

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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DEC 19 1996

In the Matter of)
)
Federal-State Joint Board on)
Universal Service)
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)
To: The Commission)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

CC Docket No. 96-45

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COMMENTS OF
THE NATIONAL CABLE TELEVISION ASSOCIATION, INC.

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TABLE OF CONTENTS

I.	INTRODUCTION AND SUMMARY	2
II.	THE COMMISSION SHOULD ADOPT VIRTUALLY ALL OF THE JOINT BOARD'S RECOMMENDED DECISION	5
III.	THE COMMISSION SHOULD ENDORSE THE JOINT BOARD RECOMMENDATION TO ADOPT COMPETITIVE NEUTRALITY AS A PRINCIPLE TO GUIDE ITS POLICY DECISIONS	11
IV.	LOW-INCOME CONSUMERS	15
V.	SCHOOLS, LIBRARIES, AND HEALTH CARE PROVIDERS	17
A.	Schools and Libraries.....	17
1.	Identifying High-Cost Areas and Economically Disadvantaged Schools.....	19
2.	Competitive Bidding.....	20
B.	Health Care Providers	23
VI.	CONTRIBUTIONS FOR THE HIGH COST/LOW INCOME FUND SHOULD BE BASED ON BOTH NET INTERSTATE AND NET INTRASTATE TELECOMMUNICATIONS REVENUES OF INTERSTATE TELECOMMUNICATIONS CARRIERS	28
VII.	CONCLUSION.....	32

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THE NATIONAL CABLE TELEVISION ASSOCIATION, INC.**

The National Cable Television Association, Inc. ("NCTA"), by its attorneys, hereby files its Comments in response to the Common Carrier Bureau's Public Notice in the above-captioned proceeding.¹ In the Public Notice, the Bureau asks for comments on the Recommended Decision adopted by the Federal-State Joint Board on November 7, 1996 in the above-captioned proceeding.²

NCTA is the principal trade association of the cable television industry in the United States and represents cable television operators serving over 80 percent of the nation's television households. NCTA has participated in every phase of this proceeding because a nondiscriminatory and competitively neutral universal service system is vital to

¹ Public Notice, "Common Carrier Bureau Seeks Comment on Universal Service Recommended Decision," CC Docket No. 96-45, DA 96-1891, released November 18, 1996 ("Public Notice").

² In the Matter of Federal-State Joint Board, CC Docket No. 96-45, Recommended Decision, FCC 96J-3, released November 8, 1996 ("Recommended Decision").

the marketplace success of competitive local exchange carriers (“CLECs”), among whom will be NCTA’s cable system members, as they challenge the incumbent local exchange carrier (“ILEC”) monopolies.

I. INTRODUCTION AND SUMMARY

The Recommended Decision culminated a prodigious effort by the Joint Board members and staff. As a general matter, NCTA supports the major conclusions reached by the Joint Board in that Decision and urges their adoption by the Commission. NCTA and its member companies vigorously supported passage of the Telecommunications Act of 1996³ because its primary thrust was to eliminate barriers to entry into various telecommunications markets, particularly the local exchange market. NCTA’s members are vitally interested in the establishment of conditions for full and fair competition in the local exchange marketplace. One such condition is a nondiscriminatory and competitively neutral universal service scheme that does not impede the development of local exchange competition by imposing substantial burdens on new entrants.

We believe the Joint Board’s Recommended Decision generally satisfies these concerns and should be adopted by the Commission. As a result, in these comments we address primarily the particular issues highlighted in the Public Notice -- which sought clarification of some issues raised by the Joint Board’s decision -- while generally endorsing the other aspects of the Recommended Decision. We do, however, take

³ Pub. L. No. 104-104, 110 Stat. 56 (1996) (“the 1996 Act”).

exception to the suggestion by the Telemedicine Advisory Committee concerning network upgrades for rural carriers cited in the Joint Board's discussion of support for rural health care providers. In addition to submitting formal comments in response to the Public Notice, NCTA will participate in the workshops to select a proxy model for determining the forward-looking costs eligible for universal service support.⁴

