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December 18, 1996

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Mr. William F. Caton
 Acting Secretary
 Federal Communications Commission
 1919 M Street, NW, Room 222
 Washington, DC 20554

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

Dear Mr. Caton:

Enclosed for filing in the above-stated matter, please find the original and four (4) copies of the Comments of the West Virginia Consumer Advocate In Response to the Recommendations of the Federal-State Joint Board on Universal Service.

Copies have been served on all parties of record on the official service list, as well as to the International Transcription Service. We are also forwarding a hard copy, plus diskette of our Comments to Sheryl Todd of the Common Carrier Bureau in accordance with the instructions on your Public Notice released November 18, 1996.

Respectfully submitted,

Terry D. Blackwood
 Counsel for Consumer Advocate

TDB/cs
 Enclosures
 cc: all parties

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

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

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**COMMENTS OF THE WEST VIRGINIA CONSUMER ADVOCATE
IN RESPONSE TO THE RECOMMENDATIONS OF
THE FEDERAL-STATE JOINT BOARD ON UNIVERSAL SERVICE**

On November 7, 1996, the Federal-State Joint Board ("Joint Board") appointed by the Federal Communications Commission ("FCC" or "Commission") pursuant to Section 254 of the Telecommunications Act of 1996 ("the Act"), adopted its Recommended Decision on universal service issues. On November 18, 1996, the Commission issued a notice seeking comment on the recommendations of the Joint Board.

The Consumer Advocate Division of the Public Service Commission of West Virginia ("West Virginia Consumer Advocate" or "WVCAD") is required by statute and regulation to represent the interests of West Virginia ratepayers in proceedings affecting rates. West Virginia Code § 24-1-1(f)(2). Resolution by this Commission of the issues relating to universal service will have a profound impact on rates and telecommunications service in West Virginia. The West Virginia Consumer Advocate submitted Comments and Reply Comments in the proceeding before the Joint Board, and generally supports the recommendations contained in the Recommended Decision of November 7, 1996. If adopted, the Joint Board's recommendations will allow the introduction of competition into all areas of telecommunications, while at the same time ensuring that rates remain affordable for all Americans and that advanced telecommunications technologies

are rapidly made available to schools, libraries and hospitals. Comments on specific sections of the Recommended Decision are set forth below, arranged according to the topic number listed in the Recommended Decision ("RD").

The names and address of the counsel for the West Virginia Consumer Advocate in this proceeding are as follows:

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Billy Jack Gregg
West Virginia Consumer Advocate
700 Union Building
Charleston, West Virginia 25301

All correspondence, notices, reply comments and other documents should be sent to the above address.

1. DEFINITION OF UNIVERSAL SERVICE; WHAT SERVICES TO SUPPORT

The Notice of Proposed Rulemaking ("NPRM") issued by the Commission in this proceeding set forth a number of services which presumptively should be included in the definition of "universal service,"¹ and asked for comments on what additional services should be included. In discussing this issue the Joint Board added access to interexchange service and directory assistance to the universal service definition. See, Paragraphs 65 and 67 of the RD. However, the Joint Board failed to include an annual "white pages" directory listing as a service to be included as part of universal service support. The WVCAD disagrees strongly with this decision.

At Paragraph 68 of the RD the Joint Board stated:

¹These services included voice grade, single-party access to the public switched network; touch tone; access to emergency services; and access to operator services. NPRM, Para. 16; 18-22.

Although the provision of "white page listings" received significant record support, we do not recommend that it be included within the general definition of universal service. While we agree with the commenters that suggest that this is an important service that facilitates access to the telecommunications network, we do not consider white page listings to be within the 1996 Act's definition of "telecommunications services." ...Although we find that white page listings should not be included in definition of universal service support, we strongly recommend that states take the necessary and appropriate steps to ensure the continued availability of this fundamentally important offering. [Emphasis added.]

The WVCAD believes the Board's decision excluding white pages is inconsistent with the decision recommending inclusion of access to directory assistance in paragraph 67 of the RD. In recommending access to directory assistance the Board, in part, stated:

We are recommending support be provided for access to directory assistance, not the service itself. We agree with the numerous commenters who favor providing universal service support for access to directory assistance because it is a necessity for consumers to access "telecommunications and information services."

