TCA, Inc.
TELECOMMUNICATIONS CONSULTANTS

DOCKET FILE COPY ORIGINAL

December 19, 1996

FCC MAIL ROOM
DEC 19 1996
RECEIVED

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Regarding: CC Docket No. 96-45 - Federal-State Joint Board on Universal Service

Dear Secretary:

Pursuant to the Commission's Public Notice of November 18, 1996, DA 96-1891, TCA, Inc.-Telecommunications Consultants (TCA) files its comments on the Recommended Decision of the Joint Board adopted November 7, 1996. Enclosed are the original and four copies of TCA's comments in the above docket.

Sincerely,

Randall R. Zach

Randall R. Zach

RZ/jd
Enclosures

cc: International Transcription Service

No. of Copies rec'd 0+4
List ABCDE

3617 Betty Drive - Suite I - Colorado Springs, CO 80917-5909

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

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

COMMENTS OF
TCA, INC. - TELECOMMUNICATIONS CONSULTANTS

TABLE OF CONTENTS

I. Introduction

The goals of this proceeding must be to provide specific, predictable and sufficient universal service support that will enable providers to offer universal services at reasonable, just and affordable rates. These comments address the issues that are of utmost concern to rural telephone companies.

II. Executive Summary

The concerns of rural telecommunications companies have not been adequately addressed in the proposed decision. Rural local exchange carriers (LECs) need sufficient and predictable support. The proposals to freeze support for rural LECs at some historic level will jeopardize universal service provision in rural areas. New cost proxy models will never be detailed enough to accurately approximate the cost of providing universal services in every rural area. Proxy models should be used to target support to the high cost access lines, but support should be based on actual costs for rural LECs. All support should be provided to the owners of facilities. This is a requirement of the Act, and the only practical way to encourage deployment of modern networks. The benchmark used to determine universal service support should be a rate that is just, reasonable, and affordable, not a number based on local revenues.

III. Principles

The universal service principles as listed in the 1996 Act [1] are complete. It is not necessary to add a "competitive neutrality" principle. Competitive neutrality must be weighed against the goals of universal service. Where the goals of competitive neutrality and the provision of universal services conflict, providing universal service must be of first importance. The idea of competitive neutrality is embodied to the extent necessary in the Act under those Sections outlined in Paragraph 23 of the Joint Board Recommendation. Therefore, there is no need to specify competitive neutrality as its own principle.

IV. Definition of Universal Service: What Services to Support

In the Recommendation, the Joint Board defines the set of services to be supported. Wireless providers receive preferential treatment in the recommended definition of universal services. The supported services specifically exclude certain vital services on the grounds that wireless providers cannot or are not required to support them at this time. This exception is neither competitively nor technologically neutral.

One of the services which should be included is E911. No other service could be more

[1] 1996 Act, Pub. L. No. 104-104, 110 Stat. 56. The 1996 Act amends the Communications Act of 1934, 47 U.S.C. §§ 151 *et. seq.* Hereinafter, all citations to the 1996 Act will be to the relevant sections of the United States Code unless otherwise noted.

essential to public safety than E911. Excluding this service from the list of supported services gives wireless providers a competitive advantage over providers who can or are required to offer the service. E911 should be added into the definition of universal service, where the service is requested by the local community.

Equal access must also be included. Paragraph 66 of the Recommendation states that "equal access should not be supported because of the potential costs to wireless carriers involved in upgrading facilities and because wireless carriers are not currently required to provide equal access." This argument is not consistent with a competitively neutral approach. Wireline carriers make expensive upgrades to provide equal access as required when an interexchange carrier issues them a bonafide request for the service. There is very little difference between wireless and wireline in this matter. In the interest of competitive and technological neutrality, access to interexchange service should include *equal access* to interexchange carriers. This applies to areas currently providing equal access or in areas that receive a bona fide request for equal access.