In these comments we reiterate our endorsement of the Joint Board Recommended Decision in most respects and in so doing urge the Commission to:

- Accept the recommendation that a proxy model based on forward-looking economic costs be used to determine the level of support a carrier needs to serve high cost areas;
- Adopt “competitive neutrality” as an additional principle governing universal service policy decisions;
- Endorse the recommendation to modify current Lifeline and Link Up programs to meet needs of low-income consumers, including the \$5.25 baseline amount recommended by the Board;
- Require specific guidelines for the RFPs schools and libraries would issue in seeking bids for the provision of discounted services;
- Limit the services to be supported for rural health care providers and require that the providers of such services shall be determined by competitive bidding;
- Reject the suggestion that universal service funds should be used to help carriers build or upgrade the public switched network required for rural telemedicine; and
- Base the universal service fund contributions of interstate carriers on both the net interstate and net intrastate revenues of such carriers.

In the new era of local exchange competition spawned by the 1996 Act, affordable telephone service in rural, insular, and high-cost areas must continue to remain a high

⁴ Recommended Decision at ¶281. NCTA and its consultant, Economics and Technology, Inc. (“ETI”), actively participated in analyzing the models submitted to the Joint Board and plan to participate in the upcoming workshops.

priority and must be achieved in a manner consistent with the competitive objectives of the 1996 Act. To date, service in these areas has been underwritten primarily by subsidies, explicit and implicit.

The cable industry supports policies to ensure that citizens in these areas have access to affordable basic service through the use of appropriately targeted subsidies. Similarly, the cable industry also endorses the 1996 Act's effort to provide support for low-income consumers, schools, libraries and health care providers (particularly in rural areas) and the Joint Board's key actions on those issues. Finally, the scope, implementation and administration of a new comprehensive universal service fund must be carefully designed to avoid unnecessarily subsidizing incumbent LECs or placing unwarranted burdens on new entrants, thereby undermining competition. The Joint Board's recommendations in this area also warrant Commission endorsement.

From the onset of this proceeding, NCTA has argued that the rules eventually adopted must meet several critical criteria. As a general matter, NCTA urged the Joint Board to ensure that the Universal Service Fund ("USF"), which supports telephone service in high-cost areas, is nondiscriminatory and competitively neutral and does not impede the development of local exchange competition by imposing substantial burdens on new entrants. NCTA strongly supported maintaining universal telephone service. But, as the 1996 Act contemplates, NCTA agreed that the current subsidy mechanisms must be changed because they are not technologically or competitively neutral.

II. THE COMMISSION SHOULD ADOPT VIRTUALLY ALL OF THE JOINT BOARD'S RECOMMENDED DECISION

NCTA applauds the members and staff of the Federal-State Joint Board for their effort in collecting, analyzing and drawing conclusions from the voluminous record in this proceeding under the strict deadlines imposed by the 1996 Act. In brief, the Joint Board made the following major recommendations which we believe the Commission should adopt:

- **Definition:** The Joint Board adopted a limited definition of telecommunications services to be supported by the USF: voice grade, dual tone, single party service for residential and single line business customers, including access to emergency services, operator services, interexchange services and directory assistance. With the exception of including single line business customers, this definition parallels that proposed by NCTA.
- **Eligibility:** Any telecommunications carrier is eligible to receive support from the USF if it provides all the services defined as universal services throughout its designated service area.
- **How Much Support:** The Board endorsed the use of a proxy model to determine the forward-looking costs upon which to calculate high-cost support. It declined, however, to recommend use of any of the models it had analyzed, finding them all wanting in one respect or another (as had NCTA). Workshops will be conducted over the coming months to refine a forward-looking incremental cost proxy methodology to assist in determining required support levels for non-rural carriers. Support for rural carriers, except for those operating in "insular" areas, would be frozen at current levels for three years, then transitioned to a proxy methodology over the following three-year period.

