

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
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Federal-State Joint Board on) CC Docket No. 96-45
Universal Service)
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REPLY COMMENTS OF
THE NATIONAL CABLE TELEVISION ASSOCIATION, INC.

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SUMMARY

In these Reply Comments, NCTA addresses the basic issues raised by other commenters in this proceeding to the extent they are inconsistent with the positions taken in our initial comments. In particular, we discuss the definition of “core” universal services; the appropriate support to be provided to subscribers in high-cost, rural and insular areas as well as to low-income customers; services to be provided to schools, libraries and health care providers; and the administration of universal service support.

At the outset, we urge the Joint Board and the Commission to release a Further Notice of Proposed Rulemaking in this proceeding. The voluminous nature of the initial comments coupled with the numerous general questions posed in the NPRM have created a record which cries out for greater clarity and refinement. While we believe that a consensus seems clear on some issues (e.g., the definition of “core” universal services), it is evident that a more focused set of proposals will result in a more rational resolution of universal service issues.

We strongly dispute the Rural Telephone Coalition’s argument that competitive neutrality should not be one of the principles guiding the Joint Board and the Commission in adopting universal service rules for all areas of the country. We also strongly oppose arguments that additional services (beyond the “core” services proposed by the Commission) should receive support at this time.

We continue to support use of a proxy model to calculate the subsidy and submit an analysis prepared by Economics and Technology, Inc. addressing other parties’ comments on the Benchmark Cost Model. In related areas, we address the NECA and Southwestern Bell contentions that new entrants should be subject to Parts 32 (Accounting) and 36 (Separations) of the Commission’s Rules and the LECs’ arguments that they should be entitled to recover their underdepreciated plant in the universal service subsidies. With respect to the former argument,

we show that applying Parts 32 and 36 of the Commission's Rules would be antithetical to the 1996 Act's goal of removing barriers to entry into the local exchange market. As for the LECs' claim that their underdepreciated plant should be recovered in USF subsidies, we note that it is the LECs themselves who have written off these investments -- with the full knowledge of their shareholders -- as they have entered competitive markets such as video. They should not be permitted to recover their underdepreciated plant in USF subsidies and there is no evidence that Congress intended that they should.

In addition to our initial proposal that low-income subscriber support should be available to those living below the poverty level, we agree with AARP/CFA/CU that eligibility for low-income support should be based on eligibility for one of the four major public assistance programs. We urge the Joint Board and Commission to create a broad-based advisory council to make recommendations to the Joint Board and the Commission with respect to the services that should be provided for schools, libraries and health care providers.

Finally, we take issue with the LECs' view that interstate retail revenues should be the basis for assessing USF contributions, and reiterate our position that net revenues from telecommunications services should be the basis upon which the contribution should be assessed.

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**REPLY COMMENTS OF
THE NATIONAL CABLE TELEVISION ASSOCIATION, INC.**

The National Cable Television Association, Inc. ("NCTA"), by its attorneys, hereby files its Reply Comments in response to the Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding.

I. INTRODUCTION

In our initial comments, we urged the Commission to adopt a universal service fund ("USF") scheme that is nondiscriminatory and competitively neutral and that does not impede the development of local exchange competition by imposing substantial burdens on new entrants. We said that competition in the local exchange market need not be -- and should not be -- antithetical to universal service and that universal service can be preserved and enhanced through an explicit, carrier-neutral support program that is funded by all telecommunications carriers; that allows access to the fund for all telecommunications carriers who play a part in delivering universal service; and that places an independent third party in charge of the administration of the fund.

We also observed that payments from the fund should be tied to the extent to which contributors provide universal service to eligible citizens and that whatever funding approach is ultimately decided upon should be equitable to the ratepayer, the incumbent carrier and new

entrants and result in the provision of universal service at the least cost -- direct or indirect -- to society.

Among other things, we argued that:

- The list of “core” services described in the NPRM should receive universal service support in rural, insular and high-cost areas because each meets each and all of the statutory criteria in the 1996 Act;
- At this time, no other services meet the statutory criteria (particularly the requirement that they “have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers”) and therefore no additional services are currently entitled to universal service support;
- As a general matter, USF support in rural, insular and high-cost areas should be provided to residential users only, not to business or commercial users;
- A proxy model should be used to determine USF support levels. The Joint Sponsors’ Benchmark Cost Model is currently the best available model although it requires correction in key particulars because it dramatically overstates the size of the required subsidy;
- Low-income consumers should receive support for the same “core” services that consumers in rural, insular and high-cost areas receive, although the funding mechanism should be separate from that used for the general USF;
- Core services which are supported by universal service funds should also be made available to eligible schools, libraries, and health care providers, but the Commission must not mandate use of a particular technology to achieve its goals;
- No additional “special” or “advanced” services for schools, libraries or health care providers should be designated for support at this time, nor does the 1996 Act require such a designation.
- Net, rather than gross, revenues from telecommunications services should be the basis for assessing USF contributions; and
- The universal service funds should be administered by an independent entity, in a competitively neutral manner, free of the control or influence of the incumbent LECs.

