



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
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May 7, 1996

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

Via UPS

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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 Pennsylvania Public Utility Commission. We have also served a copy of our Reply Comments upon all Federal-State Joint Board members in accordance with the attached service list.

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

Very truly yours,

Maureen A. Scott
Assistant Counsel

cc: International Transcription Service

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

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MAY 8 1996

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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
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

I. Introduction and Executive Summary of PaPUC's Responsive Comments.

The Pennsylvania Public Utility Commission ("PaPUC") submits the following Comments in response to the initial Comments of other parties regarding the Federal Communications Commission's ("FCC" or "Commission") and Joint Board's consideration and implementation of the universal service provisions contained in Section 254 of the Telecommunications Act of 1996 ("the 1996 Act").

While an overwhelming number of parties filed initial Comments in this docket, there appears to be general consensus on many issues. The Commission must revise its existing federal universal service programs in order to comply with the provisions of the 1996 Act. The Commission should interpret the term "telecommunications carrier" broadly and such term includes wireless providers for purposes of universal service funding obligations. The Commission's definition of "core" universal service is reasonable, however, it is in need of some minor clarification and refinement.

There is less agreement on how the universal service "subsidy" should be calculated and

once calculated how the amounts should be distributed to eligible carriers. The FCC should reject arguments that the 1996 Act requires the use of embedded costs. We believe, consistent with the comments of others that a proxy methodology may also meet all of the requirements of the 1996 Act. Whatever cost methodology the Commission adopts, it should utilize a graduated cost recovery system similar to the one employed today. The Commission should reexamine its existing thresholds, however.

We believe that the Commission should rely upon existing information sources, including data maintained and collected by states, to ensure that the various objectives of the Act are met including the "affordability" objective, the quality service objective, the "reasonably comparable" rate and service standard and, to determine the services which are subscribed to by a substantial majority of customers.

We concur with the Comments of some parties that the Commission should consider severing the portion of this proceeding (or at least issuing a supplemental NPRM) dealing with health care institutions, educational institutions and libraries. These issues are far too important and deserve more than the abbreviated comment allowed in this proceeding. The record needs further development before these issues can be adequately resolved.

Implementation of the Act through subscriber line charge ("SLC") increases would violate two of the Act's fundamental precepts. First, the Act requires that telecommunications carriers, not end users, bear the funding obligation associated with universal service. Second, imposing the level of costs on end users advocated by some parties will severely undermine the "affordability" objective of the Act. The Commission should reject these ill-conceived schemes and let the marketplace determine how universal service charges will ultimately be recouped.

Finally, consistent with the Comments of many states, we agree that states should have the option of administering federal universal receipts, as long as a plan can be developed to ensure that the separate and distinct funding requirements imposed by the Act are not compromised. The Commission should, however, not require states to administer the federal fund where they do not desire to undertake this function. In any event, it would appear that some coordination between the federal and state plans is desirable and the PaPUC encourages both the Joint Board and Commission to focus upon areas where complimentary and coordinated actions would be advantageous or beneficial to achieving the underlying objectives of the Act. Above all, the federal plan should remain flexible and not mandate a "one size fits all" approach to achieving universal service. States have made important strides in this area and their efforts should not be undone.

II. The FCC's "Core" Universal Service Definition Should Be Slightly Expanded and Clarified To Ensure That the Objectives of the 1996 Act Are Met.

Like most commenters, the PaPUC basically supports the Commission's proposed "core" definition of universal service, with one clarification and minor refinements. While we believe that it was the Commission's intent to include "local service usage" within its core definition, there is some uncertainty in this regard. We interpret the "single party service" element of the Commission's definition as including local service usage. NOPR, p. 11. Obviously at least some local service usage is a fundamental part of single party service, and it would be extremely difficult to achieve the objective of "affordable" local service if the Commission included only "access" and not usage within its "core" universal service definition. "The ability to place local calls for basic needs such as to medical and emergency services, schools, and local government at affordable prices is essential for the public interest. Clearly, the value of affordable access

to the public network is diminished if usage of the network is not affordable." See, Comments of the New York Department of Public Service at p. 12. Consequently, we would ask the Commission to clarify that local service usage is included within the definition of single party service and is part of its core universal service definition.

We also believe that some limited expansion of the definition is consistent with the § 254(c)(1) criteria and would not significantly alter the ability of new providers to meet the eligible carrier requirements of Section 214 of the 1996 Act. Consistent with the comments of many other parties, we support inclusion of both white pages directory listings¹ and access to Telecommunications Relay Services² in the initial federal "core" universal service definition. These services clearly meet all four of the criteria contained in Section 254(c)(1) of the Act. Additionally, their inclusion would not add any appreciable burden to the federal funding mechanism. We do agree with NYNEX, however, that Telecommunications Relay Service itself should continue to be funded separately to be consistent with Section 225 of the Act. NYNEX Comments, p. 11.

