



96-45

APR 12 1996

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DATE: April 11, 1996

TO: Office of the Secretary
Federal Communications Commission
Washington, DC 20554

FROM: Georgia Public Service Commission

RE: Notice of Proposed Rulemaking and Request of Comments in the Matter of Federal-State
Joint Board on Universal Service (CC Docket No. 95-116)

The following are the comments of the Georgia Public Service Commission regarding the Federal -State Joint Board on Universal Service affected by the passage of the Telecommunications Act of 1996.

Our Commission appreciates this opportunity to participate in this forum and to inform the Federal Communications Commission of our concerns regarding Federal-State Joint Board on Universal Service.

The Georgia Commission will be closely following this process as it develops in the coming months.

Sincerely,

B. B. Knowles, Director
Utilities Division

cc: Federal-State Joint Board
International Transcription Services, Inc.

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**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of }
 }
Federal-State Joint Board on }
Universal Service)
FCC 96-93
CC Docket No. 96-45

**COMMENTS OF THE
GEORGIA PUBLIC SERVICE COMMISSION
REGARDING THE NOTICE OF PROPOSED RULEMAKING AND
ORDER ESTABLISHING JOINT BOARD**

Introduction

The Georgia Public Service Commission files these comments in response to the Notice of Proposed Rulemaking and Order Establishing Joint Board on Universal Service CC Docket No. 96-45. The Georgia Public Service Commission (GPSC) is charged with, among other things, the administration of the Georgia Universal Access Fund (UAF). This fund was created by the Georgia Legislature in the 1995 session and is now law (see O.C.G.A. § 46-5-167). A complete copy of The Telecommunications and Competition and Development Act of 1995 (O.C.G.A. § 46-5-160 et.seq) containing this provision is attached. This Act is a clear policy directive of the Legislature and the GPSC is in the process of full implementation of this Act. A number of the GPSC comments are directed towards the stated goal of seeking to enhance the competitive market for telecommunications services within the state (O.C.G.A. § 46-5-168(f)).

General Comments

In 1994 the State of Georgia adopted Strategic Planning as a concept which would be used in State Government. In 1995 the Georgia Legislature passed O.C.G.A. § 46-5-160 et.seq which opened telecommunications local exchange service to competition. In 1996 the Congress of the United States passed the Telecommunications Act of 1996 (Act). In 1995 the GPSC had to "reinvent"¹ telecommunications regulation in Georgia in response to the legislature passing O.C.G.A. § 46-5-160 et.seq. The GPSC hopes that the lessons learned by the GPSC will prove useful to the FCC and the

¹ Reinventing Government, How the entrepreneurial spirit is transforming the public sector" by David Osborne and Ted Gaebler

USF Joint Board in "reinventing"² federal telecommunications in response to the Act. These comments will address the mission statement contained within the Act, the vision for the future contained in the Act, the relevant trends and constraints and how each of these apply where appropriate to the questions contained in your notice of proposed rulemaking.

Mission Statement

The GPSC believes that the Congress has given us an excellent mission statement, "to make available, so far as possible, to all the people of the United States without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide wire and radio communication service with adequate facilities at reasonable charges..." (47 U.S.C. §151). All actions of the FCC and the Joint Board should be measured against this mission statement.

Vision of the Future

The Congress has given us a clear vision of how the telecommunications industry should develop. The United States is to have a state-of-the art telecommunications infrastructure which will be produced by a competitive market wherever it is possible. Congress chose a competitive model because competition is the best possible regulator, where it can work. Congress also recognized that while competition is economically very effective and efficient, competition can produce uneven results. The GPSC believes that Congress correctly assumed that competition would develop initially and work best in urban (low cost, large markets) areas. The Georgia Legislature came to the same conclusion³. It is clear to the GPSC that Congress intends for us to let competition work wherever it can and that we are to impose only those restrictions which are necessary to accomplish the mission (see mission statement). It is also clear that Congress intends for us to use what does develop in the urban areas from the competitive model as a guide to duplicate the results in areas where competition has not worked. The new USF is to be created to ensure that the mission would be accomplished even if competition failed to achieve even results. Therefore, the USF is an "exception" to the general rule of competition and must always be treated so.

Congress has recognized that the old methods with a centralized approach will not work. The Act clearly envisions a new era of federal-state cooperation in a decentralized framework where the FCC oversees and supervises the realization of the mission and vision, but delegates to the states, the industry, and others, the responsibility of detailed implementation. The GPSC experience has indicated that Congress has picked a very effective and efficient way to address the problem. The GPSC has been very successful in applying these principles to reach our objectives efficiently and effectively. The GPSC, with no additional personnel or funds, has successfully begun the implementation of O.C.G.A. § 46-5-160 et.seq. For FY-97 the GPSC met the Governor's budget objective of reducing and/or redirecting 5% of our budget. The GPSC has already approved a

² op. cite

³ O.C.G.A. § 46-5-160 et.seq

number portability plan and we are in the process of implementing the approved number portability solution. We could not have done so if it were not for the efforts of the participants in the process. We would not have had this cooperation with a "command and control" approach. We gave the participants a set of goals and guidelines and lightly guided their efforts. They did the work; the GPSC set the policy. We are proceeding to establish the UAF in a like manner. We say all this to urge the FCC and Joint Board to adopt this approach. Adopt rules, policies and procedures which are flexible and goal oriented. Formulate rules which allow the states the ability to do the jobs their legislatures have set for them. Approve rules which recognize that one size does not fit all and that there are differences between the states. Don't adopt centralized "one size fits all" command and control procedures which will impede progress rather than help. Set up a system where we can work together to achieve universal availability to all Americans at just, reasonable and affordable rates. It is the only cost effective and efficient way the goal can ever be achieved.