In these Reply Comments, we address some of the basic issues raised by other commenters in this proceeding. In particular, we discuss the definition of “core” universal

services; the appropriate support to be provided to subscribers in high-cost, rural and insular areas as well as to low-income customers; services to be provided to schools, libraries and health care providers; and the administration of universal service support.

II. A FURTHER NOTICE IS REQUIRED IN THIS PROCEEDING

Well over six thousand pages of comments were filed in the initial round of this proceeding by over 250 parties. This was to be expected in light of the wide-ranging NPRM and the numerous parties potentially affected by the issues to be decided in this docket. Given the Congressionally-imposed mandate and deadline, the Commission had little choice but to initiate this Joint Board proceeding with a comprehensive notice as it did.

Nonetheless, the voluminous nature of the initial comments coupled with the numerous general questions posed in the NPRM have created a record which cries out for greater clarity and refinement. While we believe that a consensus seems clear on some issues (e.g., the definition of “core” universal services), it is evident that a more specific set of proposals will result in a more rational resolution of universal service issues. Recognizing that the Joint Board must make recommendations to the Commission in November, we nevertheless urge the Board and the Commission to issue a Further Notice in this proceeding.

In that Notice, the Board should propose specific rules and policies upon which comment can be focused. It can do so by eliminating some of the extraneous areas of inquiry which it sought to examine in the NPRM. While the questions posed in the NPRM are important, there is simply not enough time nor consensus to develop sound rules and policies based on the record to date in a number of areas. We urge the Board to narrow its inquiry in a Further Notice prior to its November recommendations. When the Commission initiates its proceeding on the Board’s recommendation, it also can ask for comment on some of the other important, but less time-sensitive, questions raised by this proceeding.

Moreover, as we discuss below, the need for further refinement of the issues is particularly acute with respect to defining the services that should be provided to schools, libraries and health care providers and the most effective means of delivering subsidized service to those institutions.¹ As a result, we propose below that a broad-based advisory council be created to address those particular issues through a “needs assessment” or similar proceeding. The results would be conveyed to the Joint Board to assist it in making its recommendations to the Commission.

III. GOALS AND PRINCIPLES

In the NPRM (at ¶8), the Commission asked commenters to discuss the general goals and principles included in the Telecommunications Act of 1996 upon which universal service policies are to be based. In particular, it asked whether the Commission should ensure that the means of distributing universal service support should be “competitively neutral.” This seemingly non-controversial principle was endorsed by NCTA and others in their initial comments.² However, one discordant note was sounded.

The Rural Telephone Coalition (“RTC”) argues that the NPRM’s suggestion that competitive neutrality should be an additional USF principle would be inconsistent with the principles of the 1996 Act. Specifically, RTC contends that Congress recognized that, at least in areas served by rural telcos, special consideration must be given to what it calls the different economic situations where competition would be expected to serve only the “cream” of the

¹ See Time Warner at 16-17 (suggesting a Notice of Inquiry should be adopted with respect to the access to basic and advanced services to be provided to schools, libraries and health care providers).

² For example, the state public service commissions and consumer advocates filing in this proceeding all supported creation of a universal service fund that was nondiscriminatory and competitively neutral. See e.g., Florida PSC at 3; NASUCA at 22-23.

market.³ It contends that specific provisions dealing with competition in rural areas embodied in Sections 214 (e), 251 (f), 253 (b) and (f) and 254 must be recognized in adopting USF rules. RTC contends that Congress prescribed specific “public interest” findings that state public service commissions must make before competitors can enter rural areas. These, it urges, were “deliberate variations” from the Act’s general commitment to maximum competition. RTC wants the universal service principles which will guide the Commission to reflect this view. In fact, it claims that any attempt to impose non-statutory competitive neutrality provisions or to reopen the competitive and consumer protection balance it argues Congress intended “would fail as ultra vires.”