- **Schools & Libraries Fund:** The Joint Board recommends a capped fund for schools and libraries to be used to support the purchase of any telecommunications services, as well as internal connections and Internet access. Rates for these services will be discounted 20 to 90 percent based on a sliding scale, with discounts at the upper end of the range for the most economically disadvantaged schools and those in high-cost areas. Who shall provide the requested services will be determined through competitive bidding with the lowest bid constituting the “pre-discount” price for the services. A funding cap of \$2.25 billion annually is recommended. Funds will come from assessments on the interstate and intrastate revenues of all interstate telecommunications carriers. While the Joint Board rejected NCTA’s recommendation that the schools and libraries fund be separate from the high-cost fund, it recognized our concern by proposing that the fund administrator maintain separate accounting categories for the different programs requiring support.

Internet and on-line service providers’ revenues will not be assessed for contributions to the fund except to the extent they provide telecommunications services. Importantly, any provider who competes for and wins the right to provide service to these institutions is eligible to receive support for discounted services, regardless of whether or not it contributes to the fund.

- **Low-Income Consumers:** The Joint Board recommends revising the existing Lifeline and Link Up programs so that eligible low-income consumers in every State and territory would be eligible for support and have access to the core designated services supported by universal service. Every carrier eligible for universal service support would participate. Federal support would start at \$5.25 for each eligible consumer with a maximum of \$7.00 if a State matches Lifeline support. Toll blocking and toll limitation services would be provided to low-income consumers.
- **Health Care Providers:** The Joint Board adopted definitions for “reasonably comparable” urban rates and for rates in “comparable rural areas” which are key components for determining the level of subsidy for services to be supported for rural health care providers. However, it also urged the Commission to seek further information on the scope of the services to be supported and on the cost to rural health care providers of Internet access and infrastructure development needed to

bring to such providers the telecommunications services available to urban health care providers.

- **Administration:** The Joint Board recommended that the Commission appoint a universal service advisory board to select a neutral, third-party administrator to administer the collection and distribution of the universal service fund. With respect to support for schools and libraries and rural health care providers, the Joint Board recommended that the Commission appoint the National Exchange Carriers Association (“NECA”) as temporary administrator after NECA adds “significant, meaningful representation for non-incumbent LEC carrier interests” to its Board of Directors.⁵

The Joint Board recommended that universal service support mechanisms for schools, libraries and rural health care providers be funded by assessing both the intrastate and interstate revenues of providers of interstate telecommunications services, but it made no recommendation with respect to the appropriate funding base for the high-cost fund.

While not adopting all of NCTA’s policy proposals, the Joint Board’s approach carefully defines the telephone services to be supported by the Universal Service Fund, thereby promoting both competition and consumers’ interests. The Fund would be competitively and technologically neutral, receiving contributions from all interstate telecommunications carriers, and rather than relying on company reported costs to identify high-cost areas, a proxy model approach using objective factors has been endorsed.

⁵ If the Commission accepts the recommendation that a restructured NECA be the temporary administrator for the schools and libraries and rural health care provider fund, the Commission must adopt strict requirements for converting NECA into a neutral administrator. These requirements must include a prompt deadline for the inclusion of a significant number (i.e. more than a majority) of non-ILEC NECA Board Members

We also believe the Joint Board has taken a sound pro-competitive approach to getting telecommunications and advanced services to schools and libraries by allowing all companies to compete to provide such services. The cable industry has been a leader in bringing television and new advanced services to schools. We look forward to continuing to work with the Commission and the States to develop new policies that will help accelerate schools' and libraries' access to these new telecommunications and advanced services, by allowing all companies to compete for universal service support for this purpose.

In particular, the Joint Board correctly concluded that the 1996 Act requires only “carriers that provide interstate telecommunications services” to contribute to universal service support mechanisms ⁶ and that providers of non-telecommunications services, such as enhanced and information services, cannot be required to contribute.⁷ As the Joint Board found, however, Internet access services offered by entities other than telecommunications carriers would be entitled to universal service support pursuant to section 254(h)(2)(A) of the Communications Act.⁸

⁶ Recommend Decision at ¶ 784 (emphasis added).