V. Affordability

Any increases in facilities or costs required by the list of universal services will ultimately come from rate increases. If the FCC reduces a carrier's support for universal services by excluding second residential lines and multiline business lines, carriers will have no choice but to raise local rates to make up for this revenue loss. Primary lines will be priced at reduced rates to reflect universal support while second lines must be priced at cost. Excluding some lines from universal service support is contrary to the principle of providing access to advanced services.

VI. Carriers Eligible for Universal Service Support

A. Eligible Telecommunications Carriers

The Commission should not interfere with the States application of Section 214(e)(1) eligibility requirements. The states are integrally involved with the needs of their particular states' consumers and carriers. Many states have already gone through this process of determining who will be an eligible carrier.

B. Definition of Service Areas

1. Improved Targeting

The Joint Board proposed the definition of Service Area for rural telephone companies to be their current study areas. This is appropriate for determining eligibility for universal service support in rural areas. It is also appropriate during the interim period while the current support mechanism remains in place for rural telephone companies.

When a competitor begins serving within a rural study area, the universal service support must be appropriately targeted to high cost access lines. The defined serving area may continue to be the study area of the incumbent rural telephone company, however the portable support for access lines within the area must vary based on the cost of providing the access line. The average cost of an access line in a study area may be $200, while the cost of individual access lines range from $50 to $2000. It would not be appropriate to make universal service support portable throughout such a study area based on the average cost of a loop.

Requiring the competitive LEC (CLEC) to offer services to the entire service area through advertising, does not prevent them from "cream skimming" the most profitable customers. CLECs can effectively be selective in the customers they accept through their rate structure, and marketing methods. The incumbent will be left with the most high cost, low volume customers that are not targeted by the CLEC. Appropriately targeting universal service support is essential to an equitable and effective universal service support program.

2. Acquisitions and Mergers

Caution must be exercised when promulgating rules that pertain to changes in study areas as the result of an acquisition or merger. Under paragraph 172, the Joint Board recommends using the existing study area for rural telephone companies. Study areas often change through acquisitions and mergers. New or modified rural study areas should be treated in a similar manner with other rural study areas.

In addition, universal service funding levels have been established by the Commission through the study area waiver orders. Facility upgrades are often an integral part of an acquisition, and may be required as a condition of approval for the transfer. "Freezing" support levels at a point in time prior to completion of required upgrades is inappropriate. LECs must be able to recover through support mechanisms, revenue streams authorized under current rules.

New or modified study areas must be allowed the option to adjust their "frozen" support levels based on facility upgrades. If not, these carriers may not receive "sufficient" support. When the Commission granted study area waivers, they also reviewed and established the universal service support for the new or modified study area. If LECs are not allowed to receive the amounts specified in the Commission's study area waiver orders, then their support will not be "sufficient," or "predictable."

C. Unserved Areas

Rules for unserved areas are a state matter. States are given this authority through the Act to decide who is eligible to serve these areas (Section 102 of the Act). Rules adopted must specifically state that this is a state matter and that no federal intervention is needed.

VII. High Cost Support

A. Calculation of Cost

1. Cost Proxy Models

At least until a proxy model has been thoroughly reviewed and tested, it will not meet the principles of providing sufficient and predictable support. While a model may achieve acceptable results for a large LEC, small LECs are very different. If a model results in insufficient support for one area, the large LEC is likely to make up for that deficiency in another area. Small LECs will not enjoy this benefit. No model is likely to achieve sufficient detail in assumptions to perfectly approximate appropriate costs in every area.

Proxy cost models can be used to more accurately target support to high cost access lines. For small rural LECs a model could be used to identify high cost loops, and then apply that distribution to actual cost. This method of using the proxy will assure appropriate targeting and sufficient support.

2. Portable Support

Support for combination, facilities-based and resale CLECs is not in the best interest of the consumers nor the industry. Support must only be given to facilities-based, wireline carriers. They are the carriers who will continue to make additional investments. If support only went to facilities-based providers, this would create incentives to improve the network. Section 254(e) of the Act states that "[a] carrier that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." The only conclusion that can be drawn from this statement is that the support must only go to the facilities-based provider.

