Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

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GTE's REPLY COMMENTS

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TABLE OF CONTENTS

PAGE

SUMMARY iv

DISCUSSION 1

I. THE 1996 ACT SETS FORTH THE PARAMETERS THE COMMISSION'S UNIVERSAL SERVICE RULES MUST MEET 1

II. THE COMMISSION SHOULD ADOPT THE *RECOMMENDED DECISION*'S PROPOSED COMPETITIVE NEUTRALITY PRINCIPLE 4

III. TO BE COMPETITIVELY NEUTRAL, THE FEDERAL UNIVERSAL SERVICE FRAMEWORK SHOULD MAKE SYMMETRIC SERVICE-RELATED REGULATION A CONDITION OF RECEIPT OF FEDERAL FUNDS 6

A. Section 254 Creates Not An Entitlement For *Eltels*, But A Right To Receive Support Provided An *Eltel* Complies With A Workable And Sufficient Federal Plan That Requires Compliance With Symmetric State Regulation 6

1. The 1996 Act makes clear that Congress did not intend that *Eltels* would be granted an automatic entitlement for universal service support 7

2. The states have the authority to establish conditions for receipt of universal service support, and the Commission has the authority to include guidelines for such conditions in the Federal plan 9

3. Interpreting the 1996 Act to require automatic entitlement to universal service funding -- which would eliminate competitive bidding as a viable universal service funding mechanism -- would conflict with canons of interpretation 11

B. A Well-Defined And Symmetric Obligation To Serve Is Necessary For The Commission's Plan To Be Effective In Ensuring That Universal Service Support Is Sufficient And Competitively Neutral 13

1. An obligation to serve is necessary to ensure that universal service support is sufficient 14

2. A well-defined service obligation is necessary to ensure that universal service support is competitively neutral 16

4. The minimum guidelines suggested by GTE are reasonable, and do not interfere with the state's interests in determining service requirements 17

IV. FEDERAL HIGH-COST SUPPORT SHOULD BE BASED ON AN ESTIMATE OF THE MARKET PRICE OF BASIC LOCAL SERVICE 20

A. If The Cost Estimate Does Not Represent The Market Price Of Local Service, The Resulting Support Will Not Be Sufficient Or Competitively Neutral 22

B. The Proxy Cost Estimate Must Be Validated Against Actual Cost Experience And Any Differences Must Be Explained 23

C. Any Costs From Previous Periods Whose Recovery Has Been Deferred Through Regulated Depreciation Practices Should Be Recovered And Amortized Separately 28

V. THE *RECOMMENDED DECISION*'S PROPOSED RELIANCE UPON A REVENUE BENCHMARK AS A DETERMINANT OF HOW MUCH UNIVERSAL SERVICE SUPPORT IS NEEDED MUST BE REJECTED AS CONTRARY TO THE 1996 ACT'S EXPRESS PROVISIONS 30

VI. IN ESTABLISHING A COST MEASURE FOR UNIVERSAL SERVICE, THE COMMISSION MUST KEEP IN MIND LEGAL AND CONSTITUTIONAL CONCERNS 35

VII. THE COMMISSION SHOULD TAKE EXPEDITIOUS ACTION TO DEVELOP A COMPETITIVE AUCTION MECHANISM FOR UNIVERSAL SERVICE 38

A. Competitive Bidding Is the Only Market-Based Method for Determining Support 38

B. The Commission Should Issue A Further NPRM Expeditiously To Develop A Specific Auction Mechanism 43

VIII. FUNDS USED TO SUPPORT UNIVERSAL SERVICE MUST BE OBTAINED IN A COMPETITIVELY NEUTRAL MANNER 47

A. The Commission Must Reject The Joint Board's Recommended Method Of Obtaining Funds To Support Universal Service 48

B. The Commission Must Adopt An Explicit Surcharge As The Means For Contributing Carriers To Pass Through Their Assessment To Their Customers 49

C. The Commission Must Adopt An Explicit Surcharge Assessed On End User Retail Revenues As The Means For Obtaining Funds To Support Universal Service 54

