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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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
	)	

UNITED STATES TELEPHONE ASSOCIATION
PETITION FOR RECONSIDERATION AND/OR CLARIFICATION

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SUMMARY

USTA seeks reconsideration and/or clarification of the following issues. 1) The definition of toll control contained in the Rules should be amended to require that eligible carriers provide either toll blocking or toll control instead of both because toll control is burdensome and costly to implement; 2) The limit on support for high cost exchanges purchased after May 7, 1997 should be eliminated because it arbitrarily prevents small, rural carriers in high cost areas from receiving support needed to provide universal service to their customer consistent with the Act; 3) The impact of the elimination of the USF expense adjustment should be ameliorated by permitting carriers to continue to recover the costs subject to this adjustment through the interstate jurisdiction for a five year period; 4) The limit on corporate operations expense should be re-examined to ensure sufficient recovery by small, rural LECs; 5) Non-rural companies operating in insular areas and in Alaska with less than two percent of the Nation's access lines should not be required to move to a forward-looking cost proxy model because their data are not reflected in any model and their serving areas are unique; 6) Carriers that exit the NECA pool should continue to receive LTS; 7) Telephone companies that offer a lifeline credit should not be required to offer the credit for resale and resellers that qualify for support for Lifeline Assistance should be able to receive support from the Federal funding mechanism; 8) Otherwise eligible carriers certified by the states should be required to provide the package of universal services on a stand alone basis at the affordable rate established by the state; 9) LECs should not be required to count revenues from payphone service providers for purposes of determining universal service support contributions to avoid double counting these revenues; and 10) The indexed cap on USF should be eliminated to ensure that the USF is predictable and sufficient. In addition, USTA seeks reconsideration and/or clarification of several issues regarding the education and libraries

program, including the LCP and consortia, the rural health care program and the administration of these programs. Resolution of these issues as recommended by USTA will assist the Commission in meeting the requirements of the Act.

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PETITION FOR RECONSIDERATION AND/OR CLARIFICATION

The United States Telephone Association (USTA) submits its Petition for Reconsideration and/or Clarification (Petition) in the above-referenced proceeding. USTA is the principal trade association of the exchange carrier industry. Its members provide over 95 percent of the exchange carrier-provided access lines in the U.S. All of USTA's member companies are affected by the Commission's decision in this proceeding.

On May 7, 1997, the Commission released its *Report and Order* (*Order*) in CC Docket No. 96-45. That *Order* purports to implement Section 254 of the Telecommunications Act of 1996. Recognizing that the old system of implicit subsidies relied upon to preserve universal service was no longer viable in a competitive market, Congress required the Commission and the state commissions to work together through the Joint Board process to design and implement a new framework for universal service that would be based on "explicit" funding and that would be "specific, predictable and sufficient" to ensure the continuation of affordable telephone rates for all consumers. All telecommunications providers are obligated to make "equitable and non-discriminatory" contributions to universal service to ensure "competitive neutrality". Throughout this proceeding, USTA has urged the Commission to ensure that the principles of Section 254 of the Act were implemented.

USTA commends the Commission for adopting an appropriate transition plan for rural telephone companies. However, USTA continues to question whether the Commission's proxy approach can ever be validly applied to small companies and whether predominantly rural states will be able to preserve universal service in areas served by rural telephone companies with a federal fund which only provides support for 25 percent of the difference of the proxy cost and a benchmark. USTA and its member companies intend to be very active in the rural task force that the Joint Board will create to examine these issues.

USTA also remains concerned that the major sources of universal service support have been undermined by the Commission without an explicit universal support mechanism. While the Commission acknowledges that its work on universal service is unfinished, it is clear that the principles of Section 254 have not been met. The Commission concluded that it will provide support for 25 percent of the difference of the cost of universal service, as determined by an undefined forward-looking cost proxy model, and an undefined revenue-based benchmark. USTA and its member companies will also be very active in the Commission's proceedings to develop the proxy cost model to ensure that the proxy does not underestimate the true cost of providing universal service.

