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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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OCT 30 1996

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
Federal-State Joint Board on )  
Universal Service )

CC Docket No. 96-45

**PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION  
SUPPLEMENTAL COMMENTS ON "E-RATE" PROPOSAL**

The Personal Communications Industry Association ("PCIA")<sup>1</sup> hereby submits its comments in opposition to the "education rate" proposal presented by the National Telecommunications and Information Administration ("NTIA").<sup>2</sup> NTIA's proposal to provide free Internet access at adequate transmission speeds to K-12 schools and libraries is commendable, but PCIA believes that funding for such a program should not come from the universal service fund. PCIA bases its current opposition to NTIA's plan on the following factors: 1) the plan is not consistent with the policy objective of a narrowly tailored universal service fund; 2) the plan conflicts with Congressional policies embodied in new

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<sup>1</sup> PCIA is the international trade association created to represent the interests of both the commercial and the private mobile radio service communications industries. PCIA's Federation of Councils includes: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Specialized Mobile Radio Alliance, the Site Owners and Managers Association, the Association of Wireless System Integrators, the Association of Communications Technicians, and the Private System Users Alliance. In addition, as the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

<sup>2</sup> Further Comments of the National Telecommunications and Information Administration (filed Oct. 10, 1996) ("NTIA E-Rate Proposal").

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Section 254 of the Communications Act of 1934, as amended; and 3) NTIA's submission of its proposal less than a month before the Joint Board is to make its recommendations to the Commission under Section 254 has not permitted interested parties an adequate opportunity to assess the full scope of the ramifications of the proposal.

The NTIA E-rate proposal contemplates that the universal service fund would be called upon to fund the provision of basic connectivity,<sup>3</sup> transmission speed, and Internet access for all K-12 schools and libraries in this country. In addition, the universal service fund would be used to help fund discounted advanced telecommunications services provided to high-cost or low-income K-12 schools and libraries. Prices (affecting the level of reimbursement) would be set by means of a competitive bidding mechanism, constrained in some cases by a pre-determined bid ceiling or other limitation. NTIA identifies factors that might affect the total amount required to be contributed to the universal service fund to pay for these activities, but includes no estimate as to the actual dollar amounts that might be involved.

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<sup>3</sup> "Basic connectivity" would include, in addition to monthly rates for access, initial installation as well as the inside connections necessary to permit operation of at least one computer.

**1. The E-Rate Proposal Is Inconsistent With the Concept of an Appropriately Targeted Universal Service Plan and Fund**

In its opening and reply comments in this proceeding, PCIA urged the Joint Board to develop a plan involving a narrowly targeted universal service fund.<sup>4</sup> As PCIA pointed out in those filings, it is important that the amount of the universal service fund be carefully delineated in order to support only those services defined as falling within the scope of "universal service." Minimizing required contributions to the fund should help to eliminate improper cross-subsidization (as contemplated in Section 254(k)) while also reducing the amount to be paid by individual service providers to support the fund. This in turn limits the potential effects of the fees upon competition generally and specific service providers in particular.

The very open-ended E-rate plan sponsored by NTIA is contrary to this policy objective. In addition to funding essential services for consumers, the universal service fund would have to be dramatically increased to meet the charges incurred in supporting access by all K-12 schools and libraries in the country over and above those discounts authorized by the Act.<sup>5</sup> Moreover, there is virtually no concrete information in the record as to what this

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<sup>4</sup> Comments of the Personal Communications Industry Association at 14-16 (filed Apr. 12, 1996) ("PCIA Comments"); Reply Comments of the Personal Communications Industry Association at 3-5 (filed May 7, 1996) ("PCIA Reply Comments").

<sup>5</sup> The excesses of the E-rate plan vis-a-vis Section 254(h)(1)(B) are discussed below.

amount might be<sup>6</sup> and how it might affect particular segments of the telecommunications industry or particular service providers.<sup>7</sup>

Dramatically increasing the amount to be paid into the universal service fund (particularly when considered in conjunction with the effects of numerous other Commission actions implementing the Telecommunications Act of 1996) would have a significant impact on the wireless industry. Even relatively moderate amounts would adversely affect individual business operations and profitability, particular in a low margin industry such as messaging. Likewise, access to competitive service offerings by the public would be affected as wireless service providers find it necessary to increase rates in order to meet universal service fund obligations.

Thus, the NTIA E-rate proposal runs contrary to the important goal of ensuring that the universal service fund is carefully deployed and narrowly targeted.

