an ever-widening array of telecommunications and information services. *Id.*; § 254(c)(1)-(2). Additionally, the manner in which the Act defines "telecommunications," "telecommunications carrier," and "information service" grants the Commission potential jurisdiction over a very wide variety of carriers for purposes of universal service support. Sections 153(41), (48) and (49). This jurisdiction may extend to the interstate services of providers such as America Online, CompuServe, and Prodigy. Indeed, these providers may benefit from universal service funding, to the extent that they provide their services to eligible "public institutional telecommunications users" pursuant to § 254(h)(5)(C) and who pay for those services with universal service funding. Moreover, the Commission's jurisdiction may extend to more types of providers in the future as the definition of universal service evolves and broadens in ways that regulators, providers, and consumers cannot presently imagine.

Within this broadened authority, the Commission is required to extend its jurisdiction to all local exchange companies (LECs) as now defined by § 151(44) of the 1996 Act. Yet the Commission states, "Many entities, among them non-wireline and non-dominant carriers, that might be designated 'eligible telecommunications carrier[s]' by the appropriate State commission, are not now subject to our separations rules, which apply

only to LECs." NPRM at ¶ 30 (footnote omitted). The rationale for this position is unclear. The 1934 Act provided that "the Commission may classify the property of any ... carrier used for wire telephone communication and determine what property of said carrier shall be considered as used in interstate or foreign telephone service." 47 U.S.C. § 221(c). The 1996 Act has not chnaged that provision. If new entrant LECs providing services over wire, such as cable companies, wish to become eligible telecommunications providers pursuant to § 214(e), they should be subject to the separations provisions of 47 C.F.R. Part 36. OCC does not necessarily endorse the entirety of the current Part 36 rules. However, until they are amended, they are the only mechanism for separating the costs of providing intrastate and interstate service, and nothing in them would confine their operation only to incumbent LECs if all carriers are to be treated equitably. Evidently the Commission believes it is within its jurisdiction for purposes of apportioning costs to adopt the Benchmark Costing Model,[3] about which it solicits comment in ¶ 31. The Commission can therefore assert jurisdiction over the newly defined LECs for purposes of Part 36.

Closely allied to this question is the question of whether the Commission should redefine the term "study area." NPRM at ¶ 45. The Commission's current definition is as follows: "A study area is the area within a single state jurisdiction where a LEC provides

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[3] OCC has serious reservations about the Benchmark Costing Model. That Model assigns the entire cost of the local loop to the end user. However, the loop is a joint and common cost to all telecommunications services, because none of them can be delivered without the loop.

local telephone service. No changes have been permitted in study area boundaries since November 15, 1984, except with special permission of the Commission." CC Docket No. 80-286, Notice of Inquiry (August 2, 1994) at footnote 1. The original definition of "study area" was evidently the equivalent of "cost study area." While this definition currently affects only incumbent LECs (47 C.F.R. Part 36, Appendix-Glossary (1995)), and rural telephone companies (§ 151(47)), OCC recommends that the Commission amend its definition to allow changes based on companies' actual service areas within a single state. This revision is flexible enough to allow incumbent LECs and rural telephone companies to expand their study areas as they expand their service areas to meet competition and is in keeping with the spirit of the Act. Additionally, the service areas of local exchange competitors need to be defined for purposes of cost studies.

The NPRM and the Act raise broader questions regarding jurisdiction. The Act provides that states may adopt universal service regulations "only to the extent that such regulations adopt specific, predictable, and sufficient mechanisms ... that do not rely on or burden Federal universal service support mechanisms." Section 254(g). It is not clear whether states or the Commission will define "specific, predictable, and sufficient." It is equally unclear whether states or the Commission will determine which mechanisms "rely on or burden Federal universal service support mechanisms." The Act seems to put these issues within the purview of the Commission, yet to the extent the Commission defines these terms, it may be viewed as micromanaging state efforts. OCC submits that at the very least states should define their own "specific, predictable, and sufficient mechanisms," in compliance with federal guidelines.

