

RECEIVED

APR 12 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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

FCC 96-93

In the Matter of
Federal-State Joint Board
on Universal Service

)
)
)

CC Docket No. 96-45

DOCKET FILE COPY ORIGINAL

INITIAL COMMENTS OF THE
AMERICAN ASSOCIATION OF RETIRED PERSONS,
CONSUMER FEDERATION OF AMERICA, AND CONSUMERS UNION

APRIL 12, 1996

No. of Copies rec'd
List ABCDE

049

TABLE OF CONTENTS

EXECUTIVE SUMMARY.....i-ii

I. INTRODUCTION AND OUTLINE

1

A. THE COMMENTORS

B. THE FUNDAMENTAL COMMITMENT TO UNIVERSAL SERVICE IN THE 1996 ACT

C. OUTLINE AND SUMMARY OF THE COMMENTS

II. DEFINITIONS AND MEASUREMENTS OF AFFORDABILITY

5

A. HOW SHOULD AFFORDABLE BE DEFINED?

The Definition in the Notice

Commentors' Position: The Definition of Affordable Must Give Equal Emphasis to the Relative Concept

B. HOW SHOULD AFFORDABILITY BE MEASURED?

The Position in the Notice

Commentors' Position: Measures of the Burden Must be Included in the Analysis of Affordability

III. WHAT SHOULD BE INCLUDED IN UNIVERSAL SERVICE?

8

A. THE CURRENT PACKAGE

The Proposal in the Notice

Commentors' Position: Additional Functionalities Must be Included in the Definition of Universal Service

B. PRINCIPLES FOR THE FUTURE EXPANSION OF UNIVERSAL SERVICE

The Position in the Notice

Commentors' Position: Additional Principles are Needed to Ensure that the Expansion of Universal Service Meets Broad Public Needs and Does Not Raise the Cost of Universal Service Excessively

IV.	WHAT DOES UNIVERSAL MEAN	11
	A. THE COMMISSION'S VIEW OF THE TARGET OF UNIVERSAL SERVICE POLICY	
	B. COMMENTORS' POSITION: A BROADER VIEW OF UNIVERSAL SERVICE POLICY	
V.	JUST, REASONABLE AND AFFORDABLE RATES FOR ALL AMERICANS	14
	A. THE SUBSCRIBER LINE CHARGE	
	The Discussion in the Notice	
	Commentors Position: The CCL as a Charge for the Use of a Joint and Common Facility	
	Commentors' Position: An Increase in the SLC is Contrary to the Public Policy Goal of Affordability	
	B. POTENTIAL INCREASES IN BASIC RATES FOR OTHER REASONS	
	The Notice's Discussion of Rate Increases Due to Inflation	
	Commentors' Position: Costs Are Declining and Rates Should Decline, not Rise	
VI.	UNIVERSAL SERVICE IN HIGH COST AREAS	17
	A. HOW SHOULD AFFORDABILITY AND COMPARABILITY OF RATES BE MEASURED IN HIGH COST AREAS?	
	The Discussion in the Notice	
	Commentors' Position: The Total Bill for Local and Intralata Toll Use is the Proper Basis for Determining Affordability and Comparability	
	B. WHO SHOULD DETERMINE THE AFFORDABILITY AND COMPARABILITY OF RATES?	
	The Discussion in the Notice	
	Commentors' Position: The State Public Utility Commissions Should Determine the Affordability and Comparability of Rates	

C. CALCULATING THE NECESSARY SUBSIDY

The Discussion in the Notice

Commentors' Position: All Revenues Must Be Taken Into Account

**VII. IMPLEMENTING AFFORDABLE SERVICE FOR LOW INCOME
SUBSCRIBERS**

20

A. WHO SHOULD BE ELIGIBLE FOR THE PROGRAM?

The Discussion in the Notice

**Commentors Position: Households Receiving Public Assistance or With
Income Below 125 Percent of Poverty Should be Allowed to Self-Certify with
Verification**

**Commentors' Position: Additional Services are Necessary to Assist Low
Income Households to Obtain and Keep Service**

ATTACHMENT I: DESCRIPTION OF COMMENTORS

EXECUTIVE SUMMARY

No matter how vigorously competitive or innovative the telecommunications market becomes under the deregulatory approach established in the Telecommunications Act of 1996, the implementation of the Act will fall far short of Congress' intent if average Americans pay more for their telecommunications service, lose access to crucial services currently provided as part of basic service, or fail to receive access to new functionalities as they become available.

