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August 18, 1997

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND

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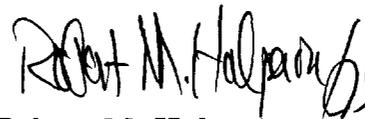
**Re: In the Matter of Federal-State Joint Board on Universal
Service, CC Docket No. 96-45**

Dear Mr. Caton:

Transmitted herewith on behalf of the State of Alaska are an original and eleven copies of the "Consolidated Opposition To and Comments of the State of Alaska On Petitions For Reconsideration" in the above-referenced proceeding.

In the event there are any questions concerning this matter, please communicate with the undersigned.

Very truly yours,



Robert M. Halperin

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**CONSOLIDATED OPPOSITION TO AND
COMMENTS OF THE STATE OF ALASKA
ON PETITIONS FOR RECONSIDERATION**

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Dated: August 18, 1997

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SUMMARY

In considering the pending petitions, the Commission should focus on the essential nation-building purposes for which Section 254 of the Communications Act of 1934, as amended was enacted: to increase the availability and affordability of telecommunications services to all Americans, including those in rural and high cost areas, and to America's schools, libraries and rural health care providers.

Universal service is a national and nation-building policy. The New Jersey Division of the Ratepayer Advocate petition for reconsideration asks that universal service support for schools and libraries be distributed in a manner "to ensure that every State contributing to the fund derives some benefit roughly comparable to its contribution. This petition should be denied because it ignores Congressional intent to promote delivery of modern telecommunications throughout the Nation, particularly to those areas where these services might not otherwise be deployed.

On the other hand, recognition of this principle requires certain changes to the Commission's universal service decision. First, *the Commission must not limit federal support to 25 percent of the amount necessary to serve high cost areas.* A universal service program that requires each State to generate on its own most of the universal service support needed in that State defeats its essential purpose because it would require significant increases in local service rates. Such a result is plainly inconsistent with both the express language of Section 254 and Congressional intent. The national universal service policy requires a national universal service fund sufficient to accomplish its intended purpose.

Second, *the FCC should base universal service contributions for high cost areas on intrastate and interstate revenues of interstate telecommunications carriers.* This approach will assure that universal service contributions are sufficient, predictable, equitable and nondiscriminatory, just as Congress required. The broadest possible universal service funding base will minimize the burden on any one set of telecommunications service consumers or providers.

Third, *universal service support for rural and high cost areas should be used to promote the affordability of basic telecommunications services, not to reduce interstate access charges.* Congress intended universal service support to be used to promote the affordability of basic telecommunications services, particularly in rural and high cost areas. That goal cannot be achieved if basic telephone subscription rates increase.

Finally, *all telecommunications carriers, not just ETCs, should be permitted to provide reduced rate services to rural health care providers.* The Commission's rule to the contrary conflicts with the language and legislative history of Section 254, and the Commission's rule would mean that rural health care providers in Alaska would not be able to obtain reduced rates for the services they need because those services are not provided by ETCs in Alaska. Congress could not possibly have intended that the State which is likely the most rural and most in need of telemedicine in the country be denied the benefits of this provision. The State of Alaska believes that the Commission's view that Section 254(e) restricts the payment of universal service support to only ETCs is erroneous.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

**CONSOLIDATED OPPOSITION TO AND
COMMENTS OF THE STATE OF ALASKA
ON PETITIONS FOR RECONSIDERATION**

The State of Alaska is deeply concerned that the Report and Order of the Federal Communications Commission ("FCC" or "Commission") on universal service¹ will not accomplish the Congressional goals of increasing the access to, and affordability of, telecommunications services to Americans living in rural and high cost areas and to America's schools, libraries and rural health care providers. In considering the issues raised by the petitions for reconsideration, the Commission should focus on these essential nation-building purposes for which Section 254 of the Communications Act of 1934, as amended was enacted. When it does so, the Commission will see that the petition for reconsideration of the New Jersey Division of Ratepayer Advocate should be denied and the petitions for reconsideration of various parties, including those of many state public utility commissions and telephone companies serving rural America, seeking changes to

¹ *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket 96-45, FCC 97-157 (released May 8, 1997). *See also Federal-State Joint Board on Universal Service*, Order on Reconsideration, CC Docket 96-45, FCC 97-246 (released July 10, 1997).

the Commission's Report and Order to promote universal service should be granted.

I. INTRODUCTION

The enactment of Section 254 was historic for two reasons. First, Congress for the first time required the Commission to take steps to make basic telecommunications services affordable for all Americans, particularly those residing in rural and high cost areas. Congress said that:

Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

47 U.S.C. § 254(b)(3).²

As the Commission has recognized, the public policy in favor of universal service is stronger today than ever before.

For the individual, telephone connectivity provides access to emergency services, to job opportunities and, through computer connections, to a host of educational opportunities. At the same time, increasing subscribership benefits all Americans by improving the safety, health, education and economic well-being of the nation.

² Senator Hollings, the ranking minority member of the Senate Commerce Committee, reiterated this point in the final debates on the Telecommunications Act of 1996: "The need to protect and advance universal service is one of the fundamental concerns of the conferees in drafting this conference agreement. Universal service must be guaranteed; the world's best telephone system must continue to grow and develop, and we must attempt to ensure the widest availability of telephone service." 142 Cong. Rec. S688 (daily ed. Feb. 1, 1996).

