

119. With a net trans account funding mechanism, if the carrier decided to absorb some or all of the fund charge, or chose not to disclose that part of their bill pays to support the CHCF-B, then the AB 3643 principle that the subsidy be imposed in a manner that clearly identifies the source of the subsidy would not be met.

120. The AEUS method of funding is a more competitively neutral method of funding than the net trans account method because it is imposed on virtually all telecommunications services and customers.

121. We are not persuaded by TURN's argument that Section 254(k) [sic] of the Telco Act limits our ability to impose an AEUS to fund the CHCF-B, since Section 254(f) of the Telco Act permits the states to adopt regulations pertaining to universal service that are not inconsistent with the FCC's rules to preserve and advance universal service.

122. Carriers who collect the AEUS contribute to the CHCF-B because they incur administrative expenses to assess, collect, and remit, the monies to the fund.¹⁰⁷

TURN interprets Conclusion of Law 119 as a conclusion that AB 3643 prohibits the use of a net trans account funding mechanism, and argues that the conclusion is erroneous.¹⁰⁸ Such an interpretation extends Conclusion of Law 119 farther than its finding. Conclusion of Law 119 finds that if a net trans account funding mechanism were used, and if a carrier did not provide adequate disclosure to its customers about the amount the customers were paying through their bills to fund universal service, then it would violate AB 3643.

The wording of AB 3643 is clear. Any funding mechanism used to support universal service must be one which clearly identifies the source of the subsidy to customers. A net trans account, in and of itself, simply does not meet that requirement because it consists of a transaction between carriers and the fund administrator. In turn, in order to cover the cost to carriers of their contribution to the net trans account, carriers are allowed to include in their rates the full cost of their contribution. However, nothing in the net trans account structure requires that a customer be notified that a specific dollar amount of their rates constitutes the customer's contribution to universal service programs.¹⁰⁹

¹⁰⁷ Decision, at pp. 273-274.

¹⁰⁸ TURN Application, at p. 10.

¹⁰⁹ As shown repeatedly above, the evidence is clear that it is the customer, and not the provider, who ultimately pays to support universal service. Therefore, we do not hear reargue that issue.

TURN argues that:

As long as customers received notice (through bill inserts or otherwise) that the universal service subsidies were being collected from a surcharge [sic] on carrier revenues, the requirement of subsection (3) -- to clearly identify the source of the subsidy -- would be satisfied.

However, the Decision finds that, because some carriers would absorb some of the cost of the surcharge, customers would not know exactly how much of the surcharge was being passed through in their rates. To find that this outcome violates subsection (3) is to read too much into that provision. Subsection (3) only requires that customers know "the source of the subsidy", not a to-the-penny calculation of how much carriers might have passed through in rates. Under carrier funding, the source of the subsidy is carriers. Customers are intelligent enough to know that companies try to pass through some or all of any taxes they must pay in the rates they charge their customers. If the Commission believes that customers need more information in order to comply with subsection (3), it can require that all carriers state on each bill that the carrier is required to pay an X% surcharge to support universal service programs. If properly interpreted subsection (3) of AB 3643 poses no bar to the adoption of carrier funding.¹¹⁰

Besides referring to the assessment as a "surcharge," this argument misses the point in several respects. First, the CPUC did not find that some carriers would absorb part of the cost of universal service; rather it recognized TURN's argument that they might do so, without reaching a conclusion about the accuracy of that argument. As the analysis above shows, TURN's argument is flatly wrong.¹¹¹

TURN admits that Subsection (3) requires that the source of the subsidy be disclosed to customers. While TURN is correct that Subsection (3) does not specifically require that customers be informed, to-the-penny, of the amount they are paying for universal service, a disclosure of the amount of the subsidy is necessary in order to comply with the intent and spirit of AB 3643, which was adopted in a context in which state universal service programs are funded by customer surcharges.

¹¹⁰ TURN Application, at p. 11.

¹¹¹ That analysis extends to TURN's statement here that "companies try to pass through some or all of any taxes they must pay in the rates they charge their customers." (TURN's Application, at p. 11.) As the analysis above shows, companies pass through to customers all of the taxes they must pay; otherwise, the companies quickly would become insolvent.

Section (2)(b)(5) of AB 3643 requires that "[c]onsumers should be able to have access to all the information needed in order for them to make timely and informed choices about telecommunications products and services, . . ." In a democracy, consumer decisions about telecommunications services include what kinds of universal service programs should exist in a competitive marketplace, and the level of support which the contributing customers should pay and supported customers receive. Consumers cannot intelligently make those decisions without information that: (1) they are receiving support from or paying support to fund universal service programs; and, (2) the amount they are receiving or paying as universal service subsidies.

A net trans account funding mechanism does not even require that a customer be notified that he or she is receiving or paying to fund universal service subsidies, much less the amount the customer is receiving as support. Even if the CPUC were to require, as TURN suggests, that carriers disclose to their customers either that "universal service subsidies were being collected from a surcharge on carrier revenues," or that "the carrier is required to pay an X% surcharge to support universal service programs," neither of those disclosures would be meaningful or satisfy the mandates of Subsection (5).

Moreover, informing customers that a surcharge to fund universal service is imposed on carriers does not communicate to customers that customers, and not carriers, are paying that cost, and it does not quantify the net impact of the programs on the particular customer, who will be either a "subsidizer" or a "subsidizee". To the contrary, it erroneously communicates to customers that carriers are paying that cost, when in economic fact they are not.¹¹² Communicating to customers that carriers pay an X% surcharge to support universal service suffers from that same flaw. Neither proposed disclosure informs paying or receiving customers about how much they personally are paying or receiving under the universal service program in question. It is that information that consumers, both recipients of subsidies and providers of subsidies, must have in order to function as consumers and citizens.