⁷ Id. at ¶ 790. Likewise, the statutory contribution mandate does not apply to cable operators to the extent they provide cable services.

⁸ Id. at ¶ 462-63.

The Commission should adopt the Joint Board's recommendations on these issues. The Joint Board's eligibility proposal would enable schools and libraries to choose from among the widest possible array of Internet access services, including cable operators and on-line service providers who are not telecommunications carriers, without having to classify those services as "telecommunications." To require a contribution from providers of Internet access or on-line services, however, the Commission must either impose contributions on providers of other than telecommunications services or effectively reclassify these services as telecommunications services in order to bring them within the contribution requirement. The former would violate §254(d) of the 1996 Act, which limits such contributions to telecommunications carriers; the latter would violate §3(46) which effectively defines telecommunications service to mean only the offering of transmission capacity to the public. Moreover, neither course is supported by the 1996 Act's goal of "accelerat[ing] rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans."⁹ To do either would, in addition to violating the Communications Act, raise the costs of Internet access services and suppress their deployment.

The Common Carrier Bureau now seeks comment on the Joint Board recommendation as the Commission begins the process which will culminate in its adoption of a new universal service program. Because, as a general matter, we endorse

⁹ Joint Explanatory Statement of the Committee of Conference, H.R. Rep. 104-458, 104th Cong., 2d Sess. 1 (1996) ("Conference Report").

the Joint Board's recommendations, and because our positions on those issues have been placed in the record on numerous occasions,¹⁰ with a few exceptions we limit these comments to the issues raised in the Public Notice. In addition, on the critical question of selecting an appropriate proxy model for determining forward-looking costs to be supported, NCTA will continue to work with the Commission and the Joint Board and their staffs in the upcoming workshops contemplated by the Recommended Decision. In this regard, while we have supported the proxy model approach in general, it is imperative that the proxy model selected not incorporate factors which could lead to a bloated universal service fund, e.g., the model should not be distorted in order to compensate ILECs for any access charge reduction which may result from the Commission's imminent access charge reform proceeding.¹¹

¹⁰ See In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Comments of the National Cable Television Association, Inc., filed April 12, 1996; Reply Comments of the National Cable Television Association, Inc., filed May 7, 1996; Further Comments of the National Cable Television Association, Inc., filed August 2, 1996; Further Comments of the National Cable Television Association, Inc., filed August 9, 1996; and Letter of Richard L. Cimerman, NCTA, to William F. Caton, Acting Secretary, FCC, October 31, 1996.

¹¹ It is important to note that the eventual amount of support is contingent upon the revenue benchmark that will be established. In this regard, we urge the Commission to adopt the Joint Board's recommendation (at ¶¶310-311) to calculate the subsidy requirement as the difference between nationwide average total revenue per line (which should include, among other things, revenues from vertical services, access charges, subscriber line charges and interexchange toll) and the proxy cost of those services, rather than as the difference between basic service rates and the proxy cost of basic service. This approach recognizes that the provider of basic services realizes far more from its customers than merely its charges for basic service. As the Joint Board said: "[I]t reflects a reasonable expectation of the revenues that a telecommunications carrier would be reasonably expected to affect its costs, as estimated in the proxy model." Id. at ¶311. In addition, it has the benefit of limiting the amount of support a carrier needs to provide the designated universal services since it reduces the gap between revenues per line and the costs determined by the proxy model.

III. THE COMMISSION SHOULD ENDORSE THE JOINT BOARD RECOMMENDATION TO ADOPT COMPETITIVE NEUTRALITY AS A PRINCIPLE TO GUIDE ITS POLICY DECISIONS

The Joint Board initially sought comment on the principles relevant to selecting the services which warranted universal service support in addition to the principles set forth in Section 254(b) of the 1996 Act. The specified principles in Section 254(b) are: (1) Quality and Rates, (2) Access to Advanced Services, (3) Access in Rural and High-cost Areas, (4) Equitable and Non-discriminatory Contributions, (5) Specific and Predictable Support Mechanisms, and (6) Access to Advanced Telecommunications Services for Schools, Health Care and Libraries.

