Public Utility Commission of Texas

1701 N. Congress Avenue
P. O. Box 13326
Austin, Texas 78711-3326
512 / 936-7000 • (Fax) 936-7003

Pat Wood, III
Chairman

Robert W. Gee
Commissioner

Judy Walsh
Commissioner

July 15, 1997

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

RE: CC Docket No. 96-45 (FCC 97-157)
In the Matter of
Federal-State Joint Board on
Universal Service

To the Secretary:

Enclosed herewith for filing with the Commission are an original plus eleven copies of the Petition for Reconsideration of the Public Utility Commission of Texas in the above captioned matter. We are also providing copies to ITS and individuals indicated on the attached service list.

Sincerely,

Steve Davis

Steve Davis
Director, Office of Policy Development

cc: ITS, Inc.
Service List

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

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

PETITION FOR RECONSIDERATION BY THE PUBLIC UTILITY COMMISSION OF TEXAS

On May 7, 1996, the Commission adopted its Report and Order on universal service (Order)[1] as a part of its program to implement the Telecommunications Act of 1996 (1996 Act).[2] The Commission has completed an important phase of the implementation in a commendable fashion, utilizing the Recommended Decision[3] of the Federal-State Joint Board to establish rules for the provision of universal telecommunications service to the nation's citizens. The Public Utility Commission of Texas (Texas PUC) applauds the Commission's efforts, and we request reconsideration only on the following selected issues.

Federal Share of Support

We are asking that the Commission reconsider its decisions regarding the portion of the high cost amount that will be supported by the interstate program, and that it reconsider the manner in which the support will be retargeted through reductions in interstate access charges.

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1 In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report & Order*, FCC 97-157, ("Order")

2 Pub. L. No. 104-104, 110 Stat. 56. The 1996 Act amends the Communications Act of 1934, 47 U.S.C. §§ 151 *et seq.*

3 Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Recommended Decision*, 12 FCC Rcd 87 (1996) ("Recommended Decision").

The 25% Factor

The Commission concluded that the federal share of universal service support for providing telecommunications service to high cost areas should be limited to 25 percent of the difference between the forward-looking economic cost of providing supported services and the national benchmark.[4] This approach is not consistent with the Joint Board's Recommended Decision, with the current universal service support system, or with objective logic. The Commission's sole rationale for the decision to limit federal USF support to 25 percent appears to be that it desires to match the current 25 percent allocation of loop costs that are currently assigned to the interstate jurisdiction under Part 36 separations rules. The jurisdictional allocation of loop costs bears no real relevance to the amount of support to be provided by the interstate universal service fund. No further justification appears to be included in the Report and Order.

The current method of providing federal universal service support to carriers that serve high-cost rural areas is based on unseparated loop costs that exceed a national benchmark under a specified formula. The federal USF currently supports 100 percent of the amount that has been identified as needing support. The Joint Board recommended that the level of support from federal universal service support mechanisms be based on the difference between the forward-looking economic cost and the benchmark amount.[5] If the intent of the Commission is to ensure that the fund size remains reasonable, then there are a number of more logical ways to accomplish that end, such as adjusting the national benchmark. We ask that the Commission reconsider this portion of its decision and seek additional remedies through the impending Further Notice of Proposed Rulemaking.

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[4] Order, para. 269.

[5] Recommended Decision, para. 270.

Diversion of Support Funding

The Commission's revisions to the interstate USF constitute significant changes to the manner of support. This decision diverts USF support amounts to reduce interstate access rates rather than to continue USF contributions to keep basic local telecommunications rates reasonable. The current USF support mechanism contributes toward the carrier's overall revenue requirement, which in turn allows basic intrastate local rates to remain affordable. Under the revised plan, however, the contribution from the federal universal service fund is diverted to reduce interstate access rates rather than remaining available to keep local service rates affordable. This diversion results in shifting more of the burden of support for high cost rural exchange rates from the interstate pool to the states.

Both of these findings of the Commission's decision significantly reduce the amount of support revenue available to the states. We ask the FCC to reconsider the diversion of current universal service support streams, and retain sufficient support to avoid significant impact on basic service rates.