Relevant Trends and Constraints

The first obvious trend is the movement toward containing, arresting, and/or reversing the growth of government. This trend is going to restrain the availability of resources to administer the USF on both a federal and state level. Fortunately, the new paradigm should allow the FCC to redirect some of its efforts. The FCC can also expect considerable help from the states. Twenty three (23) state commissions have proposed, approved, or implemented a State Universal Service Fund⁴. A state universal service fund has been proposed or is under formal consideration by the legislature or public service commission in 28 states⁵. It seems obvious to the GPSC that those states which have established such funds have created funds which are separate and distinct from the new federal USF and, therefore, do not rely on or burden federal universal service support mechanisms. The FCC should not preempt any of these state funds since to do so would be against the express language of the Act and the separation of powers amendment to the United States Constitution (U.S. Const. Amend. X). Instead, the FCC should rely on these states to administer the federal USF and their own funds, **if those states so choose**, and to use the separate state fund for the specific state purposes which are outside the legal constraints of the Act. This approach results in finding solutions which are not possible if all solutions are confined to the specific constraints of the Act. The Act should never be construed to eliminate worthwhile state programs which do not depend on federal funds nor burden federal universal service support mechanisms. To conserve space, the balance of the legal constraints will be discussed within the specific section of the GPSC comments.

The same principle also applies to other worthwhile mechanisms which develop external to the federal USF. One example is a voluntary program which collects money from subscribers and distributes it to the desired program. Illinois has a low income fund which relies on voluntary customer

⁴ Unpublished study by NRRI for GPSC

⁵ op cite

contributions⁶. The more we can solve the problem with voluntary programs, the better off the United States will be. Governments have an outstandingly poor record of meeting the needs of low income groups⁷. The more voluntary a program is the more government can stay out of the process and let those who can, and will, get the job done effectively and efficiently.

The last constraint which we will discuss in this section is "the competitively neutral" concept. If we are to realize our vision of a state-of-the art competitive telecommunications industry which deploys developing technology rapidly and efficiently, we must make sure that any variation of the competitive model is as neutral as possible. One way to accomplish this is to make it as small as possible. A 1% burden is much more competitively neutral than a 10% burden. There is some point at which the burden will be so great that it will impede the ability of the system to achieve the mission. We do not know where that point is and suggest that we try to stay as far away from it as possible. How can we pick a point which will allow us to accomplish our mission but not overload the telecommunications industry or its customers? We suggest that the best point at which to start is where we are now. The Act clearly mandates only one new program. The old paradigm has gotten us where we are now. A good starting point for a budget for the new process is what we are spending now. We can also minimize or eliminate the need for direct interference by using other methods to reach certain areas or groups of people. Voluntary programs are one method which we have already mentioned. Taking a "global" look instead of a service-by-service look is another. There will be some areas in which the competitive market will be working extremely well. There will be areas where the volume of business has attracted a number of competitors, a state-of-the art infrastructure is being built and maintained, subscribership is high, prices to the customers are low and the mission is being accomplished. These competitive zones do not need a USF and would not have one in a completely competitive market. These areas are the source of the "net payers". The "net takers" should be those areas where the total telecommunications business does not produce the revenues to support the industry. Another way to keep the fund from getting too large is to strictly construe the Act with respect to the USF provision. The Act contains some very specific principles and directions which clearly indicate a Congressional intent to place limits on the size as well as the scope of the fund. Consistent with these general observations, the GPSC makes the specific comments which follow.

Specific Comments

Goals and Principles of Universal Service Support Mechanisms

Considering the mission statement, the GPSC believes that the following statement is inconsistent with the Act and the express intent of Congress.

Items 4-8

⁶ Op. cite

⁷ See footnote 1

On page 5, item 4 the FCC states "We seek comment on whether there are appropriate measures that could help us assess whether "affordable" service is being provided to all Americans". The GPSC contends that the proper and legal interpretation of the Act is "We seek comment on whether there are appropriate measures that could help us assess whether **access to** "affordable" service is being provided to all Americans." The omission is akin to the bible publisher who left out the "not" in one of the commandments. We could not determine from the context of the NPRM whether it was intentional or accidental. We do know that it is wrong and should be corrected in either case. We are going to assume that it was the latter and not the former and not elaborate. If it was intentional we ask you to compare the two and see that the statement in the NPRM is impossible to attain, very expensive to attempt to achieve and an abuse of discretion by the FCC. The corrected statement is not only possible to achieve, it is the one intended by Congress.

What is the appropriate measure of "affordable" service. Your footnote 13 on page 5 provides one good measure. Subscribership among targeted populations may be one indicator, however, caution must be exercised in using this criteria. There may be, and probably are, other causes for low subscribership besides the price of the services. For example, the GPSC believes that the FCC has correctly identified one of the major impediments to subscribership and that is the up-front cost of getting unrestricted access to telephone service. Both the FCC and the GPSC (and perhaps other states) need to adjust our telephone service rules to reflect the fact that it is now possible to restrict the delivery of telephone service of various types. There are now better ways to balance the needs of the consumer for service with the needs of the telecommunications companies to be protected from economic loss from bad debts. Customers can now be offered a choice. We need to remove the regulatory impediments which prevent or discourage the providers from actively pursuing this market. Special offerings need to be developed which address the inability of some people to manage their money. For example, restricted toll access could be provided. We are sure that with the advent of competition some very innovative plans will be developed to cater to this market. One of the first competitive providers which the GPSC certified was a reseller who intends to cater to this same market. There may be pockets of low penetration with social and demographic factors which keep some groups from being subscribers. Every reasonable effort should be made to determine if factors other than price are the true cause of low subscribership. If we could successfully eliminate other causes of low subscribership, then the price to the subscriber would be the indicator for the final screening. The remaining problem will be to determine which level of subscribership is the cutting score that determines if the service is "affordable". The exact level should vary with the type of service. We believe that each person has made a value judgment which reflects the value of the service to each individual within the group. Some have "voted" that the service is affordable and some have "voted" that it is not. We should respect the rights of individuals to make this choice. A good benchmark is where we are now with existing services. See our comments on support for low income customers for more specifics.