Lastly, as the Commission points out in its more recently released NPRM on the interstate interexchange market, the rulemaking directives of the Act overlap to some degree. CC Docket No. 96-61, Notice of Proposed Rulemaking (March 25, 1996). The Commission specifically reserved concurrent jurisdiction in that docket to consider low-income issues, recognizing that they are also covered in this docket. *Id.* at ¶ 83.

The Commission's jurisdiction to prescribe rules based on the policies outlined in this NPRM will undoubtedly be hotly debated. Although there are many areas of authority that the Commission may delegate to states (*see* Section III, *infra*), the Act now gives the Commission broader authority in that arena. The depth and heat of any debate that arises out of this rulemaking, however, will in part depend on how many powers are retained by the states, as discussed in the next section.

III. THE COMMISSION SHOULD ESTABLISH BROAD PRINCIPLES FOR THE STATES TO FOLLOW.

As the Commission acknowledges, part of the Congressional intent behind the Act is for a "de-regulatory national policy framework." CC Docket No. 96-45, NPRM at ¶ 8; *id.* at footnote 22. Given the appropriate level of federal jurisdiction over the local exchange market (as discussed above), this Commission should limit its regulation of the states' regulation of the local exchange and should not attempt to micromanage the states' efforts to preserve and enhance universal service. Thus the Joint Board and this Commission should, whenever possible, establish general principles, rather than imposing detailed mandates on the states. Only where it is obvious that a state has clearly violated those general principles should this Commission intervene.

The key general principle to be established in this proceeding is the universal service goal itself. The Commission's duty is "to make available, so far as possible, to all the people of the United States without discrimination ... a rapid, efficient, Nation-wide ... wire and radio communications service with adequate facilities at reasonable charges...." Section 151. The Act adds considerable detail to this principle.

For instance, the Act leaves to the states the authority to determine which carriers are eligible to receive universal service support. Section 214(e)(2). Thus the issue of whether carriers have met the requirements of § 214(e)(1) of the Act, as raised by the NPRM at ¶¶ 43 and 46, is best left to the states as well.

Another matter appropriately left to the states is the determination of "means to ensure that all eligible carriers -- and no ineligible carriers -- receive the appropriate amount of universal service support." NPRM at ¶ 1. Carriers will seek to receive support if they are eligible because it is in their pecuniary interest and will request designation from the state. Thus the states can provide this Commission with a listing of eligible carriers. This solution also takes care of the problem of "ineligible" carriers receiving federal support. However, given the interstate nature of the universal service support mechanisms mandated by the Act, the determination of the "appropriate amount of universal service support" is an interstate question for this Commission to determine.

Also appropriately deferred to the states are the other issues set out in ¶ 41, collectively regarding the proper use of universal service funding. These are the consideration of measures to ensure that federal universal service support is used "only for the provision, maintenance, and upgrading of facilities and services for which the support

is intended." Section 254(e). Such review is best handled on the state level. State commissions are better equipped to handle complaints raised by competitors or consumers that support is being inappropriately used. The states are also in a better position to judge whether noncompetitive services are subsidizing competitive services, as required by § 254(k).

Section 254(f) of the Act mandates conditions for states' universal service programs. Quite apart from issues as to federal authority to impose such conditions, states are allowed to adopt such support mechanisms. Here again, the Commission should exercise restraint in overriding state programs.

IV. THE COMMISSION NEED NOT DEFINE AFFORDABILITY.

The universal standard for utility rates has long been that they be "just and reasonable." *See, e.g.*, Ohio Rev. Code § 4905.22; *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591 (1944). "Just" and "reasonable" are very subjective terms. However, it seems clear that determination of what is "just and reasonable" involves a balancing of the carrier's interests with those of its consumers. *Id.* The Act codifies, for the first time on the federal level, that "[q]uality services should be available at just, reasonable, *and affordable* rates." Section 254(b)(1) (emphasis added); *see also* § 254(i). An affordability standard is more clearly focused on the consumer.