USTA seeks reconsideration and/or clarification of the following specific issues: the definition of toll limitation, the limit on support for high cost exchanges purchased after May 7, 1997, the elimination of the Universal Service Fund (USF) expense adjustment, the limit on corporate overhead expenses, the application of the proxy to non-rural, insular companies as well as to non-rural companies in Alaska, the receipt of Long Term Support (LTS) by carriers that exit the NECA Common Line pool, the availability of Lifeline as a service for resale, requiring that eligible carriers offer universal service on a stand-alone basis, the double-counting of revenues received from payphone providers in calculating USF contributions and the continuation of the cap on USF. In addition, USTA seeks clarification of a number of issues regarding the universal service programs for schools, libraries and rural health care providers. Each will be discussed in detail below.[1]

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[1]While the Joint Board recommended that universal service support only be provided to a single, primary residence line and a single line business, the Commission did not adopt that recommendation. The *Order* states that for non-rural carriers all lines will continue to receive support until January 1, 1999 and that for rural carriers all lines will continue to receive support until at least January 1, 2001(¶ 96). The *Order* notes that the *Further Notice of Proposed Rulemaking* which will be issued to consider a forward-looking economic cost methodology will also examine the issue of whether support should extend to additional residential and multi-line business lines. The Commission's *Access Reform Order,* which requires price cap LECs to impose a higher PICC on non-primary lines by January 1, 1998, confirms that the definition of non-primary line will be determined in a *Further Notice of Proposed Rulemaking* in the universal service proceeding by the end of the year. (*See* ¶ 83 of the *Access Reform Order*). USTA has explained the administrative difficulties of differentiating primary versus non-primary residence lines. LECs do not currently possess records that discretely identify non-primary lines. With an embedded base of over 160 million lines, the time and expense of reclassifying every residence line is prohibitive. In addition, differentiating these lines will increase the time required to establish new or additional service. Even if non-primary lines could be identified, the necessary modifications to LEC billing systems would be costly and difficult to implement. And, it is unlikely that any of this could be completed by January 1, 1998. Finally, such treatment sends incorrect signals to the marketplace as customers seek to avoid any additional charges which only LECs must impose in order to recover the costs of providing service. LECs have no practical way to validate or audit customers' designations. USTA believes that the record to date does not support differentiating primary and non-primary lines and urges the Commission to carefully consider the full record in the *Further Notice of Proposed Rulemaking* and to reject the Joint Board recommendation. Further as discussed in USTA's Petition for Reconsideration of the *Access Reform Order* filed July 11, 1997, once the definition is established, the LECs will require one year to implement it.

I. THE COMMISSION SHOULD RECONSIDER ITS DEFINITION OF TOLL LIMITATION TO DENOTE EITHER TOLL BLOCKING OR TOLL CONTROL.

The *Order* states that carriers eligible to receive universal service support must provide toll limitation service to qualified low-income customers.[2] The new rules accompanying the *Order* define toll limitation to include both toll blocking and toll control.[3] USTA urges the Commission to reconsider its definition of toll limitation to denote either toll blocking *or* toll control.

The requirement to offer toll control in addition to toll blocking places an enormous and unnecessary burden on local exchange carriers (LECs). The record in CC Docket No. 95-115, demonstrates that this requirement is unnecessary, as the vast majority of LECs have already implemented solutions to help their customers limit toll usage. These solutions included toll blocking, prepaid calling cards and billing system software modifications designed to limit the amount of toll a customer incurs. As the majority of commenters in that proceeding pointed out, a Federal mandate to require toll blocking and toll control was not required.

Toll blocking typically is accomplished through central office translations which restrict an end user's line from placing toll calls. However, the customer must be served by a switch that is capable of providing the toll blocking feature. The Commission correctly recognized that this may pose a problem for some carriers and provided these carriers with the opportunity to seek

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[2]Section 54.101(a)(9).

[3]Section 54.400(a). Toll blocking is defined as a service provided by a carrier that lets consumers elect not to allow the completion of outgoing toll calls from their telecommunications channel. Toll control is defined as a service provided by carriers that allows consumers to specify a certain amount of toll usage that may be incurred on their telecommunication channel per month or per billing cycle.

additional time to make the necessary upgrades.[4]

Toll control requires more than just central office translations. Currently, billing software modifications and pre-paid calling cards provide customers with toll control capability. The development and use of billing system software modifications have only been implemented by a few large LECs. The effectiveness of this system is wholly dependent upon whether the LEC can monitor a customer's toll charges.