TURN is correct that AB 3643 does not explicitly require the use of an AEUS funding mechanism for universal service programs. In view of the specific statutory requirements that the ULTS and the DDTP be funded through an AEUS, it would be difficult to argue that if the Legislature had intended in AB 3643 to impose a particular funding mechanism on the CPUC, rather than give the CPUC discretion in deciding that issue, it could have specifically so stated.

TURN has acknowledged that "there are and always have been only two main competing models for universal service funding mechanisms -- carrier surcharges and retail

¹¹² Consideration should be given to whether such statements might constitute misleading advertising in violation of California's laws against false and deceptive advertising.

surcharges --"¹¹³ The Legislature was well aware that California has traditionally funded its universal service programs using an AEUS funding mechanism. While AB 3643 does not specifically require the use of an AEUS, it does specify parameters that any funding mechanism must meet -- parameters which are not met by a net trans account. In order to meet those parameters using a net trans account, it would be necessary to require carriers to disclose exactly the same information that is disclosed through the use of an AEUS funding mechanism. That being the case, one could conclude AB 3643 effectively precludes the use of a net trans account.¹¹⁴

D. Use of an AEUS does not Violate the Supremacy Clause.

TURN's invocation of the Supremacy Clause of the United States Constitution rests on TURN's misinterpretation of Section 254(f).¹¹⁵

1. A Proper Interpretation of Section 254(f) Avoids Invocation of the Supremacy Clause.

TURN first argues that if Section 254(f) is interpreted to preclude the use of an AEUS, then pursuant to Article VI, Clause 2 of the U.S. Constitution ("the Supremacy Clause") Section 254(f) preempts the CPUC's Decision, and the CPUC is precluded from implementing an AEUS.

State law can be preempted by federal law in either of two general ways. First, Congress may evidence an intent to occupy a given field. In that event, any state law falling within that field is preempted.¹¹⁶ Neither the TCA, nor Section 254, could be interpreted as an attempt by Congress to preempt the field of regulation of the telecommunications industry. To the contrary, Section 254(f) specifically confirms a state's jurisdiction to establish state universal service programs.

¹¹³ TURN Application, at p. 9.

¹¹⁴ In its Decision, the CPUC states that "carriers who collect the AEUS do 'contribute' to the fund in the sense that they incur administrative expenses to assess, collect, and remit the monies to the fund." TURN asserts that this conclusion by the CPUC is error. Although it might not rise to the level of error, it appears to be a weak basis for supporting the use of an AEUS. The administrative expenses carriers will incur in collecting and transmitting universal service funds should be minuscule compared to the total universal service fund. There is nothing to indicate that Congress was thinking of that type of "contribution" when it enacted the TCA. However, as shown by the arguments above, it is not necessary to rely on that basis in order to find that a state may use an AEUS funding mechanism to support its universal service programs.

¹¹⁵ TURN Application, at pp. 11-13.

¹¹⁶ See, generally, 16 Am.Jur.2d, Section 292, at p. 797-799, and April 1996 Supplement, at p. 131, citing California Coastal Commission v. Granite Rock Co. (1987) 480 U.S. 572 [107 S.Ct. 1419], and Wisconsin Public Intervenor v. Mortier (1991, US) 111 S.Ct. 2476.

Thus, the relevant question is whether, as TURN effectively argues, Congress intended to preempt a state's jurisdiction over only one element of a state's universal service programs -- the manner in which a state may fund those programs. In order to answer that question, one must look to the second way in which a state law may be preempted; that is, where Congress does not entirely displace state regulation over the matter in question, state law still may be preempted to the extent that it actually conflicts with the operation or objectives of federal law.¹¹⁷ Such a conflict arises when compliance with both the state and federal laws is impossible, or when the state law stands as an obstacle to the accomplishment of the full purposes and objectives of Congress.¹¹⁸

As shown above in the section discussing the application of principles of statutory construction, a conflict which possibly could make it difficult or impossible to comply with Section 254(f) and the CPUC's adoption of an AEUS arises only if one interprets Section 254(f) in the manner TURN seeks.

The first rule of statutory construction which a court should apply is to seek first to interpret laws and regulations in a manner which gives effect to both. When Congress passed the TCA, it knew that, up until that time, every state had jurisdiction to determine not only whether it maintained separate state universal service programs and, if so, the manner in which it would fund those programs, but also the manner in which the state would fund its contribution to the federal universal service programs. Congress also is charged with knowledge that California (and perhaps other states) funds both its state universal service programs and its contribution to federal universal service programs through AEUS funding mechanisms. Thus there is precedent for allowing states to use an AEUS funding mechanism to fund both state and federal universal service programs.

If Congress intended to revoke the jurisdiction of states in those matters, it would have stated so very explicitly. As this analysis makes clear, Section 254(f) is not a clear revocation of that jurisdiction. Interpreting Section 254(f) in the manner the CPUC has done complies with the rules of statutory construction and allows both the CPUC's order and Section 254(f) to be given full force and effect without invoking the Supremacy Clause.

**2. If AB 3643 Precluded Carrier Funding,
the CPUC Would Not Have the Authority to
Refuse to Comply With it Absent a Court
Determination that the TCA Supersedes AB 3643.**

TURN also argues that if AB 3643 precludes the use of a net trans account, then there is a conflict between federal preemption based on the Supremacy Clause and Article III, Section 3.5 of the California Constitution. The cited section of the California

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid.*

Constitution, among other things, prohibits a state administrative agency from refusing to enforce a state statute on the basis that federal law or regulations prohibit enforcement, unless an appellate court has made such a finding.

TURN suggests that the CPUC should ignore Article III, Section 3.5 and AB 3643, and adopt a net trans account funding mechanism.

