

service funds should be used “to help telecommunications carriers build or upgrade the public switched network or ‘backbone infrastructure’ required for rural telemedicine.”¹⁷ The Joint Board appears to implicitly reject that proposal by not including it in its recommendation.¹⁸ Nevertheless, its citation in the Recommended Decision raises significant concerns should the Commission reconsider the proposal in this proceeding.

First, the proposal is not competitively neutral and would result in only the incumbent telecommunications carrier being funded to build a broadband network, while potential new entrants may be required to help subsidize this construction. Second, programs exist today, such as those administered by the Rural Utilities Service (“RUS”), which make available below market rate loans and grants to rural carriers for network construction (programs for which new entrants are not eligible).

Third, there is no record evidence that such construction is necessary, or that if construction is necessary to achieve the goals of the 1996 Act, that other methods (such as RUS loans) are not already sufficient. Fourth, alternate technologies to achieve the same result, such as broadband services provided by cable companies or wireless services, may be more efficient, less costly and more effective. Accordingly, we urge the Commission to reject this “network upgrade” proposal.

As for the questions raised in the Public Notice, health care providers should receive the core services already defined for “high-cost, insular, and rural areas” universal

¹⁷ Id. at ¶747.

¹⁸ Id. at ¶750

service support. Those services plainly are “necessary for the provision of [rural] health care service.” NCTA is not in a position to propose descriptions of the kinds of additional telecommunications services that are “necessary for the provision of [rural] health care services.” However, whatever services are designated for support for rural health care providers should be competitively and technologically neutral (i.e., if broadband services with a certain bandwidth are required, providers should have the option to provide the service through various architectures, and potentially obsolete technologies such as ISDN should not be mandated).

The Joint Board’s recommendation in this area requires one additional modification. Under the 1996 Act and the Board’s proposal, rural health care providers must receive telecommunications services necessary for the provision of health care services at rates that are reasonably comparable to urban rates for similar services. The provider of the qualifying services will be entitled to an offset to its universal service obligations. The offset will be equal to the difference between the “comparable urban rate” and the “rural rate” -- the average rate charged for identical or technically similar services to commercial customers in the rural county where the health care provider is located. Under this scheme, if the comparable urban rate is \$100 and the rural rate is \$150, the health care provider would pay no more than \$100 for the services and the carrier would be entitled to a \$50 offset to its universal service obligations.

We agree with the Joint Board’s decisions with respect to defining the “reasonably comparable” urban rate and the average rural rate for purposes of determining the support

to be provided by the universal service fund. However, the Commission should require that competitive bidding be used to determine the provider of qualifying services, instead of assuming that the incumbent carrier will always be the provider of such services, as implied in the Joint Board's Decision.

The plan as suggested by the Joint Board works fine if the incumbent rural carrier is the only existing provider. However, in many instances competitive providers may exist in rural areas or may seek to enter such markets. In such instances, these non-incumbent carriers should be eligible to bid to provide qualifying services to rural health care providers.

Accordingly, we recommend that a competitive bidding process be used to select the provider of services to rural health care providers. It is important to emphasize that, under this proposal, the level of the subsidy (offset) will never be larger than it would have been in the absence of competitive bidding and the rate paid by the health care provider can only be lower. That rate could be no higher than the comparable urban rate which sets the ceiling for the price the rural health care provider must pay, just as in the case where only one carrier exists in a rural area. The subsidy amount to which the carrier is entitled would continue to be the difference between the comparable urban rate and the average rural rate.

Where the incumbent wins the bid or a non-incumbent wins but has no comparable "rural rate" on which to calculate the subsidy amount, the subsidy amount remains the difference between the urban rate and the (incumbent's) rural rate. If the non-incumbent

wins the bid and has its own rural rate, the Commission should require that that rate be used to determine the amount of the offset unless it would result in a greater subsidy amount than would be the case if the incumbent's rate were used.

Under this scenario, if the urban rate is \$100 and the incumbent's rural rate is \$150, a non-incumbent could bid to provide the services at anything less than the urban rate. If it wins, it would provide the services for the bid price, but would only be entitled to a universal service offset of \$50 (the difference between the urban rate and the incumbent's rural rate). If the non-incumbent winner had its own lower rural rate (e.g., \$130) in the area, that rate would be the rural rate for determining the amount of its offset ($\$150 - \$130 = \$20$). In the unlikely event that the non-incumbent had a rural rate that was higher than the incumbent's (e.g. \$160) which could lead to a larger offset (i.e. \$60), the Commission could require that the offset be no more than the amount (\$50) derived by using the incumbent's rural rate.

Such an approach is not only consistent with the recommendations the Joint Board made concerning health care providers, but also it is similar to that used to determine the universal service support for schools and libraries. It will likely drive the price paid by the rural health care provider down below the "comparable urban rate" and will result in a smaller subsidy amount if the non-incumbent winner has a lower rural rate than the incumbent. This approach should be adopted by the Commission.

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

On “Administration” issues, the Commission asks: Should contributions for high-cost and low-income support mechanisms be based on the intrastate and interstate revenues of carriers that provide interstate telecommunications services, based on the factors enumerated in the Recommended Decision? Should the intrastate nature of the services supported by the high-cost and low-income programs have a bearing on the revenue base for assessing funds? Should contributing carriers’ abilities to identify separately intrastate and interstate revenues in an evolving telecommunications market and carriers’ incentives to shift revenues between jurisdictions to avoid contributions have a bearing on this question?

