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Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20054

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	

COMMENTS OF MFS COMMUNICATIONS COMPANY, INC.

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COMMENTS OF
MFS COMMUNICATIONS COMPANY, INC.

SUMMARY

MFS applauds the efforts of the Joint Board to develop a comprehensive framework for implementing the universal service provisions of the Telecommunications Act. MFS agrees with and supports many of the concepts and recommendations contained in the Joint Board's Recommended Decision. However, there are several key areas where the Joint Board's Recommended Decision should be modified or clarified.

Access to Advanced Services. The Joint Board's Recommended Decision inadequately addresses one of the key policy provisions of universal service, namely access to advanced services in all regions of the Nation. MFS believes that access to advanced services could be assured by simply adopting the network standard established by Congress for RUS borrowers and implemented in at least 38 states, many of which have significant rural, high-cost areas. Among other things, this statutory network standard requires a plan for deployment of networks capable of supporting data transmissions of at least 1Mb. A plan for the deployment of such an advanced network is the statutory prerequisite for receipt of federally subsidized rural telephone loans and ought to be a prerequisite for receipt of universal service funds. Certainly, there are instances where it is technically infeasible for some carriers' networks to conform with such a standard (*e.g.*, wireless carriers who cannot obtain enough spectrum to support broadband, high-speed transmission), and in those instances, the Commission can and should waive the requirement.

Explicit Universal Service Support and Payments. The Telecommunications Act requires that universal service support be explicit, yet the Joint Board's Recommended

Decision does not develop a mechanism to ensure that universal service is explicit. MFS recommends that universal service support received (both high-cost support and low income support) should be explicitly reflected on customers' bills. Similarly, the contributions to universal service support that carriers must make should also explicitly appear on customers bills. If universal service support is reflected explicitly on customers bills (especially high-cost support), it is important that carriers have the flexibility to geographically deaverage rates to reflect the cost-based price (or the lower market-based price a carrier might choose) on customers' bills in high-cost areas.

Resale. Any carrier, including a pure reseller, that provides supported services to eligible low income or high-cost areas should be eligible to draw from universal service funds. The Joint Board's conclusion that "pure resellers" do not satisfy the definition of an eligible carrier is not competitively neutral, will deny choices to low income customers and high-cost areas, and is contrary to the procompetition intent of the Telecommunications Act.

Service to Schools and Libraries. The Joint Board's Recommended Decision should be clarified to allow any carrier that provides eligible services to schools and libraries to draw from universal service funds. As an administratively simpler (and economically equivalent) approach to providing support to schools and libraries, the Commission should consider providing rebates directly to eligible schools and libraries rather than distorting the marketplace by discounting prices and allowing carriers to recover the discount from the universal service fund.

Inside Wiring. The Joint Board's conclusion that installation and maintenance of inside wiring should be subsidized by universal service funds should be rejected. Inside wiring is not a telecommunications service, and thus, is beyond the "telecommunications services" that Congress intended to be subsidized. Including inside wiring for schools and

libraries significantly inflates the universal service "tax" that will be borne by telecommunications consumers. If the Commission decides to include inside wiring among the subsidized services provided to schools and libraries, it should require that all competitors have equal access to that inside wiring. Building owners and owners of inside wiring should not be allowed to restrict access to or use of inside wiring used for subsidized services.

Proxy Cost Model Principles. MFS supports the Joint Board's recommendation that consideration and selection of a proxy model occur in workshops. MFS offers several principles for proxy cost models, including: (1) forward-looking proxy costs should not be higher than the incumbent carrier's embedded costs; (2) proxy costs should not be designed to maintain the incumbent carrier's revenues; (3) carriers that receive high-cost support based on forward-looking proxy costs should be required to actually provide the forward-looking technologies that form the basis of such support; (4) high-cost support based on proxy cost models should not generate a windfall for any carrier; and, (5) proxy cost models should reflect realistic engineering practices.

Support Based on Costs not Revenues. The Commission should reject the Joint Board's recommendation that high-cost support be based on the difference between proxy costs and average revenues per line. Competition ought to reduce reliance on universal service subsidies as more efficient competitors enter the market. However, as competition drives down prices and stimulates volumes, average revenues will decline and the Joint Board's formula will result in an unjustified <u>increase</u> in the universal service pool. The Commission should develop high-cost support based on the difference between a benchmark that uses a national average proxy cost and an area's individual proxy costs.