No one disputes the efficacy of the Supremacy Clause of the U.S. Constitution. If one were to wrongly interpret both Section 254(f) and AB 3643 as TURN does, then it is likely that a conflict between the TCA and the Supremacy Clause on the one hand, and AB 3643 on the other hand, would exist.

However, even if TURN's interpretation were correct (which it is not), it would not give the CPUC a basis upon which it could ignore Article III, Section 3.5 of the California Constitution. The limitations placed on the CPUC by that constitutional provision are clear and unequivocal. No matter how much the CPUC may feel that following the dictates of Article III, Section 3.5 and awaiting a ruling of a court would require the Commission to perform "idle acts," the Commission is not free to prejudge how an appellate court will rule on the issue.

Thus, if the CPUC believes, as TURN asserts, that AB 3643 precludes it from using a net trans account funding mechanism, then, even if the CPUC agreed with TURN that the TCA precludes the use of an AEUS, the CPUC would not be free to resolve that contradiction by violating what it believed to be the requirements of AB 3643. In that event, the CPUC would be required by Article III, Section 3.5 of the California Constitution to await an appellate court decision on those issues.

E. The Commerce Clause Does Not Preclude the Use of an AEUS.

In its first and second claims for relief, TURN asserts that if AEUS funding mechanisms are implemented to fund the CHCF-B and the CTF, they will affect, disrupt, and interfere with interstate commerce. Specifically, TURN asserts that as a result of the AEUS, California-based business telecommunications customers will incur increased costs of doing business. Those increased costs will raise their costs of goods and services for sale in interstate commerce.¹¹⁹ "As a result, such businesses will be placed at a competitive disadvantage with respect to competing businesses located outside of California that do not pay the end user surcharges as a cost of doing business."¹²⁰ TURN also asserts that as an additional result, California telecommunications customers will pay more for telecommunica-

¹¹⁹ It is interesting that TURN invokes this basic business principle in support of its Commerce Clause argument, but ignores its application to the issue of who ultimately pay for the costs of universal service programs.

¹²⁰ TURN Complaint, at ¶ 21(a).

tions services than if the surcharge were not imposed, and that consequently, California consumers will have less money to spend on goods and services provided through interstate commerce. TURN asserts that this amounts to a violation of Article I, Section 8, Clause 3 of the U.S. Constitution (the "Commerce Clause").

Although the DCA has not conducted exhaustive research on the application of the Commerce Clause, based on the research DCA has conducted the flaw in this arguments appears to be fundamental.

The central rationale for the rule that state or local laws that discriminate against interstate commerce violate the Commerce Clause is to prohibit state or local laws whose object is local economic protectionism.¹²¹ The purpose of the Commerce Clause is not to protect state residents from their own state taxes. Rather, the purpose of the Commerce Clause in requiring that a state tax be fairly related to the presence and activities of the taxpayer within the state is to insure that a state's tax burden is not placed upon persons who do not benefit from services provided by the state.¹²² It is fundamental that a person may not claim exemption from a state license fee on his business conducted within the state as a violation of the Commerce Clause on the basis that the products sold may be used in interstate commerce.¹²³

States and local governments have the right to assess taxes and fees for appropriate purposes. The assertions TURN makes would be equally true for virtually any fee, surcharge, or tax imposed by a government entity -- licensing fees, business permit fees, fees for tearing up streets to install pipe and wiring, franchise fees charged to cable television companies, etc. For every such fee that California businesses must pay, those businesses must recoup those costs in the prices they charge for their goods or services. To the extent that out-of-state businesses with whom the California businesses compete are not assessed those fees in the same amounts by their own state and local governments, California businesses could be said to be at a competitive disadvantage. That is merely the cost of doing business in one state versus another, and businesses take those costs into consideration when deciding whether to locate or do business in a particular state.

Similarly, every surcharge, fee, or tax which California consumers are required to pay reduces the amount of income they have to spend for goods or services sold in interstate commerce. To the extent that consumers from other states do not also have to pay those

¹²¹ C&A Carbone v. Town of Clarkstown (1994, U.S.) 114 S.Ct. 1677; see also, 15A Am.Jur.2d, Commerce, section 95, April 1996 supplement, at p. 161.

¹²² Goldberg v. Sweet (1989, U.S.) 109 S.Ct. 582; see also, 71 Am.Jur.2d, State and Local Taxation, section 244, April 1996 supplement, at p. 77.

¹²³ 51 Am.Jur.2d, Licenses and Permits, section 24, at p. 30, citing Nathan v. Louisiana, 8 How (US) 73, 12 L.Ed. 992.

same surcharges, fees, or taxes in the same amounts, California consumers' transactions in interstate commerce may be said to be impaired. Once again, that is a cost of living in one state versus another, and people take those factors into consideration in determine where they will live.

The reverse also is true. To the extent that businesses and consumers in states other than California are required to pay surcharges, fees, or taxes which exceed those which Californians must pay, those businesses and consumers have less money to spend on purchasing goods and services offered by California companies.

To the DCA's knowledge, those facts have never been the sole basis for upholding a claim that a surcharge, fee, or tax violates the Commerce clause.

F. TURN's Civil Rights Claim.

In its third claim for relief, TURN asserts that the Federal Civil Rights Act (42 United States Code section 1983) protects persons against deprivation of any rights, privileges or immunities secured by the U.S. Constitution and federal laws. TURN then asserts that the TCA "secures to California ratepayers . . . the right to be free from the imposition of ratepayer-funded contributions to finance new universal service support mechanisms that may be adopted both by state and federal regulations."¹²⁴

TURN has not made this argument either in its Application or in any of its briefs before the CPUC relating to the CPUC's universal service proceeding. Therefore, it remains to be seen what arguments TURN will assert to support this claim. Although the DCA has not had the opportunity to conduct extensive research regarding civil rights claims in contexts like this, based on the research it has conducted, it questions whether TURN would be able to prove its civil rights claim.

