STATE OF CALIFORNIA PETE WILSON, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

May 6, 1996

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Via Federal Express

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

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Re: CC Docket No. 96-45, FCC 96-93

Dear Mr. Caton:

Please find enclosed for filing an original plus eleven copies of the REPLY COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA 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:jmc

Enclosures

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

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

REPLY 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 these reply comments on the notice of proposed rulemaking ("NPRM") regarding universal service. Considering that over 200 parties commented to the Federal Communications Commission ("FCC" or "Commission") on hundreds of issues, the CPUC would like to focus its reply comments. More specifically, the CPUC would like to present these points:

- o The FCC's definition of basic service should remain limited until further review.
- o The FCC should not target the universal service subsidy based on income levels within geographic areas.
- o The FCC must revise the current Universal Service Fund ("USF"), Dial Equipment Minutes ("DEM") and Carrier Common Line ("CCL") subsidies to make them explicit.
- o The FCC should exercise caution when devising the schools and libraries discount program.
- o All carriers, including wireless carriers, must contribute to the universal service fund.

- o If the FCC decides to use a third party administrator, much like it uses the National Exchange Carriers Association ("NECA") today for the USF, the FCC should request bids for administration of the fund.
- o The FCC must rely on the experience of the states so that the best program can be developed.

A. The FCC's Definition Of Basic Service Should Remain Limited Until Further Review.

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."[1]

As the CPUC expressed in the opening comments, expectations for the definition of basic service will vary from state to state based on what consumers in each state have come to expect when they sign up for telephone service. The FCC may want to add access to long distance carriers, 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 majority of commenters state that the FCC should keep its definition limited. The FCC should allow its core definition to serve as a benchmark for the states. If an individual state would like to expand the basic service definition, then it has the clear authority to do so under the provisions of the Telecommunications Act of 1996.

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1. FCC NPRM, pp.11-12.

Some parties suggested adding such services as internet access and Integrated Services Digital Network ("ISDN") lines to the definition of basic service.[2] Expanding the FCC definition to include advanced services, such as ISDN, would be premature at this time and would greatly expand the size of the universal service fund. Initially, the FCC and the states must focus on retaining the affordability of basic telephone service for all Americans in this new competitive environment. In this respect, the Commission and the Joint Board must 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 services are useful to them before the Commission targets these services for universal service support.

If the FCC prematurely expands the definition of basic service, it 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.

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2. The CPUC would like to note that Internet access is currently available to all consumers over today's standard telephone lines.

B. The FCC Should Not Target The Universal Service Subsidy Based On Income Levels Within Geographic Areas.

In opening comments, parties suggested that the Commission should further target the support to high cost areas based on the income levels of the geographic area. The CPUC recognizes that this method would focus the subsidy, but is concerned that implementing this type of program is not only administratively infeasible, but also may discriminate against classes of consumers.

If the Commission tries to implement this program based on average income levels within geographic areas, it would discriminate against similarly situated consumers living in different areas. Incomes may vary more within geographical areas than between them. For example, a moderate income consumer living in a high income area may pay a higher rate than a moderate income consumer living in a low income area that receives universal service support. While this problem could be addressed through more precise targeting of a subsidy, this would lead to a commensurate increase in administrative costs. The Commission must also take into consideration the Act's principle that rates in rural and high cost areas must be "reasonably comparable" to rates in urban areas. (The Act §354(b)(3))

C. The FCC Must Revise The Current Universal Service Fund ("USF"), Dial Equipment Minutes ("DEM") And Carrier Common Line ("CCL") Subsidies To Make Them Explicit.

Several parties suggested that the Commission does not need to make major changes to the current subsidy mechanisms to ensure universal service. The parties state that these programs have worked well for years and should continue to support the Commission's goals. The CPUC believes that the FCC must completely revise these subsidy programs in order to comply with the mandates and the goals of the Telecommunications Act of 1996.

The existing mechanisms are not competitively neutral and are not the sort of explicit mechanisms that were contemplated in Section 254(e). The current mechanisms, the Universal Service Fund ("USF"), the Dial Equipment Minutes ("DEM") program and the use of the Carrier Common Line ("CCL") charge distribute money only to incumbent local exchange carriers. These mechanisms are not competitively neutral because other carriers desiring entry to 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.

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.

Any party which suggests that the FCC only needs to make slight modifications to its current programs is ignoring the mandates of the Act. This position jeopardizes universal service. The Commission's programs are not sustainable once competition develops in the local exchange market. The Commission must recognize this fact and must revise its current programs.

D. The FCC Should Exercise Caution When Devising The Schools And Libraries Discount Program.

The CPUC agrees with parties that ask the Commission to exercise caution when developing the schools and libraries discount program. The CPUC agrees with the New York Public Service Commission when it states, "While the question of which services should be provided under the definition of universal service for schools and libraries is still to be resolved in this proceeding, the likelihood is that the majority of such services will be intrastate in nature."[3] The services which the FCC is suggesting discounting are the services which provide schools and libraries with connections to the network: their local service.