IX. FUNDS USED TO SUPPORT UNIVERSAL SERVICE MUST BE OBTAINED FROM BOTH INTERSTATE AND INTRASTATE REVENUES 56

X. THE COMMISSION MUST REJECT THE *RECOMMENDED DECISION*'S PROPOSAL THAT THE SUBSCRIBER LINE CHARGE CAP BE REDUCED 57

XI. UNIVERSAL SERVICE SUPPORT SHOULD ONLY BE AVAILABLE TO FIRMS PROVIDING SERVICE USING FACILITIES FURNISHED BY OTHERS IF THE UNDERLYING FACILITY OWNER IS FAIRLY AND FULLY COMPENSATED 60

XII. UNIVERSAL SERVICE SUPPORT SHOULD NOT BE PROVIDED TO SCHOOLS AND LIBRARIES FOR INSIDE WIRE OR INTERNET ACCESS FEES 63

SUMMARY

As many of the comments in this proceeding reflect, the Commission must reevaluate and in some cases revise entirely the conclusions that the Joint Board reached in the *Recommended Decision* in order to devise a universal service funding mechanism that is consistent with the 1996 Act. The Commission cannot establish the "specific, predictable, and sufficient" universal service funding mechanisms required by the 1996 Act unless it ensures that universal service support is a direct function of the difference between the market price intervention and a legitimate measure of the actual cost of providing universal service. Moreover, the Commission must coordinate its policies with respect to all three aspects of the regulatory "trilogy" B interconnection, universal service, and access reform B to ensure that lawful costs that incumbent Local Exchange Carriers reasonably and prudently incurred do not "fall through the cracks" of the three proceedings. Failing these criteria, the Commission's universal service funding mechanism would contravene the explicit statutory "sufficiency" requirement and raise serious constitutional issues.

The vast majority of commenters supports the Joint Board's proposed competitive neutrality principle as an integral part of the universal service support mechanism the Commission adopts. GTE and others have demonstrated, however, that no universal service funding mechanism can be competitively neutral without making symmetric service-related regulation a condition of receipt of federal universal service support. The 1996 Act makes clear that Congress did not intend eligible telecommunications carriers to be entitled automatically to receive support. The 1996 Act provides the Commission with ample authority to impose guidelines for such

conditions in the Federal universal service funding mechanism, and the states have the authority to establish such conditions.

To be sufficient, the universal service funding mechanism must accurately reflect both the actual costs of providing universal service and the revenues carriers will receive from supported services to cover these costs. First, federal high-cost support must be sufficient to compensate carriers for the market intervention in the price of local service. For this purpose, the Commission must choose a cost estimate that will serve as a proxy for the rate a carrier would charge in a competitive market. Ultimately, if cost estimates are based on simulation models, they must be validated against actual cost experience. In addition, the Commission must allow incumbent LECs to recover costs whose recovery has been deferred because of the depreciation practices with which regulated incumbent LECs have been forced to comply.

Second, with respect to the revenues carriers will recover to fund universal service, the record reflects strong opposition to the use of a nationwide average revenue-per-line based on local, access, and vertical services as the benchmark to determine the amount of universal service support required. Such a benchmark would violate the 1996 Act's requirement that universal service support be explicit. Instead of the nationwide average revenue-per-line benchmark, the federal benchmark should provide a reasonable division of funding between the federal plan and state plans.

Because of the deficiencies in the Joint Board's approach both with respect to establishing the cost of universal service and the use of the average revenue benchmark, the Commission should instead adopt an auction mechanism for determining universal service. Several commenters have joined GTE in supporting a

competitive bidding mechanism as the most efficient method for determining universal service support, and the Commission should therefore issue a Further Notice of Proposed Rulemaking expeditiously to explore GTE's auction proposal and any others that parties may proffer.

As in the case of the funding mechanism that the Commission adopts, the method that the Commission chooses to raise the funds used to support universal service must be competitively neutral. For this reason, the Commission must permit carriers to adopt an explicit surcharge as a means for contributing carriers to pass through their universal service assessment to their customers and reject the *Recommended Decision*'s proposal to base the assessment on gross revenues net of payments to other carriers. Moreover, there is broad support for the Commission to draw funds to support universal service from both the interstate and intrastate revenues of interstate telecommunications providers.

The Commission should reject any reduction in the Subscriber Line Charge ("SLC") cap and abolish the Carrier Common Line Charge ("CCLC") so as to move to an economically efficient rate structure.

The Commission should only provide for the availability of universal service funding to non-facilities-based carriers where the facilities-based firm is fully and fairly compensated.