Even assuming that a court found that Section 254(f) precluded the use of an AEUS funding mechanism for universal service programs, it does not necessarily follow that requiring the use of a net trans account "secures to California ratepayers . . . the right to be free from the imposition of ratepayer-funded contributions to finance new universal service support mechanisms that may be adopted both by state and federal regulations." As shown several times in the discussion above, and as members of the Joint Board admitted, even if a net trans account funding mechanism is used, universal service programs will continue to be funded, ultimately, by customers. Therefore, if Section 254(f) truly "secures to California ratepayers . . . the right to be free from the imposition of ratepayer-funded contributions to finance new universal service support mechanisms that may be adopted both by state and federal regulations," then Section 254(f) must be interpreted to require that carriers pay the full cost of universal service programs from their profits, and that it precludes carriers from recovering any portion of those costs from the revenues they receive from their customers.

¹²⁴ TURN Complaint, at Third Claim for Relief, ¶¶ 2 and 3.

In addition, the evidence in this case may not be sufficient to prove TURN's claim. Among the allegations which a plaintiff must plead and prove in a civil rights action against a public official is that the official acted in bad faith.¹²⁵ TURN's Complaint does not include such an allegation. Moreover, based on the facts of which the DCA is aware surrounding the CPUC's adoption of the Decision, it seems very unlikely that TURN could prove such an allegation.

Additionally, state officials are immune from suits for damages alleging constitutional violations unless it is clearly established that, at the time of the official's acts, the interest asserted by plaintiff was a protected one, or if it was objectively reasonable for officials to believe that their acts did not violate any clearly established statutory or constitutional rights.¹²⁶ Based on the facts of this case, there does not appear to be evidence that would prove that it was objectively reasonable for the CPUC to have known that adopting an AEUS would violate clearly established statutory or constitutional rights. Even if a court found in TURN's favor on its first claim, there is sufficient ambiguity in Section 254(f) that it is doubtful a court would find that the CPUC should have known that adopting an AEUS would violate those rights.

V. CONCLUSION.

Both the TCA and AB 3643 (Polanco) require that universal service funding mechanisms be explicit. That aspect of a universal service program is important because it allows the democratic process to help sort out the equities, and assure that the benefits of those programs are worth the cost. That means that: (1) the amount of the subsidy should be identified to those who pay it and to those who receive it; (2) those who receive the subsidy should be aware of the amount of subsidy they receive; and, (3) those who fund the subsidy should be aware of the amount they are contributing to it. This can best be accomplished through an AEUS funding mechanism.

Section 254(f) of the TCA does not preclude the use of an AEUS funding mechanism. Irrespective of whether an AEUS or a net trans account funding mechanism is used, it is telecommunications customers, and not carriers, who ultimately bear the cost of universal service programs. Interpreting Section 254(f) to require that carriers fund the cost of universal service programs would require a prohibition against carriers recovering any part of that cost from their customers. Section 254(f) cannot reasonably be interpreted to include such a requirement.

Both the TCA's and AB 3643's requirements that universal service funding be explicit are more easily and effectively met through the use of an AEUS funding mechanism.

¹²⁵ Morales v. Vega (D.C. Puerto Rico 1979) 483 F.Supp. 1057.

¹²⁶ McMillian v. Healey (S.D.N.Y. 1990) 739 F.Supp. 153.

Since Section 254(f) does not preclude the use of an AEUS funding mechanism, the CPUC's decision to use an AEUS funding mechanism to support state universal service programs and the state's contribution to federal universal service programs does not violate the Supremacy Clause.

Use of an AEUS does not violate the Commerce Clause simply because it a surcharge on Californians which citizens of other states may not be required to pay. A state's imposition of a surcharge on only those persons who benefit from services provided by the state is entirely appropriate.

Section 254(f) does not secure to any telecommunications ratepayers the right to be free from the imposition of ratepayer-funded contributions to finance universal service programs. Therefore, use of an AEUS does not violate the civil rights of California's citizens.

In short, nothing in the TCA, and nothing in the federal Constitution or laws, precludes the use of an AEUS funding mechanism to support universal service programs.

An AEUS provides consumers with the information they need in order to optimize the democratic process. Making subsidies explicit will help achieve a subsidy process that is efficient and democratic. It will help to assure that universal service programs will be focused on those who need a subsidy, and that their overall benefits are reasonably commensurate with their cost. It will help to prevent universal service from taking on a life of its own without reference to the real and important valid reasons for its existence.

Prepared by:

Virginia J. Taylor, Staff Counsel
Richard A. Elbrecht, Supervising Attorney
California Department of Consumer Affairs
Legal Services Unit

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Public Service Commission of Wisconsin

Cheryl L. Parriso, Chairman
Daniel J. Eastman, Commissioner
Joseph P. Metzner, Commissioner

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610 North Whitney Way
P.O. Box 7854
Madison, WI 53707-7854

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April 28, 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY BY FAX & BY MAIL

Chairman Reed Hundt
Commissioner James Quello
Commissioner Susan Ness
Commissioner Rachelle Chong
Federal Communications Commission
1919 M Street NW
Washington DC 20554

Cherney
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Boasberg
Nakahata
Keeney
Levitz
Metzger
Atlas
Sallet
Pepper
Maxwell

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

Dear Chairman Hundt:

Next week you will be making one of the most important decisions on telecommunications since divestiture. Structuring a universal service plan to assure reasonably available and affordable services to all is a challenge, and your determinations will be critical to the entire nation.

Garcia
Rosstan

The universal service decision will address many issues, on most of which there are divergent points of view. All the issues are complex or controversial. I would like to share some brief observations and opinions on a few of these items.