You ask “Which advanced telecommunications and information services should be provided, and how to provide access effectively to Americans in various geographic regions?” The GPSC is going to answer the following question instead, “How are we going to determine which advanced telecommunications and information services should be provided, and how to provide access effectively to Americans in various geographic regions?” The Act clearly indicates that this is to be a continuous process with periodic review. Set up a procedure where the FCC or some other party can initiate a proceeding to identify the specific service and cost thereof. The proceeding should use the principles and directives in the Act with the moving party having the burden of proving that all principles and directives are met and that there is a reasonable funding mechanism to pay for the service. The individual states, and possibly groups of states, should have an active role in resolving regional differences. A state could be a moving party in a proceeding for example. The same comments apply to item 6 on pg. 6. Comments on item 8 are contained in the general comments of the GPSC.

Item 9.

The GPSC differs from the interpretation of the FCC. Congress clearly intended to establish a competitive, privately held telecommunications network to replace the monopoly or semi-monopoly regulated market. All four criteria in §254(c)(1) should be met before the FCC establishes an exception to the free market. Ignoring any of the criteria will be an abuse of discretion by the FCC, arbitrary and capricious, and a violation of the intent of Congress.

Items 10 & 11.

The GPSC makes no additional comments but refers you to our previous relevant comments.

Item 12.

The GPSC agrees with the comments of the FCC.

Item 13.

Requires no comment.

Item 14.

The FCC asks whether the Act requires that all regions of the country must have access to all telecommunications and information services, and if so, how this can best be effectuated in a “pro-competitive, de-regulatory environment.” The Act clearly recognizes that there will be regional differences and that the states have an active part in administering the Act. The states also retain the right to set up independent funds to address state needs. The GPSC contends that these separate funds are a constitutional right under the separation of powers amendment to the United States Constitution (U.S. Const. Amend. X). The FCC needs to establish a procedure where a bona fide demand for service will be met if the service meets the criteria in the Act. See our previous comments on procedures.

criteria in the Act. See our previous comments on procedures.

Support for Rural, Insular, and High Cost Areas

The GPSC will comment on the services listed in item 16 and repeated in items 18, 19, 20, 21, 22, and 23 and make a general comment on the balance of the section.

Item 18.

Voice Grade Access to the Public Switched Telecommunication Network is not a service. It is a group of services. Some will qualify (i.e. single party wireline) some will not (i.e. cellular phones). The FCC can use wireless technology to provide single party "wireline" service. The FCC cannot support cellular phone service with the USF.

Item 19.

The GPSC agrees with the FCC. This service is a UAF item in Georgia.

Item 20.

Single Party Service is almost universal in Georgia. It must be included.

Item 21.

Access to Emergency Services is a State matter which should be delegated to the states. Georgia already has a law to support 911 & E-911. This law is in the appendix.

Item 22.

Access to Operator Services is a competitive service in Georgia and does not need any universal service support. The market can take care of this. It is universally available and affordable. USF support for operator services is a good example of an unnecessary subsidy for something which can stand alone.

Item 23.

The items in 23 are state matters which should be left to the states and/or addressed under other federal code sections. Georgia has addressed relay service, directory listings, and equal access. InterLata Interexchange service has been competitive in Georgia since 1984. IntraLata Interexchange competition was introduced in 1991.

Items 24 to 49

The GPSC offers the following general comments on items 24 to 49. You have proposed too many services for the USF. You are going to have to say no to a lot of the services proposed to be included in the USF. See (O.C.G.A. § 46-5-160 et.seq) in the appendix for the Georgia Legislature's list of UAF services. There needs to be a transition period (item 40). The FCC and the state commissions should develop a

cooperative program to ensure that all areas receive each of the services supported by federal universal support mechanisms.

Support for Low-Income Consumers

Item 50.

Low-income consumers should receive support for the items listed by the GPSC for rural, insular and high-cost areas to the extent any such support is necessary for a reasonable subscribership. "Access to" means a reasonable opportunity to purchase at a reasonable and affordable price in the Act. The GPSC is suggesting no additional services.

Item 51.

This matter should be left to the states. Georgia is the "flat rate state." We have the largest toll free calling area in the world in Atlanta. We have just instituted EAS for a large number of routes outside the Atlanta Metro area. Very few Georgia subscribers have measured rate service and very few have message rate service. One of our message rate tariffs is not income restricted so some subscribers to this service are high income second line subscribers. BellSouth currently offers a special local service calling plan entitled Georgia Community Calling. The terms of the plan provides that a subscriber is billed one-half the monthly residential one-party flat rate (i.e. for the Atlanta Metropolitan Area \$8.08). Included in that rate is a monthly allowance of 30 out-going calls. A subscriber can receive unlimited incoming calls. All out-going calls above the allowance are billed at a rate of \$.12 per message. This calling plan also provides a 40% discount on all intraLATA toll calls within a 55 mile radius of the subscriber's serving wire center. This rate is available to all residential customers throughout BellSouth's service area.

BellSouth and all the Independent Telephone Companies participate in the FCC's Link-up program. All telephones companies provide the matching installation funds as provided in the terms of the Link-up program. In addition, BellSouth participates in the FCC's Life-line program by matching the \$3.50 monthly credit given. Subsequently, with a total monthly credit of \$7.00, a subscriber residing in the Atlanta local calling area, qualifying the life-line program, who elects the Georgia Community Calling Plan can have access to basic local exchange service at a monthly charge of \$4.58. A single party flat rate cost these same people \$12.65 to call 2,000,000 access lines toll free. None of the above figures include tax, FCC charges, 911 access, etc. These need to be added when applicable.