Finally, the Commission must reject the *Recommended Decision*'s inclusion of inside wiring and Internet access within the scope of universal service funding as it would conflict with the statutory mandate and existing Commission policy.

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GTE's REPLY COMMENTS

GTE Service Corporation ("GTE"), on behalf of its affiliated domestic telephone operating and wireless companies, in response to the *Recommended Decision* of the Federal-State Joint Board, the FCC's *Recommended Decision Public Notice* and comments filed December 19, 1996, thereon, submits the following reply comments in the captioned proceeding.[1]

DISCUSSION

I. THE 1996 ACT SETS FORTH THE PARAMETERS THE COMMISSION'S UNIVERSAL SERVICE RULES MUST MEET.

The Telecommunications Act of 1996 ("1996 Act") established a "pro-competitive, deregulatory" national policy framework for telecommunications.[2] Chairman Hundt recently described this congressional mandate as requiring the FCC to use "(a) competition and, where that doesn't work completely or equitably, (b) proactive

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[1] Federal-State Joint Board on Universal Service, *Recommended Decision*, CC Docket No. 96-45 ("*D.96-45*"), FCC No. 96J-3 (released November 8, 1996) ("*Recommended Decision*"); Public Notice, Common Carrier Bureau Seeks Comment On Universal Service *Recommended Decision*, CC Docket 96-45, DA 96 1891 (released November 18, 1996) ("*Recommended Decision Public Notice*").

[2] All statutory references are to 47 U.S.C. unless otherwise specified.

social policies structured to be sustainable in a competitive environment."[3] There is broad agreement of commenters that competition rather than regulation should be the primary means of assuring universal service nationwide in the public interest.[4]

Under the 1996 Act,[5] where government prevents a local carrier from charging for the full cost of service in high-cost areas, a program of "explicit and sufficient" support must assure the preservation and advancement of universal service.[6] This must be implemented by a comprehensive plan that will be "specific, predictable, and sufficient . . . to preserve and advance universal service."[7]

This specific language of the statute referring to "specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service"[8] places clear responsibility on the FCC for creating a workable framework under which a federal plan in combination with "complementary state

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3 "The Hard Road Ahead -- An Agenda for the FCC in 1997 ("*1997 FCC Agenda*")," Reed E. Hundt, Chairman Federal Communications Commission, December 26, 1996, at 2.

4 *See e.g.*, the California Department of Consumer Affairs ("California Consumer Affairs") at 4, ALTS at 2-3, Teleport at 2.

5 47 U.S.C. § 254(e).

6 CompTel at 4 recognizes this requirement and urges the Commission to do "its best to ensure that competition is the defining mechanism by which consumers are assured of the ubiquitous availability of high quality, reasonably priced telecommunications services, and that universal service functions as a 'safety net' where competition is unable to produce the desired results."

7 47 U.S.C. § 254(b)(5).

8 47 U.S.C. § 254(d). (emphasis added)

universal service programs"[9] will accomplish the statutory objectives. In other words, the 1996 Act calls for both "Federal and State mechanisms to preserve and advance universal service."[10]

As the Commission reaches its decisions regarding universal service, it must also keep in mind the need for compatibility with other actions required by the 1996 Act. The Commission's rules developed for Section 251 and 252 are based upon the foundation of cost-based prices for interconnection and unbundled network elements. While GTE believes the foundation adopted by the Commission is in need of repair, to avoid creating further arbitrage opportunities, both the *Access Reform NPRM* and the instant proceeding must instead reflect similar principles.[11] For this reason, the Commission must not act in a vacuum while creating its universal service plan, but effectively must consider the three proceedings as adjacent chapters within the same book.

Commenters agree. The Illinois Commerce Commission ("Illinois CC") (at 5) "finds it imperative to examine universal service reform and access charge reform simultaneously in order to properly evaluate the impact of the Joint Board's recommendations on telecommunications consumers and providers in Illinois." MCI (at 15) also recognizes this fact, commenting that the Joint Board's SLC reduction

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[9] People of the State of California and the California Public Utilities Commission of the State of California ("CA PUC") at 4.

[10] 47 U.S.C. § 254(b)(5).

