STATE OF CALIFORNIA PETE WILSON, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
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April 11, 1996

VIA FEDERAL EXPRESS

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20036

APR 12 1996

Re: FCC 96-93
CC Docket No. 96-45 DOCKET FILE COPY ORIGINAL

Dear Mr. Caton:

Please find enclosed for filing an original plus eleven copies of the COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA ON THE NOTICE OF PROPOSED RULEMAKING in the above-referenced docket.

Also enclosed is an additional copy of this document. Please file-stamp this copy and return it to me in the enclosed, self-addressed postage pre-paid envelope.

Yours truly,

Mary Mack Adu

Mary Mack Adu
Attorney for California

MMA:nas

Enclosures

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ORIGINAL

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

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

APR 12 1996

COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA ON THE NOTICE OF PROPOSED RULEMAKING

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CERTIFICATE OF SERVICE

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

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

COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA ON THE NOTICE OF PROPOSED RULEMAKING

I. **INTRODUCTION**

The People of the State of California and the Public Utilities Commission of the State of California ("California" or "CPUC") hereby respectfully submit their comments on the notice of proposed rulemaking ("NPRM") regarding universal service. The Federal Communications Commission ("FCC" or "Commission") opens this NPRM in response to the Telecommunications Act of 1996. In this rulemaking, the FCC proposes to: "(1) define the services that will be supported by Federal universal support mechanisms; (2) define those support mechanisms; and (3) otherwise recommend changes to our regulations to implement the universal service directives of the 1996 Act."[1]

The CPUC believes that the FCC should recognize that many states, including California, have already been working to reform their universal service programs. The FCC needs to work closely with the states so that the best program can be developed. By

1. NPRM, p.3.

working with the states, the FCC can focus its energy on policies which need to be decided at the federal level.

The CPUC has been working since January 1995 to reform its universal service programs. The CPUC is examining many of the same issues for which the FCC requests comment in this NPRM and intends to have a decision out this summer resolving these issues. California's comments for this NPRM reflect the CPUC's work to date on these issues. California responds to the FCC's request for comment in the order specified in the NPRM.

II. GOALS AND PRINCIPLES OF UNIVERSAL SERVICE SUPPORT MECHANISMS

The FCC has specified a list of principles on which to base its policies for the preservation and advancement of universal service. The CPUC agrees with the principles that the FCC has outlined and has very similar principles for the California universal service proceeding. The CPUC has defined its principles as follows:

1. High quality basic telephone service should remain available and affordable to all Californians.
2. The definition of basic service should be expanded as service capabilities advance to avoid information rich and information poor stratification.
3. Consumers should have access to information to make timely and informed choices.
4. Universal service providers must adhere to reliability, privacy and security guidelines.
5. The universal service support mechanism should be efficient.

6. The universal service funding mechanism should be competitively neutral.[2]

The FCC asks for comment on whether other principles should be included with the ones it has detailed. The FCC should consider including the principle of competitive neutrality. Without competitive neutrality in funding universal service, telecommunications markets will not develop fully. If one type of competitor is favored over another, effective competition will be stifled. This important principle should not be overlooked.

The FCC also asks for comment on how it can assess whether quality services are being made available. State commissions have been working for years on quality of service issues. California has very specific standards which the local exchange carriers ("LECs") must meet regarding quality of service. The CPUC does not believe that the quality of service should decline as a result of competition. With that in mind, the CPUC is requiring new local exchange competitors to meet the same quality of service standards that are imposed on the LECs today. These standards encompass such things as dialtone speed, operator answering time and repair service answering time.[3] The CPUC believes that competition will bring increased service quality and that it is unnecessary for the FCC to impose further service quality requirements.

2. CPUC, "Universal Service Report to the Legislature, In Response to AB 3643", December 1995, p. 5.
3. See Attachment A, General Order 133-B, Section 2.