In order to monitor toll charges, the LEC must receive recording and rating information on a timely basis from every toll carrier the customer may utilize during the monitoring cycle. To be truly reliable, such information would have to be provided on an hourly basis. Without this information from interexchange carriers (IXCs), this system is ineffective. If the LEC does not perform the billing function, the toll carrier would have to develop a system to collect its billing information for each lifeline customer and send it to the appropriate LEC. The LEC would have to compile and summarize all of the toll charges for the customer and then proceed to limit the toll charges as required. It is unlikely that competing carriers will willingly provide toll billing information to other carriers. Therefore, unless the Commission requires IXCs to provide this information, this system will not be effective.

Pre-paid calling cards may also be used to control toll usage. Such cards are available to customers through various retail outlets, including grocery stores, gas stations and convenience stores, as well as through IXCs. There is no way for the LECs to control the purchase and use of pre-paid calling cards to make this an effective toll control solution in all cases. LECs cannot

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[4]Section 54.101(c).

monitor their customers to determine the usage of pre-paid calling cards. LECs should not be required to issue pre-paid calling cards in order to be eligible to receive universal service support.

Given the limitations on the effectiveness of current methods of toll control, requiring eligible carriers to offer toll control in order to receive universal service support is unreasonable. As explained above, toll control will not provide any measurable benefits above that which can be provided through the availability of toll blocking. The cost of implementing toll control will be prohibitive, particularly for small, rural telephone companies. Toll control does not prevent excessive toll charges to be incurred through collect calling. Further, this is a problem not only for LECs, but for any carrier seeking eligibility to provide universal service. The imposition of the burden of providing toll control will prove to be a disincentive for new entrants to provide universal service. Clearly, this provision does not serve the public interest.

Further, the definition of toll control itself is problematic. Allowing the customer to select the amount of toll usage may not result in effective "control" of toll usage. If mandated toll control is retained, USTA recommends that the definition of toll control be amended to allow the LEC to determine the dollar limit of the permitted toll usage based on the customer's credit rating or other income-based factors. The state commissions should oversee this process and approve the reasonableness of the dollar limit. Such a modification is consistent with the Commission's decision to defer to the states regarding lifeline eligibility and to approve waivers of the "no-disconnect" policy.

The difficulties presented above can easily be resolved by modifying the definition of toll limitation to denote *either* toll blocking *or* toll control. Such a change will not diffuse the Commission's goal to keep low-income customers connected to the public switched network to the extent possible. However, it will permit LECs and other eligible carriers the opportunity to work with their customers and their state commissions to determine the best solution to meet the needs of their customers.

II. SUPPORT FOR EXCHANGES ACQUIRED AFTER MAY 7, 1997 SHOULD NOT BE LIMITED.

The *Order* requires that a carrier acquiring a telephone exchange from an unaffiliated carrier may only receive the same per-line support received by the seller prior to the transfer.[5] This requirement is to remain in effect until all carriers receive support which is based on forward-looking economic costs, at which time the Commission believes that this issue will be moot.

This requirement places an unnecessary chill on the legitimate, voluntary sale of exchanges among carriers, and is a dramatic departure from current practice in which the Commission must consider the public interest in such transactions. In nearly every case, the purchaser of an exchange is a small, rural LEC and the outcome of the transaction is the improvement of facilities and service quality to rural customers. However, small, rural LECs lack the scale economies necessary to provide service at the same cost level as the seller, particularly where the seller is a large company. Small, rural LECs cannot provide the level of investment required to ensure that the customers in acquired exchanges have access to telecommunications and information services which are comparable to the services provided in urban areas, as required by the Act, based on the amount of support received by companies which also serve urban areas. The Commission properly rejected the Joint Board's recommendation to freeze support for rural telephone companies because the Commission determined that it would not encourage new plant investment

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[5] *Order* at ¶ 308.

and would not provide adequate support.[6] Limiting support for acquired exchanges will have similar consequences. This decision should also be rejected for the same reasons.

Implementation of this requirement will result in high cost exchanges arbitrarily precluded from receiving needed high cost support. There is nothing on the record which justifies such a result and there is nothing in the Act which would sanction the denial of universal service support to otherwise qualified eligible carriers on the basis that an exchange was purchased after a certain date. Implementation of this requirement will also prejudge the outcome of the Rural Task Force before that group has even been named. USTA recommends that the Commission reconsider its decision and permit the current process for approving transactions regarding the sale of exchanges to remain in place.