The Notice has excluded half of the definition of affordable by not considering how much of a burden telecommunications service places on household budgets. The Commission should define affordable in such a way that people not be forced to pay so much for a necessity that doing so causes serious inconvenience or results in detriment.

While the Commission is to be applauded for addressing the telecommunications needs of low-income households and those living in high cost, rural and insular areas, the Notice has improperly narrowed the focus of the law by ignoring the Congressional commitment to ensure service for all Americans at just, reasonable, and affordable rates.

The Subscriber Line Charge (SLC) paid by all consumers should not be increased to eliminate or reduce the carrier common line (CCL) charges paid by interexchange carriers (IXCs) for the use of the loop. On the contrary, since costs are declining in the industry, rates should decline.

The suggestion in the Notice that the CCL be eliminated, which would give interexchange carriers free use of the loop, would constitute a cross-subsidy of a competitive service that results in an unreasonable share of joint and common costs falling on universal service ratepayers and violates Section 254 (k) of the 1996 Act.

The Notice has failed to include crucial functionalities in the definition of universal service. Subscribers should have access to dial tone and be able to afford reasonable levels of use of necessary telecommunications services as part of universal service. Flat rate service should be supported by the Commission as the preference of consumers. Measured service, where available, should also be supported, but only as an option.

Additional functionalities should be included in the definition of universal service including -- directory assistance, the provision of and listing in annual local directories, Call Trace, 900-number blocking service, equal access to interexchange carriers, interoffice digital facilities, equal access to SS7 functionalities, and interconnection among all carriers and modern facilities.

In assessing the affordability and comparability of rates, the Commission should take into account the total bill incurred for routine daily communications, including basic service and intralata long distance.

The Commission should not attempt to set target prices for specific end-user customer classes. State public utility commissions should be responsible for determining the affordability and comparability of rates.

In calculating any draw from the universal service fund, the Commission should consider all revenues generated by the local exchange company that cover joint and common costs within the exchange. Furthermore, if the company is earning adequate revenues in the aggregate, then to the extent that the basic and enhanced service revenues from outside the high cost areas contribute to the general cost recovery of the firm, any revenue burdens shifted to the universal service fund must be offset by reductions in the local exchange company's other revenue streams.

The Commission should not use enrollment in a public assistance program as the sole criterion for eligibility for universal service support, but should also establish a self-certified income limit of 125 percent of poverty as an enrollment criterion. In order to promote universal service among low income households, the following services should be included in universal service and supported by federal programs: the basic service package, long distance blocking, and calls to the telephone company should be available at no charge, installation charges should be reduced (the Link Up Program), and the initial deposit should be waived.

The Commission should also require policies that do not impose additional barriers for low income households to obtain telephone service. Therefore, the discount should be available on the primary line into the home. Recipients should be allowed to buy optional services at regular rates. Finally, the Commission should not allow service to be disconnected for non-payment of long distance bills.

I. INTRODUCTION AND OUTLINE

A. THE COMMENTORS¹

1. The American Association of Retired Persons (AARP), Consumer Federation of America (CFA), and Consumers Union (CU) respectfully submit the following initial comments in this proceeding.²

2. These initial comments of the signatory organizations focus on the core principles of universal service. The organizations individually and jointly reserve the right to comment on other issues in separate initial comments and respond to the comments of others on all issues raised in reply comments, whether or not they have been addressed in our initial comments.

B. THE FUNDAMENTAL COMMITMENT TO UNIVERSAL SERVICE IN THE 1996 ACT

3. The Communications Act of 1934 first established a national policy of universal service with the simple declaration that one of the goals of the Act was “to make available, so far as possible to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communications service with adequate facilities at reasonable charges.”³

4. The 1934 Act also required the Commission to ensure that the rates subject to its jurisdiction be just and reasonable.

5. The Telecommunications Act of 1996 (hereafter “the Act” or “the 1996 Act”)⁴ expands dramatically the scope and specificity of national universal service policy. Two simple sentences have

¹See Attachment I for a description of the commentors.

²In the Matter of Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking and Order Establishing Joint Board, FCC, CC Docket No. 96-45, Fed. Reg. 61 10499, March 8, 1996; hereafter, the Notice.