Proxy Models

I understand the goal of proxy models as used in the universal service context is to simplify the process of determining costs. Based on experience, I recognize that cost studies are expensive and can be time intensive from a regulatory perspective. I would like to see a process that minimizes costs and regulatory intervention; however, I agree with Joint Board Commissioner Julia Johnson that none of the proxies in this proceeding is ready for use. On this matter, I urge you not to make a final decision. As this whole cost issue is examined in the months ahead, I would encourage the FCC (and the continuing Joint Board) to consider more reliance on state commission efforts to identify the costs of service.

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Transition Plan

I support the position of the state members of the Joint Board that encourages use of the alternative transition plan as part of the overall universal service decision. The initial Joint Board decision presents a grave potential to harm rural areas and actually diminish universal service. The alternative plan maintains more support for rural areas and companies. It offers continued incentives for infrastructure investment, avoids an immediate potential for local rate increases, and supports expanded service and growth in the rural areas.

The various provisions of the transition plan, including continued universal service support for second residential lines and business lines, will protect universal service in all parts of the nation.

Chairman Reed Hundt and Commissioners
Federal Communications Commission
Page 2

The Universal Service Challenge

I am very aware of the challenge this case presents. As a commissioner for several years, I have been in your shoes as you attempt to minimize costs while maintaining support for the many goals encompassed in the concept of universal service. I believe attention to meeting these goals is of paramount importance. Meeting all these needs may require a measured and reasoned approach that recognizes all goals may not be achievable at once. The impacts of these universal service provisions on local rates could be so high as to negate the very intentions of the universal service fund programs. It would be the ultimate irony if steps taken to protect and promote universal service were in fact a contributor to its downfall.

Joint Boards

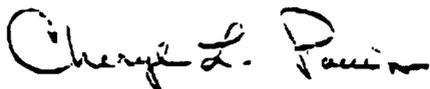
The Joint Board process is not painless, but it works. I support continued reliance on this process to shepherd further universal service changes. I applaud the public comments by Chairman Hundt on a commitment to ongoing Joint Board involvement. The work of the separations Joint Board—in process now—will be a critical input in the ongoing evaluation of universal service.

Access Charges

Some access charge reductions are needed; however, careful weighing of goals is required. Overzealous access charge reductions could jeopardize support for rural areas and low income customers and increase pressures for increases in local rates.

In conclusion, I support your efforts and recognize your challenge. I encourage you to consider these comments as you deliberate these important issues.

Sincerely,



Cheryl L. Parrino
Chairman

CLP:GAE:jah:h:\ss\letter\FCCJoint BdUSF-4-28-97-GAE

cc: Brad Ramsay, NARUC
John F O'Neal, NRTA
Michael E. Brunner, NTCA
John N. Rose, OPASTCO
Roy M. Neel, USTA
Governor Tommy G. Thompson

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FROM: Kathie Levitz

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

TIM FREEMAN
10261 Auburn Road
Fort Wayne, IN 46825

April 29, 1997

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

RE: CC Docket No. 96-45

Dear Chairman Hundt:

I am an employee of the Fort Wayne Community Schools district. Since my work with the district involves information systems, I have an awareness of the importance of the "E-Rate" Telecommunications Discount Program in relation to affordable communications services to school districts wanting to provide internet and distance learning services to students. To adequately prepare students to survive in America's ever-expanding "technology" society, it is essential that students have access to this technology in the classroom.

I urge the FCC to fully support the Joint Board's discount plan for universal service for schools and libraries.

Sincerely,

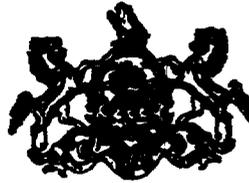

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Pennsylvania Association of Intermediate Units



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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

April 30, 1997

The Honorable Reed Hunt, Chairman
Federal Communications Commission
1919 M Street NW, Room 844
Washington, DC 20554

Dear Chairman Hunt:

As a Pennsylvania Intermediate Unit Executive Director, I would like to thank you for your dedication in ensuring that all school districts and education consortia will have affordable access to the Information Superhighway.

The Telecommunications Act and the Federal-State Joint Board decision will guarantee that all school districts will have the opportunity to connect to the Internet and provide distance learning opportunities. The \$2.25 billion a year will address the needs of all of our schools, and importantly, the plan will bring services directly to the classroom where students learn. Your inclusion of internet classroom connections is vital. This plan is essential for preparing the workforce of tomorrow.

ARIN Intermediate Unit 28 serves as an Internet Service Provider to our local districts, vocational-technical schools, and public libraries (as do many of our sister Intermediate Units across the Commonwealth). Even though we provide these services at well below market rates, there are many institutions in our rural area that simply cannot afford Internet connectivity. The discounts provided in the Telecommunications Act will enable them to establish these desperately needed connections.

Our students need deep discounts for telecommunications services this year. I urge you to fully support the Joint Board's discount plan for universal service for schools. Thank you.

Sincerely,

Thomas P. Carey, Ed.D.
PAIU President

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KANSAS RURAL DEVELOPMENT COUNCIL

1200 S.W. Executive Drive, P.O. Box 4653

Topeka, Kansas 66604-0653

(913) 271-2770 / FAX (913) 271-2719

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- John T. Barnes III
- Norma Daniels
- Allie Devine
- Jerry Mayhall
- Loren Medley
- Gary Sherrer, Lieutenant Governor
- Gary Ulican
- Steven G. Bittel, Executive Director

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

Dear Chairman Hundt:

It is our understanding that at your next meeting the FCC will be implementing the rules of the Telecommunications Act of 1996. Any reform that impacts rural America in an adverse way is of vital concern to the Kansas Rural Development Council (KRDC) as well as any other rural development organization. The loss of the universal service support will decrease rural businesses and communities ability to compete in a global market.