The WVCAD believes that access to white page listings is as important and logical as the Board's support for access to directory assistance for the same reasons given by the Board in paragraph 67. Availability of white page listings is an admittedly "fundamentally important offering." (Para. 68). It offers consumer access to important information such as consumer, government and business listings. Traditionally, consumers have treated the yearly receipt of a white page directory as a pre-paid and important part of their "core" or basic telephone service.

As many commenters have suggested, the nation's telecommunications network is only valuable if used. Lack of a guarantee of white page listings will only have a chilling effect on telephone use, inconvenience many consumers in countless ways and be inherently inefficient.

Finally, as the Commission must be aware, most - if not all - telecommunications companies charge consumers for access to directory assistance. In a universal service context, consumers could only benefit by having the "core" option of utilizing white page listings as an alternative to directory assistance. The WVCAD does not believe that the Board's well-intended recommendation that the states ensure availability of white page listings is sufficient to meet the mandates of Section 254 (c)(1) of the 1996 Act. Providing universal service support for access to white pages listings is a necessity for consumers to access "telecommunications and information services" without the potential financial burden of paying for access to directory assistance. [emphasis added] The WVCAD urges the Commission to add "white page listings" to the list of services entitled to universal service support.

2. HIGH COST SUPPORT

A. Which Proxy Cost Study to Use

In determining local exchange costs the Board has recommended that the Commission use forward-looking economic costs as the basis for determining support levels and that a proxy model is a reasonable technique for determining forward looking costs. (Paras. 275, 276). As is obvious from a cursory review of the Joint Board decision, the discussion of various proxy models generated an inordinate amount of comments and controversy. Although the Joint Board found that the Benchmark Model 2 and the Hatfield Model were "the best available basis" for a proxy model (Para. 279), ultimately, the Board passed on the decision on this issue to the Commission after a series of recommended federal-state "workshops." (Paragraphs 281 and 282).

Certainly local exchange costs need to be based on some standard which is universally accepted. All proxy cost models will embody broad assumptions and inevitable flaws by their

very nature. Nevertheless, the WVCAD urges the Commission to make an expeditious decision regarding what proxy model to use. The WVCAD does not believe any great advantage can be gained by trying to achieve an unachievable degree of accuracy in any of the proxy models. As indicated by the Joint Board, the Benchmark Model 2 and the Hatfield Model provide the best basis for the proxy model, and the WVCAD has no objection to their adoption.

B. National Benchmark Based on Revenues per Access Line

The WVCAD supports the Board's recommendation that the Commission establish a revenue "benchmark" to calculate the support that eligible telecommunications providers will receive when a proxy model is used to calculate the costs of providing services designated for support from universal service mechanisms. (Para. 299). As the Board stated:

We believe it is desirable that the benchmark be based on the amount the carrier would expect to recover from other services to cover the cost of providing supported services in rural, insular, and high cost areas, but final determination of the methodology for selecting the benchmark must also consider the revenue base for universal service contributions. Those eligible telecommunications providers for which the cost of providing supported services exceeds the benchmark would be permitted to receive universal service support. (Id.)

The WVCAD agrees with the Board that the Commission should set a nationwide benchmark to use in calculating the amount of support eligible providers would receive (Para. 309). The WVCAD also endorses the Board's recommendation that the benchmark be "based on the nationwide average revenue-per-line" and that revenues-per-line should be the sum of revenue generated by local calling, discretionary enhanced services, access services and "other as found appropriate," divided by local loops served. (Para. 310).

A national benchmark will ensure that telecommunications rates remain affordable throughout the nation, and do not vary radically from state to state. A national benchmark should also encourage competing carriers to enter high cost areas. As stated in footnote 39 of the original NPRM in this docket: "The current USF [Universal Service Fund] program is designed to preserve universal service by enabling high cost companies to establish local exchange rates that do not substantially exceed rates charged by other companies."² The goal should be the same for any enhanced universal service fund under the Act.