Our experiment with measured service indicated that only those people who could take the service and get a discount without changing their calling pattern subscribed to the service. Our low income customers have made it clear that they prefer the flat rate at an affordable price. We have done our best to accommodate them. Because of this, in Georgia, measured and/or message rate service does not meet the

“substantial majority” test contained in the Act. California can legally use their fund for this purpose. Neither California nor the FCC can use the federal fund for this purpose, if the Georgia penetration rates exist nationwide. One size does not fit all. Leave this one to the states.

Item 52.

Information access is another area which should be jointly addressed by the FCC and the states. We have a Public Information Office that would be one source for publishing that information. Carriers could be encouraged to put this information in bill stuffers, etc. Maximum use should be made of existing resources without creating another subsidy.

Item 53.

The GPSC considers this more of a condition of service. This type of information should be provided to ALL subscribers. However, the last thing we need is a separate subsidy to provide this information. For example, under O.C.G.A. § 46-5-160 et.seq. the cost of providing this information could be included in the common cost allocations to reasonable actual cost of providing service. The FCC should only directly subsidize those services which require an investment in building the telecommunications network. The guiding principle is if you deliver the service below cost you get a subsidy up to cost. If you want to get a subsidy the service must include all required elements.

Item 54.

Such services are an excellent tool to increase subscribership, however, they should be a part of the provider’s package of services offered by the carrier in response to the customer needs. We suspect that any additional cost of providing this service will be more than offset by additional revenue and/or cost savings such as bad debt reductions. It should need no further support.

Item 55.

The GPSC supports the FCC’s comments and commends the carrier with the discount plan. The GPSC has “general supervision” over all telecommunication companies. Sometimes it only takes a letter or phone call to them to get them to file such plans. As a general rule, our telephone system operators are civic minded and ready to pitch in to help when the need arises. The impact on subscribership should be positive.

Item 56.

The GPSC can handle this matter outside the constraints of the Act or O.C.G.A. § 46-5-160 et.seq, therefore we have no such detailed analysis. There seems to be a very simple quid pro quo which will make this happen. Reduce the provider’s risk of loss

from bad debt, and the lower deposit, if any,⁸ for that risk should follow. This is an item which we could work out in a cooperative effort. Our staff is currently investigating this matter but the investigation is not complete. Do not include this in a mega-subsidy plan.

Item 57.

The GPSC has no special knowledge about this group of individuals and makes no comments or recommendations to the FCC concerning services other than conventional residential services with the following exception. Most if not all wireless services are not subscribed to by a substantial majority of residential customers and, therefore, are not eligible for support from the Universal Service Fund. Such a program or support would be a violation of the Act. See our comments on item 18.

Item 58.

The FCC requests comments on the reasons underlying disparity of subscribership shown in footnote 130. The statistics quoted and other statistics indicate that Americans place a great value on their telephones. They also indicate that telephone service (at least the basic line) has a highly inelastic demand. They also indicate that while there is a positive correlation between income and subscribership, subscribership does not follow income closely. According to the statistics quoted, a household with 40% or less of the income of the median household has a telephone subscriber rate of 85.7% of the median income or above households. **This is comparing the wealthiest Americans (upper 50% of income levels) with the poorest (poverty level or below).** Sometimes we overlook the obvious. How can we expect any other result? With at least \$18,000⁹ less income something has to go. Out of every 100 households of the low-income group, 16 decided that the telephone was one of those things which had to go, while 84 of this same group found a way to include the telephone in the group of services they purchased. Can we improve this record? Yes, we have discussed some ways already. Can we improve this record significantly? Probably not, at least not with a reasonable level of price and subsidies. The "free-rider" problem with this is going to be enormous. For every 100 people targeted for any direct subsidy, there are 84 potential "free-riders" who have already responded to the existing price.¹⁰ With an inelastic service small price changes will not increase subscribership significantly. For any subsidy the maximum additional penetration is 16% with an 84% potential free-ridership. If we assume 100% participation and

⁸ A low-cost prepaid plan could be designed to require no deposit.

⁹ Median income \$30,000 Less \$12,000 Equals \$18,000

¹⁰ A free-rider is someone who takes an incentive to purchase an item when he would have purchased the item without the incentive.

100% free-ridership for every \$100 spent to get the 16 new subscribers we also get 84 free-riders. The net cost per added subscriber would be \$6.25 because we spent \$100 though only 16 more were induced to subscribe. Private industry can handle this by limiting subsidy to non-subscribers a cost of \$1.00 per subscriber added in the simplified example. Private industry can also eliminate unsuccessful programs quickly, and rapidly experiment with packages to find the best one. They have the right to market their services and develop marketing strategies. Governments can't do this. Before we institute a new program which copies old programs, we need to measure the effectiveness of the existing programs. The FCC needs to set reasonable expectations based on hard evidence of achieving results. Some differential will always exist and we need to accept this. This will convert a 16% failure rate to an 84% success rate. The old paradigm was very successful in promoting universal service.

Items 59 to 67.

The GPSC is still in the process of evaluating some of these same questions. We have no answers for the FCC.

Item 68.

The GPSC concurs with the comments of the FCC.

Item 69.

The GPSC collects data to reveal compliance with our service standards. A copy of these rules and a sample compliance report are in the appendix.

Item 70.

The GPSC is in the process of establishing a base case under rate-of-return regulation for certain statistical indices. We have not completed this yet, but we intend to keep the required data goal oriented, impose as light a burden as possible and make the requirements as easy to comply with as possible. We commend the FCC for establishing a goal of imposing the least possible cost on the companies involved.

Items 71 to 111.

This covers distance learning and tele-medicine. We have no comments on these items other than please use the same principles we have discussed earlier as you investigate these services. These areas appear to be an excellent place to use competitive bidding very liberally.

Items 112 to 129.