Additionally, the FCC asks for comment on how to assess the affordability of telecommunications services. In California, the CPUC is currently working on the same issue. In revising California's universal service program, the CPUC must ensure that basic telephone service is affordable to all Californians. California has tied the issue of affordability to the prevailing urban rate. In California, the rates of small companies cannot be higher than 150% of urban rates, and the rates which companies are allowed to charge low income customers are 50% of the urban rate.

The FCC has a specific principle to promote access to advanced services across the nation. The CPUC shares this goal. The FCC asks for comment on which advanced telecommunication and information services should be provided and how to provide access effectively to Americans in various geographic regions. The CPUC believes that making specific determinations on which advanced services to promote is problematic. The Commission needs more information on which advanced services the market will support before choosing services to subsidize. The Commission could find itself in the position of promoting an advanced service which it later discovers is not the best option for consumers. Unfortunately, once the Commission has deemed an advanced service suitable for subsidy it would be deployed in the network over other services which may be more viable. Without market information, the Commission might support services which would otherwise have been losers.

In this respect, the Commission and the Joint Board should be guided by Section 254(c)(1)(B) which states that prior to intervening to promote services, the FCC must check to see if these services, "have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers." In other words, consumers should be allowed to identify which advanced services are useful to them before the Commission targets these services for universal service support.

III. SUPPORT FOR RURAL, INSULAR, AND HIGH-COST AREAS AND LOW-INCOME CUSTOMERS

A. What Services To Support

The FCC proposes including five services as the core group of services for support. These are: "(1) voice grade access to the public switched network, with the ability to place and receive calls; (2) touch-tone; (3) single party service; (4) access to emergency services (911); and (5) access to operator services."[4] The FCC directs parties to describe additional services which meet the statutory criteria of Section 254(c)(1) and should receive universal service support.

The CPUC, in its proposal, has come up with a list of services which should be supported for universal service purposes. The CPUC decided which services to include by examining which services customers have come to expect when they order basic service. Customers should not get any less than they

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4. FCC NPRM, pp.11-12.

are getting today. In the future, the CPUC may review the definition and add further services to it. The CPUC includes the services which the FCC describes as part of its "core group", but also includes: access to long distance carriers; discounted rate for eligible low income customers; free access to customer service; choice of flat or measured service; directory assistance (411); a directory listing; access to information/800 services; and access to the deaf telephone relay service.

By including these services, the CPUC is ensuring that customers will be guaranteed to get the services that they have come to expect. These services specifically identify basic service in California. Expectations in other states may vary. The FCC may want to add access to long distance carriers and information and 800 services to its definition since those services can be considered interstate. Beyond those additions, the FCC should refrain from expanding its definition. The FCC has a good basic definition which should serve as a benchmark for the states. States should be allowed to provide for additional services in their own universal service programs and the Federal Act gives states the clear authority to do so. The FCC should not preclude states from ensuring that additional services are provided to consumers.

In describing access to emergency services, the FCC asks parties to comment on access to enhanced 911. The CPUC is supporting access to enhanced 911 in its universal service program. The CPUC requires all competitors to provide E-911. The CPUC believes that the use of E-911 will promote faster response times for emergency services and is in the public interest.

Additionally, in California, local exchange carriers are required to ensure that all of their telephone lines have the capability to connect calls to 911 and 611 (repair service), even if a customer has not yet placed an order for service or has been disconnected. The lines are called warm lines. The CPUC will continue this requirement in its universal service program. This policy ensures access to emergency services and facilitates connection to the full public telephone network.

B. **How To Implement**

1. **Who should get support**

The FCC asks for comment on whether support for rural, insular, and high-cost areas should be limited to residential users or residential and single-line business users, or should be provided to all users in such areas. The CPUC proposed, in its draft rules, to target support to residential customers in high-cost areas. Commenters protested, stating that the telephone rates for small business customers in high-cost areas would skyrocket if only residential rates are supported. They urged the CPUC to reconsider. That issue is currently undecided; the CPUC is weighing the costs of including small business lines in the universal service fund against the significant rate increases that small business customers in rural areas may face. The CPUC is limiting its consideration to residential customers and small business customers because it is clear that some targeting of the universal service fund is necessary.