Carrier Common Line Charges. The restructure of carrier common line charges is long overdue and should be undertaken in the access reform proceeding. Carrier common

line charges are not a universal service subsidy because they are not targeted to low income customers, high-cost areas or schools, libraries or health care providers.

Administration. MFS recommends that nine digit zip codes be used to organize and identify low income customers and customers living in high-cost areas. MFS supports the Joint Board's conclusion that contributions be based on gross revenues net of payments to telecommunications carriers and recommends that both interstate and intrastate revenues be used in the calculation.

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INTRODUCTION

MFS Communications Company, Inc. ("MFS"), by its undersigned counsel and pursuant to the Commission's rules, submits these comments in response to the Joint Board's Recommended Decision issued on November 8, 1996.[1/] MFS's comments generally follow the outline of the Joint Board's Recommended Decision and offer comments only in areas where MFS suggests that the Joint Board's Recommended Decision be modified.

1/ In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, FCC 96J-3, Recommended Decision, released Nov. 8, 1996 (hereafter cited as "Recommended Decision").

I. PRINCIPLES

A. Definition of Competitive Neutrality

MFS strongly supports the Joint Board's recommendation that competitive neutrality be included among the Commission's universal service policy principles.[2/] Developing universal service policies and mechanisms that are competitively neutral is consistent with the pro-competition intent of the Telecommunications Act. MFS suggests the following definition of competitive neutrality:

> *Subject to requirements established by the Commission that all firms or technologies meet certain minimum standards, a mechanism or rule is competitively neutral when its application does not give any firm a price, cost or other economic advantage or disadvantage relative to competing firms or technologies. A competitively neutral mechanism or rule is not designed to guarantee revenues or ensure that firms recover their investments or costs.*

A competitively neutral mechanism or rule should not favor or disadvantage any competitor or technology. For example, a universal service mechanism that makes subsidies available only to incumbent firms favors incumbent firms and disadvantages new entrants. Likewise, universal service mechanisms designed to ensure that incumbents recover their investment in facilities while denying new entrants a similar guarantee is not competitively neutral.

Competitive neutrality should be tempered by minimum standards that the Commission might establish for all carriers and technologies. For example, as described below, Congress

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2/ Recommendation Decision at ¶ 23.

has set minimum network standards for carriers to qualify for subsidized rural telephone loans, and the Commission could set a minimum set of standards that constitute universal service.

B. The Joint Board's Recommended Decision Inadequately Addresses Access to Advanced Services

Access to advanced telecommunications and information services in all regions of the Nation is the second (after Quality Service and Rates) universal service policy principle specifically listed in §254(b), and features prominently throughout the Telecommunications Act.[3] In the comments filed with the Joint Board and the Commission in this docket, many parties indicated that the deployment of advanced, high-speed transmission capabilities were required to give schools, libraries and health care providers adequate access to advanced telecommunications offerings (*e.g.*, the Internet).[4] More recently, the Secretaries of

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[3] 47 U.S.C. §§ 254(b)(2) (access to advanced services), (b)(3) (rural access to advanced services), (b)(6) (access to advanced services for schools, health care providers and libraries), (h)(2) (advanced services for schools, health care providers and libraries), and, 706 (regulators shall encourage the deployment of advanced telecommunications capabilities).

[4] Access to Communications for Education Coalition Comments at pg. 7; State of Alaska Comments at pp. 10-13; Alaska Library Association Comments at pg. 3; Alaska Public Utilities Commission Comments at pp. 1-6 (28.8Kb should be minimum speed); Alaska Telephone Association Comments at pp. 2-3 (ISDN); America's Carriers Telecommunications Association at pg. 6; American Association of Community Colleges and the Association of Community College Trustees Comments at pp. 10-12 (T1 access, Internet connectivity); American College of Nurse Practitioners Comments at p. 2 (ISDN); American Library Association Comments at pp. 4, 9-12; American Telemedicine Association Comments at pg. 7 (112Kb should be minimum); Ameritech Comments at pp. 14-15; Apple Computer Comments at p. 4 (bandwidths ranging from 128Kb to 45Mb should be made available); BellSouth Comments at pg. 19 (DS1 or 1.544Mb for schools); California Department of Consumer Affairs Comments at pg. 22; California Library Association Comments at pg. 3; Governor of Guam Comments at pp.
(continued...)