The GPSC makes the following comments in response to the FCC NPRM. The GPSC is opposed to any move that the FCC may make to shift cost from the federal jurisdiction to the states. The GPSC is in the process of determining how to shift cost from intrastate access charges to other intrastate telephone services or the UAF. As you can see from O.C.G.A. § 46-5-160 et.seq the intrastate access charges are

benchmarked to the FCC access charges for a five year phase down. Shifting cost to us now will compound the problem and may inadvertently adversely affect universal service. A number of other states are also addressing similar issues. Even though basic service is highly inelastic, the GPSC believes that increases should be relatively low and phased in over a period of time to minimize the negative impact on basic service. Since usage sensitive interexchange services tend to be elastic, there is a fine point which balances the need to reduce interexchange rates with the needs of basic local exchange service. The FCC may be wise to observe the states as we try to find that point.

Item 130.

Administration of the USF should be decided by the same competitive process we have been advocating consistently in our comments. What is the most cost effective and efficient way to administer the fund should guide the decision. Our state has adopted strategic planning as the best way to effectively and efficiently run state government. As an agency we have been successful and as a state we have been successful. In the 1996 session the Legislature, upon recommendation of the Governor, phased of the state sales tax on food. One source of funds is the reduction of the size of state government. Our Telecommunication Section has 9 people, our Utilities Division has 55 positions (includes 9 Telecommunication positions). It is unlikely we will have any additional staff other than the positions we can fund with redirected funds from our current budget. We are using an evidentiary process to determine eligibility for our UAF, instead of massive command and control rules and procedures. Our administrator will collect and disburse the funds per the direction of the GPSC. We did not delegate the determination of "who pays" nor "who takes" to the administrator. (See appendix) This is determined annually by the Commission from an evidentiary hearing.

The GPSC has defined a process to determine the operation of the UAF rather than detailed rules and regulations which set forth in great detail how to administer the fund. This will come from the evidentiary hearings and could vary each year to reflect changed circumstances. This approach allows the Commission to get input into the process from all participants and to observe different view points each year. The first round of hearings are currently underway. It keeps the process dynamic and avoids static solutions which will be rapidly outmoded. This process also allows the GPSC to be very efficient in administering the UAF.

The GPSC is already staffed and organized to handle such a scheme and could hear federal claims for USF assistance concurrently with state claims for the UAF at very little additional expense and very little change to our process. We believe that at a minimum, the states should have an advisory role in the administration of the fund.

The FCC could also allow states to administer the fund under a "Matching Funds" concept such as is currently the case for Pipeline Safety and Transportation Safety.

For states who found it impossible to get adequate state positions even with the Federal Funding, the FCC could provide for delegation to an independent administrator, those functions which the states could not handle. The final solution will also be driven by the ultimate design of the USF.

Conclusion

There are also other services which could be a source for support for universal service. While a USF in the form of a direct subsidy is in conflict with competition, competition to provide local access services may increase penetration by putting downward pressure on costs and rates or by changing the way **companies** recover the cost of access. Unless people subscribe to the network, they cannot purchase high-margin discretionary or enhanced services. As the network becomes used for a wider variety of services, more of the cost of local loop facilities may be recovered from new services and not basic access. A good example is Cellular providers giving potential customers "free" phones. The cost of customer equipment is obviously being subsidized by the cellular local access charge and the usage sensitive charges. Since wireline local access is the linchpin service that makes all the others possible, competition may offer local service "free" or at a very low price. Perhaps the most misapplied and misunderstood principle of economics is that competition will drive price to cost. Competitive markets often force some suppliers to price some goods and services below their individual costs. Some firms are even forced to sell their total package of goods and services below the total cost for that individual firm. In the example cited the CPE cost was priced at "0", well below total allocated cost and even lower than marginal cost. Competition will encourage this type of cross subsidy of services. The FCC should be aware of this phenomenon as it sets federal policy and use it to full advantage to promote universal service.

The USF should be a safety net which "catches those who fall through" a competitive market instead of a blanket which requires a subsidy for every service which is provided and subsidizes every service possible.

The USF should be the exception rather than the rule. Competition should be the rule and not the exception.

The FCC should "reinvent" federal regulation of telecommunications as a decentralized process which relies upon input from the states, industry and consumers. The FCC should avoid unwarranted preemption of state plans and seek to develop a cooperative relationship with the states to get the job done.

The GPSC thanks the FCC for the opportunity to make these comments and hope they prove useful to you. We look forward to working closely with the FCC to implement the new Act.

ARTICLE 4

TELECOMMUNICATIONS AND COMPETITION DEVELOPMENT

Effective date. — This article became effective July 1, 1995.

Editor's notes. — Ga. L. 1995, p. 886, § 3, not codified by the General Assembly, provides: "The Public Service Commission shall be required to conduct at least three hearings in locations outside the metropolitan areas of the state and accept evidence as to the costs, feasibility, and methodology of providing for toll free calling between two telephones where the central offices serving

such telephones are within an extended area of service of not less than 22 miles of each other. The methodology and analysis of the cost and feasibility of such toll free calling area shall be conducted under the supposition of an alternative system of regulation within the framework of Section 1 of this Act. The commission shall conduct such hearings prior to November 30, 1995, and shall report its findings to the General Assembly no later than December 31, 1995.

The Public Service Commission shall conclude its consideration in Docket 4231-U of the expansion of local calling areas pursuant to its rules, including but not limited to all balloting and the formulation of an appropriate rate design, on or before January 1,

1996. The implementation of the expanded calling areas shall be completed on or before July 1, 1996."

Ga. L. 1995, p. 886, § 4, not codified by the General Assembly, provides for severability.

46-5-160. Short title.

This article shall be known and may be cited as "The Telecommunications and Competition Development Act of 1995." (Code 1981, § 46-5-160, enacted by Ga. L. 1995, p. 886, § 2.)

46-5-161. Legislative findings; intent.

(a) The General Assembly finds:

(1) It is in the public interest to establish a new regulatory model for telecommunications services in Georgia to reflect the transition to a reliance on market based competition as the best mechanism for the selection and provision of needed telecommunications services at the most efficient pricing;

(2) Investment in the telecommunications infrastructure required to further economic growth in Georgia and to meet the growing demands of Georgia's consumers will be encouraged through competition; and

(3) In order to ensure the implementation of this new reliance on market based competition, any legislative obstacles to competition for local exchange services must be removed.