This argument is pure protectionism, is not in the public interest, and must be rejected. While the 1996 Act made special provisions in some circumstances to deal with competitive entry in rural areas, there is no indication that the Commission’s universal service rules were to reflect those atypical provisions.⁴ Indeed, competitive entry should spur better service at lower cost to consumers in rural areas, just as in all other parts of the country. To the extent that

³ Rural Telephone Coalition (“RTC”) at 4-5. RTC claims in a footnote that the reason that potential entrants have not sought to serve rural areas is that these entrants “calculate correctly” that they can maximize their return on investment by concentrating on lower cost, higher volume customers. The major competitive LECs, it argues, have publicly acknowledged that their focus is on major urban markets. *Id.* at n.10. This argument ignores the fact that numerous smaller cable companies, particularly those in rural areas, have the desire and ability to provide telecommunications services in rural areas and have taken significant steps to do so.

⁴ Contrary to the suggestion of a number of rural telephone companies, Congress did not intend to (nor did it) mandate a “single wire” scenario in rural LEC service territories. *See, e.g.,* Evans Telephone Company et al. at 11. In fact, the 1996 Act contemplates competitive entry in rural markets. *See* 47 U.S.C. §§ 253(f), 214(e)(2). The very provisions cited by these rural telephone companies not only contemplate competitive entry, but leave the States the discretion to designate a second carrier as eligible to receive universal service support in a rural telephone company’s service area and to decide the extent of the obligations that should be imposed on the new entrant. *See* 47 U.S.C. §§ 253(f), 214(e)(2); *see also* 47 U.S.C. §251(f)(10)(c) (upon request of a cable operator, no deferral of interconnection obligations imposed on a rural telephone company in areas in which the rural telephone company begins providing video programming after February 8, 1996.)

provisions such as Section 214 (e) require state commissions to find that the designation of more than one eligible carrier in a rural area is in the public interest, those commissions should find that the public interest is served by competitive entry and eligibility for the same type of support provided to the incumbent LEC.⁵

Finally, as the Commission said in the NPRM: “[A] fundamental underlying principle of the 1996 Act is the Congressional desire ‘to provide for a pro-competitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies to all Americans.’”⁶ If the Commission were to adopt the RTC view, it would not merely ignore, but would contradict, the mandate it received from Congress in the 1996 Act to spur competitive entry into the local exchange market in all areas of the country.

IV. SERVICES TO BE SUPPORTED IN RURAL, INSULAR AND HIGH-COST AREAS

Perhaps the most fundamental question raised in this proceeding is the appropriate definition of universal service -- what are the “core” services for which universal service support should be provided to ensure access by consumers with low incomes or in rural, insular and high-cost areas. In our comments, we demonstrated as a matter of statutory construction that each and all of the statutory criteria in Section 254(c)(1) must be satisfied if a service is to be included in the definition of universal service. A wide range of other parties endorsed this

⁵ Proposals for competitive bidding to set the levels of required subsidies which NCTA generally supported in its comments are rejected by the RTC (at 17); but its objections should be dismissed because of the benefits such a procedure could bring to consumers in those areas, as discussed in the NCTA comments.

⁶ NPRM at ¶ 8.

construction of the statute.⁷ At a minimum, each of those criteria must be considered, as the statute explicitly states.

Using this approach, we generally concurred with the Commission's proposed list of "core" services: (1) voice grade access to the public switched network ("PSN"); (2) touch-tone; (3) single party service; (4) access to emergency services (911)⁸; and (5) access to operator services. We also observed that no additional services satisfied each of the statutory criteria at this time. Given that universal service is an "evolving" concept, however, we indicated that additional services might well be added in the future as the statutory criteria are satisfied.

The comments filed by other parties in this proceeding reflect a general consensus supporting the NPRM's approach to the definition of universal service for rural, insular and high-cost areas and low-income consumers. In this regard, most of the incumbent LECs have urged the Commission to adopt the proposed core list (with some additions) and to adhere to the statutory criteria for establishing the initial list and adding to it.⁹ In fact, while several parties suggested adding "additional" services such as directory assistance, white pages listings and some level of local service in the basic package, those services might well be considered components of voice grade access to the PSN.¹⁰ However, other proposed "additional" services simply are not consistent with the statutory requirements, particularly the requirement that they

⁷ See e.g., Ameritech at 8, n.14; USTA at 5; Georgia PSC at 6.

⁸ We expressed concern about including access to E-911 services (as opposed to 911) among the core services, a position with which other commenters agree. See e.g., NYNEX at 11 note 20.

⁹ See e.g., Bell Atlantic at 7 (adds access to IXCs, white pages listing); US West at 5-7 (access to directory assistance, IXCs, TRS); BellSouth at 5-6 (white pages listing); Southwestern Bell at 8 (white pages, directory assistance, single party business line); NYNEX at 11-13 (directory listing, access to IXCs, TRS).