Education, Agriculture and Commerce joined together to file an *ex parte* in this proceeding urging the Commission and Joint Board to consider a proposal aimed at ensuring economical, high-speed access to advanced offerings, such as the Internet.[5] Instead of wrestling with how to provide access to advanced services throughout the Nation, the Joint Board's Recommended Decision concludes that the Commission use only §254(h) to provide support for schools and libraries, and that additional steps to meet Congress's goal of enhancing access to advanced telecommunications and information services are not needed.[6]

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[4] (...continued)
7, 10 (ISDN, access to NII); Idaho Public Utilities Commission Comments at pg. 11 (providers should contribute access to the Internet); Iowa Communications Network Comments at pg. 2; Iowa Utilities Board Comments at pg. 2; Kinkos, Inc. Comments at pp. 3-6 (community Internet access should be part of universal service); Lincoln Trail Libraries System Comments at pg. 1; Commonwealth of Massachusetts Board of Library Commissioners Comments at pg. 4; Merit Network, Inc. Comments at pp. 2-3 (ISDN, T1 access); Library of Michigan Comments at pg. 4 (ATM, broadband access); Michigan Library Association Comments at pg. 5 (ATM, broadband access); State of Missouri Comments at pp. 1-3 (Internet, teleconferencing capabilities); Mountaineer Doctor Television Telemedicine Program at West Virginia University (T-1 access, ISDN, ATM); National School Boards Association et al. Comments at pp. 13-14, Appendix I (unbundled broadband switching and transmission capable of delivering high-quality video); Nebraska Association of Hospitals and Health Systems Comments at pg. 1 (384Kb minimum, 1.544Mb more likely); New York State Board of Regents and new York Education Department Comments at pg. 11 (broadband on demand); North of Boston Library Exchange, Inc. Comments at pg. 1 (T-1, T-3 access); North Dakota Department of Health Comments at pg. 1 (ISDN); Oakland Unified School District Comments at pp. 10, 13 (T-1 access); Pacific Telesis Comments at pp. 3-6, 8-11 (ISDN provided to schools); U.S. Distance Learning Association Comments at pp. 9-12; US West Comments at pp. 21-23 (56/64Kb on request); and State of Wisconsin Department of Public Instruction Comments at pg. 1.

[5] Joint letter from Secretary of Education Richard Riley, Secretary of Agriculture Daniel Glickman and Secretary of Commerce Michael Kantor to Reed Hundt dated Oct. 10, 1996.

[6] Recommended Decision at ¶ 629.

MFS respectfully disagrees with the Joint Board's conclusion and *laissez faire* approach to promoting access to advanced services. Including "access to advanced services ... in all regions of the nation"[7] as the second listed universal service policy principle is an express direction from Congress that state and federal regulators use universal service goals and mechanisms to actively promote the development and deployment of advanced telecommunications technologies. If the *status quo* were adequate, why did Congress include access to advanced services in its list of universal service policy principles to be considered by the Commission and the Joint Board? Since digital switching and digital, fiber-optic based, interoffice transmission is already widely deployed by most local and interexchange carriers, one might reasonably assume that Congress hoped that the Commission and Joint Board would address the largely analog, copper local loop which impedes the delivery high-speed digital services to customers.

1. *Universal Access to Advanced Services Should be Assured by Adopting the Network Standard Established by Statute for RUS Borrowers*

To promote access to advanced services, MFS recommends that the Commission adopt network standards that parallel the advanced network standards adopted by Congress for rural telephone companies.[8] In its comments in this proceeding, MFS urged the Joint

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[7] 47 U.S.C. §254(b)(2).

[8] MFS's recommendation is also described in its Reply Comments at pp. 12-18 (filed May 7, 1996), the comments it filed in response to two subsequent requests for information filed with the Joint Board and the Commission on August 2, 1996 (pp. 11-28) and August 9, 1996 (pp. 3-5), and in a written *ex parte* filed with the Commission and members of the Joint Board on October 17, 1996. Unfortunately, MFS's proposal was not addressed in the Joint Board's Recommended Decision. While the Joint Board did not address MFS's suggestion, MFS recognizes that other parties did not (continued...)