(b) It is the intent of this article to:

(1) Permit local exchange companies to elect alternative forms of regulation;

(2) Protect the consumer during the transition to a competitive telecommunications market;

(3) Assure reasonable cost for universal access to basic telecommunications services throughout Georgia;

(4) Encourage investment in Georgia's telecommunications infrastructure and encourage the introduction of innovative products and services for Georgia's consumers;

(5) Authorize competition for local exchange services; and

(6) Allow pricing flexibility for all telecommunications services other than basic local exchange services. (Code 1981, § 46-5-161, enacted by Ga. L. 1995, p. 886, § 2.)

46-5-162. Definitions.

As used in this article, the term:

(1) "Alternative regulation" means a form of regulation pursuant to which the rates, terms, and conditions for telecommunications services provided by a local exchange company are set pursuant to the rules specified in this article.

(2) "Basic local exchange services" or "universal access local exchange services" mean the provision to residential and single line business customers in Georgia of services composed of a touch tone switched access line and dial tone, of a quality sufficient for two way voice and 9600 baud data/fax communications. This service shall include 1+ dialing for access to competitive providers of telecommunications services by January 1, 1997. The elements of universal access local exchange services are subject to subsequent review and modification by the commission.

(3) "Caller identification service" means a type of telephone service which permits telephone customers to see the telephone number of incoming telephone calls.

(4) "Commission" means the Georgia Public Service Commission.

(5) "Electing company" means a local exchange company subject to the alternative regulation described in this article.

(6) "Fund" means the Universal Access Fund created in Code Section 46-5-167.

(7) "Gross domestic product-price index" or "GDP-PI" means the gross domestic product fixed weight price index calculated by the United States Department of Commerce.

(8) "Interconnection service" means the service of providing access to a local exchange company's facilities for the purpose of enabling another telecommunications company to originate or terminate telecommunications service.

(9) "Local calling area" means the geographic area encompassing one or more local exchanges as described in commission orders or in maps, tariffs, and rate schedules reviewed and approved by the commission.

(10) "Local exchange company" means a telecommunications company authorized to provide local exchange service as described in this article. For purposes of this article, there shall be two categories of local exchange companies:

(A) Tier 1 companies are those companies with 2 million or more access lines within Georgia holding a certificate of public convenience and necessity issued by the commission; and

(B) Tier 2 companies are those companies with less than 2 million access lines within Georgia holding a certificate of public convenience and necessity issued by the commission.

(11) "Local exchange services" means services offered for the transmission and utilization of two-way interactive communications and associated usage with the local calling area.

(12) "Local interconnection services" means that part of switched interconnection service provided for the purpose of originating or terminating a call which originates and terminates within the local calling area.

(13) "Portability" means the technical capability that permits a customer to retain the same local number at the same customer location regardless of the provider of the local exchange service.

(14) "Switched access" means that part of switched interconnection service provided for the purpose of originating or terminating a toll service.

(15) "Switched interconnection service" means that part of interconnection service which utilizes the local exchange company's switching facilities to provide line or trunkside access or both to the local exchange company's end office or tandem switches for the purpose of originating and terminating the telecommunications services of other telecommunications companies.

(16) "Tariff" means the schedule or other writing filed with the commission that describes the rates, terms, and conditions of certain telecommunications services provided by the telecommunications company.

(17) "Telecommunications company" means any person, firm, partnership, corporation, association, or municipal, county, or local governmental entity offering telecommunications services to the public for hire.

(18) "Telecommunications services" means the services for the transmission of two-way interactive communications to the public for hire. For purposes of illustration, the term "telecommunications services" includes without limitation local exchange services and interconnection services.

(19) "Toll service" means the transmission of two-way interactive switched communications between local calling areas.

(20) "Universal access provider" means a local exchange company that is obligated to provide basic local exchange service in all of its local calling areas in response to reasonable requests for such service and

which, in consideration of such obligation, may have its rates for local switched interconnection service established as provided in this article. (Code 1981, § 46-5-162, enacted by Ga. L. 1995, p. 886, § 2.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1995, "2" was substituted for "two" in subparagraphs (A) and (B) of paragraph (10).

46-5-163. Certificates of authority.

(a) A telecommunications company including a telecommunications services reseller shall not provide telecommunications services without a certificate of authority issued by the commission. The provisions of Code Section 46-5-45 shall apply in circumstances where a telecommunications company is providing telecommunications services without a certificate issued by the commission.

(b) The commission shall have the authority to issue multiple certificates of authority for local exchange services upon a showing to the commission that an applicant possesses satisfactory financial and technical capability. Any certificate existing on July 1, 1995, shall remain effective and shall be considered a certificate of authority under this article. A certificate is not required for a telecommunications company to provide commercial mobile services. The commission shall also have the authority to issue certificates to long distance telecommunications carriers subject to federal court decisions, federal law, and regulations of the Federal Communications Commission.

(c) A showing of public convenience and necessity is not a condition for issuing a competing certificate of authority. Prior to July 1, 1998, only a currently certificated Tier 2 local exchange company may be issued a certificate of authority to compete for service in an area serviced by an existing Tier 2 local exchange company.

(d) Any certificate of authority issued by the commission is subject to revocation, suspension, or adjustment where the commission finds upon complaint and hearing that a local exchange company has engaged in unfair competition or has abused its market position.

(e) The commission shall grant certificates of authority in a timely manner and all such proceedings on complaints regarding abuse shall be resolved in a timely manner.