Several parties suggest that the Commission expand the core federal definition of

¹See, Initial Comments of the Oregon Public Utility Commission, p. 6 ("The ability to be called means little if it is difficult for anyone to discover the telephone number to call in the first place, and the ability to call means little if the caller does not have access to telephone numbers to call."); Accord, Initial Comments of the Wyoming Public Service Commission, p. 7; Comments of the Idaho Public Utilities Commission, p. 8; Comments of the Colorado Public Utilities Commission, p. 3; Initial Comments of the Indiana Public Utility Commission, p. 3; Bell Atlantic Comments, p. 2; NYNEX Comments, p. 11; SouthWest Bell Comments, p. 8; Cincinnati Bell Telephone Company, p. 4; New York Department of Public Service, p. 12.

²Accord, Initial Comments of the Oregon Public Utility Commission, p. 6 ("Oregon includes accessibility to relay services for the hearing and speech impaired in its definition of universal service, as well"); Initial Comments of the Indiana Public Service Commission, p. 2; NYNEX Comments, p. 11; Comments of Cincinnati Bell Telephone Company, p. 4; Comments of U S WEST, p. 5; New York Department of Public Service, p. 12.

universal service to include single line business service.³ Like the CPUC, this issue is currently before us in our state proceeding.⁴ We did not initially include business lines within our definition, and, to date no party to our state proceeding has challenged this finding or asked us to reconsider this issue. We are not without concern for small business owners in rural service areas and intend to resolve this issue when we finalize our intrastate universal service rules later this month.

The issue surrounding the inclusion of other services is the subject of considerable controversy in the record. For instance, some parties urge the Commission to include more advanced services, such as access to ISDN, Internet access service, data transmission capability, optional Signaling System Seven features or blocking of such features, enhanced services, and broadband services. Other parties argue that Congress did not intend this result when it provided that the definition evolve over time and that only services subscribed to by the majority of consumers be included. We tend to agree that "...consumers should be allowed to identify which advanced services are useful to them before the Commission targets these services for universal service support." CPUC Comments, p. 5.⁵

³See inter alia, Cincinnati Bell Telephone, p. 5; NYNEX, page 11;

⁴CPUC states that it had originally proposed to target support to residential customers in high-cost areas. Commenters protested, stating that the telephone rates for small business customers in high-cost areas would skyrocket if only residential rates are supported. The CPUC is weighing the costs of including small business lines in the universal service fund against the significant rate increases that small business customers in rural areas may face.

⁵See, Comments of the CPUC, p. 4 ("The Commission needs more information on which advanced services the market will support before choosing services to subsidize. The Commission could find itself in the position of promoting an advanced service which it later discovers is not the best option for consumers. Unfortunately, once the Commission has deemed an advanced service suitable for subsidy it would be deployed in the network over other services which may be more viable. Without market information, the Commission might support services

It also appears to have been Congress' intent to make many of these more advanced services immediately and ubiquitously available to consumers in rural and urban service territories alike through schools, libraries and health care providers in the state. As CPUC points out, public libraries can serve as access points for a large number of people that do not have computers in their homes. CPUC Comments at 19. High tech services available through such public agencies may be the best, if not the only way, to assure services are available to "all regions."⁶

In summary, the Commission should clarify that local service usage is a fundamental part of core universal service. The Commission should expand the core federal definition of universal service to include a white pages directory listing and access to TRS and other services for the hearing or speech disabled. The Commission should carefully weigh the inclusion of any additional services to ensure that they meet the Section 254(c)(1) criteria and that their inclusion would not result in an overly burdensome funding mechanism or effectively thwart true competition by making it virtually impossible for competing carriers to qualify as "eligible" providers under Section 214 of the 1996 Act.⁷ The broader the "core" service definition, the less likely additional carriers will either be willing or able to serve as eligible providers under

which would otherwise have been losers."); Comments of U S WEST ("As the 1996 Act acknowledges, the marketplace must be allowed over time to identify the applications most customers actually want and are willing to pay for.")

⁶Comments of the Idaho Public Utility Commission, p. 11.

⁷Accord, Initial Comments of the Oregon Public Utility Commission, p. 5 ("The initial group of services to be supported should be small, in order to keep the cost of the program down while any difficulties with implementation are being worked out."); Comments of Teleport, pp. 4-5 ("Furthermore, they will ensure that the definition of basic service does not act as a barrier to entry, nor create an undue financial burden for contributors to the universal service fund.")