Board and the Commission to encourage the deployment of advanced telecommunications capabilities by establishing minimum network standards for all local exchange carriers that generally mirrored the advanced capabilities ***already established by Congress*** for borrowers under the Rural Electrification Loan Restructuring Act of 1993 ("RELRA").[9] The RELRA requires state or territorial public utility commissions or borrowers to develop network modernization plans as a prerequisite for otherwise eligible carriers to receive federally subsidized loans for telecommunications utilities. The Act specifically requires that

> "a telecommunications modernization plan must, at a minimum, meet the following objectives:
> (i) The plan must provide for the elimination of party service.
> (ii) The plan must provide for the availability of telecommunications services for improved business, educational, and medical services.
> (iii) The plan must <u>encourage and improve computer networks and information highways</u> for subscribers in rural areas.
> (iv) The plan must provide for --
> (I) subscribers in rural areas to be able to receive through telephone lines --
> (aa) conference calling;
> (bb) <u>video images</u>; and,
> (cc) <u>data at a rate of at least 1,000,000 bits of information per second</u>; and,
> (II) the proper routing of information to subscribers."[10]

The Rural Utilities Service ("RUS") has promulgated rules implementing the above statute.[11] As of mid-1996, implementation plans from thirty-eight states and territories have

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8/ (...continued)
have a formal opportunity to respond to MFS's proposal.

9/ 107 Stat. 1356, codified in 7 U.S.C. § 935 (1994).

10/ 7 U.S.C. §935(d)(3)(B). [emphasis added]

11/ 7 C.F.R. §1751.106 *et seq.*

been filed with and approved by the RUS. These network modernization standards unambiguously articulate the minimum standards that Congress defines as the prerequisite for federal rural telephone loans, and the 38 state plans reflect the network standards state commissions or borrowers believe are appropriate for rural carriers in their states. Clearly, if Congress set these minimum standards for rural telephone companies, they should also be the minimum standard for all local telecommunications providers. Said differently, it would not be sensible telecommunications policy to hold rural telephone utilities to a standard higher than that required of other telecommunications providers.

Just as compliance with the statutory network standards is a prerequisite for receiving federal rural telephone utility loans, compliance with these minimum network standards should be a prerequisite for receipt of federal universal service funds. Such a requirement would also be consistent with the Commission's conclusions in its Interconnection Order that "the local loop element ... includes ... loops that are conditioned to transmit the digital signals needed to provide services such as ISDN, ADSL, HDSL, and DS-1 level signals ... to the extent technically feasible."[12/] Compliance with the advanced network standards required of rural telephone companies (*i.e.*, lines capable of transmitting video images and minimum data transmission speeds of 1 megabit per second) will go a long ways towards addressing the high-speed, broadband capabilities needed by schools, libraries and rural health care providers identified by many commentors.

12/ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, CC Docket 96-98, ¶¶ 380-381 (Aug. 1, 1996).

2. *Implementation of the RUS Network Standards have Proven Feasible for a Variety of Carriers and States*

Through a Freedom of Information Act request, MFS obtained some of the modernization plans filed with the RUS. Attachment 1 is shows the status of the various plans filed with the RUS. The plans that MFS examined were insightful:

- **New Mexico**. The New Mexico State Telecommunications Modernization Plan was developed by borrowers in a state with a substantial number of rural, low income telecommunications customers. The companies indicate commitment to a non-loaded loop architecture (*i.e.*, loops free from electronics, load coils, bridge taps or other impediments to high-speed offerings) that will allow them to "take advantage of emerging technologies like PCS, BISDN and ADSL."[13/] If New Mexico telephone companies can commit to such a loop architecture, shouldn't it be a national standard?
- **Alaska**. The Alaska Public Utilities Commission adopted regulations that implement the RUS's requirements.[14/] It is hard to imagine a state that has more inaccessible, high-cost populations than Alaska. In spite of the obvious challenges of providing telephone service in Alaska, the Alaska Commission adopted rules that require

> "By February 13, 2003,
> (1) a telephone company shall provide
> (A) service using switching equipment that can provide E911 service when requested by the governmental agency responsible for that service and
> (B) one-party service upon demand to subscribers; and

13/ New Mexico State Telecommunications Modernization Plan, pg. 2 (Jan. 16, 1996).

14/ In the Matter of the Development of a State Telecommunications Modernization Plan for Presentation to the Rural Utilities Service, United States Department of Agriculture, Order No. 5, R-95-4 (Nov. 22, 1995).