We are quite concerned about the long-term effects on rural economies if universal service is eliminated. Since many of our local phone companies have to provide service to areas that meet frontier status, i.e., a population density less than six persons per square mile, the loss of universal service will increase the cost to provide service to multi-line phone users to extremely high levels and in many cases prohibitive levels to the customer. Not only are these customers businesses, they are oftentimes hospitals, schools and residents wanting access to the information highway. Without access to affordable multi-line phone service rural Americans, institutions and businesses will be denied many of the services urban America takes for granted and this will lead to a further erosion of our rural communities.

We understand that rules were initially proposed which would eliminate much of the support that has traditionally kept telephone rates reasonable in rural areas. However, we also understand that the FCC intends to propose rules which will provide a three year transition period during which time the service support system for rural customers will remain unchanged. This will limit the impact and maintain current levels of service in the short run. We hope this period of transition will be applicable to both rural businesses and residences.

Thank you for taking the time to learn about our concerns and KRDC hopes you will consider this information when you take action next week.

Sincerely,

Steven G. Bittel
 Executive Director

cc: Commissioner James H. Quello
 Commissioner Rachelle B. Chong
 Commissioner Susan Ness



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JUN 10 1997

THE UNIVERSITY OF NORTH CAROLINA

AT
CHAPEL HILLFEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARYAcademic Technology and Networks
Telecommunications Office

May 5, 1997

Campus Box 1830, Giles F. Horney Bldg.
The University of North Carolina at Chapel Hill
Chapel Hill, NC 27599-1830

Reed E. Hundt, Chairman
Federal Communications Commission
1919 M Street, NW
Washington, DC 20544

EX PARTE OR LATE FILED

Re. Ex Parte Communication in CC Docket No. 96-262

Dear Chairman Hundt:

The purpose of this correspondence is to inform you of the significant impact on the University of North Carolina at Chapel Hill (UNC) of several issues pending before the Federal Communications Commission.

Current proposals to subsidize telecommunications services for grades K-12, libraries, and rural health care facilities (possibly including wiring costs) from the universal service fund will have a significant financial impact on the University of North Carolina at Chapel Hill as well as other public and private universities. *I estimate that proposals to increase the subscriber line charge (SLC) from \$6.00 to \$9.50 per line and to implement a pre-subscribed line surcharge (PSL) of \$4.50 per line per month will cost UNC approximately \$1,700,000 per year. As a publicly funded institution, UNC currently has no allocated source of funds to pay for such an increase in telecommunications expenses. Implementation of these proposals would not only preclude the accomplishment of similar technology initiatives at UNC, but would also make basic telephone services unaffordable for many of our departments, faculty, and staff.*

I encourage you to find alternative solutions of funding these important measures without jeopardizing the level of technology support at UNC and at our nation's universities. Among the alternative solutions you may consider, I would urge you to exempt institutions of higher education from the proposed surcharges.

Sincerely,

Steve Harward, Associate Director
Networking and Communications

cc: Commissioner James E. Quello
Commissioner Rachelle B. Chong
Commissioner Susan Ness
Mr. Bryan Moir

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List A B C D E

be affected as follows: \$3.50 per month potential increase in SLC, \$4.50 per month new PSL totaling \$8.00 per line in additional fees, or \$80,000 in additional charges per month. It is important to note that these are estimates, and the actual effect may vary.

Interstate access charges are also planned to be cut 40 - 50% in the first year, resulting in lost access charge revenue. The net effect of these changes will be dramatic cost increases for business users, including higher education institutions. Various members of the ACUTA Legislative/Regulatory Affairs Committee have estimated that their individual university could suffer a combination of cost increases and lost revenue ranging between \$43,000 and \$250,000 per year.

If your university is concerned about this potential huge cost increase, we urge you to work with your institution's leadership and governmental relations departments immediately to express your opposition. Time is of the essence. Correspondence may be addressed to the each of the following FCC Commissioners, and should be faxed to them as soon as possible. It is important to write to all of the commissioners, not just the Chairman. Their names and fax numbers are as follows:

Chairman Reed E. Hundt	Fax 202-418-2801
Commissioner James E. Quello	Fax 202-418-2802
Commissioner Rachelle B. Chong	Fax 202-418-2820
Commissioner Susan Ness	Fax 202-418-2821

Mailing Address for the Commissioners:
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Please note at the top of each letter: "Ex Parte Communication in CC Docket No. 96-262". Please copy all letters to attorney Brian Mor, at Fax # 202-331-9854. Also copy the letter to Jeri Semer at the ACUTA office, Fax #806-278-3268.

In addition, we suggest you consider copying this letter to your state's two Senators and the Member of Congress from your school's district. The Congress should be made aware of the FCC's plan to target business users disproportionately in an effort to achieve the universal service social agenda.

More information on Universal Service and Access Charge Reform is available from the FCC Web site, www.fcc.gov. You can reach the FCC Web site through the ACUTA Web site, www.acuta.org, through a link from the Legislative/Regulatory section.

Jeri A. Semer
Executive Director
Association of College and University
Telecommunications Administrators (ACUTA)
152 W. Zandale Dr., Suite 200
Lexington, KY 40503
Phone: (606)278-3338
Fax: (606)278-3268
E-Mail: jsemmer@acuta.org
World Wide Web: <http://www.acuta.org>

IRish -
① Please FAX orig. if
cc today. All FAX
Numbers should be noted
below.

② Also please cc GOGAN
& OBERLIN & T-HORNE &
BRAT.