"Affordable" may ultimately prove to be as slippery a term as "just" or "reasonable." And it may be easier to identify rates that are *not* affordable than to specify what an affordable rate might be. For instance, the Organization for the Protection and

Advancement of Small Telephone Companies (OPASTCO) has predicted that $180 per month is the maximum rate increase that consumers will face in Texas if the four main federally mandated universal service support mechanisms are eliminated. OPASTCO, *Keeping Rural America Connected: Costs and Rates in the Competitive Era* (Washington, D.C. 1994) at 4-12. A basic service rate that is increased by $180 per month is not affordable for the vast majority of consumers.

The Commission must begin by determining whether current basic service rates are affordable. They appear to be so for some 93.9% of the American populace. A. Belinfante, *Telephone Subscribership in the United States,* FCC (February 1996) (hereafter "*Commission Subscribership Report*"), Table 1. Some will argue that a substantial portion of the 6.1% who are phoneless could afford a telephone, but do without by choice. In this context, OCC would remind the Commission of the argument raised by our fellow consumer advocates from Delaware, Florida, Maine and Missouri in Docket No. 95-115, noting that where income was not a factor (over $50,000), at that time only 0.4% were without telephone service. The latest figures are that only about 1% of those with incomes greater than $50,000 lack telephone service. *Commission Subscribership Report*, Table 4.

The key factor in phonelessness is apparently income, *id.*, making the affordability of the service the crucial question. However, the particular portion of telephone rates (recurring local, or toll, or nonrecurring installation or deposit charges) which renders them unaffordable is undetermined. Studies show that toll charges play a large role in disconnection. *See generally* CC Docket No. 80-286, *supra*. However, installation and

deposit charges may play an equally large role in reconnection, or the ability to connect with the network at all.

The Commission seeks comment at ¶ 25 on how it should determine rate levels that would be affordable pursuant to § 254(i) and, for rural and high cost areas, reasonably comparable to those charged in urban areas. Section 254(b)(3). In Ohio, basic service rate levels are currently generally affordable. The highest single party flat rate in the state is $22.90 per month, charged by a small telephone company in a rural area, with most rates substantially below that amount. (This summary ignores the existence of distance bands or zone rates. However, it does not appear that any Ohio telephone company has zone rates that would push the cost of basic service for distant customers much above $22.90 per month.) Sixty per cent of Ohio's access lines, both rural and urban, are Ameritech Ohio's, which charges $15.25 for residential one party flat rate service throughout its service territory. Thus in Ohio at present basic service rates are both affordable and reasonably comparable in urban and rural areas.

This is not to say that current rates could not or should not be lowered. The current rates have produced and are producing returns for many LECs that are substantially in excess of those that would be found in a competitive market, as shown by the carriers' annual reports filed with the Public Utilities Commission of Ohio (PUCO). *See, e.g.,* Western Reserve Telephone Company 1994 Annual Report.

However, a recurrent theme in discussions of local exchange competition is that residential basic service rates are at risk of increase throughout the nation. This is said to

business, discretionary) whose supposedly excessive contributions have been subsidizing, or at least supporting, the unnaturally low residential rates. And rates in rural high cost areas where competition is unlikely will apparently have to rise because of the loss of contribution from services in urban areas where competition will first appear.

OCC will not specifically address the factual and policy flaws in these forecasts, but it does appear that, in the face of incumbent carriers' likely moves, this Commission and the state commissions will have to be vigilant in the future to ensure that residential basic service rates remain affordable. Section 254(b)(1). Fortunately, other specific provisions of the Act will be of great assistance in that regard. First, § 254(k) requires this Commission and the states "to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services." Section 254(k) also forbids the use of non-competitive services to subsidize competitive services. This provision will bar an incumbent carrier from using increased rates in areas not subject to competition to support decreased rates where competition is present.

Second, the provisions of § 254(b)(3) require rates in rural and high cost areas to be "reasonably comparable" to rates in urban areas, and § 254(g) requires rural and high cost area interexchange rates to be "no higher" than such rates in urban areas. Taken together, these provisions should constrain the incumbent LECs in increasing rates for the basic services that represent the majority of their current revenues.