[11] Access Charge Reform, Notice of Proposed Rulemaking, FCC 96-488, (released December 24, 1996) ("*Access Reform NPRM*").

recommendation is based upon the flawed assumption that intrastate rates will increase without corresponding action in other proceedings aimed at rebalancing the prices for many other services. Sprint (at 16) also discusses the need to increase SLC prices and "rebalancing rates to remove the local service subsidies still embedded in interstate access rates."[12] Thus, it is essential that actions in these proceedings be coordinated so that loopholes do not emerge through which some competitors are granted a competitive advantage, either through price arbitrage or the ability to avoid obligations imposed upon other firms.

II. THE COMMISSION SHOULD ADOPT THE *RECOMMENDED DECISION*'S PROPOSED COMPETITIVE NEUTRALITY PRINCIPLE.

GTE fully supports the recommendation of the Joint Board that the principle of competitive neutrality should guide FCC decisions. Parties responding to the *Recommended Decision Public Notice*'s request for comment on the appropriate definition of competitive neutrality display a remarkable extent of agreement. That such a broad range of industry participants support the competitive neutrality principle, and in similar terms, suggests this principle should encompass neutrality with respect to: collection of funding; distribution of support; and choice of technology used to provide service. Taken together, these mean that Commission rules must not serve to distort customer decisions in choosing a local service provider.

GTE (at 11-12) recommends adopting a definition of competitive neutrality under which Commission rules would cause the least possible distortion to the outcome that a competitive market would produce, *i.e.*, that does not unfairly bias customers in favor of

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[12] *See also*, Texas Public Utility Commission ("Texas PUC") at 7.

any carrier or place asymmetrical burdens on any carrier. CompTel (at 4) states that "universal service support mechanisms must not favor one type of service over another or one class of service providers over others in either the definition, allocation, collection, or distribution of universal service support payments." The Texas PUC (at 2) suggests that this principle "must permeate throughout the FCC's decisions; from issues regarding supported services to carrier eligibility and fund assessments."

MFS (at 2) offers a similar definition, and specifically introduces technological neutrality: "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." CTIA (at 4) further suggests: "The Commission must avoid adopting definitions or policies precluding the participation of specific services or technologies." Northern Telecom (at 2-3): "the FCC should avoid defining any particular service or technology that must be supported by universal service support mechanisms, but instead allow the marketplace to direct the development and growth of technology."

MCI (at 1) states that the means of determining eligibility for support and of collecting and distributing support should not advantage any party.[13] California Consumer Affairs (at 21-22) agrees that neutrality with respect to obtaining support means that: (1) all customers of all providers share equally in supporting universal service; (2) no customer of any provider can avoid paying its share of that support or can reduce its share of support by changing providers. General Communications, Inc.

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[13] *See also*, Teleport at 2: "The future of universal service, like the future of telecommunications in general, is grounded in competition."

(at 3) maintains: "The funds for universal service must be collected from all telecommunications carriers on a competitively neutral basis and also distributed to all carriers on a competitively neutral basis."

Given this consensus of disparate industry participants, the Commission should adopt an overriding competitive neutrality principle to encompass neutrality with respect to collection of funding, distribution of support, and choice of technology used to provide service so Commission rules will not serve to unfairly bias or distort customer decisions in choosing a local service provider.

III. TO BE COMPETITIVELY NEUTRAL, THE FEDERAL UNIVERSAL SERVICE FRAMEWORK SHOULD MAKE SYMMETRIC SERVICE-RELATED REGULATION A CONDITION OF RECEIPT OF FEDERAL FUNDS.

A. Section 254 Creates Not An Entitlement For *Eltels*, But A Right To Receive Support Provided An *Eltel* Complies With A Workable And Sufficient Federal Plan That Requires Compliance With Symmetric State Regulation.

The *Recommended Decision* appropriately concludes that carriers other than incumbent Local Exchange Carriers (ILECs) will be *eligible* to receive universal service support if, in compliance with subsection 214(e)(1), the firm offers basic service (as defined) throughout an identified area and advertises that service. But eligibility -- here as in other contexts[14] -- is only the first step to qualifying to receive support. Because

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[14] *Eligible* as the word is customarily and properly employed indicates the first stage of a selection process involving at least two stages. Thus, a thirty-five year old citizen of the United States is eligible to be President under Article II of the United States Constitution; whether he or she becomes President will be decided by the electorate. Webster's Encyclopedic Unabridged Dictionary of the English Language defines *eligible* as: "1. Fit or proper to be chosen; worthy of choice; desirable; *to marry an eligible bachelor*. 2. Legally qualified to be elected or appointed to office; *eligible for the presidency....*"

the FCC is obliged to ensure that support payments are sufficient to preserve and advance universal service, any support payable to a firm should depend on that firm's compliance with a federal funding mechanism designed to preserve and advance universal service. Otherwise, the Eligible Telecommunications Carrier ("*Eltel*") designation would be arbitrarily converted into an **entitlement** granted regardless of whether the *Eltel* abides by the federal funding mechanism, and regardless of whether the *Eltel* makes any real contribution to preserving and advancing universal service.