Establishment of Forward-Looking Economic Costs

The Commission has determined that the level of support for providing service to a particular customer ultimately should be based on the forward-looking economic cost of providing that service.[6] However, the Commission has concluded that the proxy models developed thus far in this proceeding cannot be relied upon as a means to calculate forward-looking economic costs, and has proposed to evaluate these models further in the coming months. To calculate federal support for non-rural carriers beginning in 1999, the Commission solicits the assistance of state regulators to conduct and provide forward-looking economic cost

[6] Order, para. 199, 223.

studies, consistent with the Commission's specified criteria. For rural carriers, the Commission proposes to develop mechanisms for the distribution of universal service support through the issuance of a Further Notice of Proposed Rulemaking (FNPRM), and the formation of a rural support task force under the direction of the Joint Board.

The Texas PUC supports the underlying concept of using forward-looking economic costs as the basis for calculating universal service support, and appreciates the Commission's willingness to allow the states to participate in the process of further review of costing methods. However, we have concerns that, in its attempt to include states in this process, the Commission may have established a process that is unworkable. The Texas PUC offers two significant concerns regarding this proposal: applicability and timing.

"One Model Fits All" Does Not Fit This Scenario

The Commission observes correctly that the states have been reviewing cost studies for several years, and have been evaluating forward-looking incremental cost studies in relation to interconnection proceedings.[7] Further, the Commission affirms its belief that the underlying cost studies used for pricing unbundled network elements for interconnection can be an appropriate basis upon which to determine the cost of providing universal service. The Texas PUC intends to proceed toward the development of a forward-looking economic cost methodology that will comply with the Commission's criteria. However, we believe it is important for the Commission to recognize that there are, and should be, significant differences between the cost studies performed for the purpose of establishing interconnection rates and those performed for determining universal service support payments.

[7] Order, para. 247.

The Texas PUC has, in fact, adopted formal costing rules as required by our state statute[8] and has approved TELRIC (total element long-run incremental cost) study results for the purpose of establishing prices for unbundled network elements for incumbent carriers. However, these studies do not appear to match the needs of a cost study that would be used for determining high-cost service areas, and the studies we have adopted (after lengthy open proceedings) do not meet the Commission's ten specified criteria.

TELRIC studies as used in interconnection proceedings enable regulators to establish a rate for a specific network element provided by a specific incumbent local exchange carrier (ILEC). The cost drivers for TELRIC studies include such variables as loop lengths, density of access lines, and switching office size. The values of these cost drivers are chosen to reflect the operational characteristics of the *specific carrier* under study. Current TELRIC studies in Texas do not distinguish between the costs of the same elements provided by a single carrier in different geographic areas. For instance, they do not distinguish between costs in a west Texas census block group (CBG) and the cost of the same element in an east Texas CBG. By definition, a TELRIC study provides the cost of a discrete network element, and not the cost of a total service package, such as basic local telecommunications service. The services identified for the purpose of universal service support are not, in all cases, the same as the elements offered within network unbundling. For example, unbundled network elements for interconnection are expected to have transmission qualities in excess of basic voice grade bandwidth; therefore, the costs of these loops are not the same as the costs for loops designed to provide basic voice grade services.

In contrast, forward-looking economic cost studies and models used for calculating the amount of revenue to be provided for universal service support are not carrier-specific, must

[8] Public Utility Regulatory Act of 1995, Tex. Rev. Civ. Stat. Ann. art 1446c-0 (Vernon Supp. 1996), Sec. 3.457.

distinguish among geographic areas, and are constrained to the provision of only the supported services as defined by the FCC. A carrier serving a customer in an area (e.g., wire center, CBG, grid) that has forward-looking economic costs that exceed a defined benchmark will receive a support payment based on the cost differential. When used for universal service targeting, forward-looking economic costs are used to calculate a generic payment amount that any carrier will receive for serving a high-cost area, and do not form the basis for a specific rate for an unbundled element offered by a specific carrier.