2. How should the Commission determine that rate levels are reasonably comparable?

The CPUC believes that rates for services between urban and rural areas should be reasonably comparable, but that the rates need not be identical. In California, local exchange carriers have basic service rates, but those rates vary from carrier to carrier. Many small companies, predominantly serving rural high-cost areas, have higher rates than Pacific Bell for basic service. These rates are capped at 150% of rates in adjacent territories. Rates in rural areas can be no more than 150% of rates in urban areas. In this way, the rates are reasonably comparable, but they are not the same.

The Commission also asks for comment on whether support should be based on achieving end prices. The CPUC plans to base the subsidy amounts on the cost of providing service and the rate local exchange carriers will be authorized to charge.

3. How to calculate the subsidy

The Commission asks for comment on how assistance for high-cost areas should be calculated and distributed. The CPUC believes that this issue may be the most critical in terms of coordinated efforts between the FCC and the state commissions. The existing mechanism which the FCC has in place is not competitively neutral and is not the sort of explicit mechanism which was contemplated in Section 254(e). The current mechanisms (the Universal Service Fund, "USF", and Dial Equipment Minute, "DEM", programs) only distribute money to incumbent local exchange carriers. These mechanisms are not competitively neutral because other carriers desiring entry into these local exchange markets are disadvantaged since they do not have access to the subsidy. These competitors may be able to operate more efficiently, but are precluded from doing so because of the funding available exclusively to the incumbents.

The FCC asks for comment on whether continuing with the USF and DEM is consistent with Congress's intent "to provide for a pro-competitive, deregulatory national policy framework...opening all telecommunications markets to competition."[5] Unfortunately, these programs are not at all consistent with the Act's intent. These programs must be replaced to externalize the subsidies which the local exchange carriers receive. Currently, these programs distribute money which becomes embedded in the rate design of the local exchange carrier and work to give the LEC an advantage over any potential competitors. Competition will be stifled if these programs are allowed to continue in their present form.

The CPUC has put forth an idea in its draft rules to determine and distribute the support for high cost areas. In its proposal, the CPUC will first calculate the costs of providing basic service to all parts of California. To do this, the CPUC will use a proxy model and will develop costs on a census block group ("CBG") level. Once the costs are determined, the CPUC will determine the affordable rate for each area. Where the cost to serve exceeds the rate in a CBG, the subsidy will be

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5. See S. Conf. Rep. No. 104-230, 104th Cong., Sess. 1 (1996).

calculated by subtracting the rate from the cost of providing service. The CPUC will then distribute the subsidy to all Carriers of Last Resort ("COLRs") serving customers in high-cost areas based on the number of customers each COLR is serving, multiplied by the subsidy amount. In order to qualify as a COLR, carriers must be willing to serve all customers in a CBG either with their own facilities or on a resale basis.

With the CPUC plan, the subsidy amount is portable between carriers. Customers can switch to a carrier different from the incumbent LEC and still receive service at an affordable rate. The CPUC determined that carriers should be willing to offer service to entire CBGs so that there would be an obligation to serve tied in with receiving the subsidy. Once the CPUC program is in place, the California subsidy for basic exchange service will be explicit and will be external from local exchange carrier rates.

4. **The Proxy Model**

The FCC requests comment on the Benchmark Cost Model ("BCM") that was submitted to the Commission by MCI, NYNEX, Sprint and US West (the Joint Sponsors). A proxy model is the appropriate way to calculate costs in order to determine the cost of providing basic service and the CPUC will use a proxy model in California. In our proceeding, the CPUC asked parties to examine the BCM and discuss how this model could be applied to California. The CPUC specifically asked parties to detail what changes would be necessary in order for the BCM to measure the cost of providing basic service in California, given the CPUC definition of basic service.