How the support mechanisms get administered is the key to a neutral universal service regime. As a general matter, we support the broadest possible participation by interstate telecommunications providers in contributing to the fund. NCTA strongly endorses the view that contributions for high-cost and low-income support mechanisms should be based on the intrastate and interstate revenues of carriers that provide interstate telecommunications services. While the Joint Board did not reach a conclusion on this issue, six members of the Board indicated they were in favor of such an approach for the schools and libraries portion of universal service fund.¹⁹ The same rationale that supports

¹⁹ See Speech of Federal Communications Commission Chairman Reed Hundt to the National Association of Regulatory Utility Commissioners, San Francisco, California, November 20, 1996 at 5. See also In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45,

inclusion of the intrastate revenues of interstate carriers in assessing contributions for schools and libraries compels the inclusion of those revenues in assessing contributions for the high-cost fund as well.²⁰

From a strictly legal point of view, the argument that assessing intrastate revenues of interstate carriers for universal service support would exceed the Commission's statutory mandate cannot withstand scrutiny. Section 254(d) clearly contemplates that a national universal service system be established by the Commission. As Commissioner Chong tellingly observed:

Section 254(d) provides that "every telecommunications carrier that provides interstate telecommunications services" must contribute, but does not in any way limit the Commission from setting up a reasonable methodology to calculate an interstate carrier's contribution to the program. If Congress had intended that the system be funded entirely by contributions based solely on interstate revenue of interstate carriers, I believe it would have been more specific.²¹

Recommended Decision, Separate Statement of Commissioner Susan Ness, November 7, 1996 at 3; Separate Statement of FCC Commissioner Rachelle B. Chong, Concurring in Part, Dissenting in Part, November 7, 1996 at 9-10; Separate Statement of Commissioner Julia Johnson and Chairman Sharon L. Nelson on Recommended Decision of the Federal-State Joint Board on Universal Service, November 7, 1996 at 3.

²⁰ The Board's stated rationale for reaching a conclusion on the contribution base for the schools and libraries fund -- that the discount mechanism was more certain than the proxy model which would be used for the high-cost fund --has no bearing on the jurisdictional or policy arguments addressing whether intrastate revenues should be included in the revenue base when assessing carrier contributions. Of more significance is the reason given by two state Board members to assess intrastate revenues in the schools and libraries context: "Congress and the Administration agreed that this is a social policy that is in the interest of the Nation, both economically and socially. States have uniformly supported this broad social policy...." Separate Statement of Commissioner Julia Johnson and Chairman Sharon L. Nelson at 5. Of course, that rationale also applies to the high-cost fund and compels the conclusion that intrastate revenues should be assessed for that purpose as well.

²¹ Separate Statement of FCC Commissioner Rachelle B. Chong, Concurring in Part, Dissenting in Part, November 7, 1996 at 9-10 (emphasis in original).

In the absence of an explicit prohibition on including intrastate revenues of interstate carriers in the basis for assessing carrier contributions, policy reasons compel the conclusion that those revenues be counted. As both Chairman Hundt and Commissioner Ness have emphasized, if intrastate revenues of interstate carriers are not counted, it is questionable whether the full measure of federal support will be available to meet universal service goals.²² Among other consequences, limiting the revenue base to interstate revenues “will mean a much, much smaller federal fund.”²³ Accordingly, it is likely that a significant shortfall in the needed support will occur. As Commissioner Ness has said, “This cannot be squared with Congress’s decision to write a clear commitment to universal service into federal law.”²⁴

It is altogether appropriate that intrastate revenues be tapped for the federal universal service fund. First, a good deal of the implicit subsidies that flow under the current support systems derives from local business services, vertical services and intrastate access.²⁵ As the Public Notice suggests, the intrastate nature of the services supported by the high-cost and low-income programs should have a bearing on the revenue base for assessing funds.

²² Hundt NARUC Speech at 5; Ness Separate Statement at 2-3.

²³ Chong Statement at 10.

²⁴ Ness Separate Statement at 3.

²⁵ Id.

The Public Notice also asks “whether contributing carriers’ abilities to identify separately intrastate and interstate revenues in an evolving telecommunications market and carrier incentives to shift revenues between jurisdictions to avoid contributions [should] have a bearing on the question?” To ask the question is to answer it. As Commissioner Chong has said: “[I]t will become increasingly difficult to distinguish between interstate revenues and intrastate revenues in the future, because the distinction is a backwards looking one based on a monopoly era.”²⁶

In our earlier comments on this issue, we raised concerns that companies which were not subject to the Commission’s Part 36 separations rules might misallocate the sources of their revenue if intrastate revenues were excluded from the assessment.²⁷ Indeed, even those companies subject to Part 36 rules could manipulate their results to avoid a USF assessment if intrastate revenues were excluded. Accordingly, we argued that the simplest and most equitable approach is to impose the same levy on both net intrastate and net interstate revenues, bearing in mind that companies not subject to separations could manipulate results if different rates are applied. Any other approach would be needlessly complex and expensive for many firms.²⁸ For all of these reasons, support for the high-cost and low-income consumer fund should be based on

²⁶ Chong Statement at 10.

²⁷ NCTA Comments at 23-24.

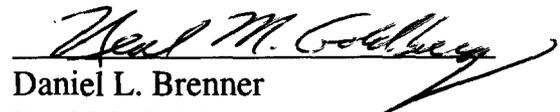
²⁸ New entrants are not subject to the FCC’s Accounting and Separations Rules and therefore generally will not track interstate and intrastate revenues separately.

contributions assessed against both the net interstate and net intrastate revenues of interstate telecommunications carriers.

VII. CONCLUSION

For the reasons stated above, the Commission should adopt the Joint Board's recommendations as modified by the proposals advanced in these comments.

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I, Roberta L. Williams, do hereby certify that on this 19th day of December, 1996, copies of the foregoing “**Comments of the National Cable Television Association, Inc.**” were delivered by first-class, postage pre-paid mail upon the attached list.


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