1. The 1996 Act makes clear that Congress did not intend that *Eltels* would be granted an automatic entitlement for universal service support.

The 1996 Act makes it clear that a firm does not automatically qualify for universal service funding upon designation as an *Eltel*. This is reflected in Congress's employment of the term "eligible." When Congress intended to create an entitlement in the 1996 Act, it used the term "entitled" rather than the term "eligible."[15] In addition, subsection 214(e)(1) expressly provides that *Eltels* may only receive universal service support "in accordance with Section 254." The legislative history of subsection 214(e) affirms that "[u]pon designation, a carrier is eligible for any specific support provided under new section 254."[16] The statute thus makes clear that an *Eltel* shall receive universal service support only if it qualifies for funding under the support mechanism created pursuant to Section 254.

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[15] Compare Section 214(e)(1) (carriers are "eligible" to receive universal service support in accordance with Section 254) with Section 254(h)(1)(A) (carriers offering service [to health care providers] shall be "entitled" to the difference between rates to health care providers and other customers in comparable rural areas).

[16] Conference Report at 141.

Section 254 also supports this interpretation of the term "eligible." For example, subsection 254(e) confirms that only telecommunications carriers designated by state commissions under subsection 214(e) shall be eligible to receive Federal universal service support, and defines how "[a] *carrier that receives such support* shall use that support" and that "*any such support* should be explicit and sufficient."[17] If Congress had intended mere designation as an *Eltel* to be sufficient to receive universal service support, it could have indicated its intent in the text of the 1996 Act by using a phrase like "such carrier" or "such eligible carrier" rather than "a carrier that receives such support." Under the language employed by Congress, receiving universal service support requires more than merely being designated as *eligible*.

Similarly, Congress could have indicated how "such support" could be used instead of how "any such support" may be used. Instead, the legislative history of the 1996 Act confirms that "[a]ny eligible telecommunications carrier that receives such support shall only use that support" for specified purposes.[18] This language makes clear that not every eligible telecommunications carrier will necessarily receive support. Further, this language of subsection 254(e) serves to reemphasize the responsibility of the Commission to see to it that support is not provided to carriers except in compensation for activities which contribute to preserving and advancing universal service

It is thus clear that the 1996 Act does not create an entitlement, in the form of an

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[17] Subsection 254(e), emphasis added.

[18] Conference Report at 131.

automatic right to receive universal service support, for any carrier that meets the minimum requirements of an *Eltel* in subsection 214(e)(1). There is thus no conflict between subsections 214(e)(1) and reasonable requirements established for the receipt of universal service funding.

2. The states have the authority to establish conditions for receipt of universal service support, and the Commission has the authority to include guidelines for such conditions in the Federal plan.

The 1996 Act clearly affirms the authority of the states to establish conditions for the receipt of universal service funding. This is consistent with the intent of the 1996 Act not to interfere with the traditional role of the states in regulating basic local service. Section 253(b) permits states to "impose, on a competitively neutral basis and consistent with Section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers." WorldCom is thus simply wrong in claiming (at 14) that "neither the Commission nor the states are empowered to delineate any eligibility requirements that exceed those already contained in Section 214(e)."

Further, Section 254(i) requires that the "Commission and the States should ensure that universal service is available at rates that are just, reasonable, and affordable." Neither the Commission or the states could carry out this directive if they lacked the authority to ensure that a carrier charges an affordable rate in return for the receipt of universal service support.

Several states reaffirm in their comments their right to establish conditions for carriers. The Texas PUC (at 5) "strongly supports the right of individual states to

impose competitively-neutral and technology-neutral conditions on carriers wishing to become eligible for support from the federal and state universal service funds." The CA PUC (at 9-10) also argues that states can set their own requirements, and reports that its recently adopted universal service plan does in fact require carriers to undertake Carrier of Last Resort ("COLR") obligations as a condition for receipt of funds. The *Recommended Decision* also recognizes the right of states to establish requirements for universal service funding, for example when it says (at ¶ 104) that states "may adopt and enforce service quality rules, on a competitively neutral basis. . . ."