The CPUC held workshops on this topic from February 1-9, 1996. At the workshops, Pacific Bell introduced a new model for the CPUC to use which would develop costs on a CBG basis which Pacific Bell calls the Cost Proxy Model ("CPM"). In the CPM, Pacific Bell identifies the location of each individual customer and calculates the cost of each customer based on the distance to the customer's central office and the density of the area. Pacific has introduced a second version of the model based on a grid cell 100th of a degree. This version does not depend on information about individual customers and can be used to model the entire state, not just Pacific Bell's territory. AT&T and MCI also introduced a model at our workshops which was fundamentally based on the BCM, but which made some major modifications to certain portions of the model.

The CPUC held these workshops in the hope that some agreement could be reached among the parties about which model would be appropriate for the CPUC to use. Because each of the proposed models had differences from the BCM, parties needed more time to review the inputs and discuss the outputs of the models. There are still unresolved issues remaining regarding the appropriate proxy model and inputs. Hearings are scheduled for the end of April. The CPUC intends to resolve these issues through the hearing process and develop proxy costs for the entire state by late spring.

In response to some of the FCC's specific questions regarding the proxy model, the CPUC believes that the Commission should start with a wireline model. If it is cheaper to offer service with another technology, the alternative carrier should benefit in this first round by being allowed to receive the same subsidy amount as the wireline based carrier. This policy will encourage the carrier with the least-cost technology to offer service, without prejudging which technology should be used. The CPUC will have periodic reviews of the subsidy amount which will incorporate technological advances. Additionally, the FCC asks whether CBGs should be the basis for the subsidy distribution. The CPUC has tentatively concluded that this is the case, but is still awaiting further testimony on the matter.

The FCC also asks whether using a competitive bidding process to determine high-cost subsidy amounts would be consistent with Section 214(e). The CPUC has examined using a competitive bidding process for its universal service program. The CPUC has not ruled out this option, but agrees with the FCC that market conditions may not warrant the introduction of this plan at present. The CPUC will calculate the costs and distribute the subsidies to all eligible carriers without a bidding process. This policy will give new entrants experience as local exchange carriers, and they will be better able to determine appropriate bidding amounts if the CPUC uses competitive bidding in the future. Given the level of difficulty experienced in getting parties to agree on a proxy cost model, the CPUC is considering using competitive bidding to determine subsidy amounts once they come up for review. This determination has not been finalized because the CPUC is still examining the administrative difficulty of auctioning off CBGs throughout the state of California.[6] The CPUC has also tentatively concluded that it will use the auction mechanism for areas which are currently unserved. (See unserved territories section below.)

C. **Who Is Eligible For Support**

In California, the CPUC proposes that carriers must meet some eligibility requirements in order to qualify to receive universal service support. The carriers must be designated COLRs by the CPUC. In order to become a COLR, the carrier must be willing to serve all customers in a CBG. Competitive carriers can serve CBGs without being COLRs, but those carriers would not be eligible for universal service support.

1. **Unserved territories**

The FCC requests comment on whether the Commission and states should develop cooperative programs to ensure that unserved areas receive service. California supports this idea and would like to put forth its proposal for bringing service to unserved territories. The CPUC suggests using the competitive bidding process in this situation. In areas where customers want service and no carrier has previously served, carriers would bid on the amount of necessary subsidy to serve the area. The

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6. California has approximately 22,000 CBGs. Even if we group CBGs together for auction purposes, it may be difficult to administer the auction process.

carrier with the lowest bid, or subsidy request, would win and would become the COLR for that area. With this proposal, unserved areas would receive service and the subsidy amount would be minimized. Competitive bidding used on this limited basis is appropriate and administratively feasible.

D. **Support For Low-Income Customers**

The FCC asks for comment regarding its responsibilities regarding low-income customers. States are currently working to increase subscribership levels among low-income customers. The policies which will best ensure universal service in a particular state will depend on great measure upon that state's unique demographics and demographic trends, the state's telecommunication market conduct and history, even the state's geography. Based on California's circumstances, the CPUC has established a universal service goal of 95 percent service (the statewide average) particularly in California's low-income, its minority communities and its limited English-speaking communities. In 1994, the CPUC required its two largest local exchange carriers to file marketing plans with detailed targets toward achieving these universal service goals. Because more than 7 million Californians over the age of 18 depend upon or prefer to speak languages other than English, the CPUC requires carriers to inform customers of the availability, terms and statewide rates for universal lifeline service and basic service in the language in which they initially order service, and to provide bills, notices, and service representatives in that language.