3. SUPPORT FOR LOW-INCOME CONSUMERS

The WVCAD fully supports the Board's recommendation that the Commission prohibit carriers receiving universal service support from disconnecting basic local telephone service for non-payment of toll charges. (Para. 387). Prohibiting local disconnection enhances universal service and is consistent with Section 254(c) of the 1996 Act because local access, in particular, is "essential to education, public health, or public safety and consistent with the public interest, convenience, and necessity." [Id., 47 USC §254(a)(A)(D)].

In addition, the WVCAD agrees with the Board's finding that the lifeline Assistance Program should include free voluntary toll blocking and toll control. (Para. 384). Voluntary toll blocking allows telephone consumers to block out-going toll calls. Toll control allows consumers to determine in advance a specific amount of toll usage per monthly billing cycle. Both of these services enable low income telephone consumers to control their financial resources and helps

²Originally stated in MTS and WATS Market Structure, Third Report and Order, 93 FCC 2d 241 (1983).

avoid the involuntary termination of access to telecommunications service. As the Board noted, "a primary reason subscribers lose access to telecommunication services is failure to pay long distance bills." (Para. 384). It is in the public interest that the above Board recommendations be approved by the Commission in order to help increase and retain subscribership among low income consumers, and to further universal service.

4. SUPPORT FOR SCHOOLS AND LIBRARIES

In its Recommended Decision the Board established a sliding scale of discounts applicable to telecommunications services provided to schools and libraries, and capped annual contributions from the Universal Service Fund to schools and libraries at \$2.25 billion per year. The WVCAD strongly supports the approach taken by the Board in order to support schools and libraries. However, because several areas addressed by the Board are ambiguous or unclear, the WVCAD offers the following additional comments.

A. Definition of High and Low Cost Areas

The sliding scale for discounts adopted by the Board is based on two factors: (1) how disadvantaged each school is; and (2) whether the school is located in a low, mid or high-cost area. Generally, the greater the percentage of students enrolled in the national school lunch program and the greater the cost to provide telecommunications services, the greater the discount. However, as shown on the matrix of discounts contained in paragraph 555 of the RD, when a school has a large number of disadvantaged students (over 50% enrolled in school lunch program), the discounts do not vary based on cost of service. For example, a school with over 75% of

telecommunications services, irrespective of whether it was located in a low-cost, mid-cost or high-cost area.

Although the discounts are based primarily on cost of service, the Recommended Decision does not define how an area's costs are to be defined. In paragraph 560 the Board stated:

It may be appropriate for the Commission to define high cost areas by considering the unseparated loop costs of the incumbent LEC. If unseparated loop costs exceed a nationwide threshold, the area may be considered "high cost," and schools and libraries located in that area would be given a greater discount.

The Board encouraged the Commission to solicit additional comment on this issue. The WVCAD believes that any benchmark adopted by the Commission to determine area costs should be easy to understand and administer. Furthermore, the standard should be familiar to the telecommunications industry, and be based on existing reports filed by telecommunications carriers. Accordingly, the WVCAD supports use of the Commission's existing standard for "high cost" set forth in regulations governing the existing Universal Service Fund, as the benchmark for use in school and library discounts. See, Subpart F of the Commission Regulations, 47 C.F.R. §§ 36.601 - 36.641. Under the Commission's current Universal Service Fund regulations, areas with unseparated loop costs in excess of 115% of nationwide average unseparated loop costs are considered high cost areas, and are eligible for support through an "expense adjustment." 47 C.F.R. § 36.631.

Applying this framework to the discount matrix for schools and libraries established by the Board, schools and libraries in areas whose costs are below 85% of the national average unseparated loop costs would be classified as "low cost." Schools and libraries in areas with loop costs falling from 85% to 115% of the national average would be classified as "mid-cost," and

schools and libraries in areas with loop costs over 115% would be classified as "high cost."