It is equally clear that the Commission has the authority to establish guidelines for any such requirements the states may establish. Although the FCC does not have authority to regulate the terms and conditions of local rates, it does have the authority to establish reasonable guidelines which states must meet as a condition for receipt of funds from a Federal program. The Commission has already employed a similar approach in the current Lifeline program, which makes receipt of Federal Lifeline funds conditional on the adoption of a state Lifeline plan that meets guidelines set by the Commission. Further, Section 253(b) requires that any exercise of the states' right to impose requirements on carriers must be consistent with Section 254; thus the Commission, in implementing the provisions of Section 254, may specify guidelines with which the states' actions under Section 253(b) must be consistent.[19] The *Recommended Decision* assumes that the Commission has this authority when it recommends (at ¶ 417) that *Eltels* be required to provide Lifeline assistance to low

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[19] For reasons explained *supra*, the establishment of a competitively-neutral obligation to serve is entirely consistent with Section 254.

income customers -- a requirement which is not set forth in Section 214(e)(1) -- and again when it says (at ¶ 105) that the FCC should rely on service quality data collected by the states to make its determination that quality services are available consistent with Section 254(b)(1).

3. Interpreting the 1996 Act to require automatic entitlement to universal service funding -- which would eliminate competitive bidding as a viable universal service funding mechanism -- would conflict with canons of interpretation.

If the FCC were to permit all *Eltels* automatically to receive universal service support, as would be the result of adopting the recommendation of the Joint Board, this would necessarily preclude any competitive bidding plan, for no competently managed firm will bid to obtain what it has already been granted. And yet the language and logic of subsection 214(e) seen in association with Section 254 establishes that Congress intended all viable mechanisms that would accomplish Congress's goals -- including competitive bidding -- to be fully considered by the FCC. Clearly Congress could not have intended the Commission to interpret any of the 1996 Act's provisions to render any of its other provisions superfluous.

Subsection 214(e)(4), for example, permits a carrier to relinquish its status as an *Eltel* and be replaced by one or more other *Eltels*. A competitive bidding plan would efficiently accomplish this because at the heart of such a plan is a procedure whereby the successful bidder would (i) replace the ILEC as a carrier obligated to serve the area in question and (ii) thus both merit and receive universal service support. Subsection 214(e)(4) sets out such a procedure by which a state commission, upon advance notice by an *Eltel* that it wishes to relinquish a universal service obligation, may permit such relinquishment provided the remaining *Eltel*(s) are required to ensure that all customers

served by the relinquishing carrier will continue to be served. Such notice must be "sufficient ... to permit the purchase or construction of adequate facilities by any remaining [*Eltel*]," and the purchase or construction should be completed within a year of state commission approval.

It is difficult to see how a state commission would give effect to the provisions of 214(e)(4), starting from the framework the *Recommended Decision* contemplates. Suppose that there are four *Eltels* in a given area, each receiving support; one is an ILEC, and the other three are Competitive Local Exchange Carriers ("CLECs"). Under the Joint Board's recommendation, only the ILEC would comply with service-related obligations as a condition for receiving universal service support. The other three *Eltels*, under the plan proposed by the *Recommended Decision*, would already receive the same amount of high-cost support without undertaking any service-related obligations in return. These carriers would have no motivation willingly to undertake such new obligations, as a replacement for the ILEC, for the level of universal service compensation would be unchanged..[20]

There is a "deep reluctance" on the part of the courts "to interpret a statutory provision so as to render superfluous other provisions of the same enactment." *See Freytag v. Commissioner of Internal Revenue*, 501 U.S. 868, 877 (1991); and *Ratzlaf. United States*, 114 S.Ct. 655, 659 (1994). If the FCC insists on automatic entitlement

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[20] This illustrates the fundamental lack of logic in a scheme that compensates carriers regardless of whether they undertake a universal service obligation, while at the same time imposing an obligation on the ILEC simply because it is the ILEC. It would be more logical -- and much more consistent with the competitive market, as well as with the structure of 214(e)(4) -- to think of the support payment as the compensation for any carrier willing to undertake the obligation.

for universal service support, this would make superfluous Section 214(e)(4) and associated provisions[21] that accommodate a competitive bidding procedure (or other procedures involving replacement of a carrier by another carrier). By adopting automatic *Eltel* entitlement for universal service support, the Commission would preclude competitive bidding as a funding mechanism for universal service not because it is impracticable or undesirable, but by virtue of the Commission's faulty interpretation of the 1996 Act.