California's universal lifeline program gives service to low-income customers at discounted rates. Eligible low income customers pay $5.62 for flat rate service and $3.00 for measured service. The end-user common line charge is waived and eligible customers pay $10 for installation.

1. Toll Limitation Services

The FCC seeks comment on whether toll limitation services should be offered to low income subscribers without a charge or at a discount. The CPUC has previously commented to the FCC on this subject in the FCC's Subscribership NPRM. On page 2 of those comments, the CPUC stated that the "Affordability of Telephone Service" study found that non-subscribers have a great deal of interest in call control service. Toll limitation services could be of great value to low income customers who have problems controlling their toll bills. The CPUC does not currently provide a discount on this service to low income customers.

2. Services other than conventional residential services

The FCC asks for comment regarding which services may be appropriate for it to subsidize which go beyond conventional telephone service for low-income customers. The CPUC, like the FCC, recognizes that some customers, who either do not have a home or who are highly-mobile, have difficulty obtaining telephone service and remaining connected to the network. At our universal service public participation hearing in San Diego, a member of the public recommended that the CPUC support voicemail programs for the homeless or highly-mobile customers. The CPUC has not made a decision on supporting this service.

3. How to implement and who is eligible for support

The FCC requests information on how to implement its program for low income customers. The CPUC examined this issue in its universal service proceeding and determined that the Lifeline program could continue as it is in California with only minor modification. The CPUC made this modification in light of the new competitors that were entering the local exchange market. The CPUC decided to give low income customers the added choice that comes with competition by requiring all local exchange carriers, new and incumbent, to make Lifeline service available at our statewide rate. Any carrier serving Lifeline customers will be able to receive money from the Universal Lifeline Telephone Service ("ULTS" or "Lifeline") fund. New carriers will not be able to draw any more than incumbent carriers, on a per customer basis.

> In order to qualify for the ULTS program, customers must certify that:
>
> 1. The residence at which the service is requested is the customer's principal place of residence.
> 2. There is only one exchange access service servicing that residence.
> 3. Based on current income, the customer's total household income does not exceed the income limitation set by the CPUC.
> 4. The customer is not claimed as a dependent on another person's income tax return.

The FCC also requests data on how much the program will cost. In California, the size of the Lifeline fund was approximately $323 million for 1995. The fund covers the monthly discounts for low income customers, as well as the discounts for installation. The fund is administered independently with oversight from the CPUC. Money is collected by charging a surcharge on all intrastate telecommunications services.

E. Ensuring That Supported Services For Rural, Insular, And High-Cost Areas And Low Income Customers Evolve

The FCC asks for comment on how to ensure that the definition of the universal services which are supported evolves overtime. The FCC cites a suggestion made by one of the parties in the CPUC proceeding which suggested that any universal service definition should be revisited at fixed intervals, such as every three to five years. The FCC comments that this suggestion could lead to the expenditure of resources on unnecessary proceedings. The CPUC agrees with the FCC and has suggested that at the end of three years, interested parties, including consumer groups, providers or individuals, can file a petition to reopen this proceeding to reevaluate the definition of basic service. In this way, if at the end of three years, services have not developed to meet the criteria on which the CPUC makes its evaluation to revise the basic service definition, an unnecessary proceeding is not started.

The CPUC intends to use criteria similar to Section 254(c)(1) and will review services recommended for inclusion on the basis of: (1) Is the service essential for participation in society? (2) Do a majority of residential customers subscribe to the service? (3) Will the benefits of adding the service to basic service exceed the costs? The CPUC has also given itself some flexibility by stating that when a majority of residential customers are not using the service, but inclusion of the service is still in the public interest, the service may become a part of the basic service definition.