In response to that request NCTA urged the Joint Board to be guided by a number of general principles which we now commend to the Commission. First, all telecommunications providers should pay a fair share of the cost of universal service. Second, universal service subsidy funds should be available to any provider that is willing to deliver universal service in its designated service area. Third, core universal services should be defined consistent with the statutory factors, especially the requirement (47 U.S.C. § 254 (c)(1)(B)) that any components of universal service should, by market forces, have been subscribed to by a “substantial majority of residential customers,” and the Commission must be judicious in designating additional services for universal service treatment. Fourth, any universal service fund should be calculated carefully to avoid imposing unnecessary burdens on consumers and jeopardizing the growth of competition. Finally, while States are permitted to adopt universal service rules “not inconsistent with”

the Commission's rules (47 U.S.C. § 254 (f)), this authority should be narrowly construed to avoid a profusion of such programs which could adversely affect the development of competitive local exchange markets.

While the Board did not explicitly recommend that any of the principles NCTA proposed be adopted as a "governing principle" relevant to the choice of services to receive support, its overall decision favorably reflects recognition of the principles suggested by NCTA. With respect to explicitly adopting governing principles in addition to those found in Section 254(b), the Joint Board recommended that the Commission establish "Competitive Neutrality" as an additional principle upon which it would base its universal service policies. The Board also stated that "competitive neutrality" encompasses "technological neutrality" which means that universal service support should not be biased toward any particular technologies. In the Public Notice, the Bureau asks how the principle of competitive neutrality should be defined and applied within the context of universal service.

NCTA is pleased that the Joint Board recognized the importance of the principle of competitive neutrality in the context of universal service and urges the Commission to adopt that recommendation. In the universal service context, competitive neutrality should be defined as ensuring that regulatory actions do not unnecessarily either favor or disfavor any particular company, set of companies, industry or set of industries. We suggest that the critical term in such a definition is the term "unnecessarily." This is so

because certain regulatory actions that may, at first glance, appear not to be competitively neutral are, upon further inspection, in fact, competitively neutral.

For example, the imposition of pricing constraints on firms with substantial market power, but not on new entrants, may appear not to be competitively neutral. However, such actions are firmly grounded in antitrust law and economics and are, in fact, competitively neutral. Similarly, imposition of certain intercarrier obligations such as wholesale resale rates, unbundling of network elements, or direct interconnection requirements, may apply only to ILECs and not CLECs but they are competitively neutral given the market power disparities between ILECs and CLECs. Congress, in the 1996 Act, recognized as much as it fashioned what it saw as competitively neutral legislation while imposing certain obligations only on ILECs.¹²

As applied in the universal service context, competitive neutrality also requires that all telecommunications carriers contribute to the universal service fund. Some ILECs argue that they should not be required to pay into the universal service fund because they provide and subsidize the provision of supported services through implicit subsidies. However, the Act mandates, and the Recommended Decision is premised upon, an end to implicit subsidies; under the new pro-competitive approach, ILECs will not be providing supported services to the exclusion of new entrants. Rather, CLECs will also be

¹² Compare 47 U.S.C. §251(b) with id. at §251(c). See also, Conference Report at 121.

providing supported services as well as paying into the universal service fund. As such, the proposed collection mechanism meets the “competitive neutrality” test.

Similarly, GTE has argued that the Recommended Decision’s collection mechanism (net, as opposed to gross, telecommunications revenues) unfairly targets ILECs who make few payments to other carriers.¹³ But a gross revenue assessment would result in the assessment of two contributions on the same service -- what the Board correctly identified as the “double payment” problem.¹⁴ On the other hand, a net revenue assessment bases contributions only on the value a carrier adds to the public switched telephone network (“PSTN”). By ignoring transfer payments included in gross revenues but deleted in net revenues, this approach is competitively neutral since both ILECs and CLECs will make contributions based on the value they add to the PSTN. Moreover, if GTE’s approach were used, companies with a wide disparity between their gross and net revenues would be disadvantaged. This burden would fall most heavily on new entrants since they will be paying very significant sums to other telecommunications companies (particularly to ILECs) at least in the short term.