Further, courts require an agency to give consideration to all reasonable alternatives.[22] If the FCC insists on action that precludes competitive bidding -- an approach that the Joint Board recommends for further investigation and that is accommodated by the provisions of the 1996 Act -- without careful consideration, this would mean the agency failed to give consideration to an alternative that is manifestly reasonable.

B. A Well-Defined And Symmetric Obligation To Serve Is Necessary For The Commission's Plan To Be Effective In Ensuring That Universal Service Support Is Sufficient And Competitively Neutral.

The Commission has the authority to set guidelines for states with respect to the service obligations the states may establish as a condition for the receipt of universal service funding by *Eltels*. Further, some minimum service obligation is necessary if the Commission is to satisfy the statutory requirement that universal service should be sufficient, and the *Recommended Decision's* principle that the plan should be

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[21] See subsections 214(e)(3) and 251(h)(2).

[22] City of Brookings Municipal Tel. Co. v. FCC, 822 F.2d 1153, 1169 (D.C. Cir. 1987).

competitively neutral. As GTE shows in its Comments, the Commission need not specify what requirements the states must adopt; it need only establish minimum guidelines for the state-determined requirements. The guidelines should make certain that the obligations are adequate to ensure that the combined effect of the state and Federal plans will satisfy the universal service objectives of the 1996 Act.[23]

1. An obligation to serve is necessary to ensure that universal service support is sufficient.

GTE demonstrates in its Comments (at 14-18) that a universal service plan will not be sufficient if a well-specified obligation to serve is not established. If no carrier has an obligation to serve, then customers for whom the average support payment in a given area is insufficient inducement will simply not be offered service voluntarily by a carrier. If the ILEC has its traditional service obligation, but no other *Eltel* has any comparable obligation, then the other *Eltels* will selectively target the most desirable customers, leaving those with higher support needs to the ILEC.[24] This selective entry will always undermine the ILEC's ability to sustain its obligation, since it will receive an average support amount, but it will serve a customer set whose funding needs are above average. The plan will therefore be insufficient -- even if the support is accurately chosen to match the average support need for customers in the area.

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[23] GTE at 49-50 suggests minimum guidelines that would satisfy this objective.

[24] As GTE demonstrates, it will be easy for an *Eltel* to target the customers it wishes to serve, while avoiding those is does not. This could be done by offering different prices to different customers, or by offering customers a set of self-selecting packages which bundle the basic functions together with other services, such as toll, vertical services, or video. Note that none of these strategies would violate Section 214(e)(1), but that the package prices would be deliberately chosen to be "unaffordable" for those customers not targeted. GTE at 16.

Ameritech (at 9) agrees that a symmetric obligation to serve is essential to "the long term sustainability of any universal service support plan." Ameritech (at 9-10) says:

> It should be noted that, particularly with respect to high-cost areas, the provision of service is inextricably connected to carrier of last resort obligations. By definition, a COLR must serve some customers at prices set below cost. If all customers could be served at cost or at a profit, there would be no need to impose carrier of last resort obligations. As competition increases, COLRs' ability to recover this shortfall through the prices for other services is significantly reduced, thereby requiring COLRs to rely on universal service funding to cover the cost of serving these high-cost areas. To permit carriers without COLR obligations to have access to the same universal service funding could jeopardize COLRs' ability ultimately to serve high-cost areas -- defeating the very purpose for which universal service funding is established in the first instance.

The Washington Utilities and Transportation Commission ("Washington UTC") (at n.3) observes that "Carriers will have an economic incentive to identify and serve the lowest-cost customers." Similarly, MCI (at 2) recognizes that one firm could gain an advantage by serving only the lower-cost customers within a given area, while receiving support calculated on an average basis. While the use of small areas for determining support can reduce the heterogeneity across customers within each area, there will always be a very significant variation in the desirability of different customers to a carrier -- unless support is determined on a customer-specific basis, which is not practical. The only way to ensure that universal service is sufficient is to establish a symmetric obligation to serve as a condition for the receipt of support.[25] This will ensure that all *Eltels* who receive support must be equally willing to serve any customer

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[25] *See*, SBC at 19: "symmetrical regulation prevents the selective targeting of only the lowest cost/highest revenue-producing customers in an area."

in the geographic area.

