

**SEPARATE STATEMENT OF
COMMISSIONER KENNETH MCCLURE
CONCURRING IN PART AND DISSENTING IN PART**

I must respectfully dissent from the portion of the Joint Board recommendation relating to the assessment of revenues for the universal service support mechanism. Two approaches have been recommended by the Joint Board on the assessment of interstate and intrastate funding. For the schools, libraries and rural health care components of the fund, the Board has recommended that contributions be based on both the interstate and intrastate revenues of the interstate. However, for the purpose of funding the high cost and low income components of the fund, the Board has taken a more conservative approach and requested that comments be filed by interested parties on the appropriateness of this matter. I believe that the Act is clear that regardless of the funding purpose, interstate funds should be used for funding the federal universal service program. The necessity of these two separate recommendations is not justified.

Section 254(d) states that "every telecommunications carrier that

provides interstate telecommunications services" must contribute to preserve and advance universal service. Congress required that these contributions be made on an "equitable and nondiscriminatory basis" and mandated that contributions be provided by telecommunications carriers that provide interstate telecommunications services. When that requirement is read together with Section 254 (f), which contemplates state universal service programs, it is my opinion that Congress intended the specific reference to interstate carriers to mean that a distinction should be made for a separate federal support mechanism. Only interstate revenues should be utilized for funding the federal universal service program, allowing intrastate telecommunications revenues to be used for funding the complimentary state universal service programs.

In my opinion, Congress has made it clear that there is a distinction between the federal and state universal service programs and thus the same distinction should follow related to the contributions for those programs. Courts have required that regulatory agencies maintain jurisdictional distinctions when using carrier revenue to support the costs of a particular service. In *A T & T Communications of the Mountain States, Inc. v. Public Serv. Comm'n*, 625 F.Supp. 1204, (D. Wyo. 1985) the

Wyoming PSC attempted to require A T & T to pay local exchange companies one percent of all of its billings, for both interstate and intrastate calls, to cover the costs of local disconnect service. The Court found that the PSC had exceeded its jurisdiction by including interstate calls in the base for calculating contributions for the cost of local disconnect service. Clearly, the FCC has authority to base the support mechanism for a federal universal service program on interstate revenues. However, just as clearly, the authority to utilize intrastate telecommunications revenues as a base for contributions to state universal service programs lies solely with the individual state commissions.

Using both the interstate and intrastate revenues of carriers that provide interstate service creates an inequitable and discriminatory basis for the contribution. Telecommunications traffic carried by a carrier only authorized to provide intrastate telecommunications service will not be subject to contributions while similar traffic carried by an interstate telecommunications carrier will be subject to contributions for the federal universal service fund. The carriers will be providing exactly the same type of telecommunications service, with one subject to federal assessment while the other is not. This could even lead to an unfair competitive advantage.

Arguably the end-user will be paying for these contributions through increased rates in order to make the telecommunications carrier whole. If only some of the carriers are forced to contribute, those who are not will have an unfair competitive advantage.

This advantage cannot be alleviated by requiring those carriers which only provide intrastate telecommunications services to contribute to the federal universal service fund because clearly the statute does not permit that. Congress limited the authority of the Joint Board and the Commission to require contributions to federal universal service support mechanisms from those carriers which provide interstate telecommunications services. The only viable alternative that would allay this concern is to use only the interstate telecommunications revenues to fund the Commission's federal universal service programs.

I am further concerned that relying upon intrastate telecommunications revenues as a base for contributions to support federal universal service may adversely affect State programs and the low income, disabled and rural consumers that depend on them for access to the telecommunications network. Section 254 (f) anticipates state universal service programs which should compliment the federal program, not compete with it.

Further, Section 254 (f) provides that "Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State." Thus, it is certain that many, if not all, states will be adopting additional regulations which provide for contributions from those carriers of intrastate telecommunications services. This will undoubtedly result in some intrastate telecommunications services being assessed for contributions to a federal universal service fund while other intrastate telecommunications services are assessed for both federal and state universal service funds. This is clearly discriminatory on its face and should be avoided.

Respectfully submitted,

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November 7, 1996

**SEPARATE STATEMENT OF
COMMISSIONER LASKA SCHOENFELDER
DISSENTING IN PART**

I respectfully dissent from the Joint Board's recommendation today regarding the assessment on carriers' total interstate and intrastate telecommunications revenues, the delay in implementing the high cost fund and the treatment of the Subscriber Line Charge. While I do not dissent, I have reservations regarding the support for these mechanisms not being explicit on customers' bills, supporting internal connections for schools and libraries and the overall size of the Universal Service Fund.

First, regarding the fund assessment, I do not believe the Commission has authority to base contributions on intrastate telecommunications revenues. The jurisdiction between the Commission and the states is distinct. The Commission possesses authority to assess interstate revenues, while the state commissions have authority to utilize intrastate revenues. To recommend that the Commission utilize intrastate telecommunications revenues is certainly beyond the scope of its jurisdiction.

Second, Congress clearly intended the Telecommunications Act of 1996 to preserve state authority over universal service matters within the state. I am greatly concerned that utilizing intrastate revenues will negatively impact such well intended state programs. State commissions should not be hindered by this decision to develop their own workable and viable state programs. Therefore, intrastate revenues should not be assessed, as such revenues are designed for complementary state universal service programs, not the federal fund.