¹⁰ A number of state commissions and consumer counsels made this suggestion. See also Initial Comments of the American Association of Retired Persons, Consumer Federation of America, and Consumer's Union ("AARP/CFA/CU") at 9-10.

have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers.¹¹ Moreover, adopting those suggestions would result in a larger subsidy fund and a potential barrier to new entrants, both consequences inconsistent with the goals of the 1996 Act.

Perhaps most telling in this regard is the fact that not only did virtually all of the incumbent LECs and their potential competitors support the proposed “core” definition, but also the overwhelming majority of comments filed by state public service or utility commissions and offices of consumer counsel supported the proposed list of “core” services. These entities recognized that with every additional service added to the list of core services the price of the universal service fund increases.¹²

If the Commission concludes that a service need not satisfy each and all of the statutory criteria to warrant universal service support -- a conclusion contrary to the language and intent of the statute -- the Commission should place a heavy burden on any proponent seeking to add new services to the definition. As Bell Atlantic suggests, “[i]f a service does not meet all the criteria, the evaluation [of the four criteria] must show why the public’s interest in including the service on the list is so overwhelming that not all [of] the criteria need to be met.”¹³ In such an evaluation, the Commission must consider the effect on competition which might result if new subsidized services are to be added to the universal service definition.

¹¹ See Alaska PUC at ii (urging, *inter alia*, addition of local dialing access to Internet, line quality for fax, access to optional digital services such as switched 56 and ISDN).

¹² See Maine PUC, et al. at 16.

¹³ See Bell Atlantic at 7.

V. IMPLEMENTATION OF SUPPORT

1. Who Should Receive Support? Despite some suggestions to the contrary,¹⁴ we continue to agree with the suggestion in the NPRM that federal support, even in rural and insular areas, should be limited to single-line residential services. Proposals to include business line services appear to be inconsistent with the Act's requirement that defined services have been subscribed to by a substantial majority of residential subscribers. Moreover, if business lines were to be supported, the universal service fund will be increased exponentially and, as we said in our initial comments, even in rural areas, most single line business users are likely to be in the downtown core of such areas and probably are not as expensive to serve as are the outlying residential customers.

2. How Should Support Be Calculated? Perhaps the most contentious issue in this proceeding will be how to calculate what support is needed for rural, insular and high-cost areas. In this regard, the NPRM asked for comment on use of a proxy model to determine the level of assistance to high-cost and other areas requiring support as opposed to relying on a LEC's reported costs. NCTA endorsed the use of a proxy model, as have most of the commenters in this proceeding. In this regard, while the Rural Telephone Coalition, BellSouth and Southwestern Bell reject the use of proxy models,¹⁵ both NYNEX and US West (with some modifications) continue to endorse the Benchmark Cost Model ("BCM") which they have

¹⁴ See e.g., Rural Telephone Coalition at 8; Southwestern Bell at 8; USTA at 13.

¹⁵ Rural Telephone Coalition at 16-17; BellSouth at Attachment (NERA Report); Southwestern Bell at 14-17.

sponsored with MCI and Sprint.¹⁶ Pacific Telesis supports its own Cost Proxy Model (“CPM”).¹⁷ Finally, Ameritech is open to the use of proxies.¹⁸

The dispute now is over what model (or type of model) best serves the purpose of calculating the support required and is consistent with the principles of the 1996 Act. With our initial comments, we submitted a report prepared by Economics and Technology, Inc. (“ETI”) examining the Benchmark Cost Model (“BCM”) advanced by the Joint Sponsors (MCI, NYNEX, Sprint and US West). As ETI concluded, the BCM is useful for determining high-cost areas. The BCM relies upon publicly available data, generally incorporates reasonable network engineering assumptions, and models forward-looking costs. However, ETI found that the BCM in its present form has several shortcomings that can and must be remedied. In its report, ETI suggested a number of adjustments to the BCM. When these corrections are made, the model yields a substantially smaller and more accurate universal service funding requirement. ETI also commented unfavorably on the then-existing Pacific Telesis Model.

No other party to this proceeding has submitted a comparable comprehensive analysis of the BCM in its initial comments. A number of parties did, however, address the BCM. Many parties, including the public service commissions of Illinois, Indiana, Wisconsin, Missouri, Alaska, New York, Pennsylvania and Maine et al., as well as the National Association of State Utility Consumer Advocates (“NASUCA”) also critiqued the BCM and suggested modifications along the lines of those included in the ETI Report (e.g., adding business lines to the Model,

¹⁶ NYNEX at 10; US West at 8.

¹⁷ Pacific Telesis at 31. In a recognition of a major deficiency many found with its model, Pacific Telesis now claims it no longer requires the use of proprietary data.