Prior to release of the *Order*, the Commission utilized three criteria in approving transactions among carriers.[7] These criteria included: the impact on the total USF fund, the approval of the relevant state commission, and a determination that the transaction was in the public interest. There is no reason for the Commission to now adopt a different and harsher standard, particularly since the Commission failed to complete its work to determine the costs of providing universal service. While the present case-by case waiver process is cumbersome and

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[6] *Order* at ¶ 297.

[7] *See, In the Matter of U S West Communications, Inc. and Eagle Telecommunications, Inc. Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules and Eagle Telecommunications, Inc. Petition for Waiver of Section 61.41(c) of the Commission's Rules; Petition for Reconsideration (of) MCI Telecommunications Corporation; Petition for Partial Reconsideration and/or Clarification (of) National Telephone Cooperative Association and United States Telephone Association; Petition for Partial Reconsideration (of) Pacific Bell, Memorandum Opinion and Order on Reconsideration,* AAD 94-27 (FCC 97-136), released April 18, 1997, par. 4.

could be improved upon, the requirement in the *Order* amounts to a kill rather than a cure. The Commission should reconsider this requirement and allow the present practice to remain in place.

III. INTERSTATE RECOVERY OF ADDITIONAL LOOP COSTS CURRENTLY PERMITTED UNDER PART 36.601(c) SHOULD BE SUBJECT TO A TRANSITION.

The *Order* eliminates the existing USF expense adjustment contained in Section 36.601(c) of the Commission's rules for non-rural LECs beginning January 1, 1999. This adjustment permitted additional intrastate loop costs to be recovered through the interstate jurisdiction. The *Order* also states that the new high cost mechanism effective January 1, 1999 for non-rural carriers will only provide support for interstate universal service costs.[8] In addition, the *Access Reform Order* requires non-rural LECs to use any receipts from the new universal service mechanism to reduce interstate access charges (¶381). The elimination of Section 36.601(c) effectively eliminates shifting additional loop cost to the interstate jurisdiction, thereby resulting in unrecovered loop costs because the new fund only permits recovery of interstate costs. This poses a serious threat to universal service.

In order to ameliorate the impact of the *Order*, USTA recommends that beginning January 1, 1999, non-rural LECs should be permitted to reduce their interstate access charges by an amount equal to the interstate high cost support received from the new federal fund less the amount of Part 36 interstate high cost support received as of December 31, 1998. This formula should remain in effect for no longer than five years to permit non-rural LECs sufficient time to seek recovery of these costs through the intrastate jurisdiction.

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[8]*Order* at ¶¶268-269.

IV. THE COMMISSION SHOULD RECONSIDER THE LIMIT ON RECOVERY OF CORPORATE OPERATIONS EXPENSE.

The *Order* limits the amount of corporate operations expense that may be recovered through high cost support to a maximum of 115 percent of the projected level of corporate operations expense per line as calculated based on a formula developed by the Commission.[9] This limitation will have a detrimental impact on many small, rural telephone companies. These companies rely heavily on high cost assistance to provide affordable service. The costs to support the regulation of universal service are as much a part of the provision of universal service as the facilities required to provide the services. Examples of corporate operations expense include the costs of both Federal and state regulation to comply with accounting, audit, and separations requirements, information management and legal costs. These functions must be performed regardless of carrier size. The dramatic decreases in the level of support which will result if the formula contained in the *Order* is implemented will severely threaten these carriers' ability to provide affordable service.

The Commission itself recognized that the formula would produce "unintended results" for some carriers. In its own *Order on Reconsideration* released July 10, 1997, the Commission adjusted the formula. These adjustments will not provide sufficient relief and USTA recommends that the Commission further reconsider this issue.

In a Petition for Reconsideration filed on July 11, 1997, GVNW recommends that the Commission modify the formula to allow a minimum of $300,000 of Corporate Operations Expense for the support computation. USTA believes that this modification will provide the

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[9] *Order* at ¶¶ 283-284.

necessary relief for the very smallest of exchange carriers. In addition, USTA recommends that the Commission adopt a limit of two standard deviations to permit equitable recovery of corporate operations expenses for other small companies. This recommendation will achieve the Commission's objective of ensuring "prudent facility investment and maintenance" and is consistent with Section 254(k) of the Act.