(2) a telephone company shall provide an end-to-end data transfer rate of no less than 28.8 kilobits per second.
(3) a telecommunications provider shall provide switched digital service that operates at a rate of at least 56 kilobits per second to any customer upon request.

A telecommunications provider shall work towards

(1) elimination of party-line service and
(2) universal availability, upon request, of digital voice and data service of at least 56-164 kilobits per second; transmission and reception of high-bit-rate (no less than 1 megabit per second) data; and reception of video as described in (e) of this section."[15]

It is hard to imagine why the modernization standard that applies to telephone companies serving the remote areas of Alaska should not also apply to every other telephone company in the United States.

- **Illinois**. The State Telecommunications Modernization Plan for Illinois[16] prepared by the borrower telephone companies commits to provide for "customers in rural areas to be able to receive, over telephone lines, such services as: video images; data at the rate of at least one million bits of information per second provided that proper electronics and switching facilities are connected to the network facilities being placed."[17]

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[15] Id. Appendix B, pg. 7.

[16] State Telecommunications Modernization Plan, State of Illinois (June 21, 1996).

[17] Id. at pg. 2.

- **Guam**. In the telecommunications Modernization Plan for the Territory of Guam, which was prepared by Bellcore,[18] in the short term (1997-2001), the Guam Telephone Authority has committed to provide

> "Through the use of remote switching centers and because of the relatively small size of the island, most subscriber loops are short enough to enable the use of High-bit-rate Subscriber Line (HDSL) technologies to provide two-way data transmissions at rates of at least 1 Mb/s. All new loop facilities are capable of supporting HDSL since at least three pairs of wires are placed to every customer premises."[19]

It seems reasonable to apply the same telecommunications network modernization standards to other "island" telephone companies -- like the phone companies serving Manhattan.

3. *Network Standards, Which are not Service Requirements, May be Waived in Instances of Technical Infeasibility Due to Exogenous Factors*

It is important to note that the statutory mandate regarding deployment of advanced telecommunications capabilities does not require that such advanced services shall be supported by federal universal service support mechanisms. Said differently, the deployment of advanced telecommunications network capabilities need not be a component of universal service that is eligible for extraordinary support or subsidies, nor should the provision of advanced services be subsidized. Consistent with the policies established by Congress in RELRA for RUS borrowers, networks should be capable of supporting advanced services as a prerequisite to a carrier's receipt of any universal service support.

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[18] Telecommunications Modernization Plan for the Territory of Guam (November 13, 1995).

[19] Id. at pg. 10.

It is also important to distinguish between a network that is capable of providing advanced telecommunications services and actually providing the services. MFS is not suggesting that advanced services -- such as ISDN, ADSL or HDSL -- be provided at rates subsidized by universal service. The prerequisite for receipt of universal service funds should be deployment of a network that is capable of supporting such advanced services and providing access to such services. If all carriers deploy networks that are capable of supporting advanced services and provide access to advanced services, the natural operation of the competitive market will create powerful economic incentives for carriers to ensure that such capabilities are actually used by consumers. Congress envisioned such a market-based mechanism when it required that "[t]he Commission shall establish competitive neutral rules ... to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services."[20/]

The Commission should recognize when it is technically feasible to enhance access to advanced telecommunications services. Some carriers, particularly wireless carriers, may be unable to conform their networks with the standards set out in the RELRA because their licenses do not include enough spectrum to allow them to offer such broadband capabilities. Denying them access to universal service support while requiring them to contribute would violate principles of competitive neutrality. In order to preserve the principle of competitive neutrality, MFS recommends that the Commission grant a waiver of the minimum network standards in instances where it is technologically infeasible for carriers to meet these minimum standards because of exogenous factors obviously beyond a carrier's control, such

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20/ 47 U.S.C. § 254(h)(2)(A).

as limited spectrum. The Commission should not, however, grant a waiver simply because a carrier asserts that it would be very expensive to upgrade its landline network to conform with the minimum network standards.