¹⁸ Ameritech at 12.

allowing for the use of different switching architectures for areas with different characteristics, and accounting for the real-world distribution of customers in Census Block Groups).

Others argue that the BCM -- or any type of proxy model -- should not be used at all. For example, Southwestern Bell (“SBC”) opposes the use of the BCM because it believes the BCM does not provide a reasonable comparison to actual costs by study area or by wire center. It claims that the validity of the model must be established by testing its hypothesis against known and measurable results. According to SBC, “[t]he only appropriate test is the comparison to actual network costs of study areas across the nation.”¹⁹ In this regard, it has compared the BCM for each state and each incumbent LEC to actual USF information as reported by NECA in a number of particulars and finds the BCM wanting.

Similarly, BellSouth submitted a report by National Economic Research Associates (“NERA”) addressing numerous issues including the BCM.²⁰ NERA (at 38) finds fault with the BCM (“We believe the BCM is not yet sufficiently reliable for determining proxy costs for specific serving areas in a state”), and in particular finds the BCM “most troubling because it does not depict the actual costs of an actual local exchange carrier.” *Id.* (emphasis in original) A similar criticism of any proxy cost model is suggested by the Rural Telephone Coalition.²¹

Of course, one of the primary reasons for turning to a proxy model is to avoid reliance upon the costs reported by inefficient local exchange carriers -- costs which can be manipulated to the LECs’ advantage. As Pacific Telesis observed: “A proxy cost model is better than using

¹⁹ Southwestern Bell Telephone Company at 14-17.

²⁰ See BellSouth Corporation, BellSouth Telecommunications, Inc. at Attachment (NERA Report) at 36-40.

²¹ Rural Telephone Coalition at 16-17 (“A proxy method that would limit support to some preconceived cost level based on a formula that deviates from what is needed...is unlawful.”)

actual costs since using a model removes the incentive for inefficient operation that comes with allowing recovery for any level of investment or engineering practice.”²² The Commission has endorsed this view: “A high-cost assistance program based solely on reported costs...provides no incentives for efficient operation.”²³ Such a methodology also provides the opportunity for LEC manipulation of the very cost figures upon which its subsidies are based. Finally, as even Bell Atlantic recognizes, the 1996 Act requires universal service funding to “consumers...in rural, insular and high cost areas,” not to companies serving those areas.²⁴ For this reason, an approach based on the reasonably approximated costs of serving areas with particular characteristics, not the costs that particular companies may incur for any of a variety of reasons, is appropriate.

US West, one of the BCM’s Joint Sponsors, endorses the BCM as a foundation for a proxy cost model and also finds some merit in the Pacific Telesis Model.²⁵ In an Appendix to its comments, US West briefly discusses some developments with respect to the BCM modeling process which, it claims, “enhance the ability of this proxy-type model to serve as the basis for the efficient distribution of funds to rural, insular and high-cost areas.”²⁶

NASUCA also briefly addressed the BCM and the Pacific Telesis Model.²⁷ NASUCA endorsed the use of a verifiable proxy cost model for determining the size of the universal

²² Pacific Telesis at 18.

²³ See Amendment of Part 36 of the Commission’s Rules and Establishment of a Joint Board, Notice of Proposed Rulemaking and Notice of Inquiry, FCC 95-282, released July 13, 1995, at ¶55.

²⁴ See Bell Atlantic at 9 citing Section 254(b)(3) (emphasis added).

²⁵ US West, Inc. at 8-11.

²⁶ Id. at Appendix A, p.1.

²⁷ NASUCA at 19-21.

service fund, as did NCTA. And, as did NCTA, it found the then-existing Pacific Telesis Model wanting because, among other things, it “relies on proprietary models and incorporates confidential information from cost studies.”²⁸ It concludes:

[t]he Telesis model has been cross pollinated with assumptions and data from Pacific Bell Cost Studies that serve to grossly overstate the costs of basic exchange service and improperly inflate the costs of rural service. It would be difficult, if not impossible, for the Commission and interested parties to confirm that the Telesis model produced proxy cost estimates that comply with costing principles acceptable to the Commission or whether the model is “technology neutral.”²⁹

NCTA asked ETI to review the Southwestern Bell, BellSouth (NERA) and US West discussions of the BCM in light of the ETI Report on the BCM submitted with our initial comments. ETI has also reviewed Pacific Telesis’ proposed modification of its proxy model which purports to eliminate the use of proprietary data. Finally, ETI addresses the USTA proposal to set an affordability “benchmark” based on nationwide average loop costs. ETI’s analysis of those comments is appended hereto.

