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May 8, 1996

Mr. William F. Caton
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

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

Dear Secretary Caton:

Enclosed are an original and four copies of the Reply Comments of the American Public Power Association in the rulemaking referenced above. We have also served a copy of these comments upon all Federal-State Joint Board members included on the service list published in the *Federal Register* at 61 Fed. Reg. 10521 (March 14, 1996).

By separate cover, in accordance with paragraph 144 of the Commission's Order, we have also submitted a copy of the enclosed comments on disketter to Ernestine Creech of the Commission's Common Carrier Bureau.

Sincerely,


James Baller

cc: International Transcription Service

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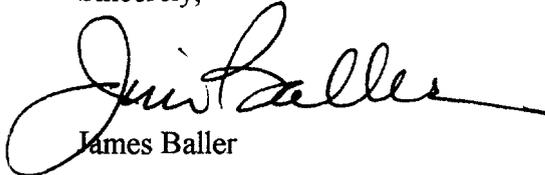
Ms. Ernestine Creech
Federal Communications Commission
Common Carrier Bureau
Accounting and Audits Division
Suite 257
2000 L Street, N.W.
Washington, D.C. 20554

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

Dear Ms. Creech:

Enclosed are a hard copy and a diskette version of the Reply Comments of the American Public Power Association in the rulemaking referenced above.

Sincerely,



James Baller

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

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

To the Commission and the Joint Board:

**REPLY COMMENTS OF THE
AMERICAN PUBLIC POWER ASSOCIATION**

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AMERICAN PUBLIC POWER ASSOCIATION

May 8, 1996

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

In the Matter of)
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Universal Service)
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To the Commission and the Joint Board:

**REPLY COMMENTS OF THE
AMERICAN PUBLIC POWER ASSOCIATION**

In this submission, the American Public Power Association (APPA) replies to certain comments filed in response to the Commission's Notice of Proposed Rulemaking on Universal Service (NPRM). APPA is the national service organization for approximately 2000 consumer-owned electric utilities throughout the Nation, located in every state except Hawaii.

In the opening round of comments, UTC, which represents both privately-owned and consumer-owned electric utilities on telecommunications matters, filed comments that reflect positions on which all utilities could agree. APPA endorses and associates itself with these comments. Given its diverse constituency, UTC could not address issues on which the interests of privately-owned and consumer-owned utilities may diverge, and it cannot now reply to first-round comments that have raised some of these issues. APPA has therefore undertaken to file its own reply comments.

For more than a century, consumer-owned electric utilities have played a vital role in making electricity universally available and have furnished essential competition in the electricity industry. They are now well situated to contribute toward meeting the twin statutory goals of giving all Americans access to telecommunications at "just, reasonable, and affordable rates" and

of establishing a competitive environment in the telecommunications arena. APPA submits that the Commission should encourage their involvement by resolving all questions of interpretation in this and other rulemakings to implement the Telecommunications Act of 1996 in a way that gives consumer-owned electric utilities a full, fair and equal opportunity to participate in building our National Information Infrastructure (NII).

Background

Consumer-owned electric utilities emerged in the 1880's in numerous small communities that were literally left in the dark by profit-driven privately-owned utilities. By 1890, more than 150 towns were operating lighting and power systems, and in the next decade, that number multiplied at a rapid rate. Because these consumer-owned power systems typically charged prices that were half the rates charged by private utilities, "common people gained access to the miracle of electric lights, while in other cities only the wealthy could afford to switch from traditional gas or kerosene lamps."¹

Consumer-owned power systems also filled gaps left by privately-owned utilities in many larger cities. For example, despite stiff resistance from the competing private utility, the City of Detroit established a municipally-owned power system that reduced prices by fifty percent within seven years and extended service to the stores and homes of common people. Similar experiences elsewhere caused the popularity of consumer-owned power to soar. By 1923, the number of consumer-owned electric utilities peaked at more than 3000.²

¹ R. Rudolph and S. Ripley, Power Struggle: The Hundred Year War Over Electricity at 10 (1986) (hereafter "Power Struggle").

² Power Struggle at 47

At the same time, following successive periods of overbuilding, shakeouts and consolidations similar to those which are widely expected to occur in the telecommunications industry over the next few years, privately-owned utilities also reached the zenith of their power in the 1920's, when 16 holding companies controlled 85 percent of the Nation's electric service. The privately-owned electric utilities seemingly had every advantage over their consumer-owned counterparts -- a vertically and horizontally integrated industry, freedom to operate economically on a regional scale, ineffective regulation by government agencies, vast financial support from Wall Street, and dominance of public relations. Not surprisingly, consumer-owned power suffered, declining to 2,320 systems by 1928. Still, enough consumer-owned power systems remained to raise "troubling questions about fair rates, democratic control, and public service that would be widely debated again in the 1930s."³

In the 1932 presidential election campaign, electric power became the "dominant" issue. On one side, President Hoover argued that "[t]he majority of men who dominate and control electric utilities belong to a new school of public understanding as to the responsibilities of big business to the people."⁴ On the other side, Franklin D. Roosevelt maintained that:

[W]here a community, or a city, or a county, or a district, is not satisfied with the service rendered or the rates charged by the private utility, it has the undeniable right as one of its functions of government . . . to set up . . . its own governmentally owned and operated service . . . the very fact that a community can, by vote of the electorate, create a yardstick of its own, will, in most cases, guarantee good service and low rates to its population. I might call the right of the people to own and operate their own utility a "birch

³ Power Struggle at 46-52; D. Nye, Electrifying America at 182-83 (1990) (hereafter "Electrifying America").

