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

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

\_\_\_\_\_  
In the Matter of  
Federal State Joint Board on  
Universal Service  
\_\_\_\_\_

CC Docket No. 96-45

REPLY COMMENTS OF THE  
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

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Federal - State Joint Board on Universal Service

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REPLY COMMENTS OF THE  
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

In April, AT&T, the National Cable Television Association, and over 200 others filed comments addressing the FCC's March 8, 1996 "Notice of Proposed Rulemaking" ("NPRM") in the above-captioned proceeding. Pursuant to the Federal Communications Commission's ("FCC") Rules of Practice and Procedure, 47 C.F.R. §§ 1.49, 1.41, and 1.415 (1995), the National Association of Regulatory Utility Commissioners ("NARUC") respectfully submits the following response to certain of those comments.

I. DISCUSSION - PROCEDURAL ISSUES

On page 24 of its comments, the National Cable Television Association, Inc., suggests that issues related to the Carrier Common Line Charge should be deferred to the FCC's forthcoming proceeding on access charge reform. NCTA is apparently referencing the Part 69 proceeding announced in ¶ 3 of the recently released April 19, 1996 interconnection rulemaking.<sup>1</sup>

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<sup>1</sup> See, "Notice of Proposed Rulemaking" In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, mimeo at 2.

In that paragraph, the FCC acknowledges the interrelationship connecting this § 254 proceeding, the issues raised in that docket, and the "upcoming proceeding to reform...Part 69 access charge rules." This acknowledgement, and the NTCA "deferral" suggestion, raises two important and related issues. First, any potential near-term SLC changes must be addressed by this Joint Board. Second, the FCC, through the Joint Board, should issue at least one supplemental notice to incorporate additional issues raised by, inter alia, the April interconnection NPRM.

**A. Issues concerning possible adjustment of the Subscriber Line Charge must be addressed by this Joint Board.**

The FCC has already recognized by expressly referring SLC issues to this Joint Board that any change in that charge could effect subscribership levels. NPRM at ¶ 114, mimeo at 45. Moreover, an increase in the SLC will directly raise the costs of funding the existing Lifeline programs specifically sanctioned by Congress in 47 U.S.C. § 254(k). Increased lifeline costs obviously raise related collection and distribution issues concerning the § 254 Federal funds. This potential impact on subscribership and the Lifeline program requires that Congress this Joint Board address SLC issues as Congress intended.

Accordingly, the NCTA suggestion to defer SLC-type issues to the proposed Part 69 proceeding raises an important issue concerning the FCC's authority. When it enacted § 254, Congress intended that any change to the SLC be referred to this Joint Board. Accordingly, NARUC submits that any action taken in the

proposed Part 69 proceeding that addresses the SLC must, at a minimum, be explicitly based on a recommendation from this Board.

- B. To assure the Joint Board has a complete record upon which to base its recommendations, a Supplemental Notice is required to (1) incorporate additional issues raised by, inter alia, the April interconnection NPRM, and (2) present more concrete proposals for comment.**

The FCC has acknowledged there are issues in the April 19, 1996 interconnection rulemaking that impact the Joint Board's assigned task in this proceeding. These include the FCC proposals concerning the pricing of interconnection and network elements. Therefore, a supplemental notice to draw in those matters is appropriate.

Moreover, as the initial *NPRM* was extremely broad, a second notice containing more tightly focused proposed solutions is also needed to allow commentors to provide the specific information and analysis the Joint Board needs to build an appropriate record for final action.

With more narrowly focused proposals, parties will be able to address the potential financial impacts specific suggestions will have on individual companies and existing funding requirements. The breadth of the *NPRM*, together with the overlap and possible combinations of the *NPRM* proposals, made it almost impossible for parties to adequately quantify the impact of any single proposal, much less provide an analysis of the impact of any comprehensive rule.

Due to the time limits imposed by the statute, and practical constraints, the Commission did not have the opportunity or the

resources to pursue quantitative analyses of various options using existing cost data. Indeed, the *NPRM* lacks any substantive discussion of the basis for its proposals. Yet, some of *NPRM* suggestions could result in significant cost recovery shifts for some States and even for some areas within a State.

If the Board issues a supplemental notice with more narrowly defined options and rules, commentors can price out the proposals based upon publicly available cost data. Comments will then be able to provide the Joint Board and the FCC with far more meaningful information than the general proposals and case specific analyses provided so far.

**C. More time should be allowed and additional comments should be taken regarding the Benchmark Cost Models.**

U.S. West, NYNEX, and others have proposed the use of a benchmark costing model ("BCM"). However, their comments do not address how the model can accurately reflect the high costs of (1) serving non-road accessible remote areas, (2) connecting certain remote areas to the public network, (3) and a number of other concerns raised by various commenters. Additional modeling must be completed before the effectiveness of the BCM, in any of its related iterations, can be determined.

Accordingly, NARUC suggests that (1) additional time be allowed to evaluate the BCM, and (2) the Board allow another comment round to assure an adequate record concerning the appropriateness of the BCM as a funding paradigm.

In addition, as there are several BCM models that may be suitable, the Board should issue a supplemental notice, as

suggested, supra, to focus parties' comments on a more limited range of BCM proposals.

### III. DISCUSSION - SUBSTANTIVE ISSUES

#### A. The Subscriber Line Charge should not be increased.

In its comments at pages 15-17, AT&T suggested the SLC be raised to approximately \$7.00. It was not alone in suggesting an increase. NARUC has evaluated these proposals, and continues to strongly oppose any increases in the SLC.

