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

In the Matter of

Access Charge Reform	)	CC Docket No. 96-262
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
Transport Rate Structure and Pricing	)	CC Docket No. 91-213
End User Common Line Charges	)	CC Docket No. 95-72

PETITION FOR RECONSIDERATION OR CLARIFICATION

Puerto Rico Telephone Company ("PRTC") requests that the Commission reconsider its Access Charge Reform Order to the extent that it requires carriers to apply any universal service support it receives from the federal solely fund to the reduction of its interstate access charge revenue requirements.[1]

I. INTRODUCTION

In its Access Charge Reform Order, the Commission adopted significant changes to the way in which access charge rate elements are developed and applied for price cap carriers, and to a limited extent, applied certain reforms to rate of return carriers as well. These reforms were adopted in the context of the concomitant overhaul of the federal universal service program, such that the Access Charge Reform Order also addressed

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[1] Access Charge Reform Order, First Report and Order, CC Docket No. 96-262, FCC 97-158 (rel. May 16, 1997), recon. Order on Reconsideration by Commission Motion, FCC 97-247 (rel. July 10, 1997) ("Order").

access charge issues that were characterized as related to the new universal service mechanism.[2] In this regard, the Commission has found that "any universal service support" distributed to a carrier from the new fund must be used to reduce or satisfy that carrier's interstate access requirement.

In the Order, the Commission states:

> Consistent with our decision in the Universal Service Order to fund only interstate costs through the federal universal service fund, we direct incumbent LECs to use any universal service support received from the new universal service mechanisms to reduce or satisfy the interstate revenue requirement otherwise collected through interstate access charges.[3]

This finding is fundamentally inconsistent with the plain language of Section 254 of the Communications Act, which requires that telecommunications services — not limited to interstate toll services — be made affordable through universal service support established by the Joint Board and the FCC under the Act.[4] Certainly, any restriction upon universal service funds received under the new program, should at least be limited to those support mechanisms that previously were and continue to be determined solely with respect to interstate costs, i.e., LTS and DEM weighting.

In addition, the restriction imposed by the Commission on universal service support is at odds with the Commission's own definition of the basic services that are to be supported by the

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[2] See id. at ¶¶ 367-87.

[3] Id. at ¶ 381.

[4] See 47 U.S.C. § 254(b)(3).

universal service fund. Therefore, PRTC requests that the Commission remove this restriction upon the application of universal service support such that a carrier may appropriately apply such receipts to ensure the affordability of any telecommunications service included within the definition of universal service under Section 254 of the Act. If, however, the Commission has not imposed such a restriction for rate of return carriers, PRTC requests clarification of this point.

II. SECTION 254 REQUIRES THAT TELECOMMUNICATIONS SERVICES BE MADE AVAILABLE AT AFFORDABLE RATES

The Commission's directive that LECs apply universal service support to their interstate revenue requirement is contrary to the goals of universal service. The guiding principal of the Commission's universal service mandate is that "quality services should be available at just, reasonable, and affordable rates."[5] Congress further described that all customers in all regions should have access to "telecommunications and information services, <u>including</u> interexchange service and advanced information services" at rates comparable to those in urban areas.[6] According to these statutory provisions, it is not appropriate for the Commission to limit arbitrarily the benefits of universal service support solely to the rates for access charges paid by interexchange carriers.

The plain language of the statute makes clear that Congress

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[5] 47 U.S.C. § 254(b)(1).

[6] 47 U.S.C. § 254(b)(3) (emphasis added).

intended the universal service fund to provide support for a range of telecommunications services included within the definition of universal service. The Commission's decision breaches this principle by limiting the applicability of federal universal service support to the interstate access revenue requirements. Although it is clear that support for interexchange service did not have to be excluded from receipt of any universal service support, interexchange service certainly cannot be supported to the explicit exclusion of what the Joint Board and the Commission have indicated to be a primary objective — the affordability of basic (i.e., local) services for all consumers.

However, limiting the benefits of federal USF to the interstate access revenue requirement does not satisfy the statute or the Commission's stated goals. Instead, it will have the effect of lowering access charges to interexchange carriers that may or may not pass such savings through to local consumers. Even if such a flow-through could be guaranteed, however, it will never reach those consumers who rarely, if ever, initiate interstate long distance calls. Yet, these are the customers to whom universal service support truly makes a difference between subscribing to basic phone service or not. In this regard, the Commission has not explained how USF support delivered through a reduction in access charges will "ensure" that universal service is "affordable."