The *Recommended Decision* offers an odd justification for not considering a service obligation: that any "cherry picking" by a carrier would be readily detected.[26] This implies that such "cherry picking" would be a concern. Even if such behavior could be detected, what of it? None of the behavior a carrier would engage in to successfully "cherry pick" is prohibited by Section 214(e)(1) or would otherwise be unlawful, and the *Recommended Decision* does not contemplate any additional service obligations or sanctions to be imposed upon carriers that "cherry pick." Detection alone, then, would have nothing to do with ensuring that the plan is sufficient.

2. A well-defined service obligation is necessary to ensure that universal service support is competitively neutral.

If universal service funding is not tied to the assumption of a symmetric set of service obligations, then the universal service plan cannot be competitively neutral. Each *Eltel* will be provided the same amount of compensation per customer, but will not be performing the same function in return for that compensation. In fact, if an *Eltel* can serve selectively, as described *supra*, it could well be compensated for serving a set of customers, all of whom it would have been willing to serve without support. The ILEC, in contrast, would carry a heavier burden of obligations, and would be required to serve a less desirable set of customers in return for compensation which would be insufficient, for reasons described *supra*. This clearly would not allow all carriers an equal opportunity to compete, and would violate the definitions of competitive neutrality offered by most commenters.

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[26] *Recommended Decision* at ¶ 156.

Ameritech (at 9) agrees that "The problem with the Joint Board's proposal is that it would compensate all carriers alike regardless of the differential application of COLR and equal access requirements." In addition to the fact that new *Eltels* could serve selectively, the ILECs today are constrained by a wide range of nonprice requirements, having to do with service quality, response times, and other service-related obligations.[27] Ameritech (at 8) notes that "the principle of competitive neutrality requires a recognition of the fact that regulatory requirements impose substantial cost on certain carriers' provision of 'eligible services.'" If the costs imposed differ across carriers, but the compensation for incurring them is the same, the plan cannot be neutral.

4. The minimum guidelines suggested by GTE are reasonable, and do not interfere with the state's interests in determining service requirements.

The guidelines that GTE suggests should be incorporated into the Federal plan would not unreasonably restrict carriers' ability to compete, nor would they restrict state commissions from making determinations concerning the service requirements and affordability standards appropriate for their respective states. Instead, they would establish principles that are necessary if the universal service policy arrived at through the combined efforts of the Commission and the states is to meet the requirements of the 1996 Act.

The *Recommended Decision* (at ¶ 131) proposes that the rate level that is

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[27] The ILEC may, for example, be required to establish certain numbers of customer contact centers per customers served for the purpose of taking requests for service or repair, install a certain percentage of service requests within a specified time period (*e.g.*, 90% within 5 days), or repair a certain percentage of reported trouble within a specified time period (*e.g.*, 95% within 24 hours).

affordable in each state should be determined by the state commission. However, because affordability is a concept that pertains to the needs of customers, rather than of carriers, the level that is affordable in a given area should not depend on which universal service carrier the customer selects. It is reasonable, therefore, for the Federal plan to require that whatever ceiling the state chooses to impose on the price of basic local service should be the same for all *Eltels* that receive support in a given area. Note that the Commission cannot rely on the assumption that the offering of basic service by the ILEC at a constrained price will force other *Eltels* in the same area to offer the same price. Under the packaging strategies described *supra*, it would be optimal for the *Eltel* seeking to serve selectively to offer service only in packages whose prices were quite high. It is possible that none of these packages would be affordable for many customers in the area.

Similarly, any service quality standards would presumably be set because the state commission considered them essential to meet the needs of customers, and these needs would not depend on the customer's choice of carrier. Once again, while the Commission should not presume to tell states what their quality standards should be, it is not unreasonable for the Federal plan to require that universal service support should ensure that each customer receives quality service -- as defined by the state commission -- regardless of the carrier chosen.[28]

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[28] If quality standards are necessary, there is no competitive harm in applying them to all carriers who receive support. A number of states, such as California, have already decided to apply symmetric quality standards to entrants as well as incumbents.