The CPUC recommends that the FCC set up a periodic review process that is started when necessary and that the FCC gives itself the flexibility to modify the list of core services based on the public interest. The FCC must keep in mind that any expansion of the definition of core services will increase the cost of the subsidy associated with universal service.

The FCC also asks for comment on how state commissions track the service quality performance of local exchange carriers. The CPUC has a specific list of reports which it requires local exchange carriers to provide on service quality. The CPUC is also requiring new entrants to provide service quality reports.[7]

IV. **SCHOOLS, LIBRARIES AND HEALTH CARE PROVIDERS**

In this section, the FCC requests comment on what additional services should be included for universal service support for schools, libraries and health care providers. The CPUC has interpreted the Telecommunications Act of 1996 in the same way

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7. See Attachment A, General Order 133-B, Section 4.

that the FCC has and agrees that the intent of the legislation is to ensure that schools, libraries and health care providers are well positioned to take advantage of advanced telecommunications services.

At the California public hearings on universal service, schools and libraries were two of the most vocal groups. Representatives of these groups told the CPUC that the only way to ensure widespread access to advanced services is to assist schools and libraries in gaining access. Speakers in rural areas told the CPUC that libraries may serve as a catalyst for economic development. Public libraries can serve as access points for a large number of people that do not have computers in their homes.

Prior to the legislation's enactment, the CPUC was unsure whether discounts, or providing some other type of incentive to schools and libraries, would be appropriate. The CPUC was concerned that these discounted rates would be challenged as discriminatory by certain groups. After reviewing the legislation, it is clear that the CPUC and the FCC need to develop discounts for these institutions on both intrastate and interstate services, respectively. The CPUC has not decided how it will provide discounts and has asked parties in its universal service proceeding to provide testimony on this subject. At this time, it would be premature for the CPUC to make recommendations to the FCC.

The CPUC also recognizes that telecommunications carriers must charge rural health care providers rates which are reasonably comparable to those charged in urban areas. The CPUC is currently investigating this matter.

V. OTHER UNIVERSAL SERVICE SUPPORT MECHANISMS

A. The Federal Carrier Common Line Charge ("CCL")[8]

The FCC states that the Telecommunications Act states, "that any federal universal service support should be explicit and should be recovered from all telecommunications carriers that provide interstate telecommunications service on an equitable and nondiscriminatory basis."[9] The CPUC agrees completely with this goal of the Act. The FCC requests comment on whether the interstate CCL charge paid by interexchange carriers meets these criteria. The CPUC believes that this charge is not explicit because it is embedded in local exchange carrier access rates.

When the CPUC opened the intraLATA toll market in California to competition, it eliminated our intrastate CCL charge. The CPUC stated in its decision, "The CCLC is not a cost- based charge...The history of the CCLC demonstrates that it was designed not to recover revenues from cost-causers, but to shift the burden for NTS costs from local exchange subscribers to toll users."[10] The CPUC recommends that the FCC eliminate its interstate CCL charge.

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8. The CPUC refers to this charge as the "CCLC" in its decisions.
9. FCC NPRM, p.51.
10. CPUC Decision 94-09-065, September 15, 1994, p. 121.

VI. ADMINISTRATION OF SUPPORT MECHANISMS

A. Who Should Contribute

The FCC requests comment on which carriers should contribute to universal service and how contributions should be assessed. The CPUC believes that all telecommunications providers should contribute to universal service. For the federal fund, all providers of interstate telecommunications should contribute. The FCC should not pull money from carriers' intrastate services. States which set up their own programs will be drawing on intrastate funds for their programs. If the FCC decides to draw from this source as well, it could be devastating for state universal service programs and rates for intrastate services. The Act does not clearly give the FCC authority to draw from intrastate funds, and the FCC should not expand its funding base to include them.

B. Who Should Administer

The FCC asks if it should have state public utility commissions collect and distribute the funds for universal service. The CPUC will already be collecting and distributing money for its universal service fund. Having state utility commissions perform this role for the FCC could provide for a more seamless targeting of support for universal service.

VII. CONCLUSION

State commissions, like California, are working in their jurisdictions to address the issues raised by the FCC in this