Such a system would be easy to monitor, and would be relatively simple to adjust if the Commission wanted to alter the percentage of schools falling within each category. Accordingly, the WVCAD urges the Commission to adopt a definition of high-cost, mid-cost and low-cost areas for purposes of school and library discounts based on unseparated loop costs of each carrier.

B. Schools in High Cost Areas Will Still Pay More

As a general matter related to loop length, schools in urban areas are more likely to be classified as "low cost" and schools in rural areas are more likely to be classified as "high cost."

In paragraph 560 of the RD the Board stated:

We recommend that the statutory definition of "affordable" must take into account the cost of service in an area. Thus, we recommend that the Commission take into account the cost of providing services when setting discounts for schools and libraries.

In spite of this recommendation, under the Board's proposed matrix discounts available to schools and libraries do not vary with cost of service once a school has over 50% of its students enrolled in the school lunch program. The Commission should be aware that even at prices with steep discounts of 80% and 90%, schools in high-cost areas (rural schools) will still pay more for telecommunications services than schools in low-cost areas (urban schools). This is true even if the schools in high and low-cost areas have exactly the same percentage of disadvantaged students.

For example, the competitively bid price for a T-1 line to an urban school in a low-cost area with over 75% disadvantaged students may be \$500 per month. Applying the 90% discount results in a monthly price to the school of \$50. On the other hand, the price of the same T-1 line to a rural school in a high-cost area may be \$1,000 per month. Applying the 90% discount in this

case results in a monthly charge for the rural school of \$100, twice that paid by an urban school, even though both are equally disadvantaged. In order to lessen the disparities between equally disadvantaged urban and rural schools, the WVCAD recommends that the Commission amend the discount matrix found in paragraph 555 of the RD to provide an 85% discount for schools in high cost areas with between 50% and 74% disadvantaged students, and to provide a 95% discount for schools in high cost areas with over 75% disadvantaged students. This slight amendment to the Board's proposed matrix of discounts will ensure that cost of service is considered in determining discounts, and that the schools in our nation most in need of assistance in securing affordable telecommunications services - those with extremely high levels of disadvantaged students in high cost areas - pay rates which are comparable to disadvantaged schools in urban areas.

C. Are Private and Parochial Schools Included in the Discount Program?

The basis of the school discount is found in Section 254(h) of the Act which directs that "elementary and secondary schools" be provided telecommunications services at rates less than charged others for the same services. Section 254(h)(5) of the Act defines "elementary and secondary schools" the same as those terms are defined in paragraphs (14) and (25) of the Secondary Education Act of 1965 (20 USC 8801). The Education Act defines "elementary and secondary schools" as ". . . a non-profit institutional day or residential school that provides elementary [or secondary] education, as determined under State law." [Emphasis added.] Thus, it appears that the various state laws around the country will determine whether non-public schools, such as parochial schools, will be eligible for discounts under the Telecommunications Act.

This determination will be problematic, since each state has a different method of deciding

whether elementary and secondary education is being provided at private and parochial schools "under State law." For example, Tennessee has a well-defined process under state law for accrediting non-public schools. See, Tennessee Code Annotated 49-1-302; 49-6-3001; Rules of the Tennessee State Board of Education, Chapter 0520-7-2. West Virginia has no statutory definition of elementary or secondary school, but requires county school board approval of instruction in private and parochial schools under the compulsory school attendance law. See, West Virginia Code, §18-8-10. On the other hand, the Kentucky Department of Education is apparently prohibited from prescribing regulations for private and parochial schools, although individual private and parochial schools can voluntarily submit to state regulation in order to participate in various state and federally funded projects. Kentucky State Department of Education v. Rudasill, 589 S.W.2d 877 (Ky. S. Ct. 1979). The question remains: what test should be used to determine whether a private or parochial school is eligible for discounts under Section 254 of the Telecommunications Act?

The Joint Board never directly addressed this question under the discussion of "eligibility" for the school discount. See, Paragraph 593 of the RD. Nevertheless, in the discussion of the discount formula found in Paragraph 554 of the RD, the Joint Board appears to include private and parochial schools in the total number of participating schools. The Commission should clarify this issue and give some guidance to the states and telecommunications carriers on whether private and parochial schools are eligible to receive the school discounts, and how eligibility should be determined.