Additionally, the Commission should recognize that many states are at various stages of developing programs to assist the connection of schools and libraries to the telecommunications network. The CPUC agrees with the Pacific Telesis Group when it says, "the Commission should ensure that states in which educational access to technology has already begun, or is well on its way, should not be made to subsidize states in which no

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3. Comments of the New York Public Service Commission, p. 8.

effort has been made to bring technology to the classroom."[4]

If the Commission is not careful in crafting a discount program, the universal service fund could grow out of control. Without reasonable constraints, the burden placed on telecommunications providers and consumers could be overwhelming. The FCC should devise a model program and allow states to modify it based on the progress each state has already made and the local rates for services.

E. All Carriers, Including Wireless Carriers, Must Contribute To The Universal Service Fund.

Airtouch Communications, Inc. makes the argument that the Commission should exempt wireless carriers from having to contribute to state universal service programs. Specifically, Airtouch comments, "The Commission should confirm in this proceeding that CMRS providers are subject to federal universal service support obligations and requirements -- and are not subject to the separate state requirements imposed on intrastate service providers."[5]

This argument has serious negative implications for universal service. Currently, wireless carriers are contributors to California universal service programs. The contributions of wireless carriers keep low income customers and customers in high cost areas connected to the telecommunications network. These

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4. Comments of the Pacific Telesis Group, p.7.

5. Comments of Airtouch Communications, Inc., p.2.

connections increase the value of the network for everyone. Congress was specific in its intent that the Commission must promote competitive markets, but Congress was equally specific that universal service must be preserved.

Today, only incumbent local exchange carriers are receiving universal service support for the wireline services they offer. Under the CPUC proposed plan, by the end of this year competitive local carriers could also draw from the fund if they are serving customers in high cost areas. For some of the less densely populated areas of California, parties have argued that wireless technologies would be more efficient than traditional wireline service. If that is the case, the CPUC will distribute subsidy funding to the wireless carrier serving the high cost area.

The FCC must reject the idea that wireless carriers should not make an equal contribution to universal service. These carriers benefit, just as other carriers do, from having a ubiquitous telecommunications network. Wireless customers do not call other wireless customers only; they can and do connect to anyone on the network.

F. If The FCC Decides To Use A Third Party Administrator, It Should Request Bids For Administration Of The Fund.

In its opening comments, the CPUC suggested that states would be in a good position to distribute universal service funds. Other parties commented that the FCC should use a neutral third party administrator. Many parties suggested that the Commission use NECA to administer the fund. The CPUC believes that if the Commission decides to use a third party administrator, it should request bids for administration of the fund. NECA may be in the best position to administer that fund as a neutral third party, but to ensure that the Commission is getting the administration of its fund at a competitive price, the FCC should allow other parties to bid. In this way, the FCC will be fulfilling the mandates of the Telecommunications Act by promoting competition in all areas.

G. The FCC Should Rely On The Experience Of The States So That The Best Program Can Be Developed.

In California, the CPUC has been working for more than a year to reform its universal service programs. Other states have been developing new universal service programs as well. This state experience should weigh heavily as the FCC makes its policy decisions. The FCC needs to work closely with the states so that the best program can be developed. By working with the states, the FCC can focus its energy on policies that need to be decided at the federal level.

States have experience in virtually all of the areas on which the FCC has requested comment in this NPRM. States have been dealing with issues such as service quality and affordability for many years. The FCC should rely on the expertise that states have developed. An FCC partnership with the states is the only way to ensure that universal service will be preserved for all Americans. Additionally, the FCC should allow states to develop their own universal service programs which are more closely tailored to the local needs within each state.

II. Conclusion

The CPUC submits these comments in response to issues raised by several parties in this proceeding. In addition to the CPUC's opening comments, the CPUC would like to stress that the FCC should limit the definition of basic service. The FCC should not target the universal service subsidy based on income levels within geographic areas. The FCC must revise the current USF, DEM and CCL subsidies to make them explicit. The FCC should exercise caution when devising the schools and libraries discount program. All carriers, including wireless carriers, must contribute to the universal service fund. If the FCC decides to use a third party administrator, the FCC should request bids for administration of the fund. The FCC must rely on the experience of the states so that the best program can be developed.

Respectfully submitted,

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May 6, 1996

CERTIFICATE OF SERVICE

I, Mary Mack Adu, hereby certify that on this 6th day of May, 1996, a true and correct copy of the forgoing **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** was mailed first class, postage prepaid to all known parties of record.

Mary Mack Adu

Mary Mack Adu

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