Section 214 of the Act. Therefore, the Commission's determinations in this regard will be critical. Additionally, the Commission should consider the added cost burden to the fund itself.⁸

Consistent with the comments of many parties, we support reviews of the current definition of universal service by the Joint Board and FCC every three years. The Commission should also review the level of advanced services provided to educational institutions and health care providers on a three year basis.

III. The Commission Should Not Declare Cellular or Other Wireless Services To Be Jurisdictionally Interstate For Universal Service Funding Purposes.

Several cellular providers and their trade associations urge the Commission to declare cellular and other wireless services jurisdictionally interstate for universal service funding purposes. They argue that this declaration is mandated by the Omnibus Budget Reconciliation Act ("OBRA") and the 1996 Act. They also argue that without a declaration that they are interstate providers only, they will be subject to overlapping and conflicting universal service funding obligations by the FCC and various states. For the following reasons, the Commission should soundly reject these arguments. Rather than being supported by the Acts in question, the preemption requested by these parties conflicts with the provisions of both the 1996 Act and the OBRA.

First, Section 6002(c)(3), which contains the language preempting state rate and entry regulation, is qualified as follows:

⁸U S WEST estimates that its proposals would result in a \$5.0 billion fund, or a fund which is over four times the current funding level. (U S WEST's proposal includes one-party service; a voice-grade line with touch-tone capability; access to competing long distance carriers; access to telephone relay services for hearing or speech disabled customers; dialing access to 911/Enhanced 911 emergency services; and access to directory assistance. Additionally, U S WEST's proposal incorporates the BCM and a \$30 affordability benchmark.)

"Nothing in this subparagraph shall exempt providers of commercial mobile services (where such services are a substitute for land line telephone exchange service for a substantial portion of the communications with such State) from requirements imposed by a State commission on all providers of telecommunications necessary to ensure the universal availability of telecommunications service at affordable rates."

Quite clearly this language expresses Congress' overriding concern with universal service by creating an exception to the general rate and entry prohibition contained in subpart 3 in instances where the wireless provider is a competitive or substitute provider of local exchange service. Clearly, in this limited instance, states may impose competitively neutral conditions on CMRS providers "to ensure the universal availability of telecommunications service at affordable rates." In light of this language, the argument that the FCC should declare CMRS an interstate service for state universal service funding purposes would be completely contrary to the language of the OBRA and therefore must fail.

Moreover, the 1996 Act also supports the obligation of wireless providers to contribute to both the state and federal funding mechanisms. Under both sections 254(f) applicable to state funding mechanisms and 254(d) applicable to the federal funding mechanism, every "telecommunications carrier" is required to contribute to the funds. A "telecommunications carrier" is defined in the 1996 Act as: "...[A]ny provider to telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in section 226), except that the Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage." Emphasis added. Clearly, the term telecommunications carrier as used in the 1996 Act was meant to encompass CMRS providers.

Airtouch argues that since CMRS is not currently a land-line service substitute for a substantial portion of the communications in any state, the states are not allowed to impose intrastate universal service requirements on CMRS providers. We disagree that this provision affects a wireless entity's funding obligation in any way. For that matter, until CMRS is a land line service substitute for a substantial portion of the communications in any state, it should not be eligible for either federal or state funds, however Airtouch does not dispute the Commission's ability to impose assessments on wireless providers. Moreover, if the FCC exempts CMRS providers from state funding requirements on this basis, then other carriers should likewise not be subject to funding requirements until they qualify as eligible carriers under the Act.

Vanguard Cellular Systems ("Vanguard") also expresses a concern that without appropriate action, it is likely that telecommunications carriers will be subjected to "double-dipping" in universal service fund calculations. Vanguard Comments, p. 6. Vanguard describes a scenario wherein the FCC would adopt interstate revenues as the appropriate methodology for calculating a carrier's payment while a State adopts a methodology that depends on total revenues generated in the State, in which case a carrier may have its interstate revenues included in the calculations twice. Vanguard Comments, p. 6. To avoid this potential scenario, Vanguard urges the Commission to declare CMRS entirely jurisdictionally interstate as a result of the OBRA, and thus not subject to the separate state requirements imposed on intrastate service providers.⁹ Vanguard Comments at 6. The PaPUC believes this scenario is implausible given the precise wording of the statute that requires the federal fund to draw on interstate

⁹Accord, Comments of Airtouch Communications, p. 2; Comments of the Personal Communications Industry Association, p. 4.

revenues only and the state fund to draw on intrastate revenues. Additionally, as already discussed, exemption of wireless providers would violate the provisions of the 1996 Act which expressly requires all telecommunications carriers to contribute to both federal and state funds.