## **2. The NTIA Proposal Exceeds the Intent of Congress in Adopting Section 254(h)**

Section 254(h)(1)(B) requires telecommunications carriers, upon bona fide request, to provide services defined by the Commission as part of the universal service package for

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<sup>6</sup> PCIA has heard informal estimates of the cost of NTIA's proposal ranging from \$10 billion to over \$40 billion. Depending upon which estimates are correct, the NTIA proposal could lead to a doubling or tripling of the universal service fund size.

<sup>7</sup> As PCIA has pointed out in its filings, the mechanism selected for assessing universal service fund contributions can have disparate effects on particular service providers. PCIA Comments at 8-9.

schools and libraries "at rates less than the amounts charged for similar services to other parties." The telecommunications carrier may offset the discount against its required contribution to the universal service fund or may draw from the fund to pay for the discount.

The Congressional objective embodied in this section does not warrant the adoption of a plan whereby the telecommunications industry and its subscribers must fund free access by all K-12 schools and libraries to the Internet. The language of the section itself contemplates that schools and libraries will continue to pay for service, only at a rate reduced from that otherwise offered by the telecommunications carrier. Unlimited free service, in contrast to payment of discounted rates, removes any incentive to make efficient use of such facilities.

Section 254(h) addresses "services." The NTIA plan, however, contemplates that telecommunications carriers also would be responsible for installing certain internal wiring. Such wiring and its installation do not fall within the statutory definition of "telecommunications service," and thus would not be authorized by Section 254(h).

Moreover, while the offer of free telecommunications services sounds great in theory, it ignores the fact that the resources used to provide such services might be used in different ways by individual schools if they in fact had the choice of how to use the funds. Although NTIA encourages private efforts to donate necessary equipment to schools, free access to the Internet does not mean much if a school does not have computers -- and even less where other basic school resources are lacking due to insufficient funds.<sup>8</sup>

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<sup>8</sup> For example, schools lacking adequate classroom space will be hard put to make effective use of computer terminal equipment. Similarly, many schools do not currently have  
(continued...)

The NTIA proposal contains no explanation of why Internet access to all K-12 schools and libraries must be provided on a no-cost basis or why it must be funded entirely by the telecommunications industry. Indeed, this funding requirement appears to represent a substantial tax on the wireless industry as well as all other telecommunications service providers. It is reasonable to expect this tax to be passed directly or indirectly on to the consumers of telecommunications services. These higher rates in turn have further implications for universal service goals and funding requirements.

NTIA completely ignores the effect of its proposal on the remainder of the telecommunications industry -- which effects must be considered to ensure that any universal service plan is both feasible and consistent with the statutory scheme. As indicated in the preceding section, a dramatic increase in the universal service fund contribution amount would have significant consequences for existing and new entrants into the telecommunications marketplace. Clearly, Congress cannot have intended to subvert existing telecommunications competition to support the universal service plan.

**3. The Late Submission of the NTIA Proposal Has Prevented a Full Airing of Relevant Considerations Before the Joint Board**

Although the Notice of Proposed Rulemaking in this docket was released nearly eight months ago, NTIA has submitted its E-rate proposal less than one month before the Joint

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<sup>8</sup>(...continued)  
adequate teaching staffs and may not be able to spare an instructor in connection with Internet usage.

Board is to make its recommendations to the Commission under Section 254. As a result, there has been little opportunity for parties to critically evaluate the proposal. As suggested above, the implications of the NTIA plan may be significant from all perspectives.

Moreover, there is a troubling lack of specific data and detailed proposals in the NTIA filing. NTIA provides no information as to the practical effect of its proposal on the total amount of the universal service fund -- which may total \$10 billion, \$20 billion, \$40 billion or more -- or upon the amounts that must be collected from individual telecommunications service providers. NTIA provides no specific details about how its competitive bidding mechanism would work, but offers only general alternatives that might be deployed to ensure efficient functioning.

Some commentators have suggested that NTIA's proposal may represent an impermissible taking and thus is unconstitutional. This issue and its possible resolution likewise have not been adequately spelled out in the record.

Thus, there simply is not enough information in the record to permit the Joint Board at this time to make a sound recommendation with respect to the NTIA suggestions. Before that can happen, specific details must be discussed, and all ramifications for telecommunications users must be explored.

#### **4. Conclusion**

PCIA urges the Joint Board to set aside the NTIA E-rate proposal at this time. The concept as presented by NTIA is inconsistent with the important policy objective of a

narrowly tailored universal service fund and exceeds the parameters set forth by Congress with respect to the provision of services to schools and libraries. Additional information must be explored before the NTIA proposal can be viably considered.

Respectfully submitted,

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October 30, 1996

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of October, 1996, I caused copies of the foregoing  
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