³Notice, note 9, p. 4, cites the amended language.

been replaced by seven broad principles to be implemented by the Federal Communications Commission (hereafter "the FCC" or "the Commission") with the advice of a Federal-State Joint Board. Section 254(b) of the Act states that:

[t]he Joint Board and the Commission shall base policies for the preservation and advancement of universal service on the following principles:

- (1) **QUALITY AND RATES.** -- Quality services should be available at just, reasonable, and affordable rates.
- (2) **ACCESS TO ADVANCED SERVICES.** -- Access to advanced telecommunications and information services should be provided in all regions of the country.
- (3) **ACCESS IN RURAL AND HIGH COST AREAS.** -- Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas at rates that are reasonably comparable to rates charged for similar services in urban areas.
- (4) **EQUITABLE AND NONDISCRIMINATORY CONTRIBUTIONS.** -- All providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.
- (5) **SPECIFIC AND PREDICTABLE SUPPORT MECHANISMS.** -- There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.
- (6) **ACCESS TO ADVANCED TELECOMMUNICATIONS SERVICES FOR SCHOOLS, HEALTH CARE, AND LIBRARIES.** -- Elementary and secondary schools and classrooms, healthcare providers, and libraries should have access to advanced telecommunications services as described in subsection (h).
- (7) **ADDITIONAL PRINCIPLES.** -- Such other principles as the Joint Board and the Commission determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with this Act.

⁴Telecommunications Act of 1996, Public L. No. 104-104, 110 Stat 56(1996) (hereafter, 1996 Law), sec. 254 (b)(1).

6. AARP, CFA, and CU believe that the fundamental changes embodied in the Act include the following. a) The Commission is charged with assuring that all rates for universal service -- not just the rates for interstate services -- are just, reasonable, and affordable. b) The Act introduces the concept of affordability directly and explicitly into national policy. c) While access to the network for high cost areas and low-income consumers has been supported for years, the Act explicitly requires this policy, expands the services to which it should apply and institutes a formal process for expanding the definition of universal service over time. d) The Act requires specific and predictable mechanisms, in the form of contributions from all providers of telecommunications services, to support universal service.

This comprehensive commitment to and expanded concept of universal service is the key to the ultimate success of the 1996 Act.

7. No matter how vigorously competitive or innovative the telecommunications market becomes under the deregulatory approach established in the Act, the implementation of the Act will fall short of Congress' intent if average Americans pay more for their telecommunications service, lose access to crucial services currently provided as part of basic service, or fail to receive access to new functionalities as they become available.

8. We applaud the Commission for addressing the telecommunications needs of low-income individuals and of those individuals living in high cost, rural, and insular areas. Moreover, we appreciate the Notice's recognition of the 1996 Act's commitment to the principle that all consumers are entitled to quality telecommunications service at just, reasonable, and affordable rates and that, therefore, the concept of universal service applies to all consumers. However, as will become clear throughout these comments, AARP, CFA, AND CU are very concerned that the Notice does not

address the important, underlying elements of this principle and, instead, limits its scope to only the beneficiaries of the targeted subsidies.

9. Moreover, AARP, CFA, AND CU are deeply troubled by the Commission's statement that it will not address the cost allocation rules (and joint and common costs of providing services) of Section 254(k) of the Act this Notice of Proposed Rulemaking. We believe that the concept of universal service for all consumers cannot be adequately addressed without the Commission considering the related issues of cost allocation and joint and common costs.

C. OUTLINE AND SUMMARY OF THE COMMENTS

The Comments are organized as follows:

10. Section II addresses the definition and measurement of the term "affordable." In this section, we demonstrate that the Notice has excluded half of the definition of affordable by not considering how much of a burden telecommunications service places on household budgets. This half of the definition is the most frequently used in every day language and the most important to consumers.

11. Section III addresses the issue of what should be included in the definition of service. In this section, we demonstrate that the Notice has failed to include crucial functionalities in the definition of universal service including use of the telephone network, directory listings, and modern facilities.

12. Section IV addresses how to define universality. In this section, we demonstrate that the Notice has simply ignored the Congressional commitment to ensure service for all Americans at just, reasonable, and affordable rates. It has improperly concentrated solely on the high cost areas and low-income populations which are to receive targeted subsidies to promote universal service.

13. Section V discusses the implementation of universal service policies for all consumers. It stresses the importance of just, reasonable, and affordable rates for all Americans and points out a

number of ways in which the Notice is unnecessarily and improperly proposing to increase the cost of universal service for the average consumer.

14. Section VI discusses the implementation of targeted subsidies for high cost areas. In this section, we propose a series of principles and approaches which will ensure that the targeted subsidies treat all areas, ratepayers, and service providers in an equitable manner, while promoting economic efficiency and vigorous competition.