Rather than completely exempt cellular carriers from state funding requirements, the Commission and Joint Board should examine means to ensure that cellular providers are not subject to overlapping assessment of fees. See, Comments of the Personal Communications Industry Association, p. 12.

In summary, to argue that CMRS providers should be able to qualify as eligible telecommunications carriers under the Act, while at the same time avoid the universal service obligations applicable to their competitors and the Act's funding requirements, is a contradiction in terms.

IV. The 1996 Act's Provisions Relating to Health Care, Educational Institutions and Libraries Are Extremely Important to Rural Communities and Should Be Subject To Greater Examination and Comment Either through a Separate Proceeding or Supplemental NPRM.

In our initial Comments submitted on April 12, 1996, we indicated that we were attempting to coordinate our comments on these issues with the Pennsylvania Department of Health, the Pennsylvania Department of Education, and representatives of Pennsylvania's libraries. We received comments from a representative of the Governor's Staff on behalf of the Departments of Health and Education which we attach as Exhibit A. As to the provisions in the 1996 Act relating to libraries, we recommend that the Commission carefully consider the comments filed by the American Library Association.

Consistent with the comments of many parties, however, we are concerned that the record in this proceeding on these issues may not be adequately developed to provide the basis

for resolution of these issues. Given the extreme importance of these issues and the urgent need to develop a well thought out plan so that the legislation's benefits are realized by all Americans, we agree with several Commenters that the Commission should address these issues in more detail in a supplemental rulemaking. With the myriad of other important issues raised in this docket dealing with high-cost areas and services in general, the issue of the appropriate degree of service to be provided to health care, education institutions and libraries has not received adequate attention by parties.¹⁰

The Commission could also through a supplemental NPRM seek comment on the specific proposals set forth in some parties' comments. It is also recommended by many parties, that states play a more prominent role in this area given its importance. For instance, Pacific Telesis recommends that states be given primary authority in this area. TCG recommends that the Commission direct the states to develop specific proposal for the types of services that will truly improve the delivery of services to the public by eligible institutions. Similarly, Cincinnati Bell Telephone believes these issues should be addressed at the state level, rather than by federal mandate. CBT Comments at 13. The Wyoming PSC argues that local expertise and input should be employed specifically with respect to § 254(b)(6) (advanced telecommunications services), § 254(c)(1)(A) ("services essential to education, public health and public safety"), and § 254(c)(3) ("additional services for such support mechanisms for schools, libraries and health care providers"). Wyoming PSC Comments, p. 14.

¹⁰Accord, NYNEX Comments, p. 18 ("In contrast to the large amount of data in the record about high cost areas and subscribership, the Commission has relatively little information about the needs of these entities. Therefore, the Commission needs to gather additional information from the educational, library and health care communities before moving forward on these issues.")

It is clear from the Comments that were filed that many carriers and states have already taken important initiatives in this area. Pacific Telesis points out that in California, it has already implemented an initiative which gives access to advanced services to all not-for-profit schools and libraries. Pacific Telesis Comments, p. 3.¹¹ Bell Atlantic cites to its involvement in the **KickStart Initiative**, a federal-state-local proposal that is designed to ensure "that each school in the United States has the tools needed to enhance the learning experiences of students through access to Information Age services." Bell Atlantic Comments, p. 17. The Oregon Public Utility Commission also notes that many programs will be available to schools and libraries, including grant programs and discount programs from both state and federal resources. Oregon PUC Comments, p. 7.

There is also considerable conflict in the record regarding the types of and levels of advanced services which should be made available.¹² NYNEX suggests that the FCC avoid adopting an inflexible universal service support mechanism that would dictate a standard set of services to be provided to every school or library, or that would specify a particular discount

¹¹Pacific Telesis points out that the needs of educational institutions may vary from state to state and that a definition of what advanced service is needed for education in one state may not be appropriate in another. To accommodate the differences between states, Pacific Telesis argues that the Commission should permit each state to make the determination of what its schools and libraries need, as long as certain guidelines are met. Pacific Telesis argues that the federal guidelines should set up minimum standards that must be met or describe limits on what services the federal fund will cover. *Id.* at p. 4. Pacific Telesis argues that by leaving the decision up to state commissions so that the available technology, architecture, and educational needs of their particular state can be addressed will comport with the requirements of Section 254 and the concept of a "bona fide request". *Id.* at pp. 4-5. While we take no position on this issue at this time, we do agree that the concerns raised by Pacific Telesis merit further examination.