Steve

Harward, L S

From: root@acuta.org[SMTP:root@acuta.org]
Sent: Wednesday, April 23, 1997 8:31 AM
To: member@acuta.org
Subject: ACUTA Regulatory Alert

ACUTA Regulatory Alert**FCC Access Charge Reform Could Result in Dramatic Cost Increases for Business Telephone Customers**

ACUTA members should be aware of two issues currently before the Federal Communications Commission (FCC) that could significantly increase the telecommunications costs of higher education institutions and other large multi-line business users. These proposals pertain to changes in universal service and interstate access charge rules.

A decision may be made on these proposals by May 6. Although it has not been announced publicly, ACUTA has learned that the leadership of the FCC is reportedly considering proposals that would target multi-line business customers with major increases in the Subscriber Line Charges (SLC). In order to generate nearly \$3 billion in additional revenue, this revenue would be used to subsidize inside wiring and access to the network for public K-12 schools and libraries, access to the network for rural health care facilities, and increases in lifeline service.

The Telecommunications Act of 1996 requires the FCC to establish rules for discounted telecom services for K-12 schools, libraries, and rural health facilities, subsidized through the Universal Service Fund. However, wiring is not called for in this legislation.

Under the proposal being promoted by the Chairman of the FCC, the following increases could occur:

- * The cap on business multi-line Subscriber Line Charges (SLC) may be raised from \$8 per line to \$9.50 per line per month, including Centrex lines.
- * A pre-subscribed line (PSL) surcharge will be imposed on business users. The charge is anticipated at \$4.50 per multi-line business line. The \$4.50 per month charge would also apply to each Centrex line.
- * The SLC cap on second residential lines may be raised from \$3.50 to \$6.00 per month. This will affect university employees and students who telecommute.
- * Cellular, PCS, and paging customers may be assessed a \$1.00 per telephone number per month "universal service social agenda obligation" fee.

According to the information ACUTA has received, it appears from our initial analysis that a university that has 10,000 Centrex lines would

CC 96-45

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Corbett Elementary School
Making Connections with Literacy
5949 E. 29th Street
Tucson, AZ 85711
(520) 512-3370
corbsch@azstarnet.com

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JUN 10 1997

FEDERAL COMMUNICATIONS COMMISSION
1 Main Office SECRETARY

The Honorable Reed Hundt, Chairman
The Honorable Rachele B. Chong, Commissioner
The Honorable Susan Ness, Commissioner
The Honorable James Quello, Commissioner
Federal Communications Commission
1919 "M" Street, NW, Room 844
Washington, DC 20554

RE: CC Docket No. 96-45

Dear Commissioners,

We are writing to thank you for your dedication to providing affordable access to the Information Superhighway. Democracy requires equal public access to information for all citizens, including students.

The Telecommunications Act and the Federal-State Joint Board decision will guarantee that all school districts will have the opportunity to be connected to the Internet and distance-learning opportunities.

In poor schools like ours, affordability is critical. We are a neighborhood school serving a low socioeconomic community. For most of our 700 students and their families, the public school provides the nearest and most affordable (free) access to information technologies.

The classroom connection to information is critical. At present, our school library has a modem - one computer for telecommunications to serve the Internet needs of our entire school community. This does not begin to address our needs.

Our students, teachers, and families need deep discounts immediately. We urge the FCC to fully support the Joint Board's discount plan for universal service for all American schools.

Thank you for your continued support of affordable access.

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Sincerely,


Jane Klipp, principal


Judi Moreillon, teacher-librarian

Carbon County Superintendent of Schools

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Jerry Scott, Superintendent



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Red Lodge, Montana 59068
406-446-1301
JUN 10 1997

EX PARTE OR LATE FILED

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

April 29, 1997

The Honorable Reed Hundt, Chairman
Federal Communications Commission
1919 M Street, NW, Room 844
Washington, D.C. 20554

Dear Chairman Hundt:

I am the Carbon County Superintendent of Schools with an office in Red Lodge, Montana. I am the acting administrator for four rural schools which range from 13 to 33 students grades K - 8. There are also six other schools in Carbon County which have their own administrators and range in size from 133 to 547 students K - 12 grade. One of the ways we have been trying to coordinate communications between our Carbon County schools has been via e-mail and/or other electronic methods. This has not been an easy task with the variety of equipment and size of budgets the schools have.

The Telecommunications Act and the Federal-State Joint Board decision will guarantee that all of the school districts will have an opportunity to connect to the Internet and provide many other opportunities for our rural area. The inclusion of internal classroom connections for discounts is vital for our schools to continue to be able to afford such connections to each other and the world. There is no doubt in my mind that many of Carbon County's school boards would choose to cut high phone expenses by disconnecting, or not connecting at all, from the Internet services. Our students need deep discounts to such services this year and in the years to come. I urge the FCC to fully support the Joint Board's discount plan for universal service for schools.

Thank you.

Sincerely,

Jerry Scott

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Boscov's

CC 896-45

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JUN 10 1997

BOSCOV'S DEPARTMENT STORES, INC.
INFORMATION SERVICES

3135 MARION AVENUE - LAURELDALE, PA 19605-2745
PHONE (610) 929-6960 - FAX (610) 929-7336

April 28, 1997

EX PARTE OR LATE FILED

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Chairman Reed E. Hundt
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

RE: ExParte Communication in DCC Docket No. 96-262

Dear Chairman Hundt:

I am writing to express Boscov's Department Store, Incorporated's concerns about a possible Federal Communications Commission action which could substantially raise our telephone bills. Our information is that the Commission will vote May 6 on, among other things, the imposition of a "Fair and Equitable Rate Charge" of \$4.50 per month beginning this coming January, which would increase to \$6.00 per month the next year, to be used to wire schools and libraries for the Internet.