When Congress sought to secure the benefits of competition for the American people, while continuing to advance and protect universal service, it did not intend for the FCC to immediately implement, what will be seen by consumers as a significant local rate increase. Moreover, as the Texas Office of Public Utility Counsel noted in its comments at 6-7, such an increase is in direct conflict with the spirit, if not the letter, of § 254's requirements to keep rates "affordable" and assure that services included in the universal service definition bear only a reasonable share of joint and common costs.

Finally, the record does not support raising the SLC. Before a decision is made to recover a greater share of NTS costs by increasing a non-optional, flat-rate end-user charge, the Board must determine what effect that price increase will have on subscribership. The only study referenced in this proceeding, which the FCC relied upon in rendering its original SLC decision, suggests an increase of the magnitude necessary to eliminate the common line charge could drive a significant number of

subscribers from the network. Indeed, the FCC concedes in ¶ 114 of the *NPRM* that "...recovery of the full interstate allocation of common line costs directly from end-users might cause the flat monthly rates paid by certain subscribers to exceed acceptable levels, and...have an adverse impact on...subscribership."

Other than the *de minimis* and anecdotal<sup>2</sup> evidence supplied by AT&T and others concerning the impact of the existing SLC, there is no evidence in the record to support an increase. Indeed, the States, which the FCC has acknowledged elsewhere have considerable expertise concerning subscribership issues,<sup>3</sup> were virtually unanimous in their opposition to any SLC increase - as were the smaller local exchange carriers. Even the interexchange carriers, whom one would expect to be the strongest advocates for SLC increases, were split on this issue.<sup>4</sup>

The record lacks crucial evidence concerning the probable impact of SLC increases and suggests, through oppositions from almost all major commenting groups, the impropriety of increasing

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<sup>2</sup> The current SLC is smaller both in real terms and as a percentage of the average customer's bill than the increases suggested by AT&T and others. Moreover, it was put in place and collected under a different regulatory regime. Changes in this and other dockets instigated pursuant to the '96 Act will undoubtedly result in dramatic shifts in the regulatory landscape which could affect any SLC change's impact on subscribership.

<sup>3</sup> See, generally, the Notice of Proposed Rulemaking **In the Matter of Amendment of the Commission's Rules and Policies to Increase Subscribership and Usage of the Public Switched Network**, CC Docket No. 95-115, 1995 FCC LEXIS 4784, [RELEASE-NUMBER: FCC 95-281].

<sup>4</sup> MCI pointed out in its comments, at page 14, that there may be no economic justification for increasing the SLC.

the SLC from both a policy and legal perspective. Accordingly, NARUC urges the Board to discard this proposal and focus its limited resources on more viable options.

**B. The Federal USF fund administrator should establish a Universal Service Advisory Council.**

In its comments at page 23, NECA suggests a universal service advisory council be appointed to advise the new USF fund administrator. NARUC has supported the creation of similar oversight boards with State representation. Such an advisory board, consisting of representatives of the fund recipients, contributors, state regulators, and consumer groups, will ensure the neutrality of the funds administration and assure the appropriate consideration of the concerns of all parties.

**C. The size of the fund should not be capped.**

At least three commenters urge this body to limit the overall size of the fund.<sup>5</sup> NARUC generally agrees with the comments of Alaska, Guam, and others that because the Act both reaffirms traditional goals, and establishes new ones for Universal Service funding, the size of the fund should not be the driving consideration.

The size of the fund must be sufficient to attain the universal service goals stated in § 254. That section requires, inter alia, funding to ensure universal service is provided at comparable rates. To attempt to do so within any predetermined

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<sup>5</sup> See, e.g., Bell Atlantic Initial Comments, at page 9, states the fund should be capped at existing levels; MCI, at page 10 of its comments, states that the fund should be limited to residential customers.

funding limit seems contrary to the requirements of the Act. Accordingly, NARUC respectfully suggests that any constraints that prevent rates from being reasonable is unlawful.

**V. CONCLUSION**

In response to communications reform movements, NARUC has focused upon principles to establish an appropriate federal - state regulatory framework, set US policies, and promote consumer protections. In light of acknowledged State concerns, we respectfully request that the Joint Board carefully consider and incorporate NARUC's positions, as outlined infra, in any recommendations to the FCC.

Respectfully Submitted,



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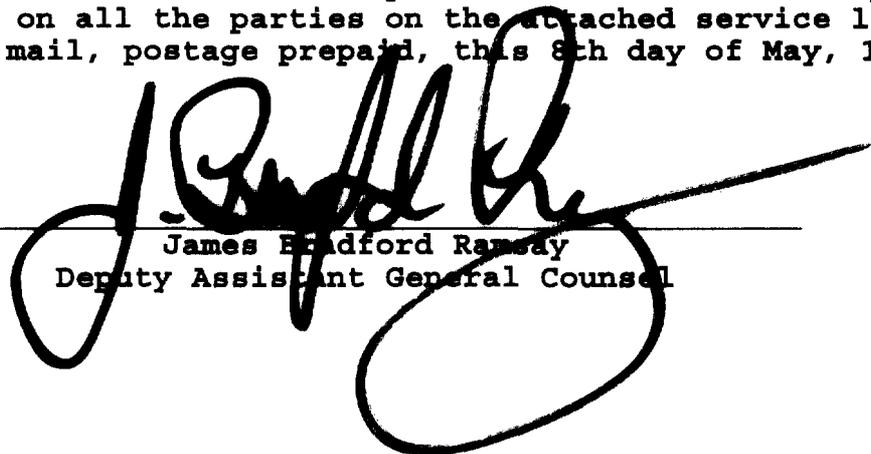
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**May 8, 1996**

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