V. NON RURAL LECS PROVIDING SERVICE IN ALASKA OR AN INSULAR AREA SHOULD NOT BE REQUIRED TO CALCULATE THEIR COSTS PURSUANT TO A PROXY MODEL.

The *Order* requires that the Puerto Rico Telephone Company as well as any non-rural carriers that serve Alaska calculate their costs pursuant to a cost proxy model.[10] As the Commission itself points out, none of the proxy models submitted to date include any information on Alaska or the insular areas. These companies face circumstances and incur costs to provide affordable service that are unlike those encountered by non-rural carriers in the contiguous 48 states. None of the proxies will assure these companies that they will recover the costs of providing affordable service. Further, even if their data is finally included in the proxy models, this will be the first time their results have been in the public record and there will be little time to ensure that the data are reliable.

Certainly neither Congress, the Joint Board nor the Commission intends to subject customers served by these carriers to unaffordable rates. In its comments, USTA recommended that the Commission avoid this inequitable result by including those carriers operating in Alaska or in an insular area with less than two percent of the Nation's subscriber lines with other rural

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[10] *Order* at ¶¶315-316.

carriers which will continue to receive support based on embedded costs. Given the limited number of companies which would be affected by this change and the unique circumstances these companies face, USTA again urges the Commission to adopt this definition.

VI. THE COMMISSION SHOULD CLARIFY THAT CARRIERS EXITING THE NECA COMMON LINE POOL WILL STILL BE ELIGIBLE TO RECEIVE LTS.

Beginning January 1, 1998, eligible telephone companies that participate in the NECA common line pool as well as competitive eligible local telecommunications carriers will receive Long Term Support (LTS). LTS is to be the equivalent of the difference between the projected Carrier Common Line (CCL) revenue requirement of NECA Common Line tariff participants and the projected revenue recovered by the NECA CCL charge as calculated pursuant to Section 69.105(b)(1) of the Commission's rules.[11] The new Part 54 rule, as written, would require carriers to participate in the NECA pool to receive LTS. Such a result is inequitable, since LTS will be portable, and unnecessary.

The *Order* states that beginning on January 1, 1998, a rural carrier's annual LTS may be increased from its LTS for the preceding calendar year based on the percentage of increase of the nationwide average loop cost. LTS is a carrier's total common line revenue requirement less revenues received from SLCs and CCL charges.[12]. Because LTS is based on the current pool composition, once the carrier's LTS amount is established, there is no compelling reason that carriers must remain in the NECA Common Line pool to receive LTS.

[11]Section 54.303.

[12]*Order* at ¶ 306.

Those carriers choosing to exit the pool should be allowed to continue to receive LTS, given an equitable distribution of LTS among the remaining pool members. The *Order* states that beginning on January 1, 1998, rural carriers will recover LTS from the new universal service support mechanisms at a level sufficient to protect their customers from the effects of abrupt increases in the NECA CCL rate.[13] If each NECA pooling company receives its share of LTS, that company can set its CCL rates without an abrupt increase to its customers. USTA requests that the Commission revises its rule to correspond to the *Order* and permit telephone companies to exit the NECA common line pool without losing LTS.

VII. THE TREATMENT OF LIFELINE SUBJECT TO RESALE MUST BE CLARIFIED.

Currently, Lifeline assistance is provided to eligible low income customers in two ways. Pursuant to the current Commission rules in Section 69.104(k), a telephone company may offer a credit of $3.50 to qualified customers that purchase specific basic exchange service as part of the current Lifeline Assistance Program. Telephone companies receive reimbursement from NECA for the amount of the credit pursuant to Section 69.603(d). A telephone company may also offer a Lifeline service at a lower rate to qualified customers. The Commission should clarify that telephone companies which offer a credit to eligible customers as part of the Lifeline Assistance Program are not required to resell the credit.

[13] *Order* at ¶ 305.

The Act correctly describes Lifeline Assistance as a program and states that this program should not be changed as provided for in Part 69 of the Commission's rules .[14] While Section 251 requires certain LECs to resell service offerings which could include a lifeline service, there is nothing in the Act which would require LECs to resell a Lifeline credit offered under Part 69 as part of the Lifeline Assistance program. Therefore, USTA recommends that the Commission clarify the definition of Lifeline in Section 54.401 by stating that Lifeline is a Federal program and by removing any reference to a service. In addition, Section 54.405 should be amended to require that eligible carriers make available the Lifeline program to qualifying low-income customers.