⁴ President Hoover's comments are quoted in Power Struggle at 66.

rod in the cupboard, to be taken out and used only when the child gets beyond the point where more scolding does any good.”⁵

Over the last six decades, consumer-owned electric utilities have repeatedly proven that President Roosevelt's “yardstick” and “birchrod” concepts work very well in practice. As a result, consumer-owned power systems now provide electricity to approximately 35 million Americans. Three-quarters of the public power systems are located in towns with populations of less than 10,000, but some of the Nation’s largest cities also operate electric utilities, including Los Angeles, Sacramento, Phoenix, Seattle, San Antonio, Austin, Memphis, Nashville, Jacksonville and Orlando.

The “yardstick” and “birchrod” concepts should also work well in the field of telecommunications, into which many consumer-owned electric utilities have evolved, or are likely to evolve, over the next few years.

Electric utilities require “real-time” communications capabilities to meet their information and system command-and-control needs. As a result, many utilities have constructed, or are considering constructing, sophisticated communications networks that include virtually all of the media that will be incorporated into the National Information Infrastructure -- fiber optic cable, coaxial cable, twisted pair copper wire, microwave, trunked land/mobile radio systems and power line carriers.

The demands of consumer-owned electric utilities for enhanced telecommunication and information services are expected to rise as the utilities seek operate with ever greater efficiency

⁵ President Roosevelt’s speech, delivered in Portland, Oregon in September 1932, is quoted in R. Morgan, T. Riesenberg and M. Troutman, Taking Charge: A New Look at Power at 9 (1976).

in order to survive in the new era of restructuring and deregulation of the electric power industry. The need to implement mandated energy conservation and environmental protection programs will also reinforce these trends. Computers and microprocessors will play an increasingly important role in improving distribution efficiency and in enhancing the control, reliability and responsiveness of electrical service to the public. Advanced distribution devices will replace mechanical devices that control power flow on distribution systems, and new technology will make real-time pricing a reality in the near future. In short, sophisticated communication networks will be essential for utilities to ensure reliable service and thrive in the next century.

Faced with the need to upgrade their infrastructure for the purposes of their own core business, consumer-owned electric utilities can accelerate the pace of making telecommunications services universally available in their communities. That is so because the communications facilities needed by utilities for load management and control operations can readily carry telephone conversations, cable television entertainment, data, and other interactive communications, including Internet services.

Consumer-owned electric utilities have at least three options for using their enhanced infrastructure for the purposes of telecommunications. The simplest -- and the one most likely to be adopted widely -- is for them to lease "dark fiber" to telephone companies, cable operators or other carriers of telecommunications services. As UTC notes in its comments, the definitions set forth in the Telecommunications Act were carefully crafted to allow electric utilities to do this without subjecting themselves to the full panoply of regulation and obligations that apply to carriers of "telecommunications services."

A second alternative is for consumer-owned electric utilities to enter into creative partnerships with certain customers or other entities in which they furnish telecommunications on an individual basis. As businesses across the Nation consider downsizing or relocating, such arrangements can be critical to the economic well-being of many communities. Again, UTC's comments have addressed the regulatory implications of such relationships.

Third, consumer-owned electric utilities can become full-fledged providers of telecommunications services to the public, competing head-to-head with telephone companies, cable operators, transmitters of data and other suppliers of telecommunications services. Some 60 communities are already providing cable television, and consumer-owned utilities such as Glasgow, Kentucky, Cedar Falls, Iowa, and Lusk, Wyoming, are well on their way to becoming full-service "communications utilities."

In summary, in the absence of artificial barriers imposed by the Commission or the states, consumer-owned electric utilities can become significant contributors to the development of the NII. They already have access to poles, attachments and rights-of-way. Their investments in additional infrastructure will be driven by their core-business considerations of reliability and public safety. They have well-established, positive relationships with their customers. They have long histories as successful competitors. Most important for the purposes of this proceeding, they also have a century-old ethic and tradition of universal service.

**The Commission Should Not Discourage Consumer-Owned
Electric Utilities From Furnishing Universal Services**

As the number and complexity of the opening-round comments on the NPRM reflect, the concept of universal service is a highly intricate one that encompasses many elements on which

reasonable parties can differ. Within APPA's own membership, a range of opinions exists on the details of how the program should be structured and administered. On one point, however, all members of APPA agree -- the Commission should do nothing to discourage consumer-owned electric utilities from participating in the universal services program but should treat all those that wish to do so the same way that it treats other potential participants.