¹²Accord, Comments of Teleport Communications Group, p. 1 ("Additionally, TCG recommends that the Commission initiate a "Phase II" of this proceeding to investigate advanced universal services for schools, libraries, and rural health care providers.")

on each telecommunications service since such a "one size fits all" approach would probably not meet the needs of these entities, and the prescribed discounts might not be sufficient to allow them to obtain the services they need. NYNEX Comments p. 20. Sprint urges that it is premature to rule on what additional or advanced services should be supported. Many of the advanced services mentioned by the FCC are in their infancy and are still evolving. Sprint Comments at p. 23.

NYNEX recommended that the Commission develop a plan that allows schools, libraries and health care providers to define the services for which they need support by the universal service fund. They recommend a "Education Telecommunications Council" with 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 information technologies. NYNEX Comments pp. 19-20.

Parties also point out that there are other components including costs for hardware and software, content, costs for professional development and systems operation.¹³ Pacific Telesis Comments, p. 5. Under the Act, telecommunications providers fund access to the network and connections within the schools. Pacific Telesis argues that a different funding mechanism must be designed for the remainder of the components needed for a successful program. Pacific Telesis Comments, p. 5. While we agree that these components are important, non-network

¹³Accord, NYNEX Comments, p. 19 ("Simply making telecommunications services available, without the associated equipment and software and professional training and support, and without an understanding of whether those services will meet the user's needs, would not accomplish the goals of the Act. Moreover, the needs of each entity will vary in the years ahead as new technologies and applications are developed.")

based costs are outside the scope of the Act and should be addressed independently of the Act's requirements.

In summary, we believe that these issues need further record development and that given their importance, the Commission should issue a supplemental NOPR specifically addressing these issues in more detail.

V. Most Parties Agree that Modification of the Commission's Existing Universal Service Programs are Necessary.

A. The Commission and Joint Board Should Reject the Arguments of Some That The 1996 Act Requires The Use of Embedded Costs.

Several parties argue that the 1996 Act requires the Commission to use "embedded costs" in defining the universal service subsidy. We strongly disagree and the Commission should likewise reject these arguments. PaPUC, like other parties, believes that a proxy model may also meet all of the requirements of the 1996 Act.¹⁴ No methodology is without its problems, including the embedded cost methodology which the Commission currently utilizes.¹⁵

We, like many other states, tentatively favor a forward-looking, incremental cost

¹⁴We also agree with the majority of Commenters that it is preferable to use a more simplified, competitively neutral mechanism which would combine all universal service assistance for high-cost companies into one mechanism.

¹⁵Some parties believe that embedded costs are inappropriate for use as a benchmark since they provide no incentives for recipients of funding to pursue efficient operations. They also believe that an embedded cost methodology will violate the competitive neutrality goals of the 1996 Act by providing different levels of support to different providers. On the other hand, they argue, that the proxy model does not incorporate the costs of any one particular LEC and thus should satisfy the statutory requirements for a competitively neutral gauge of universal service support requirements. They further argue that support programs should not be based on incumbent carriers' revenue requirements or costs, but those of an efficient, market-driven competitive provider.

methodology¹⁶ as a proxy for benchmark costs.¹⁷ Various proxy models are endorsed by many parties as specifically meeting all of the criteria of the Act. At the same time, most parties recognize that proxy models, including the BCM, may have shortcomings. However, as pointed out by several parties many of its shortcomings appear to be generally identifiable and potentially correctable.¹⁸

Most parties also support smaller units of disaggregation than current study areas for incumbent LECs.¹⁹ Sprint notes that one of the shortfalls of the traditional subsidy system is its averaging of costs across high cost and low cost areas. *Id.* at p. 13. Teleport points out that one reason for adopting CBGs as the area of analysis was to render the model independent of any carrier's network architecture and that the flexibility of the PacTel model that permits

¹⁶As noted in our initial Comments, we do not utilize a pure TS-LRIC approach. The approach endorsed in our September, 1995 Order includes a reasonable allocation of joint, shared and common costs, including overhead costs. We also tentatively concluded that the local loop costs themselves are joint or shared costs since the loop is utilized to provide a wide array of services, including basic universal service. See In Re: Formal Investigation to Examine and Establish Updated Universal Service Principles and Policies for Telecommunications Services in the Commonwealth; Interlocutory Order, Initiation of Oral Hearings Phase, Docket No. I-00940035, Order (Entered September 5, 1995).