Clearly, the questions of whether rates for services included in the definition of universal service are or will be affordable (NPRM at ¶ 25), whether support should be

based on specific end-user prices, and whether rural rates are comparable to those in urban areas (NPRM at ¶ 26) lack a simple, clear-cut answer. It should also be clear that the answers significantly depend on local conditions, local costs, and the combination of services available on the local level. Thus these questions are best answered by the individual states.

The notion of "whether there should be procedures to recalibrate ... rate levels to reflect changes in inflation" has the concept of affordability backwards. NPRM at ¶ 25. If any recalibration is necessary, it should be based on growth (or lack of growth) in incomes. The Commission should also be mindful of declining industry costs.

V. THE COMMISSION SHOULD DEFINE CORE SERVICES.

OCC believes that concerns for consumers in rural, insular, or high cost areas should be considered in determining whether a particular service is "consistent with the public interest, convenience, and necessity" under §§ 254(b)(7) and 254(c)(1)(D). Indeed, as the Commission noted, § 254(b)(3) of the Act requires this consideration:

> Consumers in all regions of the Nation, including 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 and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

Given this broad policy, it seems reasonably clear that voice grade access to the public switched network, with the ability to place and receive calls, touch-tone, single-party service, access to emergency services (911) and access to operator services must be

included as core services.[4] NPRM at ¶ 16. We agree with the Commission's statements in ¶¶ 18-22 that these services meet the definitions of § 254(c)(1). Moreover, under § 254(f) states may adopt additional regulations so long as they are not inconsistent with or less restrictive than the Act. Thus, determination of whether including a particular additional service in the definition of universal service is "consistent with the public interest, convenience, and necessity," § 254 (B)(7), is best left to individual state commissions.

In comments filed with Ohio's Commission, OCC supported the inclusion of a number of basic services in a residential tariff that should be universally available at just and reasonable rates:

a. Residential single party, voice-grade access line
b. Flat rate for unlimited usage
c. Touch-tone dialing
d. Telecommunications Relay Service
e. Operators and directory assistance
f. Emergency services (9-1-1/E9-1-1)
g. Access to all available long distance carriers
h. White Pages listing and a directory
i. Repair service to the network
j. Blocking for Caller ID, Auto Callback, 900, 976, 976-like services; Toll Blocking; and Call Trace.[5]

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[4] While OCC favors universal service support for single-party service, it also favors universal service support for multi-party service, where available.

[5] *In the Matter of the Commission's Investigation Relative to the Establishment of Local Exchange Competition and Other Competitive Issues*, PUCO Case No. 95-845-TP-COI, Initial Comments of the Office of the Ohio Consumers' Counsel (December 14, 1995) at 67-68. All these features should be universally available as a basic service package, but each feature may not require support

Flat rate service, relay services, directory listings, equal access to all available long distance carriers, network repair services, and blocking services are consistent with the definitions in § 254(c)(1) and should be included as core services. In particular, flat rate service is the choice of a substantial majority of residential consumers. In a 1986 survey conducted in Ohio the National Regulatory Research Institute found that almost 85% of residential subscribers chose flat rate service and almost 69% thought that it was the fairest way to charge for local telephone service. C. Mount-Campbell, J. Neuhardt and B. Lee, *A Descriptive Study of Telephone Usage in Ohio* (Columbus, Ohio, 1987) at 34-35, 78, 81. A usage sensitive rate based on minutes of use would clearly limit consumers' access to and usage of the "information superhighway."[6] OCC also submits that flat rate service meets the "public interest and necessity" test under § 254(b)(7) and strongly urges that flat rate service be included as part of a standard universal service package.

Relay services, directory listings, repair services, and blocking services meet the § 254(b)(7) test and should be included, as should access to all available long distance carriers, particularly given the directive in § 254(b)(3) regarding "access to ... interexchange services." While it is important that all consumers have access to all available carriers, however, it may not be necessary to require support for that access.