(f) All local exchange companies certificated by the commission shall be subject to the same rules and regulations applied by the commission to other local exchange companies certificated to provide local exchange services within the same area; provided, however, that in promulgating rules and regulations necessary to implement the provisions of this article, the commission may adopt rules and regulations for local exchange companies certificated after July 1, 1995, which vary from other rules and regulations

applicable to the delivery of telecommunications services but which are appropriate and consistent to service being delivered by such local exchange companies and are adopted in the public interest. (Code 1981, § 46-5-163, enacted by Ga. L. 1995, p. 886, § 2.)

46-5-164. Interconnection among certificated local exchange companies.

(a) All local exchange companies shall permit reasonable interconnection with other certificated local exchange companies. This subsection includes all or portions of such services as needed to provide local exchange services.

(b) The rates, terms, and conditions for such interconnection services shall not unreasonably discriminate between providers and shall be negotiated in good faith between the providers and filed with the commission.

(c) In the event that such rates, terms, or conditions cannot be negotiated by the parties, the commission shall determine the reasonable rates, terms, or conditions for the interconnection services.

(d) Such interconnection services shall be provided for intrastate services on an unbundled basis similar to that required by the FCC for services under the FCC's jurisdiction.

(e) The commission is authorized to allow local exchange companies to resell the services purchased from other local exchange companies pursuant to rules determining when and under what circumstances such resale shall be allowed; provided, however, that the resale of basic local exchange services supported by the Universal Access Fund shall be limited to users and uses conforming to the definition of basic local exchange services set forth in paragraph (2) of Code Section 46-5-162. Any local exchange company or telecommunications company desiring to purchase or to resell services purchased from another local exchange company may petition the commission for the authorization to purchase or to resell such services. In cases where the purchase or resale of services purchased is authorized by the commission, the commission shall determine the reasonable rates, terms, or conditions for the purchase or resale of such local exchange services such that no local exchange company or telecommunications company gains an unfair market position. The commission shall render a final decision in any proceeding initiated pursuant to the provisions of this subsection no later than 60 days after the close of the record except that the commission, by order, may extend such period in any case in which it shall find that the complexity of the issues and the length of the record require an extension of such period, in which event the commission shall render a decision at the earliest date practicable. In no event shall the commission delay the rendering of a final decision in such proceeding beyond the earlier of 120 days after the close of the record or 180 days from the filing of the notice of petition under this subsection. The commission, at its

discretion or upon a petition filed by either party, may modify a ruling rendered under this subsection, provided that a petition for modification may not be filed more than once in any 18 month period.

(f) The basic local exchange services of Tier 2 local exchange companies may be purchased by competing providers at the tariffed rate, provided such reselling does not result in the loss of intrastate or interstate revenues to the selling company for the individual service being resold. This subsection does not apply to Tier 2 local exchange companies that have switched access rates that are lower than or at parity with the same local exchange company's interstate switched access rates.

(g) The commission shall have the authority to require local exchange companies to provide additional interconnection services and unbundling. (Code 1981, § 46-5-164, enacted by Ga. L. 1995, p. 886, § 2.)

46-5-165. Alternative regulation of rates, terms, and conditions.

(a) Any Tier 1 local exchange company may elect to have its rates, terms, and conditions for its services determined pursuant to the alternative regulation described in this article, in lieu of other forms of regulation including but not limited to rate of return or rate base monitoring or regulation, upon the filing of notice with the commission and committing to provide basic local exchange services upon reasonable request and to invest \$500 million per year for five years to improve and strengthen telecommunications services in Georgia; provided, however, that after the expiration of three years of such investments, the commission shall determine, after notice and opportunity for a Tier 1 local exchange company or other interested parties to be heard, whether such investment commitment should be continued for the remaining two years or whether such commitment should be reduced.

(b) Any Tier 2 local exchange company may elect to have the rates, terms, and conditions for its services determined pursuant to the alternative regulation described in this article upon the filing of notice with the commission and committing to provide basic local exchange services upon reasonable request.

(c) The alternative regulation under this article shall become effective on the date specified by the electing company but in no event sooner than 30 days after such notice is filed with the commission.

(d) On the date a telecommunications company elects the alternative regulation described in this article, all existing rates, terms, and conditions for the services provided by the electing company contained in the then existing tariffs and contracts are deemed just and reasonable. (Code 1981, § 46-5-165, enacted by Ga. L. 1995, p. 886, § 2.)

46-5-166. Rates for basic local exchange services.

(a) An electing local exchange company shall have its rates for basic local exchange services determined pursuant to this Code section.

(b) Rates for basic local exchange services for residential and single line business customers in effect on the date the local exchange company becomes subject to alternative regulation described in this article shall be the maximum rates that the local exchange company may charge for basic local exchange services for a period of five years, provided that such maximum rates are subject to review by the commission pursuant to subsection (f) of this Code section under rules promulgated by the commission. During such period, the local exchange company may charge less than the authorized maximum rates for basic local exchange services. Thereafter, rate adjustments for basic local exchange services may be made pursuant to subsection (c) of this Code section.

(c) Rates for basic local exchange services may be adjusted by the electing company subject to an inflation based cap. Inflation shall be measured by the change in the GDP-PI. The electing company is authorized to adjust the cap on an annual basis. The cap requires that the annual percentage rate increase for basic local exchange services shall not exceed the greater of one-half of the percentage change in the GDP-PI for the preceding year when the percentage change in the GDP-PI exceeds 3 percent or the GDP-PI minus 2 percentage points.

(d) In the event the GDP-PI is no longer available, the commission shall elect a comparable broad national measure of inflation calculated by the United States Department of Commerce for its use.

(e) The local exchange company shall set rates for all other local exchange services on a basis that does not unreasonably discriminate between similarly situated customers; provided, however, that all such rates are subject to a complaint process for abuse of market position in accordance with rules to be promulgated by the commission. Competing local exchange companies may resell local exchange services purchased from other local exchange companies.