Our interconnection loop cost studies include a number of variables that relate to the general characteristics of the customer loop to be served, but which are not deaveraged to specific geographic areas within the state. In contrast, cost studies or models to be used for the targeting of universal service support must have a much more specific geographic component.

We ask that the Commission reconsider its emphasis on the reliance of one omnibus cost methodology that can be used for both pricing network elements and targeting universal service support, and look favorably on proposals that include similar but independent methods.

Timing of the FCC's Plan

The Commission asks state regulators to elect, by August 15, 1997, whether they will conduct their own forward-looking economic cost studies for the purpose of calculating universal service support.[9] Further, electing states must file those cost studies with the Commission on or before February 6, 1998. If a state chooses not to elect to provide its own study, the universal service support calculations will be performed using the Commission-designated cost study. The Commission's methodology will be developed, however, only after issuance of a FNPRM in June 1997, and following further deliberation on the methodology until its adoption in August 1998. The Texas PUC fully intends to pursue development of a forward-looking economic cost

[9] Order, para. 248.

methodology in accordance with the Commission's criteria. However, without the benefit of knowing the responses to the FNPRM and the position of the Commission, the Texas PUC and the other state regulators are disadvantaged by the unusual and awkward timing of this proposal. The logic in this approach is reminiscent of Monty Hall's question: "Do you want to design your own study, or would you rather use what's behind Curtain Number Two?"

Inasmuch as we wish to preserve our options with respect to the design of forward-looking economic cost methodologies, we are filing, under separate cover, notification of our election to participate in the process that the Commission has outlined in the Report and Order. However, we ask that the Commission recognize the awkwardness of this process, and either extend the state deadline beyond the October decision on the cost methodology, or at least grant state regulators a great deal of flexibility to adopt and file plans beyond the August 15, 1997 deadline.

Subscriber Line Charge Increases

In the Recommended Decision, the Joint Board urged that there be no increase in the current $3.50 subscriber line charge (SLC) cap for primary residential and single-line business lines. The Texas PUC supported the Joint Board's recommendation in our Further Comments in this proceeding.[10] The Commission has adopted that specific recommendation in this proceeding, but contemporaneously imposes significant increases in the SLCs for non-primary and multi-line business lines in the companion Access Charge Reform proceeding.[11]

The Texas PUC consistently has opposed the imposition of, and increases to, interstate SLCs since their inception. We believe these charges are perceived by customers to be a part of

[10] Further Comments, Public Utility Commission of Texas, CC Docket No. 96-45, December 12, 1996.

[11] In the Matter of Access Charge Reform, CC Docket No. 96-262, *First Report and Order*, adopted May 7, 1997.

their local rates, and increases to the SLCs contribute to consumer perception that competitive changes carry a significant price tag. We reiterate our opposition, as expressed previously in this proceeding and in the Access Charge proceeding,[12] to the recovery of common line costs through the imposition of flat rate charges to captive customers who may or may not use interstate services. We also continue to have concerns about the administrative difficulty and the potential for erroneous billing that may occur from the application of different SLCs for primary and additional residential lines. We ask that the Commission reevaluate their decision regarding SLCs and leave the existing rate caps in place.

Eligibility Criteria

The Commission adopts the statutory criteria contained in section 214(e)(1) as the rules for determining whether a telecommunications carrier is eligible to receive universal service support.[13] Further, the Order concludes that section 214(e)(2) does not permit the Commission or the states to adopt additional criteria for designation as an eligible telecommunications carrier.[14] The Commission further determines that a carrier that offers any of the services designated for universal service support, either in whole or in part, over facilities that are obtained as unbundled network elements, satisfies the "own facilities" requirement for eligibility.[15]

Statutory Authority

The 1996 Act specifically delegates authority to state commissions for the designation of eligible telecommunications carriers.[16] The extent to which the FCC has chosen to codify and

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[12] See Further Comments by the Public Utility Commission of Texas, CC Docket No. 96-45, December 12, 1996, and Comments of the Public Utility Commission of Texas, CC Docket No. 96-262 et al, January 22, 1997.

[13] Order, para. 134.