¹⁷See, inter alia, CPUC Comments at pp. 10-13; Staff of the Public Utilities Commission of Ohio, Comments at p. 19; Florida Public Service Commission Comments at pp 10-11, Wyoming Public Service Commission Comments at pp. 8-9.

¹⁸See, Comments of Teleport, pp. 7-8.

¹⁹Initial Comments of the Staff of the Public Utilities Commission of Ohio, p. 6 ("We further believe that Census Block Groups (CBGs) are an appropriate and manageable level of disaggregation for developing proxy costs."); Comments of Teleport at 8-9; Comments of Cincinnati Bell Telephone Company, p. 8 ("In order to insure the proper and accurate distribution of high-cost assistance, costs must be targeted to an area smaller than a study area."); Pacific Telesis Comments, p. 13 ("The subsidy must be targeted to a much smaller geographic unit than the entire state so that appropriate high cost areas can be identified and compensated.");

greater or lesser aggregations of data (wire center, CBG or individual line levels) could in all probability be built into the BCM model.²⁰ As indicated in our initial Comments in this docket, we support disaggregation down to the wire center or below if possible.

NYNEX supports the BCM for price cap or larger LECs only because any overestimation in some areas will be offset by underestimation in other areas. It states, however, that such a model 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. NYNEX Comments at p. 10. NYNEX states that for companies that serve rural areas, the Commission should use actual study area costs to develop high-cost assistance. NYNEX Comments, p. 11.

We note that many small rural telephone companies are opposed to the use of the proxy methodology because they fear it will underestimate their costs of providing service in many instances. While we have to date made no exception for smaller LECs in the context of our state proceeding, we will be examining this issue in more detail in our state investigation. Additionally, while we are not opposed to the Commission taking a more cautious approach with respect to smaller carriers at the federal level, the Commission should allow states to address this issue in the fashion which they believe most suitable.²¹

Whatever the approach the Commission ultimately decides to utilize, we support the Commission's continuing to utilize a graduated cost recovery scale (similar to the current scale). However, the Commission should reevaluate the current threshold levels. Accord, Comments

²⁰Comments of Teleport, pp. 8-9.

²¹The Commission has several alternatives to the use of embedded costs for smaller carriers. For instance, the Commission could require the use of proxy costs, but allow for a true-up or waiver process in those instances where a smaller rural telephone company believes that it is being harmed or adversely affected under the proxy methodology.

of NYNEX, p. 15; Comments of Teleport, p. 11; Comments of MFS, p. 18.

In addition to undertaking periodic reviews of the definition of universal service, the Commission should also periodically review its costing methodologies, including the BCM if utilized, for needed modifications and updates. Accord, Comments of Sprint, p. 8.

In conclusion, the Commission should reject arguments that it must use embedded costs to identify universal service costs. A well-defined and structured proxy model may also meet all of the Act's objectives.

B. Many Parties Agree That the Commission Should Use Existing Information Sources Including States, To Ensure That its Regulations Meet Some Of the 1996 Act's Objectives, Including The Affordability, Reasonably Comparable and Service Quality Objectives.

Most parties agree that the Commission should utilize existing information sources, including states, in ensuring that the objectives of the Act are met. The Commission should rely upon states for information relating to affordability and quality of service. The Commission should also be able to rely upon states for information to ensure that services and rates in rural areas are "reasonably comparable" to the services and rates offered in urban areas.

For instance, like Pennsylvania, many other state Commissions pointed out that they already impose service quality requirements for eligible carriers and that the FCC should utilize existing information from state quality of service programs, together with the information it already collects, in ensuring that quality service standards have been met by eligible providers.²² Given the close oversight by states in this area, we would advocate that the FCC

²²Accord, Initial Comments of the Oregon Public Utility Commission, p. 3 ("We suggest that the FCC allow each state to determine service quality standards appropriate to its own circumstances, with the broad guidance that they must, at a minimum, be sufficient to enable customers to obtain the services listed in the FCC's definition of universal service."); Comments

simply defer to states in ensuring that the quality of service objective of the Act is met.

Additionally, in making its determination that services in rural areas are "reasonably comparable" to services in urban areas, the characteristics and requirements for both urban and rural and high cost areas will vary from state to state. As the Oklahoma Corporation Commission pointed out, the demographics for Oklahoma's major urban areas are vastly different from the demographics of New York's or California's major urban areas. OCC Comments at p. 5. Given these state by state differences, we recommend that the FCC as part of its evaluation, utilize information from the individual states on the comparability of services and rates within each state which may provide a more meaningful measure of the Act's objectives in this regard.