(f) (1) Except as otherwise provided in this subsection, the rates for switched access by each Tier 1 local exchange company shall be no higher than the rates charged for interstate access by the same local exchange company. The rates for switched access shall be negotiated in good faith between the parties. In the event that the rates for switched access cannot be negotiated between the parties, any party may petition the commission to set reasonable rates, terms, or conditions for switched access. The commission shall render a final decision in any proceeding initiated pursuant to the provisions of this paragraph no later than 60 days after the close of the record except that the commission, by order, may extend

such period in any case in which it shall find that the complexity of the issues and the length of the record require an extension of such period, in which event the commission shall render a decision at the earliest date practicable. In no event shall the commission delay the rendering of a final decision in such proceeding beyond the earlier of 120 days after the close of the record or 180 days from the filing of the notice of petition for determination of rates for switched access that initiated the proceeding.

(2) Each Tier 2 local exchange company shall, prior to July 1, 2000, adjust in equal annual increments its intrastate switched access charges to parity with its similar interstate access rates. The commission shall have authority to govern the transition of Tier 2 local exchange company switched access rates to their corresponding interstate levels and shall allow adjustment of other rates, including those of basic local exchange services or universal service funds, as may be necessary to recover those revenues lost through the concurrent reduction of the intrastate switched access rates. In no event shall such adjustments exceed the revenues associated with intrastate to interstate access parity as of July 1, 1995. In addition, if access revenues have dropped below July 1, 1995, levels in subsequent years, the adjustment in those years will be based on the reduced balance. Any intrastate to interstate switched access adjustments resulting in increased local rates that have been capped under subsection (b) of this Code section will be allowed and a new cap will be established pursuant to this Code section. In the event that the rates for switched access cannot be negotiated in good faith between the parties, the commission shall determine the reasonable rates for switched access in accordance with the procedures provided in paragraph (1) of this subsection.

(g) In accordance with rules to be promulgated by the commission, any electing company shall file tariffs with the commission for basic local exchange services and other local exchange services that state the terms and conditions of such services and the rates as established pursuant to this Code section. (Code 1981, § 46-5-166, enacted by Ga. L. 1995, p. 886, § 2.)

46-5-167. Universal Access Fund.

(a) The commission shall create a Universal Access Fund to assure the provision of reasonably priced access to basic local exchange services throughout Georgia. The fund shall be administered by the commission under rules to be promulgated by the commission as needed to assure that the fund operates in a competitively neutral manner between competing telecommunications providers.

(b) The commission shall require all telecommunications companies providing telecommunications services within Georgia to contribute quarterly to the fund in a proportionate amount to their gross revenues from

sale to end users of such telecommunications services as determined by rules to be promulgated by the commission.

(c) The commission may also require any telecommunications company to contribute to the fund if, after notice and opportunity for hearing, the commission determines that the company is providing private local exchange services or radio based local exchange services in this state that compete with a telecommunications service provided in this state for which a contribution to the fund is required under this Code section.

(d) Contributions to the fund shall be determined by the commission based upon estimates as to the difference in the reasonable actual costs of basic local exchange services throughout Georgia and the amounts established by law or regulations of the commission as to the maximum amounts that may be charged for such services.

(e) Moneys in the fund shall be distributed quarterly to all providers of basic local exchange services upon application and demonstration that the reasonable costs as determined by the commission to provide basic local exchange services exceed the maximum fixed price permitted for such basic local exchange services. The commission may take into account the possibility that a competing local exchange company is providing or could provide lower cost basic local exchange services. Competitive providers shall be entitled to obtain a similar subsidy from the fund to the extent that they provide basic local exchange services; provided, however, that such subsidy shall not exceed 90 percent of the per line amount provided the incumbent local exchange company for existing basic local exchange service or 100 percent of new basic local exchange service.

(f) The commission shall require any local exchange company seeking reimbursement from the fund to file the information reasonably necessary to determine the actual and reasonable costs of providing basic local exchange services.

(g) The commission shall have the authority to make adjustments to the contribution or distribution levels based on yearly reconciliations and to order further contributions or distributions as needed between companies to equalize reasonably the burdens of providing basic local exchange service throughout Georgia.

(h) A local exchange company or other company shall not establish a surcharge on customers' bills to collect from customers' contributions required under this Code section. (Code 1981, § 46-5-167, enacted by Ga. L. 1995, p. 886, § 2.)

46-5-168. Jurisdiction and authority of commission.

(a) The jurisdiction of the commission under this article shall be construed to include the authority necessary to implement and administer

the express provisions of this article through rule-making proceedings and orders in specific cases.

(b) The commission's jurisdiction shall include the authority to:

(1) Adopt reasonable rules governing certification of local exchange companies;

(2) Grant, modify, impose conditions upon, or revoke a certificate;

(3) Establish and administer the Universal Access Fund including modifications to the maximum allowable charge for basic local exchange service;

(4) Adopt reasonable rules governing service quality;

(5) Resolve complaints against a local exchange company regarding that company's service;

(6) Require a telecommunications company electing alternative regulation under this article to comply with the rate adjustment provisions of this article;

(7) Approve and if necessary revise, suspend, or deny tariffs in accordance with the provisions of this article;

(8) If necessary, elect another comparable measurement of inflation calculated by the United States Department of Commerce;

(9) Establish reasonable rules and methodologies for performing cost allocations among the services provided by a telecommunications company; and

(10) Direct telecommunications companies to make investments and modifications necessary to enable portability.

(c) The commission shall render a final decision in any proceeding initiated pursuant to the provisions of this article no later than 60 days after the close of the record except that the commission, by order, may extend such period in any case in which it shall find that the complexity of the issues and the length of the record require an extension of such period, in which event the commission shall render a decision at the earliest date practicable. In no event shall the commission delay the rendering of a final decision in such proceeding beyond the earlier of 120 days after the close of the record or 180 days from the filing of the notice of rulemaking, petition, or complaint that initiated the proceeding.

(d) In conducting any rule-making proceeding under this article, the commission shall consider the following factors:

(1) The extent to which cost-effective competitive alternatives are available to existing telecommunications networks and services; and