The Commission does not explicitly say in the NPRM that it intends to discriminate against consumer-owned electric utilities, and based upon the Commission's actions in related areas -- such as its efforts to encourage consumer-owned electric utilities to enter into competition with incumbent operators of cable television systems -- APPA assumes that the Commission has no such intent. APPA is concerned, however, that some of the Commission's statements in the NPRM could be misconstrued by parties with interests adverse to those of consumer-owned electric utilities and could lead to consequences that the Commission never even envisioned, much less intended.

Specifically, in paragraph 6 of the NPRM, the Commission speaks of the "legislative intent to 'accelerate rapidly private sector deployment of advanced services to all Americans,'" citing a single sentence in S. Conf. Rep. No. 104-230, 104th Cong, 2d Sess. at 1 (1996). In paragraph 8 of the NPRM, citing the same sentence in the conference report, the Commission states that "a fundamental underlying principle of the 1996 Act is the Congressional desire 'to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies to all Americans.'" Similarly, in paragraph 45 of the NPRM, the Commission solicits comment on how to define "study area" in the way that best comports with "Congress's expressed objective 'to

provide for a pro-competitive, de-regulatory national policy framework' for the 'rapid[] private sector deployment of advanced telecommunications and information technologies.'" Again, the Commission relies upon the same sentence in the conference report.

First, APPA notes that the relevant language of the Telecommunications Act is conspicuously different from the portion of the conference report to which the Commission refers. Specifically, the preamble of the Act says nothing about the "private sector" but states that the purpose of the Act is to "promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the *rapid deployment of new telecommunications technologies* (emphasis added)." APPA submits that, in interpreting the Telecommunications Act, the Commission should weigh most heavily the actual language that Congress as a whole passed and that the President signed.

Second, although Congress surely considered promoting "private sector" deployment of advanced telecommunications services an important goal, neither the language nor the legislative history of the Telecommunications Act suggests that this was Congress's "fundamental underlying principle." NPRM ¶ 8. Certainly, it was hardly Congress's "primary" purpose in enacting the Telecommunications Act, as the Telecommunication Industries Association claims in its Comments, at 1. To the contrary, the themes of neutrality, equal treatment of potential competitors and technologies, and non-discrimination pervade the Act and its legislative history. See, e.g., Sections 254(b)(4), 254(d), 254(f), 254(h)(2). Indeed, denying consumer-owned electric utilities a full and fair opportunity to participate in and draw support from the universal services program would undermine the statutory goal of fostering competition in the telecommunications arena.

Third, in defining the entities that can qualify for designation as eligible recipients of universal services support, the Act does not distinguish between consumer-owned and privately-owned entities. Section 214(e). Nor does the Act draw such a distinction when it discusses the entities that can receive universal services support for furnishing qualifying services to educational facilities and libraries.⁶ If Congress intended to limit such support to the “private sector,” it would surely have said so in fashioning these definitions.

Fourth, there is no inconsistency between a goal of promoting private-sector deployment of advanced telecommunications services and giving consumer-owned electric utilities a fair opportunity to participate in the universal services program. In the years ahead, we will see the emergence of new forms of cooperative relationships that could not even be imagined a few years ago. At the same time, our Nation fervently believes that competition is the best vehicle for achieving innovation, low prices and high quality of service. Competition among consumer-owned and privately-owned utilities has been a boon to the public in the field of electricity, and there is no reason to assume that the result would be any different in the field of telecommunications.

Finally, Congress is well aware of the essential role that consumer-owned electric utilities have historically played in enhancing the economic well-being and quality of life of their communities. It is unreasonable to assume that Congress intended to prevent them from playing a

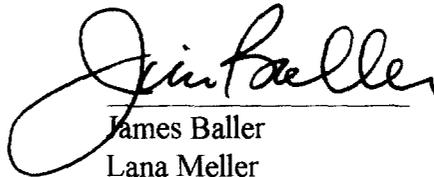
⁶ APPA agrees with various first-round commenters, including Continental Cablevision, Inc., Comments at 14, and Metricom, Inc., Comments at 6 n.14, that the Act allows entities that provide qualifying universal services to schools and libraries to receive universal support subsidies without being designated as “eligible carriers” under Section 214(e).

similar role in field of telecommunications, particularly on no more evidence than a single stray sentence in a massive report on a landmark piece of legislation.

Conclusion

The history of the electric power industry teaches that it would be a mistake to rely solely on the private sector to achieve the goal of universal service. APPA submits that, at a minimum, the Commission should hedge its bets by doing nothing to discourage consumer-owned electric utilities from participating in the universal services program on an equal footing with all other potential participants.

Respectfully submitted,



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