Portable support has the potential of creating an overrecovery situation for the reseller. This would occur if CLECs are allowed to purchase loops for resale at a discount and then also receive support for those loops. If CLECs are to receive support where they do not own the facilities, then they must pay the full cost of the loop including a return component.

3. Which Lines to Support?

The Joint Board recommends support for only the first residential line and single-connection businesses. It is difficult at best to get an accurate count of these lines. A customer may have a line from the incumbent (which the incumbent treats as primary) and that same customer may purchase another line from the competitor (which the competitor treats as primary). As far as each carrier is concerned, there is only one line to that customer and therefore it is treated as their primary line.

Another example that will cause problems is when multiple families live in the same dwelling. Each family has its own line with the address on the bill being the same. Each of these lines are the first line for each family.

Which lines are primary will be hard to monitor. The primary line should be the line that is installed first. Wireless generally does not provide service to any customer's primary line. Few wireless lines, if any, are primary residential lines and almost never the first line that customer has installed. The first line installed should be considered the primary line until a competitor wins over the customer. Also, support must be the same whether the line is a business line or a residential line. Generally, wireless does not distinguish between residential and business customers with respect to rates. There is no cost-effective method to monitor this approach of excluding second lines.

Even if the Commission figures out a way to distinguish between a customer's house in Denver and their condo in Daytona Beach, arguments between carriers about who provides the primary line are inevitable. Therefore, all lines should be supported including all residential lines and business multilines. The second line to a home or business is not any less important than the first.

Another important argument to oppose the elimination of second lines from support is that doing so would prevent customers in all areas of the country from receiving advanced telecommunications services. There is a tremendous need for second lines for the additional services customers use. Take for example the Internet. Many customers who are avid users of the Internet have a second line dedicated to that service. Faxes and modems are other important "information highway" tools that compel the use of second lines. Eliminating support for second lines fundamentally hinders economic growth and access to these advanced services.

The rules need to address very specifically the loops to be used in calculating the frozen per line amounts and support dollars for rural carriers. The Recommendation (paragraphs 289 through 293) outlines the process for these calculations. The word "loops" is used throughout the description with no explanation of which loops should be included. The loops used as the divisor in the frozen per line calculations must be consistent with the loops that will be the multiplier in calculating the support.

B. Determining the Level of Support Using a Benchmark

The Joint Board recommends using revenue per line, including ancillary service revenue, as a benchmark. Using this approach will result in higher rates for basic local service in rural areas. This is the result of differences in discretionary revenues between carriers.

Rural customers do not subscribe to discretionary services as readily as urban customers. Some carriers do not even offer these services. For example, only 19% of rural customers buy custom calling services, while 33% of suburban customers buy the services.[2] Urban customers are even more likely to take custom calling features. If the benchmark is based on local service revenues, then the process will effectively impute to rural LECs revenues that they do not earn. Since they do not earn the same level of revenue per line as an urban LEC, their rate for basic exchange service will be higher than in urban areas.

The benchmark should be based on a reasonable rate for basic local service alone. The rate chosen must meet the criteria of keeping rural rates comparable to urban rates.

C. Transition

Sufficiency is not established if a carrier's support is frozen. Current and past business decisions were made based upon current rules. A freeze on historical data will not provide carriers with the funding that they need to provide universal service. Carriers must have be able to obtain funding for upgrades that they are installing to provide universal services. Carriers need to provide

---

[2] Rural Telecommunications, January/February 1996, pp. 30-36.

services for the evolving definition of Universal Service. Freezing the support does not fit into an evolving definition.

During the 3-year transition period when a LEC can elect to use proxies, they must also have the ability to revert back to the transitional method when and if rules are modified. There is a historical basis for this ability. When price cap rules first came about, some LECs chose to use this form of regulation. They knew that it was a one-time election and that they could not fall back on rate-of-return regulation. Shortly after they became a price cap company, the rules were modified. These modifications caused the companies to be better off if they would have stayed under rate-of-return regulations.