While ETI addresses each of these submissions in detail, in general it concludes that the advantages of having an objective measure of efficient, forward-looking costs far outweigh the purported benefits from the use of “actual” embedded costs, and that the proxy approach is more compatible with the 1996 Act’s overarching pro-competitive policies. ETI also responds to claims regarding carrier-specific costs and models, including the CPM. It observes that for each and every carrier-specific cost analysis (whether in the form of a model or cost study), specific and detailed scrutiny is required to determine the reasonableness of assumptions and accuracy of the underlying data. Since much of this data is within the exclusive control of each LEC (and

²⁸ Id. at 20.

²⁹ Id. at 20-21.

may, in addition, be treated as proprietary), ETI concludes that analyzing and correcting carrier-specific models for each LEC would create an enormous burden on the FCC, state PUCs, and all other interested parties (as evidenced by the extensive, ongoing proceedings in California).

A number of related costing issues warrant brief mention. First, one of the other BCM sponsors, NYNEX, continues its support of the BCM, but states that the BCM should only be used for price cap LECs because it “may not accurately portray the costs of a carrier that serves only a limited or a smaller area, and this could cause financial harm to small carriers.”³⁰ In fact, as we stated in our initial comments, because price cap LECs have the ability to retain earnings above cost so long as their prices remain below their caps, the Joint Board and the Commission should seriously consider whether those LECs require universal service support at all.³¹

Second, the National Exchange Carrier Association (“NECA”) urges continuation of the existing universal service fund approach. NECA acknowledges that a proxy model may be appropriate for large LECs, but argues that it should not be mandated for rural companies. In addition, NECA (echoed by Southwestern Bell)³² argues that new entrants should be subject to Parts 32 (Accounting) and 36 (Separations) of the Commission’s Rules to allow regulators to base support payments on the actual costs of these new entrants.³³ Under the NECA approach, the actual cost data of new entrants would be compared with the disaggregated incumbent LEC costs in order to develop limits on the per-line support for the new entrants where their costs exceed those of the incumbent LEC.

³⁰ NYNEX at 9.

³¹ See NCTA at 13; See also Time Warner at 11-12 (only LECs subject to rate of return regulation should be eligible to draw funds for individual high-cost areas).

³² Southwestern Bell at 13-14.

³³ National Exchange Carrier Association at 10.

This proposal is inappropriate and unacceptable. It flies in the face of the intent of Congress in the 1996 Act which is to reduce barriers to entry for new entrants into the local exchange market. Indeed, the relevance of methodologies such as those in Parts 32 and 36 created for a monopoly marketplace are being questioned in this very docket. New entrants should not be saddled with the requirements which NECA proposes.

Finally, one consistent theme seems to be woven through the RBOC comments. That is the idea that the RBOCs are entitled to recovery for underdepreciated plant.³⁴ This is absolutely not the case. The RBOC's purported rationale is that a regulatory bargain/social contract existed between the LECs and the relevant regulatory bodies which justifies recovery of underdepreciated plant. Specifically, the RBOCs claim that underdepreciated plant is the result of decisions by state and federal regulators which encouraged long depreciation lives in order to keep telephone rates low. They also contend that their cost of capital will increase as shareholders will be reluctant to invest in the future because of a perceived greater risk on recovery of their investments.

In fact, however, it is generally the LECs themselves who are to blame for the claimed underdepreciation. In many instances the outside plant, particularly local loops consisting of twisted pair copper wires, continue to have a useful life for the delivery of services. It is the LECs who, in their desire to provide video and broadband services, have written these investments off their financial books as they argued that still useful plant had to be replaced to open new revenue streams. Thus, the physical plant which is still both used and useful (yet no longer has any financial value) is that for which the LECs seek to force new entrants and other telecommunications providers to pay by including its costs among the costs to be subsidized by

³⁴ See e.g., BellSouth at 10; Southwestern Bell at 23; US West at 11.

the USF. However, as these investments have been written off the LECs' financial books over the past several years, shareholders responded in most instances by bidding LEC share prices even higher. Thus shareholders -- again the purported rationale for recovery is to compensate shareholders -- have already dismissed the unrecovered plant as a concern.³⁵ Simply stated, LECs seek to recover the cost of investments which they have already written off their financial statements, which shareholders have been told may never be recovered, and for which shareholders have already recognized that recovery is unlikely with no demonstrable adverse effect on the willingness of investors to invest.

VI. SUPPORT FOR LOW INCOME CONSUMERS

The NPRM proposes that, at a minimum, low income customers should receive support for the same core services designated for rural, insular and high-cost areas. NCTA endorsed that approach and also supported continuation of the existing Lifeline and Link Up programs which provide support for low-income consumers. We also urged the Commission to encourage -- but not require -- toll limiting and related services for low-income subscribers.