[14] Order, para. 135.

[15] Order, para. 161-169.

[16] 1996 Act, Section 214(e)

interpret Section 214(e) of the statute appears overly prescriptive, and may lead to confusion and debate as to the meaning of the directives. As an example, the FCC offers an extensive discussion of its view of the meaning of "owned" facilities, an issue which the state commissions are clearly given authority to decide. As another example, Section 214(e)(5) of the 1996 Act defines a service area for non-rural carriers to be "a geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms." However, the Commission has reached a conclusion in this Report and Order regarding this very issue that has been clearly delegated to state authority by stating that it concludes "that service areas should be sufficiently small to ensure accurate targeting of high cost support and to encourage entry by competitors."[17] Whether or not we agree with the Commission's conclusion, we are concerned that the Commission has exceeded its statutory authority with respect to eligibility criteria. We urge the Commission to reconsider and soften the prescriptive nature of their conclusions with respect to eligibility.

Status of Lifeline Services

Setting aside the jurisdictional authority issue related to eligibility, the Texas PUC requests clarification on the issue of the provision of Lifeline service as it pertains to eligibility. The Commission clearly lays out in Section IV of the Report and Order the definition of services to be supported by the universal service program.[18] The definition of core services does not include the provision of interstate Lifeline service discounts, nor were such discounts included in Section 254 of the 1996 Act. Elsewhere, however, the Commission asserts that "provision of Lifeline service is not an additional obligation of eligible carriers, but instead is a supported service that must be provided by eligible carriers."[19] As a result of these apparently conflicting

[17] Order, para 184.
[18] Order, paras. 56-82.
[19] Order, footnote 342.

passages, we are uncertain whether the Commission intended for Lifeline services to be included among the services to be supported, and we are unclear about the authority under which the Commission made this determination. We ask for the Commission's clarification on this issue.

Conclusion

The Texas PUC is keenly aware of the difficulty of implementing the universal service provisions of the 1996 Act, and appreciates the massive effort undertaken by the Commission to complete these proceedings on a timely basis. We also appreciate the Commission's attempts to involve the states in this process, and we intend to participate fully in the ongoing development of the proxy models as well as the other elements of the universal service proceeding.

Respectfully submitted,

Public Utility Commission of Texas
1701 N. Congress Avenue
P. O. Box 13326
Austin, Texas 78711-3326

June 26, 1997

Pat Wood, III
Chairman

Robert W. Gee
Commissioner

Judy Walsh
Commissioner

SERVICE LIST

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

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

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

The Honorable James H. Quello
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

The Honorable David Baker
Georgia Public Service Commission
244 Washington Street, S.W.
Atlanta, GA 30334-5701

The Honorable Julia Johnson
Florida Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

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

The Honorable Laska Schoenfelder
South Dakota Public Utilities Commission
500 E. Capital Avenue
Pierre, SD 57501

The Honorable Martha S. Hogerty
Public Counsel for the State of Missouri
P.O. Box 7800
Harry S. Truman Building, Room 250
Jefferson City, MO 65102

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

Deonne Bruning
Nebraska Public Service Commission
P.O. Box 94927
Lincoln, NE 68509-4927

Bridget Duff
Florida Public Service Commission
2540 Shumard Oak Blvd.
Gerald Gunter Building
Tallahassee, FL 32399-0850

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

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

Mark Long
Florida Public Service Commission
2540 Shumard Oak Blvd.
Gerald Gunter Building
Tallahassee, FL 32399-0850

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

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

Thor Nelson
Colorado Office of Consumer Counsel
1580 Logan St., Ste. 610
Denver, CO 80203

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

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

Brian Roberts
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102-3298

Tiane Sommer
Georgia Public Service Commission
244 Washington Street, S.W.
Atlanta, GA 30334-5701

Kevin Schenzfeier
New York Department of Public Service
3 Empire State Plaza
Albany, NY 12223

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

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

Emily Hoffnar
Federal Communications Commission
CCB, Universal Service Branch
2100 M Street, N.W., Room 8617
Washington, D.C. 20554