With regard to the affordability standard, we agree with parties that "there is no reason to adjust existing rates to some national benchmark level." See, Teleport Comments at 10. We also agree that since affordability can vary from location to location, "the Commission and the Joint-Board should not become mired in trying to determine a national standard for 'affordable' local service prices." MFS Comments, p. 19.²³

of the Wyoming Public Service Commission, p. 2 ("Many states have established service quality standards (or guidelines), and the common elements of these standards should be the basis for national service quality standards."); Comments of the Idaho Public Utilities Commission, p. 6 ("The states are in the best position to monitor and enforce service quality for the local user. No federal standards are necessary here."); Comments of the People of the CPUC, p. 3 ("State commissions have been working for years on quality of service issues."); New York State Department of Public Service, p. 3 ("Finally, the Commission should use state reporting requirements to monitor and ensure the provision of high quality service.")

²³See Comments of the New York Department of Public Service, p. 5 ("To the extent that a benchmark rate is used for purposes of qualifying for universal service support, the rate level should be left for the states to determine, in the context of state plans for distribution of high-cost assistance. This approach will result in benchmark rates that more accurately reflect circumstances within a particular jurisdiction (e.g., household income, cost of living, local

Further, Pacific Telesis notes at page 20 of its Comments:

The Commission notes that Section 254(i) provides that the Commission and the states have powers under the Act to ensure affordability and reasonable comparability. Such a charter, however, will be difficult at best. Traditionally, state commissions set rates for basic service that are based on affordability. Even within California, prices for basic service vary widely. ... Rather than undertaking a separate review of affordability, the Commission should require states to continue to determine the levels of affordability applicable to prices within the state, and ensure that a reasonableness standard is met.

In summary, the Commission should rely upon information collected by the individual states to ensure that certain of the Act's objectives are met, including "affordability" and "reasonable comparability" determinations, and defer to the states on others including quality of service standards.

C. It is Critical That Federal Rules Permit Maximum State Flexibility And Recognize That the Federal Act Does Not Require That State Universal Service Programs Be "Identical to" But Merely "Consistent With" the FCC's Universal Service Program.

The Commission should not adopt rules that would mandate states to adopt universal service plans "identical" to the plan ultimately adopted by the FCC. The Federal Act only requires that state plans be "consistent with" the FCC's universal service program. The Commission should interpret this requirement in a fashion which would permit maximum flexibility for states. In other words, as long as state plans do not thwart the federal program or some objective of the Act, they should be allowed to utilize cost allocation methodologies and distribution requirements different from those ultimately utilized by the FCC. We agree with

calling area size, telephone penetration, current rate levels and rate setting policies). It will also ensure that universal service support is targeted to those customers in areas where it is most needed.")

the Wyoming Public Service Commission which stated that the "proper way to recognize state universal service fund policies is to give deference to states with established laws, rules and policies which sincerely reflect policies and initiatives similar to the Act in questions of promoting competition." Comments of the Wyoming Public Service Commission, p. 5.²⁴

Additionally in the areas of subscribership and low-income consumers, it is "important to allow states to determine the appropriate means of reaching their specific targeted problem areas."²⁵

This is not to say that the two systems should operate entirely independently of one another. We agree with many parties that there is a need for some coordination between the

²⁴See also Comments of the Staff of the Public Utilities Commission of Ohio, p. 6 ("Regardless of the methodology that is chosen by the FCC for the federal Universal Service Fund, the individual states should not be required to adhere to those identical parameters upon establishing its own intrastate universal support fund. Latitude should be given to the individual states to determine their policy goals and design the state universal service program that best achieves those goals.")

²⁵Comments of the Idaho PUC, p. 7 ("To effectively attach the remaining pockets of nonsubscribership, a micro-based state approach is preferable to a macro-based federal approach."); CPUC Comments, p. 14 ("The policies which will best ensure universal service in a particular state will depend on great measure upon that state's unique demographics and demographic trends, the state's telecommunication market conduct and history, even the state's geography."); Comments of Cincinnati Bell Telephone Company, p. 3 ("...CBT urges the Commission to allow the states to continue to target support for low-income consumers as state authorities are closer to this issue."); Comments of Pacific Telesis, p. 21 ("We do not believe, however, that the Commission should mandate programs to increase subscribership. Conditions vary greatly from state to state. Multiple factors, such as linguistic needs, income levels, and geography influence subscribership levels."); Comments of U S WEST ("...[M]atters such as service deposits, full toll denial ("FDT") and local service denial are being responsibly addressed at the state level. Absent a demonstration that market or state regulatory resolution of these matters seriously impedes federal universal service goals or the implementation of those goals, federal intervention in this area is not necessary"); Comments of the New York Department of Public Service, p. 14 ("While we support cost-effective low-income programs, mandating a single, nationwide policy may not be as effective as state policies that are tailored to reflect conditions within a particular state. Thus, any Commission requirements should not supersede state policies regarding deposit requirements.").

federal and state plans and we encourage the FCC and Joint Board to examine and identify those areas where coordination of the funding mechanisms would be beneficial.