As for who should be eligible for low-income support, NCTA stated that "low income" should be defined consistently across the country, rather than on a state-by-state basis, even though some state-to-state differences may exist. Therefore, for example, a definition such as "anyone living below the poverty level" could be the federal definition, but the poverty level benchmark could differ from state to state. Regardless of the definition, NCTA urged that revenues used for this purpose should be kept separate from the revenues used to subsidize service in insular, rural and high-cost areas.

³⁵ In fact, in changing from SFAS 71 to SFAS 101 accounting most RBOCs have explicitly indicated to their shareholders (in their respective 10-K filings) that the write-off is occurring because, with the advent of competition, there can be no assurance of recovery.

NCTA's position on support for low-income subscribers is echoed by many of the parties in this proceeding. In general, the LECs urge continuation of existing programs, and limited core services for low-income subscribers. Some parties call for the addition of toll-limiting services in the core definition for low-income subscribers,³⁶ while some interexchange carriers just as vehemently object to such a mandatory approach.³⁷ We continue to believe that our "encourage, but not require" approach will best serve the public interest.

The AARP/CFA/CU comments suggest that eligibility for low-income support should be based on households currently enrolled in or eligible for any of the four major public assistance programs -- Aid to Families with Dependent Children, Supplemental Social Insurance, Medicaid and Food Stamps -- as well as to "households with incomes below 125% of [the] poverty [level]."³⁸ The former criterion -- eligibility for one of the four major public assistance programs -- is a reasonable eligibility criterion for receipt of low-income universal service support. In fact, it is the basis for some of the existing support programs. However, with respect to the latter ("125% of poverty") suggestion, we believe that a standard which results in a greater degree of certainty with respect to who is covered, and therefore the ultimate size of the required subsidy, is needed.

Such a standard should cover those truly in need of support while keeping the fund manageable. One such approach would be to use the first criteria advocated by AARP/CFA/CU -- eligibility for any of the four major assistance programs. Another would be based on eligibility for the existing low-income support programs. For example, "[u]nder Lifeline and

³⁶ See e.g., Bell Atlantic at 14; AARP/CFA/CU at 22; Office of Communication of the United Church of Christ, et al. at 9-10.

³⁷ See e.g., AT&T at 13 note 16; Sprint at 21; CompTel at 18.

³⁸ AARP/CFA/CU at 21.

Link Up America programs, benefits are available to persons who pass a ‘means’ test such as eligibility for food stamps or Medicaid. A second requirement for FCC certification is that each applicant’s eligibility for benefits be verified. The state has considerable latitude in selecting means tests, shaping the benefits, and determining the geographic availability of the programs.”³⁹ Since these programs appear to be working satisfactorily, they can provide a reasonable model for determining eligibility for the low-income support contemplated by the 1996 Act. Nevertheless, the Commission must take every step possible -- consistent with the public interest -- to avoid establishing obstacles to new entrants by foisting unnecessary subsidy costs on them as the price of entry.

VII. SCHOOLS, LIBRARIES AND HEALTH CARE PROVIDERS

Consistent with the 1996 Act, the Commission in the NPRM sought comment on numerous issues relating to the mandate that it may designate services for support for elementary and secondary schools and classrooms, health care providers and libraries and that such entities “should have access to advanced telecommunications services.” However, as Continental Cablevision observed: “Notably,...the statute does not require the Commission to designate any ‘advanced services’ for universal service support. Rather, the Commission’s mission is to develop competitively neutral rules to enhance access to these services, to the extent technically feasible and economically reasonable.”⁴⁰ Because the cable industry has been a leader in providing communications facilities and services to schools and classrooms,⁴¹ we welcomed the opportunity to address these issues and did so in our initial comments.

³⁹ Monitoring Report, CC Docket No. 87-339, Federal-State Joint Board State in CC Docket 80-286 (May 1995) at 48.

⁴⁰ Continental Cablevision at 6-7 (emphasis in original)

⁴¹ See e.g., Tele-Communications, Inc. at 17-23; Continental Cablevision, Inc. at 5-12.

In our comments, we agreed with the Commission's tentative conclusion to make "core" telecommunications services available to schools and libraries at the discount contemplated by Section 254 (h)(1)(B). In addition to these basic services, we urged the Commission and the states, in determining with care which, if any, additional telecommunications services to support, to guard against mandating particular technologies and instead to adopt result-oriented goals. As we said, to do otherwise could unnecessarily discriminate against new entrants who offer different network architectures and superior technologies. We urged a similar approach with respect to services to be provided to health care providers. We also emphasized that the Commission's task with respect to advanced services for schools and libraries is to develop competitively neutral rules to enhance access to these services, to the extent technically feasible and economically reasonable, not to provide the services themselves (including hardware and software) at subsidized rates.