Support for rural LECs should not be frozen over the transition, but instead use current rules. Large telephone companies would still report their costs so as to preserve the National Average Cost Per Loop which is vital to the calculation of current USF support. This is a reasonable approach considering upgrades and other business decisions that affect future years.

It would be imprudent for any telephone company to make any more investment decisions until they know what the rules will actually be. May 8, 1997 will be the first date that they will know the new rules. Then there will be a period of rule clarification or court intervention. It could very well be May 8, <u>1998</u> before telephone companies fully understand how the rules will affect their company. Furthermore, Section 254(a) of the Act only requires that:

> "the rules established...shall include a definition of the services that are supported by Federal universal service support mechanisms and a specific timetable for implementation. Thereafter, the Commission shall complete any proceeding to implement subsequent recommendations from any Joint Board on universal service within one year after receiving such recommendations."

This being the potential timetable, rural LECs should be allowed to use their costs, with the option to use proxies, until actual <u>final</u> rules are approved. Then they would start to phase to the new rules.

IX. Issues Unique to Insular Areas

Small rural telephone companies in the continental U.S. endure the same challenges as those in Alaska and insular areas. They too have short building seasons and hurricanes. There is no question that they are as high cost as Alaska and insular areas.

Per NECA's 96-1 Universal Service Fund filing based on 1995 financial data, only one of the top fifty-six (56) highest cost study areas (as ranked by cost per loop) was an Alaskan or insular study area. Its ranking is third highest cost at $2,491/loop. The other high-cost study areas are study areas within the continental United States. Other "insular" areas such as Micronesia, Hawaii, Puerto Rico, and the Virgin Islands do not even have study area costs per loop of above $1,000/loop. Texas alone has eight study areas above $1,000/loop. New York even has ten study areas with a greater cost per loop than the average for Alaska. In addition, the average cost per loop for the state of Alaska is $382.65 while Wyoming's is $380.25.

The above statistics show that high cost areas exist outside of Alaska and insular areas. The qualifications for "high cost" support should be based on which areas are "high cost" and not some other arbitrary, subjective criteria. Rural carriers should be exempted from proxies, like Alaska and insular areas, until competition exists in their areas.

X. Support for Schools and Libraries

B. Intra-School and Intra-Library Connections

The Act does not require that internal connections are to be supported. The Act clearly states that *services* are to be supported, but does not give the FCC authority to provide discounts for non-service items. Therefore, the Commission should not support discounts for internal connections.

C. Discount Methodology

The Department of Education's five-step breakdown to calculate the greater discounts on telecommunications and other covered services for economically disadvantaged schools (Par. 570) is appropriate. The discounts of multiple schools within a district should be averaged. (Par. 567)

E. Funding Mechanisms for Schools and Libraries

The Commission should set up a separate fund for the $2.25 billion cap used to support discounts to schools and libraries. This amount could be collected through one funding process, but then it should be maintained separately from the universal service fund.

A cap on this fund is not in the best interest of schools and libraries. The cap is not predictable. For example, a school could believe it is going to get the discounts and incorporates them into their budgets. If the cap subsequently is reached, the discount to this school will not be available. The schools need to be assured at the time of their budget process whether they will receive discounts.

XI. Support for Health Care Providers

Removing distance charges would be detrimental to carriers. If the Commission continues with this method, they must allow the full recovery of these distance charges from the universal service fund.

XIII. Administration

D. Basis for Assessing Contributions

The Joint Board recommends using gross telecommunications revenues less amounts paid to other carriers as a basis for assessing contributions. The Commission should use retail revenues billed to end users as the basis for funding universal support. Payments made to other carrier adds an unnecessary complexity to the process. These payments are like any other expense that the carrier incurs in the normal course of doing business. The Joint Board's recommendation of allowing carriers to offset their contribution with support payments that they are entitled to receive is reasonable.