The *Order* also prevents carriers operating as resellers which offer all of the services included in the definition of universal service from receiving support for resold lines,[15] although these resellers are not precluded from participating in the Lifeline Assistance program. Without the ability to receive support from the universal service funding mechanism, however, resellers will not have any incentive to participate in the program. USTA recommends that the Commission permit all carriers which participate in the Lifeline Assistance program to be reimbursed for the lifeline credit directly from the new universal service funding mechanism.

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[14]Section 254(j).

[15]Section 54.201(I).

VIII. THE COMMISSION SHOULD REQUIRE ELIGIBLE CARRIERS TO OFFER UNIVERSAL SERVICE ON A STAND-ALONE BASIS IN ORDER TO RECEIVE SUPPORT.

While the Act provides that the states will determine whether carriers will be deemed to be eligible telecommunications carriers to qualify for universal service support pursuant to Section 214, the Commission, in accordance with paragraph 137 of the *Order* and pursuant to Section 254(e) of the Act, should not provide support to any eligible carrier that does not offer customers the opportunity to purchase universal service on a stand-alone basis. Such a requirement will prevent carriers from packaging toll, video or custom calling features with universal service in order to "cherry-pick" the high volume, high revenue customers. This will assist the states in ensuring that the services which are defined as universal service are affordable. It will also ensure that the universal service fund is truly competitively neutral. The Commission should require that, in order to receive Federal support, an otherwise eligible carrier must offer the defined universal service package on a stand alone basis at the affordable rate established by the state. Alternatively, an eligible carrier could offer the universal services combined with other features, so long as a package which includes the univeral service definition is offered at the affordable rate.

IX. LECS SHOULD NOT TREAT THE REVENUES RECEIVED FROM PAYPHONE SERVICE PROVIDERS AS END USER REVENUES FOR PURPOSES OF CALCULATING UNIVERSAL SERVICE CONTRIBUTIONS.

Payphone service providers (PSPs) are treated as end users for purposes of applying the SLC.[16] In addition, PSP revenues from payphone transactions between the PSP and the LEC

[16] *See*, Report and Order, *Implementation of the Pay Telephone Reclassification and* (continued...)

are included by the LEC as end user revenues for purposes of determining universal service contributions. The PSP also counts its end user revenue for purposes of its contribution to universal service. This amounts to a double-counting of these revenues.

For example, when a customer makes a coin call from a payphone, the PSP pays the LEC for the line and any additional services and the LEC counts that payment as end user revenue toward its universal service obligation. The PSP passes that cost through to its end user customer and includes the compensation it receives from its end user customers (the transient public) as end user revenue toward its universal service obligation. Thus, the revenues are counted twice, once when the LEC receives compensation from the PSP and again when the PSP receives compensation from its end user.

In order to alleviate this double counting, USTA recommends that the Commission permit the LECs to exclude the revenues received from PSPs from LEC calculation of end user revenues and require PSPs to count their end user revenues toward their universal service obligation.

X. THE COMMISSION SHOULD REMOVE THE CAP ON USF IN ORDER TO ENSURE THAT SUPPORT IS SUFFICIENT.

In the *Order,* the Commission clarifies that the indexed cap on the USF will remain n effect until all carriers receive support based on a forward-looking economic cost mechanism.[17] Inclusion of new elements in the high cost fund, such as DEM weighting and LTS, as well as

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[16](...continued)
Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, released September 20, 1996, at ¶ 187.

[17]*Order* at ¶ 281.

the adjustments necessary to include new recipients and to move non-rural carriers to a proxy in 1999 will necessitate adjustments to the cap every year. This volatility will make the fund unpredictable, contrary to the principles of the Act.

In addition, the cap is contrary to the principle that the fund be sufficient. For example, increases in loop costs or an increase in interstate calling that, in turn, increases DEM weighting, may not be fully recovered under a capped fund. A capped USF will not ensure continued recovery of existing and increasing costs to provide universal service at affordable rates in high cost areas. LECs have incurred costs to provide universal service with the expectation that these costs will be recovered through universal service. They did not incur these costs with the expectation that an arbitrary cap would prevent recovery. USTA urges the Commission to eliminate the cap on the USF.