D. The Commission Should Reject the Arguments of Some Parties that the Commission Should Increase the SLC or Use End User Charges to Implement the Act.

Several parties urge that the Commission to implement the Act's provisions by either increasing the existing SLC or creating new end user charges which would to be used by carriers to recoup above-average costs. For instance NYNEX states that all interstate carriers should collect universal service support through a percentage surcharge on their interstate customers' bills. p. 24. NYNEX states that this would ensure that universal service support would have a neutral competitive impact and that it would be explicit, as required by the Act. p. 24. SouthWest Bell advocates that the Commission modify the existing SLC caps to a level based on an Interstate Affordability Benchmark (as defined in USTA's proposal). SWBT Comments, p. 4. U S WEST also supports the use of end user charges to implement the provisions of the Act. U S WEST Comments, p. 15.

We believe that attempts by the Commission to fund the 1996 Act's universal service mandates by increases to the SLC or through new end user charges would be a violation of several of the Act's provisions. First, the Act quite clearly contemplates that the Commission implement its funding obligations by assessments on interstate carriers, not end users. Second, imposition of funding requirements directly upon the end user would undermine the Act's affordability objectives.

We also agree with the Comments of the Maine Public Utilities Commission, et al. which strongly urge the Commission to allow the marketplace to determine how the costs are ultimately recovered from end users. *Id.* at p. 18.

"Interexchange carriers may recover this charge in a variety of ways from their customers. For some carriers, 'Ramsey pricing' will dictate the imposition of flat end user charges. However, some carriers may choose to absorb that charge or part of it as a part of their cost of doing business, or to obtain a competitive advantage. As the market becomes more competitive, the various market participants may be less able to recover fixed (non-variable) costs through flat end-user charges. The plan advanced here will allow the market place to determine how NTS costs are ultimately recovered from end users rather than prescriptively requiring that they be recovered in all cases in the same way."

VI. The Commission Should Interpret The Definition of Interstate Telecommunications Carrier Broadly.

The PaPUC agrees with those parties that urge the Commission to interpret the definition of interstate telecommunications carrier broadly.²⁶ The general policy should be that all providers of interstate services contribute. This would include, at a minimum, LECs, C-LECs, IXC, resellers, CMRS providers, pay telephone providers and 900 service providers, and microwave and satellite carriers.

Contrary to the arguments of some, however, the Act does not give the FCC authority to draw from carriers' intrastate revenues. We agree with the CPUC that such an interpretation of the Act, besides being unlawful, would be devastating for state universal service programs and rates for intrastate services.

VII. PaPUC Supports Giving States The Option Of Fund Administration.

Many states urge the FCC to give states the option of administering federal universal

²⁶"To the greatest extent possible, consistent with the provisions of the 1996 Act, all public network beneficiaries should help to support universal service goals." Comments of U S WEST, p. 14.

funds.²⁷ The PaPUC was a strong proponent of state administration of the federal universal service fund in our Comments filed before passage of the Act. Because of concerns regarding the separate and distinct funding requirements of the Act, we supported neutral third party administration of the fund in our initial Comments filed in this docket. We also supported NECA as the third party administrator of the fund, and continue to do so. However, as long as the federal/state funding requirements can still be kept separate as required by the 1996 Act, we see no reason why states that want to administer federal funds should not be allowed to do so. By no means should the Commission, however, require all states to administer the federal fund -- but rather only those states electing such an option. We continue to believe that there are benefits associated with state administration of federal funds.

²⁷See, inter alia, Initial Comments of the Oregon Public Utility Commission, p. 8 ("States should be allowed to decide whether they prefer to administer universal service funds themselves or have them be administered by a neutral third party."); Initial Comments of the New York State Department of Public Service, p. 10; Initial Comments of the California Public Utility Commission, p. 21; Initial Comments of the Colorado Public Service Commission, p. 7; See also Initial Comments of Bell Atlantic.

VIII. Conclusion

For all of the reasons enumerated above and in our initial comments, we urge the Commission and Joint Board to adopt rules consistent with the comments expressed therein.

Respectfully submitted,


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