15. Section VII discusses the implementation of targeted subsidies for low income subscribers. This section proposes approaches that will improve the performance of these programs in reaching the targeted population.

II. DEFINITIONS AND MEASUREMENTS OF AFFORDABILITY

A. HOW SHOULD AFFORDABLE BE DEFINED?

The Definition in the Notice

16. The first and perhaps most fundamental issue raised by the Notice is the definition of affordable (para 4, p. 4). The Commission rightly notes that the Congressional charge to ensure affordability is a new obligation for the Commission (para. 14, p. 9). The Commission begins by citing a definition of affordable that invokes both an absolute and a relative concept of affordability

Webster's New World Dictionary defines the term "afford" as follows: "to have enough or the means for; bear the cost of without serious inconvenience." (note 12, p. 5)

17. The first definition (*have enough or the means for*) is an **absolute** concept in the sense that there is no qualifier; no matter how much it hurts, if a subscriber continues to pay for telecommunications service, telephone service is deemed by implication to be affordable.

18. The second definition (*bear the cost of without serious inconvenience*) is a **relative** concept in the sense that the burden imposed is qualified by the term “serious inconvenience;” if it hurts a lot to pay for telephone service, telephone service is not deemed to be affordable, even though the subscriber continues to pay for it.

19. The example the Commission gives in footnote 13 refers only to the **absolute** connotation of affordability:

For example, one such measure might be the level of telecommunications service subscribership among targeted populations (note 13, p. 5).⁵

20. In this example, only when a household stops paying for telephone service is it considered unaffordable. This definition completely overlooks the unfortunate reality that many consumers keep telephone service although doing so causes them serious inconvenience or detriment, because a telephone is a necessity in our society.

Commentors' Position: The Definition of Affordable Must Give Equal Emphasis to the Relative Concept

21. A more recent edition of the Webster's Dictionary cites the **relative** concept as the primary definition of affordable -- “to manage to bear without serious detriment.” The secondary definition in this edition includes the **absolute** -- “to manage to pay for or incur the cost of”.⁶

22. This **relative** definition of affordability should be a basic concept of universal service. It reflects a major policy decision that paying for one necessity (*e.g.*, telephone service) should not entail reducing the consumption of another necessity (*e.g.*, medicine). Households that must make sacrifices to pay for

⁵Similarly, in para 114, the Notice limits the discussion of the universal service impact of a price increase to its effect on subscribership and makes no reference to the burden of such an increase.

⁶Merriam Webster's Collegiate Dictionary, Tenth Edition (1995), p. 36.

telecommunications service should not have to seriously diminish their standard of living, or take risks with their health and safety.

The Notice has adopted a definition of affordable that is far too narrow.

23. We look to the Commission to recognize and implement the **relative** definition of affordable along with the **absolute** definition so that the overarching goal of universal service articulated by Congress in the Act can be achieved.

The Commission should define affordable in such a way that people not be forced to pay so much for a necessity that doing so causes serious inconvenience or detriment.

B. HOW SHOULD AFFORDABILITY BE MEASURED?

The Position in the Notice

24. The Commission seeks comment “on whether there are appropriate measures that could help us assess whether ‘affordable’ service is being provided to all Americans.” (para, 4, p. 5)

Commentors' Position: Measures of the Burden Must be Included in the Analysis of Affordability

25. In adopting a universal service rule, the Commission should consider all empirical measures and public policy implications of both the **absolute** and **relative** definitions of the word “affordable.”

Empirical measures for each of these definitions are readily identifiable.⁷

Measurements are available to the Commission under the relative definition of affordable that can help the Commission effectively implement the first principle of universal service, which states that “[quality] service should be available at just, reasonable, and affordable rates,” for all consumers.

⁷ Direct Testimony of Dr. Mark N. Cooper on Behalf of AARP, Comprehensive Review of the Revenue Requirement and Rate Stabilization Plan of Southern Bell Telephone and Telegraph Company, Florida Public Service Commission, Docket No. 900960-TL, November 2, 1992.

26. **Quantitative measures of the relative concept** involve estimating the percentage of income that households might be forced to spend for service at various income levels and rate levels (as in the Consumer Expenditure Survey compiled by the Bureau of Labor Statistics). **Qualitative measures** include what people consider “too expensive” or “too much” to pay for telephone service. Examples of this measurement are levels of satisfaction and dissatisfaction with rates expressed in response to questions asked in opinion polls.