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[6] A customer could circumvent a message limitation by dialing into his or her Internet provider and staying on-line. Such a customer, if he or she had no second line, would do so at the cost of not being able to make or receive other calls, however. Ameritech's residential consumers in Ohio may purchase a second line for a flat, message or measured rate. If the consumer is residential, he or she may be telecommuting without being considered a business consumer. In contrast, business customers have a 30 call limit before incurring a per-call charge.

Whether universal service support should be provided for "services using other than a primary line to a principal residence," *id.*, is problematic.[7] On the one hand, a substantial majority of residential consumers do not subscribe to second lines and lines to second residences. Section 254(c)(1)(B). On the other hand, allowing unrestrained and unsupported pricing of second lines discriminates against those in rural areas. Even if no support is provided, however, OCC submits that § 254(b)(3) still requires rural and high cost area second lines and lines to second residences to be available at rates reasonably comparable to those charged in urban areas.

The Commission questions what customer classes should receive universal service support. NPRM at ¶ 24. Without determining whether business lines should receive support, OCC submits that at the very least residential customers must receive universal service support. The question of whether business lines should receive support may change over time. Additionally, if support is not made available for second lines or business customers, those services must still be "available at rates that are reasonably comparable to rates charged for similar services in urban areas." Section 254(b)(3). Also, while business customers are not explicitly excluded from receiving support, § 254(c)(1)(B) requires the Commission to consider whether a particular service has "been subscribed to by a substantial majority of *residential* customers." (Emphasis added.)

It also seems logical that prices should vary by type of consumer, *e.g.*, residential vs. business or business single-line vs. business multi-line. However, it may not be

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[7] The NPRM refers to a "subsidy" in this context. Support does not become subsidy for a particular service unless the service is being provided at a price less than incremental cost.

necessary to attempt to set specific end user prices, and in any event, that should be a function determined by state commissions. It would seem to be extremely burdensome and an inefficient use of state and Commission resources for the Commission to resolve disputes regarding whether the level of prices in a rural area is comparable to rates charged for similar services in an urban area.

The provision of a minimum level of services required to ensure the goal of universal service should not present a barrier to competition or favor one form of technology over another if the components of universal service are available for resale, each participant contributes on an equitable and nondiscriminatory basis, and the means of distributing support are administered in a competitively neutral fashion. Thus, a new entrant would not have to build a network or buy a switch so long as these elements are available for resale at reasonable prices.

Regarding the question of whether "advanced" services should receive Universal Service support, OCC believes that Internet access, data transmission, enhanced services and broadband services should at a minimum be made available publicly at libraries and/or schools but not necessarily on a "household by household" basis. Clearly, the question of the appropriateness of including these or other services must be periodically reviewed. Section 254(c)(1).

VI. THE SERVICES AVAILABLE TO LOW-INCOME CONSUMERS SHOULD BE AS BROADLY DEFINED AS POSSIBLE.

In ¶ 53 the Commission questions whether free access to the central office is appropriate for low income consumers. The externality concept of telecommunications --

that the value of the network increases as more people are connected to the network -- supports including free access for low-income consumers. The Commission itself has acknowledged "[t]he increasing importance of the public switched network in connecting households to the economy for those not on the network, making it harder for those households to escape poverty." Commission Press Release (February 27, 1996).

OCC supports including free access to the telephone service provider *and* 911 for low-income customers in the universal service support package. The Cincinnati Bell Telephone Company recently conducted a trial on "soft dial-tone," which provides subscribers access to 911 services and the central office for up to 100 days prior to subscribing. This program was successful in assisting people that would otherwise have no means of accessing emergency and central office functions and was implemented system-wide in Cincinnati Bell's service territory on February 16, 1996.

As to ¶¶ 54 and 56, the PUCO has recently received comments in a pending docket regarding toll limitation services (PUCO Case No. 95-790-TP-COI). OCC's comments supported the PUCO Staff recommendation that would prohibit local exchange carriers from disconnecting customers from basic local exchange service for the nonpayment, among other things, of toll service. A toll call is one of the few services for which the customer does not know the charge until it has been incurred. Numerous studies have shown that uncontrollable long distance bills and high connection charges are a major cause of low-income nonsubscribership. CC Docket No. 80-286, *supra*.