In raising this issue, the WVCAD is not attempting to limit the number of schools eligible for the telecommunications discount. On the contrary, the WVCAD believes the intent of the law was to provide benefits to as many schools as possible, both public and private, since the

connection of all schools will benefit society at large. The WVCAD believes a presumption should be established that all schools are eligible for the discount under Section 254 of the Act, unless it can be shown that a particular school is not providing elementary and secondary education "as determined under State law." The WVCAD urges the Commission to address this issue and provide guidance to the States and the schools.

5. SUPPORT FOR HEALTH CARE PROVIDERS

A. Definition of Rural Area

At paragraph 693 of the RD the Joint Board recommended that the Commission adopt the "Goldsmith modification" of Metropolitan Statistical Areas (MSA) in order to distinguish which health care providers were located in rural areas, and thus eligible for discounts on telecommunications services under the Act. The WVCAD strongly supports this recommendation. The "Goldsmith modification" takes into account the actual rural nature of many areas within MSAs, and indicates by census block which areas are "urban" and which are "rural." For example, Kanawha County has the largest population of any county in West Virginia, and is included with Putnam County as part of the "Charleston MSA." However, Kanawha County is also a very large county in terms of size, and encompasses large tracts of wilderness in its eastern and southern sections. The "Goldsmith modification" recognizes this difference, and, thus, classifies the Cabin Creek Clinic as a rural health care provider, and Charleston General Hospital as an urban provider, even though both are contained within the Charleston MSA. The Commission should adopt the Board recommendation on this issue.

B. What Services Are "Necessary" for the Provision of Health Care

At paragraph 654 of the RD the Joint Board appeared to recommend that rural health care providers be able to "choose the telecommunications services they require." The WVCAD fully supports this approach which would be the same as applied to schools and libraries under Section 254 of the Act. However, later in that same paragraph the Joint Board seems to back away from this recommendation, implying that rural health care providers should be limited to a pre-approved menu of services which the Commission may bless as "necessary for the provision of health care in a state."

The WVCAD opposes this approach. Any list approved by the Commission in 1997 may be obsolete or irrelevant to a large segment of the health care community. Only health care providers, fully cognizant of their own experience, needs and fiscal limitations, are in a position to make a determination about what telecommunications services are "necessary." The fact that these services will not be provided free, but merely at rates that are "reasonably comparable" to urban areas, is adequate protection against extravagant or wasteful use of telecommunications resources by health care providers. The Commission should ratify the Joint Board initial recommendation and find that the services which are necessary for the provision of health care are those services chosen by the health care providers themselves.

6. INTERSTATE SUBSCRIBER LINE CHARGES AND CARRIER COMMON LINE CHARGES

The WVCAD believes that the subscriber line charge (SLC) should be eliminated by the Commission. While the Board recommended that there be no increase in the current \$3.50 SLC for primary residential and single-line business lines, it did not go far enough, particularly given the universal service concerns of low-income customers. The residential SLC of \$3.50 a month

is a fixed, unavoidable end-user charge or surcharge which, as the Board noted, "has an impact on universal service concerns such as affordability." (Para. 769).

The 1996 Act does not require, nor contemplate a fixed, non-avoidable, non-usage sensitive monthly subscriber line charge to captive end-users for universal service support. Section 254(d) of the 1996 Act requires telecommunication carriers, not end-users, to contribute to the support of universal service:

Every telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the commission to preserve and advance universal service. [Emphasis added.]

See also, Section 254(b)(4) of the 1996 Act which states that "all providers of telecommunications service should make an equitable and non-discriminatory contribution to the preservation and advancement of universal service."

As presently constituted, the SLC is an arbitrary and implicit subsidy which does not meet the mandates of the 1996 Act. It discriminates against the low-income end-user and consumers who make infrequent long distance interstate calls. (Sec WVCAD Reply Comments, p. 3).³ The \$3.50 per month SLC particularly effects the affordability of residential telephone service in West Virginia. In Topic V of its Recommended Decision, the Board concluded that "both absolute and relative components must be considered in making the affordability determination required under the statute." (Para. 125). The WVCAD agrees, but wishes to impress upon the Commission that consumers consider the \$3.50 SLC cap to be an unavoidable part of their monthly telephone bill.