C. Universal Service Support Received and Paid for Should be Explicitly Reflected on Customers' Bills

The universal service mechanisms proposed by the Joint Board do not ensure that universal service support will be explicit and used "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended" as required by §254(e). There are two aspects of making universal service explicit -- those who receive support should know how much support they receive and those who provide support should know how much support they are providing. For example, the Joint Board does not propose a mechanism that ensures that high-cost support provided to companies will actually be reflected in the rates paid by customers who live in high-cost service areas. Support to high-cost customers is not explicit. Likewise, while the Joint Board proposes universal service support of up to $2.25 billion for schools and libraries, it does not propose a mechanism to make that support explicit on the bills of telecommunications customers who would provide that support. If telecommunications consumers are required to subsidize low income subscribers, service to high-cost areas, schools, libraries and health care providers, they ought to know how much support they are required to provide.

The best way to ensure that universal service meets this statutory requirement is to explicitly reflect universal service support on customers' bills. Customers' bills should reflect the support they receive as well as the support they provide. A customer who lives in a high

cost area should receive a bill from his carrier that shows the full price of the service less the high-cost subsidy that the carrier applied to the customer's bill. Similarly, a low income customer that receives Lifeline or Linkup support, should see those subsidies explicitly reflected on the bill rendered to them by a carrier. Telecommunications carriers that contribute to universal service funding should explicitly reflect their contributions on the bills they send to their customers.

There are many benefits associated with explicitly reflecting universal service support and payments on customers' bills. Explicitly reflecting universal service support is expressly required by §254(e); a line item entry on customers' bill is very explicit and fulfills the statutory requirement that universal service support be explicit. Explicitly reflecting universal service support honestly informs customers of the total costs of telephone service and the subsidies they receive. Explicitly reflecting support on customers' bills also ensures that the benefits of universal service support flow directly to low income customers and customers living in high cost areas rather than simply being retained by carriers.[21/] Explicitly reflecting support on customers' bills will substantially mitigate the "rate shock" that might otherwise occur when rates are geographically deaveraged and increased to cost-based rates in high-cost areas.

21/ The nine-digit zip code mechanism for identifying eligible customers, described in Section VIII.A. (Administration), below, could be used to ensure and easily audit that carriers' bills reflected the appropriate universal service support.

II. AFFORDABILITY

A. Ensuring the Affordability of Local Service Should not Significantly Expand the Overall Size of Universal Service Support

The Joint Board found that "affordability" included an absolute component ("to have enough or the means to") and a relative component ("to bear the cost of without serious detriment").[22] The Joint Board also found that while there is a correlation between subscribership levels and affordability, current high subscribership levels did not imply that they were affordable in the sense that current rates may impose a hardship on some subscribers.[23] The Joint Board also recommended that states take the primary role in determining affordable rates given the characteristics of households and telephone service (*e.g.*, size of the local calling scope) in individual states.[24]

The effort to ensure affordable rates should not significantly expand the overall size of the universal service support fund. Telephone subscribership is very high, which implies that most subscribers find that it is affordable. While states should play an active role in investigating the causes of declines in subscribership, as suggested by the Joint Board,[25] the availability of federal universal service support should not give states *carte blanche* to fund politically popular local rate reductions or hold local service rates at unrealistically low levels.

22/ Recommended Decision at ¶ 125.

23/ Recommended Decision at ¶ 127.

24/ Recommended Decision at ¶ 131.

25/ Recommended Decision at ¶ 132.

There is a practical risk that the mandate to ensure affordable rates will result in rates that are too low.

MFS suggests two practical mechanisms for limiting universal service support to the level needed to maintain affordable rates. First, in aggregate, universal service support for service to high cost areas should be limited to the aggregate amounts presently provided to companies serving high-cost areas. The total support available for low income subscribers may be higher or lower than current support levels depending on the net result of the various programs (*e.g.*, subsidized toll blocking, and qualification by social agencies rather than self certification). Second, as suggested by the Joint Board,[26] additions to total high-cost support should occur only when there is a decline in subscribership or only when there is a substantial change in a factor affecting affordability. After all, current high levels of subscribership have been achieved given current levels of support, so it seems reasonable to expect that additional funds are necessary only when there is a substantial change in circumstances.