27. **Quantitative measures of the absolute concept** include penetration rates (as compiled by the Current Population Survey conducted by the Bureau of the Census). We can also find **qualitative measures**, where people are asked why they do not have or have given up telephone service. Examples of this measurement include the national study conducted by the American Association of Retired Persons and the Consumer Federation of America.⁸

III. WHAT SHOULD BE INCLUDED IN UNIVERSAL SERVICE?

A. THE CURRENT PACKAGE

The Proposal in the Notice

28. The Commission notes that the Act does not restrict the definition of service to “telephone exchange service.” Rather, the Act requires the universality of the broader concept of “telecommunications services” (para 14, p. 9, para 15, p. 10, and para 16, p. 10). In recognition of this broader concept, the Commission proposes the following set of services be included in universal service – voice grade access to the public switched network (para. 18); touch-tone (para. 19); single party (para. 20); access to emergency services (para. 21); access to operator services (para. 22); and relay services (required elsewhere in the law; note 42, p. 11).

⁸Mark N. Cooper, The Telecommunications Needs of Older, Low Income and General Consumers in the Post-Divestiture Era (AARP and CFA, October, 1987).

Commentators' Position: Additional Functionalities Must be Included in the Definition of Universal Service

29. The Commission has asked for comment on additional services that might be included for Universal Service support (para 17, p. 11 and para 23, p. 14).

Although we support the inclusion of these proposed functionalities in the definition of service, we believe that the Commission's definition of service is inadequate, given the current state of the network and telecommunications services.

a. Include Use/Flat Rate Service

30. Over the past half century, our society has woven telecommunications service into the fabric of daily life. The ease of access to unlimited local calls has fundamentally influenced our decisions about where to live, where to locate services, how to acquire information, and how to allocate our time. In short, telecommunications has become the mainstay of daily communications.

The Commission fails to include use in its definition of service. We believe that subscribers should have access to dial tone and be able to afford reasonable levels of use of necessary telecommunications services as part of universal service.

31. Flat rate telephone service, which provides subscribers with unlimited local calls, is by far the service utilized by the great majority of subscribers in this country, even where measured service is available as an option. The Commission recognizes that one of the criteria for a service's inclusion in the definition of universal service is that the service has, "through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers." (para. 9, p. 6)

Consumers given the choice between local measured and flat rate service consistently and overwhelmingly choose flat rate service.

Flat rate service should be supported by the Commission as the preference of consumers. Measured service, where available, should also be supported, but only as an option.

b. Include Additional Functionalities

32. The Commission has neglected to include a number of other functionalities that are presently embodied in telecommunications services purchased by the majority of subscribers and considered to be necessities. These functionalities include the following local services:

Directory assistance, and the provision of and listing in annual local directories.

33. For purposes of public safety, convenience, and necessity, we also believe that the following additional services should be supported:

Call trace and 900-number blocking service.

34. Finally, the following modern network facilities and functionalities should be included to ensure basic access to the information superhighway:

Equal access to interexchange carriers, interoffice digital facilities, equal access to SS7 functionalities, and interconnection among all carriers.

B. PRINCIPLES FOR THE FUTURE EXPANSION OF UNIVERSAL SERVICE

The Position in the Notice

35. As stated in Section 254(b)(7) of the Act, the Commission and the Joint Board should articulate a framework for consideration of additional functionalities for inclusion in universal service. The Commission points out that the four criteria set out in the law for deciding when a service should be included in the definition of universal service are not precisely defined and are only considerations. The Notice states:

[t]he Joint Board in recommending, and the Commission in establishing, the definition of the services that are supported by Federal universal service support mechanisms shall consider the extent to which such telecommunications services

(A) are essential to education, public health and public safety;

(B) have, through the operation of market choices by customers been subscribed to by a substantial majority of residential customers;

(C) are being deployed in public communications networks by telecommunications carriers;
and

(D) are consistent with the public interest, convenience and necessity. (para. 9, p. 6)

Commentors' Position: Additional Principles are Needed to Ensure that the Expansion of Universal Service Meets Broad Public Needs and Does Not Raise the Cost of Universal Service Excessively

36. In addition to considering some or all of the above four criteria, AARP, CFA, AND CU believe that the following additional characteristics are indicative of a basic and necessary functionality and should be used by the Commission to determine whether an additional functionality should be added to the definition of universal service:⁹

The service must be a communications service which connects each to all;

The service must be a "mass market" service, which is most economical when sold in large volume;

37. Moreover, the Commission should conduct all proceedings on the expansion of the definition of universal service in open and public forums.