Predictably, the myriad of issues on this topic raised in the NPRM resulted in voluminous comments by all affected entities. A multitude of schools, libraries, health care providers, associations of such groups and other related entities filed comments in this proceeding. Not surprisingly, those groups sought an expansive definition of services to be provided to them at the greatest discount possible (where applicable).⁴² Indeed, there are some who argue that not only should access to advanced services be provided for schools and libraries at the statutorily-mandated discount, but also that such access, and the services themselves, should be free.⁴³

⁴² See e.g., Comments of the American Federation of Teachers; Comments of The Access to Communications for Education [ACE] Coalition; Joint Comments of National School Boards Association, American Library Association et al.; Comments of the American Telemedicine Association.

⁴³ See Comments of Richard W. Riley, Secretary of Education at 2; Statement of Richard W. Riley, U.S. Secretary of Education before the Federal Communications Commission, April 12, 1996 at 1("[E]very

On the other hand, a number of parties recognize the consequences attendant to a “quick fix” approach to the problems of providing subsidized services and access to schools, libraries and health care providers. As the Idaho Public Utilities Commission observed:

The main concern is that education and health care entrepreneurs, in combination with telecommunications carriers, will “game” the system to enrich them both. Over-pricing services so they can be “discounted” to educational providers by carriers and expensive services provided by health care providers without cost-effective demand for them by customers are dual concerns. There is potential here to enrich both carriers and public service providers at the expense of the general public.

Do not attempt a list of what additional services should be available. The only sound list would be one that is almost behind the technology, limited to what we know can work and be provided now. Technology will quickly outpace such a list, creating a need for further bureaucracy to update and oversee it. Try to make demand a driver with health care providers, more so even than for education.

The best way to deal with these “public service discounts” is to insist on some sharing of facilities, to make sure that whatever is put in place is fully utilized. This requires some sort of joint proposals where that is feasible. The mere fact of sharing of facilities would help alleviate the concerns over excessive demands by such groups, resulting in cost burdens placed on general customers.⁴⁴

Echoing these concerns is the Washington Utilities and Transportation Commission:

The Washington UTC questions the soundness of a policy mandating discounted services for schools and libraries over the long term. The potential costs of such support for schools and libraries throughout the United States could be very high, placing massive burdens on telecommunications providers and users of the network....This kind of support would be more appropriately provided through the congressional appropriation of general tax revenues. The Joint Board should consider recommitting this issue to Congress for amendment of the Act.⁴⁵

effort should be made to give our nation’s schools and libraries free access to the new telecommunications world that is now emerging or access at substantially discounted rates”).

⁴⁴ Idaho Public Utilities Commission at 10-11.

⁴⁵ Washington Utilities and Transportation Commission at 15.

Whether or not the Joint Board and Commission seek recommitment, there is an alternative procedure that finds support in the record of this proceeding, and that has the benefit of continuing to address these issues in a deliberate, yet prudent, manner.

In this regard, NCTA urges the Commission to adopt a variant of the approaches recommended by NYNEX,⁴⁶ Pacific Telesis,⁴⁷ Time Warner,⁴⁸ Teleport⁴⁹ and the Florida Cable Telecommunications Association.⁵⁰ Each of these parties, in essence, recommends referral of some of the complex issues dealing with support for schools, libraries and health care providers in this docket. For example, NYNEX recommends establishment of an Education Telecommunications Council. Under the NYNEX proposal, this council (called for in a recent Aspen Institute Report) would have representatives from public and private schools, the telecommunications industry, State and Federal government agencies that deal with education, and providers of educational computer software and hardware, professional training and educational research and evaluation. It would develop proposals to enable schools to obtain access to information technologies.

As NYNEX notes, the Commission recently announced its intention to form a Telemedicine Advisory Committee to assist it in implementing the Telecommunications Act.⁵¹ That Committee will provide a report to the Joint Board to assist it in making its

⁴⁶ NYNEX at 18-20.

⁴⁷ Pacific Telesis at 12.

⁴⁸ Time Warner at 16-17.

⁴⁹ Teleport at 18-19.

⁵⁰ Florida Cable Telecommunications Association at 13-18.

⁵¹ See News Release, "Commission Announces Intention to Form Telemedicine Advisory Committee to Assist Implementation of the Telecommunications Act," April 12, 1996.