The PUCO's generic rulemaking on competition (PUCO Case No. 95-845-TP-COI) contained a section on low-income issues. OCC recommended that discounted rates

for call control features (*i.e.*, toll restriction) and reasonable payment arrangements plus toll restriction at no charge in lieu of disconnection of *local* service be a part of Ohio's low-income package. OCC Comments cited in footnote 5, *supra*, at 74-75. OCC supports these same types of programs and discounts at the federal level. Any reasonable lowering of the economic barriers that low-income consumers face when desiring to connect to the public switched telecommunications network should be implemented.

In ¶ 58 the Commission asks what other services should be included in a low income package. Some services that will be beneficial to low-income consumers and prevent them from being telecommunications "have-nots" in a rapidly changing world, such as Internet access and broadband, can be provided and made available through the mandate for schools and libraries. OCC anticipates that some other services will be recommended by organizations whose sole client base is low-income consumers.

VII. THIS COMMISSION SHOULD MEASURE PROGRESS TOWARD REACHING THE UNIVERSAL SERVICE GOAL.

In ¶ 1 of the NPRM, the Commission identified three purposes for this rulemaking: "(1) define the services that will be supported by Federal universal service support mechanisms; (2) define those support mechanisms; and (3) otherwise recommend changes to ... regulations to implement the universal service directives of the 1996 Act." Clearly, the Act codifies more about universal service than was set forth in previous law. As noted by the Commission, the principles in § 254(b) "particularize and supplement" the universal service goal in § 151. NPRM at ¶ 3. However, one thing that appears not to be explicitly covered by the Act, but that should be adopted by this Commission, is periodic review to

see whether the actions this Commission has ordered have in fact advanced the cause of universal service. Notably, § 254(a)(2) requires the Commission to establish a specific timetable for implementation of the recommendations of the Joint Board. A review process to measure the level of telecommunications service subscribership among targeted populations should be part of that timetable. NPRM at ¶ 4, footnote 13.

The Commission has also asked for comment on how and how often it should evaluate the services to be included in the definition of universal service, given the Act's direction that that list should be an "evolving" one. NPRM at ¶ 66; *see* § 254(c)(1). OCC submits that a four year review, coincident with the second general review discussed below, should be adequate. Given the rapidly evolving nature of the entire telephone network and the basic local exchange market in particular, however, the Commission may have to be prepared to act sooner. The information-gathering proposal set forth in ¶ 67 of the NPRM appears reasonable.

Only through such a process can this Commission determine the extent to which the universal service goal set forth in § 151, as amended by the Act, is being met. Obviously, this will require participation from the states, the industry, and the public. This review should occur no later than two years after the issuance of the rules required by § 254(a)(2) of the Act, and no less often than every two years thereafter.

Within the section of the NPRM headed "Ensuring that Supported Services for Rural, Insular, and High-Cost Areas and Low-Income Consumers Evolve" the Commission has included a request for comment on "whether it would be useful to collect certain basic information regarding technical performance levels of carriers." NPRM at ¶

69. OCC supports the publication of such information, along with price and product information, so that consumers can indeed make informed choices between carriers. Only with adequate and accurate information will efficient providers of quality service succeed. If such providers succeed, the universal service goal will be closer to reality. The information-gathering proposals set forth in NPRM ¶ 69 also appear reasonable.

VIII. IN KEEPING WITH THE ACT'S PROVISIONS, COLLECTION AND ADMINISTRATION MECHANISMS SHOULD BE EXPLICIT, NON-DISCRIMINATORY, AND COMPETITIVELY NEUTRAL.