The needs and preferences of all users must have been considered in an open, public forum.

38. These principles are intended to ensure that functionalities are added to the universal service definition in a manner that meets the needs of the broad public without significantly raising the cost of universal service.

IV. WHAT DOES UNIVERSAL MEAN?

A. THE COMMISSION'S VIEW OF THE TARGET OF UNIVERSAL SERVICE POLICY

39. The Notice declares that the 'primary responsibility' of the Commission under the 1996 Act is as follows:

⁹AARP and CFA, Universal Service Requirements for the Information Age, 1994.

The 1996 Act provides universal service support for two primary categories of services, each of which has two separate subcategories of intended beneficiaries: (1) A “core” group of services, the provision of which is to be supported for consumers with low incomes or in rural, insular, and high cost areas; and (2) additional services, including advanced telecommunications and information services, for providers of health care or educational services, as described in Sections 254(b)(6) and 254(h). As we interpret the 1996 Act, our first responsibility is to identify what core group of services should be supported by Federal universal service support mechanisms, to enable the first group of beneficiaries to purchase those services at just, reasonable, and affordable rates. (para. 11, p. 7)

40. Thus, the Commission limits its attention to consumers in rural, insular, and high cost areas, and with low incomes. This focus is too narrow and is not consistent with the 1996 Act. Even the 1934 Act had a broader perspective than this, and the 1996 Act expands the 1934 Act’s commitment to universal service. Designing targeted assistance programs for high cost areas and low-income groups is only part of the commitment of the Congress to ensure universal service. The language of the Act as well as statements of Congressional intent make it clear that the Congress placed a much broader charge on the Commission — assuring just, reasonable and affordable rates for all Americans.¹⁰

B. COMMENTORS' POSITION: A BROADER VIEW OF UNIVERSAL SERVICE POLICY

41. Although the 1996 Act establishes and the Notice recognizes a much broader view of universal service, the Notice does not address the underlying elements of this broader view.

42. The requirement in Section 254(b)(1) of the new law that “quality services should be available at just, reasonable, and affordable rates” is not limited to high cost areas and low-income consumers but, instead, applies to all consumers. In fact, the law reiterates this broad view of policy in Section 254 (i), which is entitled “Consumer Protection” and states unequivocally:

The Commission and the States should ensure that universal service is available at rates that are just, reasonable, and affordable.¹¹

¹⁰The 1996 Act, p. 1.

¹¹1996 Law, sec. 254(i)

43. This section implies that all consumers should benefit from the concept of universal service. There is no indication anywhere in the Act or Conference Report that the Congress intended to provide consumer protection only to consumers in high cost areas or low-income households. Thus, the term consumer protection can only be construed in its broadest sense.

The 1996 Act requires that universal service, as defined by Congress in Sections 254(b)(1) and 254(i) of the 1996 Law, applies to all consumers, not only to high cost areas and low-income consumers.

44. By declaring this very broad view of universal service, the Congress implicitly rejected the notion that telecommunications service should always be priced at the highest price the market can bear. In adding the term affordable to the first principle of universal service, Congress recognized that just and reasonable rates might be unaffordable for some consumers. By retaining the just and reasonable standard, Congress recognized that affordable rates might be unjust and unreasonable. Implicit in the interrelation between these two concepts is the notion that the market alone cannot be counted on to determine the pricing of telecommunications service for two reasons.

45. First, because of a lack of competition, unchecked market power over prices could allow excess profits resulting in unjust and unreasonable rates.

46. Second, even if competition were effective and prevented unjust or unreasonable rates, the market price could be too high for some to afford.

47. In recognition of the market's potential inability to provide all consumers with universal service as required by the 1996 Act, AARP, CFA, AND CU believe that:

- i. **Universal service should be ensured for all subscribers by the requirement that rates for all subscribers be just, reasonable, and affordable.**

- ii. **Universal service in high cost areas and for low income households is to be further ensured through targeted subsidies.**

V. JUST, REASONABLE AND AFFORDABLE RATES FOR ALL AMERICANS

A. THE SUBSCRIBER LINE CHARGE

The Discussion in the Notice

48. The failure of the Notice to recognize the 1996 Act's broad commitment to universal service leads the Notice to suggest several policies that are contrary to the intent of Congress. Most importantly, the Notice contemplates an increase in the SLC and the elimination of the CCL charge.