In the universal service context, competitive neutrality also requires that all eligible telecommunications carriers be allowed to receive universal service funding on a

¹³ See “The Universal Service Recommendation: Not Ready For Prime Time,” Remarks by Lee Schmidt, Chairman, United States Telephone Association, and Vice President-Industry Affairs, GTE Telephone Operations, Before the National Association of Regulatory Utility Commissioners Annual Convention, San Francisco, CA, November 19, 1996.

¹⁴ Recommended Decision at ¶ 807.

fair and equitable basis. The Recommended Decision does just that by allowing eligible carriers to receive funding on the same basis as ILECs, even in rural areas.

IV. LOW-INCOME CONSUMERS

The Joint Board sought comment on the services to be provided to low-income consumers and how any new support system would mesh with existing programs. It proposed that, at a minimum, those customers should receive support for the same core services designated for rural, insular and high-cost areas.

In our comments, we endorsed that approach as well as continuation of the existing Lifeline and Link Up programs which provide support for low-income customers. The Joint Board essentially recommended such an approach, and we urge Commission approval of the Joint Board's recommendations, particularly the expansion of the current Lifeline and Link Up programs to all States and territories.

In the Public Notice the Bureau asks three questions: What baseline amount of support should be provided to low-income consumers? Is the \$5.25 baseline amount suggested in the Recommended Decision likely to be adequate? How can the FCC avoid the unintended consequence that the increased federal support amount has no direct effect on Lifeline subscribers' rates in many populous States with Lifeline programs, and instead results only in a larger percentage of total support being generated from federal sources?

We agree with the Joint Board's recommendation to modify the Lifeline and Link Up programs. In particular, we agree that low-income consumers eligible for Lifeline

assistance should receive the designated services determined to be “core” services for purposes of the high-cost fund support. While we had urged that toll blocking and toll limitation services should be encouraged, but not mandated, by the Commission, we do not dispute the wisdom of the Joint Board in calling for inclusion of such services in the Lifeline support program.

The Joint Board appropriately conditioned its recommendation by stating that only those carriers that currently possess the capability of providing toll blocking and toll limiting services would be required to provide them to Lifeline-eligible consumers and receive universal service support for such services. Those carriers unable to provide such services would not lose their designation as eligible telecommunications carriers. The Joint Board recommended that such carriers be required to add the capability to provide at least toll blocking in any switch upgrades, but did not recommend that universal service support be provided for such switch upgrades.

With respect to the specific issue raised in the Public Notice -- the baseline level of support -- we agree that the \$5.25 (up from the existing \$3.50) figure is a sound compromise. It achieves the Joint Board’s twin goals of extending Lifeline support to all States and of maximizing States’ incentives to generate matching intrastate support for the program. The Joint Board’s recommendation that additional federal support equal to one-half of any support generated from the intrastate jurisdiction be available would result in a maximum of \$7.00 in federal support.

NCTA has no particular information upon which to determine whether the Board's recommendation will have "no direct effect" on Lifeline subscribers' rates in many populous States with existing Lifeline programs and whether it could instead result only in a larger percentage of the total support being generated from federal services. Nevertheless, we agree with the Joint Board's concern that its recommendation may increase the overall level of federal support without benefiting a significant number of low-income consumers. We urge the Commission to carefully weigh the comments on this issue.