³Most inequitably, a consumer who makes no or relative few interstate toll calls in a month is still charged an interstate SLC.

As referenced in its earlier Comments to the Board, local rates in West Virginia are already high in absolute terms, well above the national average. (WVCAD Comments p. 4). Other relative components that should be considered are:

1. West Virginia is a rural state with a low population density of only 75.1 persons per square mile. (*Id.* p. 2).
2. Subscribership levels are well below the national average. (*Id.*)
3. Because of rugged mountainous terrain construction costs for landline telecommunications are high. (*Id.* p. 4).
4. West Virginia income levels per-capita are the 47th lowest in the nation. (U.S. Dept. of Commerce Survey of Current Business, August, 1995).

All of the above, including both the absolute and relative components, affect the affordability of telephone service in West Virginia. Elimination of the SLC would positively impact universal service in West Virginia and, no doubt, other states.

In its Recommended Decision Executive Summary, the Board states:

We recommend that the current SLC cap not be increased. In the event that the Commission determines that the revenue base for assessing contributions to the new national universal service support mechanism by interstate telecommunications carriers should include all telecommunications revenue, including intrastate revenue, then we recommend that the Commission implement a downward adjustment in the SLC cap for primary residential and single-line business lines. (Para. 11).

The Board's conditional recommendation reflects that Section 254(e) of the 1996 Act requires that universal service support be explicit and that telecommunications carriers, not end-users, are responsible for contributing to universal service support under a projected new national mechanism. In deciding upon its new national universal support mechanism, all

telecommunications revenue should be included. However, regardless of the decision on the revenue basis of universal service fund contributions, the Commission should not only make a downward adjustment to the SLC cap, it should eliminate it. In the new competitive telecommunications environment which the 1996 Act envisions, the SLC should become a relic of the past.

7. ADMINISTRATION OF SUPPORT MECHANISMS

At paragraph 817 of the RD the Joint Board recommended that assessments for the universal service support of schools, libraries and rural health care providers be based on both the intrastate and interstate revenues of each carrier. However, the Board made no recommendation as to the appropriate funding base for high cost and low-income support. The WVCAD advocates that the Commission adopt the same funding base for high cost and low-income support as adopted for schools, libraries and health care providers: both intrastate and interstate revenues, net of payments to other carriers.

It is important to remember that the revenue base chosen will not affect the size of the fund, it will merely act as an allocator. The size of the fund will be determined by the such things as the need for support (high cost and low-income) and any caps on funding imposed by the Commission (e.g., schools). The basis for assessment will affect which carriers will pay what share of the fund. Limiting the assessment base to interstate revenues only will mean that incumbent local exchange carriers will pay relatively smaller shares into the fund, since a smaller proportion of their revenues come from the interstate market compared to interexchange carriers. Such a bias would be unreasonable given that the purpose of the universal service support mechanisms is to maintain the affordability of local service, and that support of these mechanisms

is to be assessed on all carriers on an equal basis. Furthermore, basing assessments on total revenues - interstate and intrastate - will minimize the opportunity to "game" the system through the classification of revenues, will simplify reporting, and will simplify compliance checks. The Commission should find that assessments for the universal service support should be based on all revenues⁴ of all carriers, regardless of whether a call happened to originate in another state or LATA.

The West Virginia Consumer Advocate urges the Commission to adopt rules on universal service which will ensure that the advent of competition in all areas of telecommunications benefits as many of our citizens as possible and harms none. Adoption of the Joint Board recommendations, with the modifications and clarifications discussed above, will help maintain affordable service for high cost areas and low-income individuals, and will ensure that schools, libraries and rural health care providers across the nation have access to advanced telecommunications services.

Respectfully submitted,



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⁴Net of payments to other carriers. See paragraph 809 of the Recommended Decision.