49. The Commission describes the subscriber line charge as follows (para 112, p. 45):

Currently approximately 25 percent of the unseparated cost of incumbent LEC [Local Exchange Carrier] subscriber loops (the lines connecting subscribers to local telephone company central offices) is allocated to the interstate jurisdiction. These carriers recover a significant portion of their loop costs allocated to the interstate jurisdiction directly from subscribers through flat monthly subscriber line charges, but the Commission's rules impose caps on the SLC rate at \$3.50 per month for residential and single-line business users and \$6.00 per month for multi-line business users. The incumbent LECs' remaining interstate allocated loop costs are currently recovered through a per-minute carrier common line (CCL) charge paid by the IXCs [Interexchange Carriers], and ultimately by subscribers in the form of increased interstate long distance rates.

50. The Notice further points out:

Many interested persons have argued that all costs associated with facilities dedicated to the use of a single subscriber should be recovered through a flat, non-traffic sensitive charge assessed on end-users. (para. 113, p. 45)

51. The Notice raises this issue in the context of language in the law that expresses a preference for the elimination of "implicit subsidies." The Notice indicates agreement with this view in stating that the CCL charge "appears to constitute a universal service support flow." (para. 113, p. 46) The Commission suggests that the CCL charge arises solely because of the desire of a previous Joint Board

and FCC to cap the SLC in pursuit of universal service goals. (para. 114, p. 46) The Notice then seeks comment on ways to reduce the CCL charge and increase the SLC. (para. 114, p. 46-47)

Commentors Position: The CCL Charge is a Charge for the Use of a Joint and Common Facility

52. AARP, CFA, AND CU view the CCL charge as a charge that covers the use of a joint and common facility, the loop.¹² The loop is a telecommunications facility used to complete all telephone calls -- local, intralata long distance, and interLATA long distance -- and to provide enhanced services. If the loop were not provided by the existing local companies, the IXC's would have to build their own loops, or rent the use of some other loop in order to sell their services to the public.

If implemented, the suggestion in the Notice that the CCL be eliminated, which would give interexchange carriers free use of loop, would constitute a cross-subsidy of a competitive service that violates Section 254 (k) of the 1996 Act.

53. Because the loop is a joint and common cost shared by competitive and non-competitive services, it is subject to Section 254(k) of the 1996 Act. This Section specifies the allocation of joint and common costs between services defined as universal service and competitive services. Section 254(b) states:

The Commission, with respect to interstate services, and the States, with respect to intrastate services, shall establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services.

54. The Conference Report makes a point of stating that in adopting Section 254 (k) "the House is receding to the Senate." (1996 Law, p. 134) The Senate report made it clear that a reasonable share of

¹²Richard Gabel, The Impact of Premium Telephone Services on the Technical Design, Operation and Cost of Local Exchange Plant (Public Policy Institute, AARP, 1992).

joint and common costs was the maximum that should be included in the rates for universal service, but that less could be allocated to these services.

The Commission and the states are required to establish any necessary cost allocation rules, accounting safeguards, and other guidelines to ensure that universal service bears no more than a reasonable share (and may bear less than a reasonable share) of the joint and common costs of facilities used to provide both competitive and noncompetitive services. (Conference Report, p. 129)

55. If the CCL charge is transformed into either an increase in the SLC or into a draw on the universal service fund, the IXC will be the recipients of a subsidy from those paying for the loop.¹³ In short, the IXC would be allowed to use a joint and common facility -- the loop -- without paying for it. If free access is granted to the IXCs, rates for universal service would be covering 100 percent of costs for facilities that are used by interLATA long distance services. Consequently, free access for the IXCs clearly violates Congress' intent that services included in universal service bear only a reasonable share of joint and common costs.

Commentors' Position: An Increase in the SLC is Contrary to the Public Policy Goal of Affordability

56. Imposing an increase in the SLC would also run counter to Congress' public policy goal that rates be affordable. Increases in the SLC would increase the burden of obtaining telephone service on all subscribers and the Commission has no way of guaranteeing offsetting rate reductions. Moreover, the Commission cannot ensure that whatever rate reductions are offered are enjoyed by the majority of residential subscribers on whom the burden of increases in the SLC will fall.

¹³Notice, para. 114, pp. 46-47.