E. Administrator of Universal Service Support Mechanisms

NECA should be the administrator of the new universal service mechanism. NECA has an exemplary record with the present fund. Their neutrality can be assumed since they were originally created out of an FCC proceeding. NECA has the databases and expertise to fulfill the function properly.

If schools and libraries are to be supported as soon as possible, then NECA, who currently has the tools, should be named the temporary administrator. This is going to be a complex task that only NECA, with its expertise, can perform expeditiously.

XIV. Conclusion

The Act states, "The Joint Board and the Commission shall base policies for the preservation and advancement of universal service on the following principles"(SEC. 254(b)). The proposals set forth by the Joint Board and the Commission thus far do not set policy that would preserve and advance universal service in areas served by small, rural LEC's.

Without the presence of competition, small, rural LECs should be encouraged to preserve and advance universal service with continued actual cost support. There would be no one else present who would meet the obligation to preserve and advance universal service. To freeze and then decrease universal service support would certainly lead to the degradation of service and replace the current system with the "Have's" and the "Have-not's". If proxies are introduced at a future date, they should remain optional in these area's without competition. It cannot yet be proven that a lower level of proxy support will accommodate all the unique service requirements of each of the 1000+ small, rural LECs. A lower level of revenue from proxies does not meet the requirements and obligations of continued preservation and advancement of universal service. A higher level of support will be necessary as the requirements and obligations of meeting new standards of universal service increase.

The presence of competition in areas served by small, rural LEC's cannot be viewed in the same light as the presence of competition in urban and suburban areas served by large LEC's. If competition does begin to materialize, it will most likely start with little or no long-term obligation to serve. Segmentation of rural customers resulting in the targeting of the highest-volume users and resale will occur first. This type of business effort certainly does not need to be rewarded with support based on the existing small LEC's costs or some non-applicable guestimate of forward-looking cost. Keeping the cost-based support targeted to the carrier of last resort so that the challenges of investing to meet long-term needs of universal service can continue. When, and if, true facilities based competition does materialize, then the incumbent carrier of last resort should be allowed the option to convert to proxy based support over a five-year period.

The Joint Board and FCC must immediately produce a system of universal support that will renew the confidence that rural areas will not be left stranded on the telecommunications highway of the future. To take universal service support away from those who can provide true universal service and give it to almost anyone who asks for it is not in the best long-term interest of customers in small, rural LEC areas.

Respectfully submitted,

Randall R. Zach
Financial Consultant
TCA, Inc.-Telecommunications Consultants
3617 Betty Drive, Suite I
Colorado Springs, CO 80917

December 19, 1996

APPENDIX A
SERVICE LIST

The Honorable Reed E. Hundt, Chairman
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

The Honorable Rachelle B. Chong, Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

The Honorable Susan Ness, Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

The Honorable Julia Johnson, Commissioner
Florida Public Service Commission
2540 Shumard Oak Blvd.
Gerald Gunter Building
Tallahassee, FL 32399-0850

The Honorable Kenneth McClure, Commissioner
Missouri Public Service Commission
301 W. High Street, Suite 530
Jefferson City, MO 65101

The Honorable Sharon L. Nelson, Chairman
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250

The Honorable Laska Schoenfelder, Commissioner
South Dakota Public Utilities Commission
State Capitol, 500 E. Capitol Street
Pierre, SD 57501-5070

Martha S. Hogerty
Public Counsel for the State of Missouri
P.O. Box 7800
Jefferson City, MO 65102

Anna Gomez
Federal Staff Chair
Federal Communications Commission
2100 M Street, N.W., Room 8617
Washington, D.C. 20036

Paul E. Pederson
State Staff Chair
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Lisa Boehley
Federal Communications Commission
2100 M Street, N.W., Room 8605
Washington, D.C. 20554

Charles Bolle
South Dakota Public Utilities Commission
State Capitol, 500 E. Capitol Street
Pierre, SD 57501-5070