III. CARRIERS ELIGIBLE FOR UNIVERSAL SERVICE SUPPORT

Any carrier that meets the minimum network standards described above and actually provides supported service to low income customers or to customers who live in high-cost

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[26] Recommended Decision at ¶ 132. "Therefore, we recommend that, to the extent that subscribership levels fall from current levels on a statewide basis, the Commission and affected state work together informally to determine the cause of the decrease and the implications for rate affordability in that state. If necessary and appropriate, the Commission may open a formal inquiry on such matters and, in concert with the affected state, take such action as is necessary to fulfill the requirements of section 254."

service areas, or provides supported services to eligible schools, libraries or health care providers should be eligible for universal service support. The Joint Board's Recommended Decision generally embraced this principle, but should be modified in two areas: (1) service provided through resale should be eligible for universal service support; and, (2) carriers that provide service to eligible schools, libraries and health care providers should not be denied support simply because they do not provide the panoply of universal services throughout their service areas.

A. Service Provided Through Resale Should Eligible for Universal Service Support

The Joint Board misinterprets §214(e)(1), the statutory definition of an eligible carrier, to exclude "pure" resellers from being eligible from receiving universal service support even though they might provide service to otherwise eligible low income customers or high-cost areas.[27] Section 214(e)(1) defines an eligible carrier as a carrier that offers the services supported by universal service support mechanisms "either using its own facilities or a combination of its own facilities and resale of another carrier's services." The Joint Board interprets this to exclude a "pure" reseller because that is not a "combination" of facilities and resale of another carrier's services. An alternative interpretation, that MFS believes is consistent with the policy rationale of the Telecommunications Act would include resellers, even pure resellers, in the definition of eligible telecommunications carriers.

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[27] Recommended Decision at ¶ 161-162.

There is no debate that resellers are telecommunications carriers. Denying universal service support to the services provided by resellers is not competitively neutral as it would disadvantage resellers and provide a competitive advantage to facilities-based carriers. It seems patently inconsistent with the pro-competition intention of the Telecommunications Act to interpret and apply §214(e)(1) to create such a serious competitive distortion. Also, there is no debate that resellers could serve low income customers or high-cost areas. Why would Congress want to subsidize low income customers and high-cost areas, but prohibit an entire class of competitors from providing such subsidized services?

The policy purpose of §214(e)(1) might have been to create a mechanism to ensure that there was no double recovery of universal service subsidies. That is, Congress may have created the definition of an eligible telecommunications carrier to prevent both the facilities-based carrier and those who resell those facilities from receiving subsidies for the same service.[28/] That double recovery problem is avoided when low income and high-cost subsidies are assigned to end-user customers (and explicitly reflected on customers' bills) and not carriers. If the prices charged by facilities-based carriers and resellers are based on the costs of providing service, and any subsidies are explicitly reflected on customers' bills, then there will be no opportunity for double recovery of subsidies. The Commission should not accept the Joint Board's conclusion that pure resellers might not be eligible to draw from the universal service fund like other carriers. Instead, the Commission should broadly

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28/ Note that double recovery is different from designating more than one carrier as an eligible carrier, as contemplated by §214(e)(2). In any area, more than one carrier may be eligible to receive universal service funds, but double recovery occurs when more than one carrier receives funds for service to the same low income or high-cost customer.

interpret §214(e)(1) to include many types of carriers (including pure resellers), and limit the potential for double recovery of subsidies by explicitly reflecting subsidies on customers' bills.

B. Carriers That Provide Supported Service to Eligible Schools, Libraries and Health Care Providers Should be Eligible for Universal Service Support or Credits

The Joint Board's Recommended Decision does not indicate whether the eligibility requirements apply only to carriers serving low income customers and service to high-cost areas. A carrier that provides supported service to eligible schools, libraries and rural health care providers should be eligible for the associated subsidies irrespective of whether it also provides supported services to low income customers or high cost areas.

Section 254(e) limits universal service support to an "eligible telecommunications carrier" as that phrase is defined by §214(e)(1). In contrast, support for health care providers, schools and libraries is extended to "all telecommunications carriers" rather than "eligible telecommunications carriers." Such language acknowledges that Congress did not intend for support to carriers that provide service to schools, libraries and health care providers to be limited to eligible telecommunications carriers as that term is defined by §§254(e) and 214(e)(1). As a matter of policy, it would not promote the provision of advanced services to schools, libraries and health care providers if support for such services were limited to eligible telecommunications carriers. The Joint Board's Recommended Decision should be clarified to allow any telecommunications providers that provide supported services to schools, libraries and health care providers to be eligible for any associated universal service support irrespective of whether such providers are otherwise eligible telecommunications carriers.