Third, the Act states that contributions to the federal universal service

fund are to be made from those carriers that provide interstate telecommunications services. To recover intrastate revenues from these carriers is an act I do not believe Congress intended. Furthermore, such recovery is clearly discriminatory insofar as it assesses intrastate contributions only from those carriers that provide both interstate and intrastate services. Carriers providing intrastate services, but not interstate services, cannot be required to contribute under the Act, yet it is inconsistent and discriminatory to mandate the same revenues be recovered from carriers merely because they provide interstate services.

I must also dissent from the portion of the decision which recommends high cost funding be delayed until the size of such fund is determined. While I agree with the decision to further review the proxy methodology, I find little merit in forestalling the implementation of funding. The Act is clear in its mandate for interstate funding and I disagree that determining the size of the fund is necessary in order to begin this process.

The issue regarding the Subscriber Line Charge is also one in which I must disagree. I have serious concerns that we are not addressing this important issue today and I believe the decision to postpone action on this topic is unfounded. The record is complete and supports that a recommendation be made. Furthermore, in delaying addressing this issue, we are not requesting additional comments for the record. In the competitive environment which we are trying to achieve, the recovery of cost should be determined by the marketplace, not by regulatory mandates.

In closing, I would also like to express my reservations about not providing explicit notification on customers' bills about the charges assessed to fund these programs. Consumers are entitled to be made aware of the charges that they are paying to support the recommendations made herein. Also, while I do not dissent to providing interconnection for schools and libraries, I have concerns that such action may not be consistent with a strict reading of the Act under Section 254(h)(2). The Act calls for support to "services", not for the funding of plant and equipment. Lastly, I find the overall projected size of the fund necessary to assist schools and libraries (\$2.25 billion) may be excessive and harmful to end users. This amount,

while certainly beneficial to schools and libraries, may adversely affect numerous customers, particularly those in low income categories. I believe that a federal universal service fund that taxes consumers billions of dollars a year is not only inconsistent with Congressional intent, but could be extremely harmful nationwide to consumers. By supporting services at this level, average rates for all consumers may increase and it may harm competition which is the principal objective of the law.

November 7, 1996

**SEPARATE STATEMENT
OF
MARTHA S. HOGERTY
PUBLIC COUNSEL FOR THE STATE OF MISSOURI**

*Re: Federal-State Joint Board on Universal Service Recommended
Decision*

CC Docket No. 96-45

By this Recommended Decision, the Joint Board has proposed a number of significant recommendations designed to promote universal service. These recommendations are intended to benefit consumers in all regions of the nation. The Joint Board was unwavering in its focus on developing equitable solutions to these difficult and complex issues.

Especially significant for consumers is the potential that the Subscriber

Line Charge (SLC) paid by residential and small business customers will ultimately be reduced. A SLC reduction would allow these customers to share in the rate reductions which are produced by the Telecommunications Act of 1996. The magnitude of a SLC reduction could exceed \$200 million in the aggregate. In the short-term, consumers are clear winners if such a SLC reduction is implemented. As competition develops, the sustainability of any SLC becomes less likely.

Consumer advocates have worked for many years in order to ensure just, reasonable, and ultimately, affordable telecommunications rates for all consumers. Maintaining affordability has been one of my principal goals in this proceeding. I believe the framework for ensuring affordable rates, described in our Recommended Decision, appropriately places the primary role for this determination on the states. The Recommended Decision also outlines the various factors, including subscribership rate and size of calling area, that state commissions must consider when addressing this issue.

Consumers also directly benefit from our recommendation that the Lifeline assistance program be expanded to every state and territory; that

the base federal Lifeline contribution be increased from \$3.50 to \$5.25 per eligible customer; that carriers be prohibited from disconnecting local service of Lifeline eligible consumers for nonpayment of toll; that toll limitation services be available at no charge to low-income consumers; and that carriers be restricted from imposing service deposits on consumers electing toll blocking service. I believe that expanding the reach of the Lifeline assistance program is the right thing to do. The 1996 Act appropriately reaches out to all consumers -- including low income consumers -- when considering the scope of universal service. Lifeline assistance helps maintain telephone service for those customers least able to afford it.

We have all worked hard in order to construct an effective means of assuring access to telecommunications benefits for schools and libraries as Congress intended. I believe that we have achieved an appropriate range of benefits at a reasonable cost. We have also made an important determination to base a universal service program on forward looking costs rather than the costs of currently existing networks. Important work needs to be done to realize this goal in the months ahead.

I emphasize that the Recommended Decision is only a recommendation to the full Federal Communications Commission. The FCC will make the ultimate decision in this proceeding by May 8, 1997. I strongly encourage consumers to actively participate in the FCC's public process to ensure that the pro-consumer recommendations are adopted.

In closing, this is the first time a consumer advocate has served a formal role in a federal-state Joint Board process. Participation here, however, is only the first step in what I hope will be a cooperative and continuing federal-state-consumer partnership. I welcome the opportunity to continue my work with the Joint Board on the unresolved universal service issues.