XI. RECONSIDERATION AND/OR CLARIFICATION OF ISSUES RELATING TO EDUCATION AND RURAL HEALTH CARE.

A. Lowest Corresponding Price.

USTA requests that the Commission reconsider the rebuttable presumption that would require service providers to "look back" three years for data to determine the LCP. As recommended in its earlier comments, USTA urges the Commission to change the look-back provision to encompass only contracts signed within the previous year. Every additional year that a provider must "look back" increases exponentially the number of customer contracts that providers have to review and assess before determining the appropriate LCP. Having to review thousands of additional contracts due to the three-year period is unnecessarily burdensome and would impede the timeliness of the bidding process. It would not be competitively neutral because it disadvantages larger providers with more potential contracts or prices to review. The Commission can reasonably rely on market forces which will quickly affect pricing levels, thus eliminating the need to "look back" over an extended period of time.

In addition to prices established under contracts, many service providers must provide services at rates regulated by tariffs. In these cases, the LCP determination can only be based upon currently available rates. To require these service providers to base their LCP determination on historical tariff rates would force the provider to offer a pre-discount price that would be unlawful for that provider. For similar reasons, promotional offerings must also be excluded from the comparable rates upon which LCP is determined. Promotional offerings are special incentive programs, that cannot be duplicated once the promotional price offering had ended. USTA, therefore, seeks clarification that historical tariff rates and expired promotional rates are excluded from those rates used to determine the LCP.

USTA also seeks clarification of the Commission's decision that it will "not require a carrier to match a price it offered to a customer who is receiving a special regulatory subsidy or that appeared in a contract negotiated under very different conditions, if that would force the provider to offer services at a rate below Total-Service Long-Run Incremental Cost (TSLRIC)."[18] USTA agrees that providers should not be required to match special regulatory subsidies or different contract prices. As stated, however, the *Order* could be construed to

[18]*Order* at ¶ 489.

require a carrier to provide service to a school or library at the same rate as another service provided under a "special regulatory subsidy" or "negotiated under very different conditions" with the only exception being where the rate as applied to the school or library would be below TSLRIC. This requirement would contradict the Commission's rule that the LCP is to be determined only based upon similar services provided to similarly situated non-residential customers.

The fact that a service receives a regulatory subsidy or was negotiated under different conditions is sufficient to render the two services dissimilar for the purposes of the LCP test. Requiring carriers to provide services which are not "subsidized" at the level of other services which are "subsidized" is unreasonable. The carrier is made whole for the price of the "subsidized" service by the regulatory subsidy involved, whereas the carrier providing a service at that price under the schools and libraries discount program is not. This result is contrary to the Act. If the Commission intended carriers to be required to match special regulatory subsidies or contracts negotiated under very different conditions, then USTA seeks reconsideration of this determination. Moreover, the Commission clearly rejected the use of TSLRIC for determining prices for schools and libraries and therefore, should not use it in this context.

USTA requests that the Commission place some reasonable limits on a customer's ability to challenge the pre-discount price it has been offered. Without such reasonable limits, customers could potentially use the regulatory dispute process simply to try to obtain even more favorable prices without regard to the legitimacy of the challenge. USTA seeks clarification that when a customer selects a provider in a multiple-bid environment, then it should be presumed that the selected bid price is fully acceptable to the customer. Any dispute process should be designed to address only those cases where a single provider has responded to the bid. The Commission should clarify that customers seeking to file disputes: 1) must provide sufficient evidence to justify why the pre-discount price appears unreasonable, and 2) are subject to recourse if it is determined that the dispute is frivolous.

B. Consortia.

USTA seeks clarification that record-keeping and universal service benefit allocation liability is the responsibility of the consortium or the entity or person authorized to request and purchase service on behalf of an aggregated group. Service providers cannot be responsible for determining universal service benefit allocations among individual members of aggregated purchasing groups nor should they be required to maintain records other than those they would in the normal course of their business.

In addition, service providers providing services to either individual or aggregated customers who use the service for both eligible and ineligible activities have no way of determining when the customer is using the service for each activity and therefore cannot be accountable for making that determination. Service providers should not be responsible for policing the Commissions rules nor should they be liable for actions or decisions made by customers outside of their control. The Commission should clarify that the customer authorized to place the bona fide request, such as the lead consortium member, is accountable