V. SCHOOLS, LIBRARIES, AND HEALTH CARE PROVIDERS

A. Schools and Libraries

The 1996 Act gives special emphasis to the delivery of services to schools and libraries. See 47 U.S.C. §§ 254 (b)(6), 254 (c)(3). The cable industry has been in the forefront of providing communications facilities and services to schools and classrooms. The cable industry's substantial contribution to the wiring of America's schools and other public institutions is well-known.¹⁵

¹⁵ For several years, the cable television industry has been working with educators to help them achieve their goals. Beyond the wide range of quality educational children's programming made available through cable, local cable providers nationwide are connecting schools to cable service free of charge, contributing audio-visual equipment and satellite dishes at cost, buying copyright clearances on behalf of educators, and providing distance learning opportunities. They are also helping faculty and students to use new educational delivery technologies and programming to stimulate learning. Currently, more than 75% of our nation's public and private K-12 schools receive over 500 hours per month of commercial-free educational television free of charge. More significant for purposes of this proceeding, over 100,000 schools nationwide, representing 73% of all schools and 81% of all students, have been wired to receive Cable in the Classroom.

As a general matter, the Joint Board adopted the proposals NCTA advanced with respect to support for schools and libraries. In particular, the Joint Board adopted the suggestion of NCTA and others that schools and libraries be required to seek competitive bids for all services eligible for Section 254(h) discounts.

Under the Joint Board's proposal, a school or library would be required to submit its request for services to the fund administrator, who would then post a description of the services sought on a Web site for all providers of services to see and respond to as if the request were a Request For Proposals ("RFP"). The Joint Board recommendation is silent as to federal guidelines for such RFPs. Because the RFP will be such an integral part of the universal service program for schools and libraries, we believe the Commission should spell out in more detail what is required in such an RFP to ensure it is truly competitively neutral. We address that issue below.

In addition, the Public Notice seeks comment on several issues dealing with schools and libraries, including: What methods should the Commission use for identifying high-cost areas for purposes of providing a greater discount to schools and libraries located in high-cost areas? What measures of economic advantage may be readily available to identify economically disadvantaged non-public schools and economically disadvantaged libraries or, if none is readily available, what information could be required that would be minimally burdensome? We also respond to those questions below.

1. Identifying High-Cost Areas and Economically Disadvantaged Schools

The Commission should use the same method for identifying the high-cost areas in which schools and libraries will receive greater discounts as is ultimately selected to identify high-cost areas for the federal universal service “high-cost” fund. For that purpose NCTA supports the adoption of a forward-looking proxy model that reflects economically efficient inputs and algorithms, recognizes the substantial economies of scale and scope inherent in the ILEC networks, and computes the cost of providing primary basic residential local exchange service.

The Joint Board endorsed this approach to identifying high-cost areas in general. There is no reason the same methodology cannot be used to identify those high-cost areas in which schools and libraries may be eligible for additional support.

It must be noted, however, that NCTA does not advocate the use of a cost proxy model simply for the sake of adopting a cost proxy model. A proxy model that exaggerates costs by, for example, incorporating excessive capacity or overstated carrying charges will simply create an oversized universal service fund, which is incompatible with the goal of competition in the local market. We look forward to actively participating in the upcoming workshops to assist with the selection of a reliable cost proxy model.

The Bureau also seeks comment on how to identify economically disadvantaged non-public schools or libraries for purposes of eligibility for greater discounts. For public

schools the Joint Board recommends use of national school lunch program data since that would measure the wealth of students actually enrolled in a particular school as opposed to other information which might measure a particular school district's affluence but not reflect the financial status of students in a particular school. For schools (both public and non-public) that do not participate in the national school lunch program, the Joint Board suggests that they need only certify the percentage of their students who would be eligible for the program if the school did participate. Libraries would be eligible for greater discounts based on their location in a school district serving economically disadvantaged students -- determined by averaging the percentage of students eligible for the national school lunch program in all eligible schools, both public and non-public, within the school district in which the library was located.

We support the Board's proposed methodology, while recognizing that it requires some effort on the part of the applicant. Nevertheless, since the purpose of the exercise is to entitle the school or library to greater discounts than would otherwise be applicable if it were not deemed to be "economically disadvantaged," the particular school or library can determine for itself whether the additional paperwork is worth the additional discounts on telecommunications services to which it would be entitled.