In a recent publication the Commission's Common Carrier Bureau identified explicit and implicit support mechanisms. Com. Car. Bur., FCC, *Preparation for Addressing Universal Service Issues: A Review of Current Interstate Support Mechanisms* (1996) at i-ii. Explicit support mechanisms are Lifeline and Link Up, Telecommunications Relay Service (TRS), the Universal Service Fund, Dial Equipment Minutes (DEM) Weighting, Long Term Support (LTS), and the Rural Utilities Service loan programs. Identified as "implicit" are the Common Carrier Line Charge (CCLC) for recovering the cost of the local loop, study area access rate averaging, non-traffic sensitive (NTS) switching costs, and the interim transport rate structure. The Act requires universal service support to be explicit. Section 254(d) and (e). The Commission solicits comment on whether the CCLC should be eliminated and the local loop costs be recovered entirely from end-users through subscriber line charges (SLC). NPRM at ¶ 114.

As noted before, it is OCC's position that loop costs are attributable to every service that uses the loop. Footnote 3, *supra*. A uniform SLC that is collected only from end-users unfairly burdens them, because of the lack of connection between a particular end-user and the use of particular services. The provider seeking access to the loop benefits from that access. Carriers cannot deliver their services without access, and it is fair for them (and the customers of their diverse services through charges for those services) to pay for it.

Toll carriers have generally sought to have the CCLC severely reduced or eliminated, because the CCLC pays for a nontraffic-sensitive service on a traffic-sensitive basis (minutes of use -- MOU). OCC agrees that this is not explicit or non-discriminatory, but disagrees that there should be no toll carrier payment for costs that incumbent LECs incur to provide access. A flat rate is preferable, if one can be devised that is comparable to the flat rate that carriers pay for special, as opposed to switched, access. If this is not possible, a flat rate based on number of calls might be more fair than a charge based on MOU if the cost per call can be calculated.

OCC takes the position that all carriers that provide telecommunications services as defined in the Act should contribute to federal universal service funding unless their operations are wholly intrastate. (It seems unlikely such a carrier would exist.) The requirement that all carriers contribute would certainly include wireless carriers, including cellular carriers. The prohibition against requiring universal service contributions from cellular carriers extends only to states and local authorities. 47 U.S.C. § 332(c)(3). OCC realizes that the provisions of 47 U.S.C. § 332(c)(3) are explicitly adopted by the Act.

Section 253(e). However, the Commission's call for comment regarding wireless services to serve underserved customers and areas recognizes that cellular or other wireless services may be the most efficient way to provide services to certain areas. If this proves to be true, these wireless services "are a substitute for landline services" pursuant to § 332(c)(3), and can be required to contribute. Broadly construing the definitions in the statute, information service providers can be included among those required to contribute.

The Commission calls for comment on methods of contribution in ¶ 125, that is, contribution based on gross revenues, based on revenues net of payments to other carriers and based on per-line or per-minute units. OCC's position on this is based in part on what the Commission concludes about the CCLC. If the CCLC continues to be measured on a traffic-sensitive basis, it will be reflected in carriers' revenues net of payments to other carriers. Those carriers would be contributing doubly if new contribution methods are on a per minute basis. OCC prefers a per-line or gross-revenue measurement in this scenario. If, however, the CCLC, which OCC believes should remain in place, becomes an NTS charge, a gross revenues or MOU contribution may be fair.

OCC supports the appointment of a non-governmental agency, chosen from competitive bids, to administer the fund. There are many non-governmental agencies that have data base and information processing capabilities, and a non-governmental agency is more likely to be neutral. Non-governmental agencies also have the incentive to be efficient and to reduce costs.

IX. CONCLUSION

In summary, the Commission faces an exciting and challenging task. OCC is pleased to help in every way possible to assist in defining a concept so important to its clients as universal service and outlining a workable method for the administration of universal service support.

Respectfully submitted,

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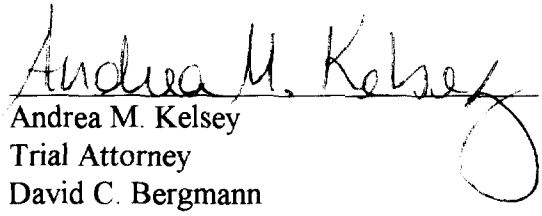

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