Deonne Bruning
Nebraska Public Service Commission
300 The Atrium
1200 N Street, P.O. Box 94927
Lincoln, NE 68509-4927

James Casserly
Senior Legal Advisor
Office of Commissioner Susan Ness
Federal Communications Commission
1919 M Street, Room 832
Washington, D.C. 20554

John Clark
Federal Communications Commission
2100 M Street, N.W., Room 8619
Washington, D.C. 20554

Bryan Clopton
Federal Communications Commission
2100 M Street, N.W., Room 8615
Washington, D.C. 20554

Irene Flannery
Federal Communications Commission
2100 M Street, N.W., Room 8922
Washington, D.C. 20554

Daniel Gonzalez
Legal Advisor
Office of Commissioner Rachelle B. Chong
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

Emily Hoffnar
Federal Communications Commission
2100 M Street, N.W., Room 8623
Washington, D.C. 20554

L. Charles Keller
Federal Communications Commission
2100 M Street, N.W., Room 8918
Washington, D.C. 20554

Lori Kenyon
Alaska Public Utilities Commission
1016 West Sixth Avenue, Suite 400
Anchorage, AK 99501

David Krech
Federal Communications Commission
2025 M Street, N.W., Room 7130
Washington, D.C. 20554

Debra M. Kriete
Pennsylvania Public Utilities Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Diane Law
Federal Communications Commission
2100 M Street, N.W., Room 8920
Washington, D.C. 20554

Mark Long
Florida Public Service Commission
2540 Shumard Oak Blvd.
Gerald Gunter Building
Tallahassee, FL 32399

Robert Loube
Federal Communications Commission
2100 M Street, N.W., Room 8914
Washington, D.C. 20554

Samuel Loudenslager
Arkansas Public Service Commission
P.O. Box 400
Little Rock, AR 72203-0400

Sandra Makeeff
Iowa Utilities Board
Lucas State Office Building
Des Moines, IA 50319

Philip F. McClelland
Pennsylvania Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, Pennsylvania 17120

Michael A. McRae
D.C. Office of the People's Counsel
1133 15th Street, N.W. -- Suite 500
Washington, D.C. 20005

Tejal Mehta
Federal Communications Commission
2100 M Street, N.W., Room 8625
Washington, D.C. 20554

Terry Monroe
New York Public Service Commission
3 Empire Plaza
Albany, NY 12223

John Morabito
Deputy Chief, Accounting and Audits Division
Common Carrier Bureau
Federal Communications Commission
2000 L Street, N.W., Suite 812
Washington, D.C. 20554

Mark Nadel
Federal Communications Commission
2100 M Street, N.W., Room 8916
Washington, D.C. 20554

John Nakahata
Senior Legal Advisor
Office of Chairman Reed E. Hundt
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Lee Palagyi
Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive S.W.
Olympia, WA 98504

Kimberly Parker
Federal Communications Commission
2100 M Street, N.W., Room 8609
Washington, D.C. 20554

Barry Payne
Indiana Office of the Consumer Counsel
100 North Senate Avenue, Room N501
Indianapolis, IN 46204-2208

Jeanine Poltronieri
Federal Communications Commission
2100 M Street, N.W., Room 8924
Washington, D.C. 20554

Michael Pryor
Federal Communications Commission
2100 M Street, N.W., Room 8905
Washington, D.C. 20554

James Bradford Ramsay
National Association of Regulatory Utility Commissioners
P.O. Box 684
Washington, D.C. 20044-0684

Brian Roberts
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Gary Seigel
Federal Communications Commission
2000 L Street, N.W., Suite 812
Washington, D.C. 20554

Richard D. Smith
Federal Communications Commission
2100 M Street, N.W., Room 8605
Washington, D.C. 20554

Pamela Szymczak
Federal Communications Commission
2100 M Street, N.W., Room 8912
Washington, D.C. 20554

Lori Wright
Federal Communications Commission
2100 M Street, N.W., Room 8603
Washington, D.C. 20554