2. Competitive Bidding

In recommending competitive bidding, the Joint Board's purpose was to attract the most number of bidders to drive down the cost of advanced telecommunications services for schools and libraries. As noted above, the RFP process for schools and libraries is

critical to achieving that goal as well as a competitively neutral support system. To further this goal, the Commission should require separate RFPs for telecommunications services, Internet services, and the provision of internal connections. This approach is necessary since there will likely be various types of providers which can supply some, but perhaps not all, of the requested services, and some of these providers may be able to provide better services at lower prices than others.

More specifically, some firms may be in the business of providing Internet access but not telecommunications services. Alternatively, entities such as electrical contractors may be well positioned to offer a low bid for the provision of internal connections -- as the 1996 Act contemplates -- but not be in the business of providing Internet access or telecommunications services. In order to ensure that entities other than those providing telecommunications services have a fair opportunity to respond to RFPs for Internet access and internal connections such RFPs should be separate and distinct from RFPs for telecommunications services.

Separate bids will encourage the maximum number of bidders to participate, resulting in the lowest possible prices to schools and libraries for each component of the supported services. In addition, such an approach will reduce the opportunities for ILECs to make non-compensatory, cross-subsidized low bids for particular competitive components of an RFP and to make up the difference by undetected higher prices charged for monopoly services in a "package" RFP.

Beyond requiring separate RFPs, the Commission should also require that entities bidding on multiple RFPs from the same school, school district, library or consortium respond with an itemized bid. A “package” bid, in which the purchaser of services is not informed as to the component prices for the various requested services, would not enable the purchaser to determine whether a bid offered for some subset of the total required services is perhaps a better (lower) bid. For example, if separate RFPs are issued for the provision of telecommunications services and Internet access, and a telecommunications provider responds with a package price bid for both RFPs, without identifying the constituent prices for the specific underlying services, the purchaser of services would not be able to determine whether a bid offered solely for the provision of Internet access constitutes a lower bid.

The Commission should also adopt other safeguards so that the ILECs cannot “game” the competitive bidding process. For example, the Commission should provide for a single round of sealed bids. Such an approach would prevent the situation where an ILEC -- or any other bidder -- is permitted to “rebid” once it learns the bid of its competitors. A single sealed bid will result in all bidders making their first offer their best offer, will result in prompter delivery of services to schools and libraries and will reduce, if not eliminate, opportunities to game the process.

Finally, the school or library should be required to describe what its plans are with respect to the proposed telecommunications program for which it seeks bids. The Joint Board recommendation contemplates a similar requirement for school and library self-

certification since it calls for certification to the fund administrator that the school or library has “adopted a plan for securing access to all of the necessary supporting technologies needed to use the services purchased” with the discounts.¹⁶ This requirement was in response to concerns that some services might be requested that schools or libraries would be unable to use for their intended educational purposes. For similar reasons, a school’s (or library’s) plans for teacher training and software and hardware acquisition should be detailed in the RFP. This would better enable a bidder to tailor its proposals to complement the plans of the school or library, as well as ensuring against the solicitation of proposals for purchases which may, in the end, not be used.

B. Health Care Providers

With respect to health care providers, the Commission asks numerous questions dealing with the exact scope of services that should be included in the list of additional services “necessary for the provision of health care” in a State, the needs of rural health care providers, and the most cost-effective ways to provide these services to rural areas.

Before addressing those issues, however, we must respond to a troubling suggestion in the Recommended Decision. That proposal concerns network upgrades for rural carriers. The Telemedicine Advisory Committee report suggests that universal

¹⁶ Recommended Decision at ¶603. This self-certification requirement only requires certification that a “plan” exists. The requirement we propose seeks more detail on the components of such a plan. Since those details would have to exist in order for the school or library to “self certify” to the fund administrator, a requirement to include them in the RFP should not place an unreasonable burden on the applicant and would ensure that it would “avoid the waste that might arise from requests for services that the schools were unable to use for the educational purposes intended.” Id. at ¶600.