B. POTENTIAL INCREASES IN BASIC RATES FOR OTHER REASONS

The Notice's Discussion of Rate Increases Due to Inflation

57. In the discussion of the SLC, the Commission makes reference to a staff document which argues that the SLC should be increased to keep pace with inflation. (note 229, p. 45)

58. Similarly, the Notice seeks comments on the following:

whether there should be procedures to recalibrate these rate levels to reflect changes in inflation or other factors that may make such recalibration necessary (para. 25, p. 15)

Commentors' Position: Costs Are Declining and Rates Should Decline, not Rise

59. AARP, CFA, AND CU find repeated references to inflation as the justification for rate increases both ironic and troubling. The Commission is well aware of the fact that telephone costs do not track inflation. AARP, CFA, AND CU estimate that the costs for the loop have been falling by approximately 7 percent per year for at least the last decade. Even if a SLC of \$6 had been justified in 1985 (which we believe was not), cost reductions since then would have lowered the justifiable amount to approximately \$3 today. The current SLC of \$3.50 has never been adjusted to reflect declining costs in the industry. As a result, instead of considering rate increases in the SLC or universal service packages, the Commission should consider reductions.¹⁴

VI. UNIVERSAL SERVICE IN HIGH COST AREAS

A. HOW SHOULD AFFORDABILITY AND COMPARABILITY OF RATES BE MEASURED IN HIGH COST AREAS?

The Discussion in the Notice

60. The Commission seeks comment on how affordable and comparable rates should be measured for service in high cost areas. (para 25, p. 15)

¹⁴David Gabel, Current Issues in the Pricing of Voice Telephone Services(AARP, 1995); Mark N. Cooper, Local Exchange Costs and the Need for a Universal Service Fund: A Consumer View (CFA, May 1994).

Commentors' Position: The Total Bill for Local and Intralata Toll Use is the Proper Basis for Determining Affordability and Comparability

61. Consistent with the definition of universal service offered above (See sections II.A. and III.B.), we stress that any measurement of affordability and comparability must include reasonable levels of usage. Use of local services is frequently restricted for many rural, high-cost customers because much of the business of daily life in rural areas requires an intralata long distance call. Local calling areas may allow rural customers only limited daily communication. As a result, many rural customers must pay a toll for calls within their community of interest but outside their local calling area. Consequently, the total local bill is higher than urban rates, not lower, in rural areas.

In assessing the affordability and comparability of rates, the Commission should take into account the total bill incurred for routine daily communications, including basic service and intralata long distance.

B. WHO SHOULD DETERMINE THE AFFORDABILITY AND COMPARABILITY OF RATES?

The Discussion in the Notice

62. The Commission seeks comment on whether it should attempt to set specific target prices for specific end-user customer classes. (para 26, p. 15)

Commentors' Position: The State Public Utility Commissions Should Determine the Affordability and Comparability of Rates

63. The Commission notes in a number of instances throughout the Notice that the circumstances of local exchange and exchange access services vary widely across the country. Consequently, the Commission would have difficulty picking a price for the customer, or defining customer classes.

The Commission should not attempt to set specific target prices for specific end-user customer classes. State public utility commissions should be responsible for determining the affordability and comparability of rates.

C. CALCULATING THE NECESSARY SUBSIDY

The Discussion in the Notice

64. The Notice seeks comment on the methods to be used in calculating the subsidy. (para. 27, p. 15)

Commentors' Position: All Revenues Must Be Taken Into Account

65. In addition to believing that the Commission should base an analysis of affordability and comparability of rates on the consumer's costs of usage and total bill, we believe the Commission should consider all sources of revenue in determining how to establish the amount a telecommunications provider may draw from the universal service fund. (para 27, p. 15) We believe that two important reasons exist for taking all revenues into account.

66. First, within a given exchange, companies generate revenues from a variety of services (*e.g.*, call waiting). Because these services use the loop, they should help cover its costs. Indeed, all services should help cover these costs. Historically, enhanced services have been high margin services, making major contributions to the overall revenue requirements of the company.¹⁵ Moreover, because high cost areas are not likely to experience competition in the near- to mid-term, these margins on services sold within high cost exchanges are likely to be maintained. Consequently, the revenues these services generate should be included in estimating whether a subsidy is necessary for the provider of telecommunications services in high cost areas.

67. Second, in the aggregate, rates for the services sold by virtually every local exchange company we are aware of cover their costs, plus a reasonable return on equity. Low levels of mark-up on some

¹⁵To some degree, margins are high because joint and common costs are not attributed to them (See Richard Gabel, The Impact of Premium).