We do not question the wisdom of wiring schools and libraries, and we had no objection to its inclusion in the Telecommunications Act of 1996. Rather, we question the manner in which this new charge is to be levied, and the fact that the Commission has to our knowledge not determined how the money might best be distributed. Reliable studies have shown that business customers are already overcharged significantly by their local telephone companies, and we wonder why that money would not be used to accomplish the worthy goal of wiring schools and libraries.

If these charges are instituted, the impact on us would be substantial, because Boscov's Department Stores has 415 telephone lines, resulting in yearly surcharges of \$22,410. We consider this surcharge to be unduly burdensome, and we cannot imagine that this charge reflects the intent of Congress when it acted to bring advanced technology to America's classrooms.

We ask you to consider the effect that such a proposal would have on retailers, who are increasingly reliant on telecommunications in the routine management of their business. We appreciate your consideration.

Sincerely,

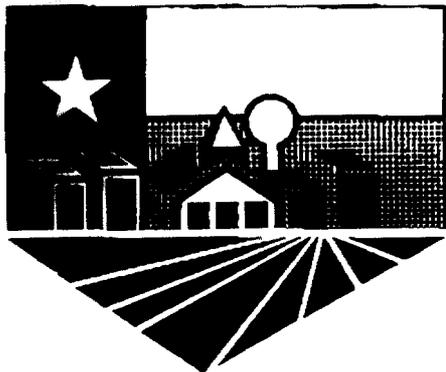
BOSCOV'S DEPARTMENT STORE, INC.

Thomas R. Hinkle

Thomas R. Hinkle
Director of Business Technology

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CC 96-45



TEXAS RURAL DEVELOPMENT COUNCIL

8140 Burnet Road, Suite 218 • Austin, Texas 78757-7799
(512) 323-6515 FAX (512) 323-6626

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JUN 10 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

May 1, 1997

DOCKET FILE COPY ORIGINAL

The Honorable Reed E. Hunt
Chairman
Federal Communications Commission
1919 M Street, NW
Room 814
Washington, D.C. 20554

Dear Chairman Hundt:

Last year, Congress passed and the President signed into law the Telecommunications Act of 1996. This legislation mandated reform of the universal service support system (which lowers the cost of serving areas of the country that otherwise would be too costly to serve). Apparently, rules implementing this mandate are to be made final by May 1997.

We understand that rules were initially proposed which would eliminate much of the support that has traditionally kept telephone rates reasonable in rural areas. However, we also understand that the Federal Communications Commission intends to propose rules which will provide a 3-year transition period during which time the service support system for rural consumers will remain unchanged. Such revision to the proposed rules will limit the impact on rural consumers and maintain current levels of support for the near future. We trust this 3-year transition period will be proposed for all rural consumers, both residential and business. Rural communities need this window of opportunity in order to evaluate and address changes to universal service support.

In this regard, we sincerely appreciate the efforts of the Commission to maintain affordable reliable phone service for rural areas. However, we are very concerned about the long-term effect upon rural areas if universal service support is eliminated to rural multi-line customers. Local phone service provides the necessary link between rural areas and urban areas. In rural areas, the multi-line customer is often a hospital, school district, nursing home, small business, or rural resident with access to the Internet. Without access to affordable multi-line phone service, we question the ability of rural America to retain these institutions and businesses and to attract new ventures. We are also concerned that rural Americans may no longer be able to afford access to the information super-highway.

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We understand that the Office of Advocacy of the Small Business Administration has provided you with information concerning the probable impact on rural consumers of the newly proposed universal service support mechanism. We are very concerned, as is SBA, that under present proposals only urban areas will benefit from increased competition, while the cost of comparable telephone service in rural areas will increase dramatically. We fear that, because of the increased cost of service, rural areas will lag even farther behind its urban counterparts in terms of resource development, information access and educational opportunities.

Thank you for considering the unique impact that universal service support rules will have on rural America during this rule-making process. We will continue to monitor this impact and provide to you timely and reliable information.

Sincerely,



James Cowan, Chairman
Telecommunications Infrastructure
Committee

c: Commissioner James H. Quello
Commissioner Rachelle B. Chong
Commissioner Susan Ness
Jenell Trigg, SBA Office of Advocacy



Legislature of the Virgin Islands

Vargrave Richards
Vice President
Chairman
 Committee on Education
Committee Member
 Health
 Housing, Parks & Recreation
 Rules
 Youth & Human Services

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#1 Lagoon Street Complex
 Frederiksted, St. Croix 00840
 TEL. (809) 773-2124
 FAX (809) 773-4748

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JUN 10 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

April 30, 1997

The Honorable Reed Hundt
 Commissioner
 Federal Communications Commission
 1919 M Street, N.W. , Room 814
 Washington, D.C. 20544

Dear Commissioner Hundt:

On behalf of the students of the Virgin Islands, I would like to ask you for your support to ensure that all schools have affordable access to the Information Superhighway. As the Chairman of the Committee on Education for the 22nd Legislature, I would like to also pledge my support for the implementation of the Telecommunications Act of 1996 and other technology initiatives that are essential tools in contemporary classrooms.

The Telecommunications Act and the Federal-State Joint Board discount plan will guarantee that students all over the country will have the opportunity to get on-line and gather information from all over the world. The discount plan will save our schools over \$2.25 billion a year, which may be used to fund other important education mandates.

In the Virgin Islands, the Department of Education received a grant which enabled volunteers to wire four of the territory's public schools. The department plans to wire all each of the territory's 33 public schools within the next two years. This discount plan will ensure that once our schools are wired, our students will have greater access to the Internet.

I urge the FCC to fully support the Federal-State Joint Board's discount plan for universal, affordable, Internet access for schools and libraries. Thank you.

Sincerely,

Vargrave
 Vargrave Richards
 Chairman
 Committee on Education

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