III. THE APPLICATION OF FEDERAL USF SUPPORT TO INTERSTATE ACCESS REVENUE REQUIREMENTS IS CONTRARY TO THE COMMISSION'S DEFINITION OF SUPPORTED BASIC SERVICES

Section 254(c) of the Communications Act requires the Commission to define the telecommunications service that comprise the availability of universal service.[7] Thus, the Commission has adopted a detailed definition of universal service to establish the services to be supported.[8] The "core" or "designated" services to receive universal service support are: single-party service; voice grade access to the public switched network; touchtone, access to emergency services; access to operator service; access to interexchange service; access to directory assistance; and toll limitation services for qualifying low-income customers.[9] By definition, this list of services involves basic, primarily local service functions, and includes merely as one aspect of these services access to interexchange service. However, by its restriction of universal service in the Access Charge Reform Order, the Commission arbitrarily has limited support to this single "core" service such that support for any other "core" service included within the Commission's definition is effectively precluded.

The Commission has indicated more specifically that universal service funds are intended, at least in part, to

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[7] 47 U.S.C. § 254(c)(1).

[8] Federal-State Joint Board on Universal Service, Report and Order, CC Docket No. 96-45, FCC 97-157 (rel. May 8, 1997) at ¶¶ 56-107 ("Universal Service Order").

[9] Id. at ¶ 56.

support local services. The Universal Service Order contemplates that recipients of universal service support could be required to provide some minimum amount of local usage that would presumably be reflected in some per-minute rate reduction.[10] Although this specific subject is designated to be addressed in a Further Notice of Proposed Rulemaking, it clearly suggests that the Commission recognizes that federal universal service funds must be available to support usage of local telecommunications services, and certainly are not restricted from doing so based on jurisdictional grounds. The restriction imposed on such universal service funds, however, would clearly prohibit the furtherance of any such policy.

Finally, in assessing the issue of whether or not current rates are affordable, the Joint Board and the Commission have consistently focused upon local rates. Indeed, the Commission has determined that states are in a better position than the Commission to determine whether rates are affordable, which could only be the case if it is the affordability of local rates that is at issue.[11] The reason for this focus by the Commission, the Joint Board, and commenters is clear — universal service is intended to ensure that basic service is available to subscribers at affordable rates, not that interstate access charges are available to IXCs at reduced rates. In this regard, the Commission's universal service restriction in the Access Charge

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[10] Id. at ¶ 67.

[11] Id. at ¶ 118.

Reform Order is contrary to the core statutory requirement of Section 254, that "[t]he Commission and the States should ensure that universal service is available at rates that are just, reasonable, and affordable,"[12] and should be reconsidered.

IV. IN THE ALTERNATIVE, THE COMMISSION SHOULD CLARIFY WHETHER THIS RESTRICTION APPLIES TO NON-RURAL, RATE OF RETURN CARRIERS

In many respects, the Access Charge Reform Order applies only to price cap carriers, and the Commission has reserved reform for rate of return carriers to a future NPRM.[13] It is possible, therefore, that the Commission's restriction on the application of universal service support does not reach rate of return carriers. If this is the case, PRTC requests that the Commission clarify this point.

The Commission finds in the Order that because the universal service distribution mechanisms will not change for non-rural LECs until January 1, 1999, "it is not necessary at this time to determine the manner in which non-rural carriers should adjust their interstate access charges to reflect a difference in universal service support."[14] The Commission does not indicate whether it is referring only to price cap incumbent LECs or all incumbent LECs. Indeed, it is plausible that the Commission has not included in its consideration of this issue those carriers

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[12] 47 U.S.C. § 254(i) (emphasis added).

[13] Order at ¶ 330.

[14] Id. at ¶ 382.

that are neither price cap carriers nor rural carriers.[15] Therefore, if the restriction upon universal service funds has not yet been considered for rate of return, non-rural incumbent LECs, PRTC requests that the Commission clarify this point.

V. CONCLUSION

For these reasons, the Commission should reconsider its blanket restriction upon the applicability of universal service support to interstate access revenue requirements so that universal service distributions may be used to ensure affordable local rates as needed. In the alternative, the Commission should clarify that it has not yet considered the application of such a restriction to non-rural, rate of return carriers.

Respectfully submitted,

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[15] PRTC, for example, is a rate of return, non-rural incumbent LEC.

CERTIFICATE OF SERVICE

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