Thus, we recognize that our universal service policies may now have greater societal consequences than in the past.³

The importance of affordable telecommunications is particularly great in states such as Alaska, where telecommunications are the essential lifeline connecting remote communities to larger population centers and the Nation as a whole.

Second, Congress took historic steps to promote the delivery of telecommunications services to America's schoolchildren, libraries, and rural health care providers. In Section 254(h), Congress required that the Commission implement a program to ensure that schools, libraries, and rural health care providers obtain telecommunications and related services at a discount or at other favorable rates. Through this provision, Congress intended to promote the delivery of modern telecommunications throughout the Nation, particularly to those areas where these services might not otherwise be deployed. As the Joint Committee on Conference explained:

The ability of K - 12 classrooms, libraries, and rural health care providers to obtain access to advanced telecommunications services is critical to ensuring that these services are available on a universal basis. The provisions of subsection (h) will help open new worlds of knowledge, learning and education to all Americans -- rich and poor, rural and urban. They are intended, for example, to provide the ability to browse library collections, review the collections of museums, or find new information on the treatment of an illness, to Americans everywhere via schools and libraries. This universal

³ *Amendment of the Commission's Rules and Policies to Increase Subscribership and Usage of the Public Switched Network*, Notice of Proposed Rulemaking, CC Docket No. 95-115, 10 FCC Rcd. 13003, 13004 at ¶ 4 (1995).

service will assure that no one is barred from benefitting from the power of the Information Age.⁴

The Commission has recognized the importance of these two provisions. Indeed, the very first paragraph of its Report and Order addresses these -- and only these -- two provisions.

The Commission should view the pending petitions for reconsideration in light of these principle purposes of Section 254. It would be arbitrary and capricious, stand the intent of Congress on its head, and be contrary to sound public policy for the Commission, acting under a law that intends as a primary purpose to protect and promote universal service, to take steps that would increase rates for basic telecommunications services in rural and high cost areas or deny support for telecommunications services to the schools, libraries, and rural health care providers that need it most. Yet, it appears that parts of the Commission's decision may have those effects.

II. THE COMMISSION SHOULD RECOGNIZE THAT UNIVERSAL SERVICE IS A NATIONAL AND NATION-BUILDING POLICY

As recognized by many petitioners, universal service is a national policy goal which must be implemented through a nation-wide program.⁵ Congress

⁴ H.R. Rep. 104-458, 104th Cong., 2d sess. Joint Explanatory Statement of the Committee of Conference at 132-33 (January 31, 1996).

⁵ See, e.g., Petition for Reconsideration and Request for Clarification of the Alaska Public Utilities Commission at 6; Petition for Reconsideration and Clarification of the Vermont Public Service Board and Vermont Department of Public Service at 3-6; Petition for Reconsideration by the Wyoming Public
(continued...)

clearly intended that all Americans, regardless of where they reside, obtain affordable telecommunications services and access to information services. 47 U.S.C. § 254(b)(1), (2), (3), (6). Indeed, Congress recognized, as the Commission had previously, that expanding subscribership and use of the telecommunications network benefits all Americans.⁶

Recognition of the essential nation-wide attributes of the universal service program that Congress has mandated should guide the Commission's resolution of many of the issues raised in the petitions for reconsideration. The New Jersey Division of the Ratepayer Advocate has filed a Petition for Reconsideration and Clarification asking that universal service support for schools and libraries be distributed in a manner "to ensure that every State contributing to the [universal service schools and libraries] fund derives some benefit roughly comparable to its

⁵(...continued)

Service Commission at 2-4; Petition for Reconsideration and Request for Clarification of the Alaska Telephone Association at 1-2; Petition for Reconsideration of The Western Alliance at 18-21; Petition for Reconsideration of Sprint Corporation at 2; Petition for Reconsideration and Clarification of U S West, Inc. at 2-9; Petition for Reconsideration and Clarification of the Rural Telephone Coalition at 1-4.

⁶ As Senator Dorgan concisely stated in the final debate:

"A telephone in the smallest city in North Dakota or the smallest town in North Dakota is as important as a telephone in lower Manhattan in New York because one makes the other more valuable."

142 Cong. Rec. S690 (daily ed. Feb. 1, 1996)

contribution."⁷ This petition should be denied because it ignores the fundamental national nature of the Congressionally mandated universal service program.

States in which the universal service support needs are greatest will, by definition, be those in which (a) costs are highest, (b) current levels of telecommunications infrastructure development are lowest, and (c) because these areas tend to be sparsely populated, intrastate telecommunications revenues are the lowest. Given these obvious and inescapable facts, Congress could not possibly have intended that each State contribute to universal service support to the same degree that its carriers or residents will be benefited.

On the other hand, many petitions point out flaws in the Commission's decision which emanate from the Commission's failure to implement a nation-wide universal service system that provides sufficient support so that all Americans can obtain affordable basic telecommunications services. As recognized by various petitioners, three changes to the Commission's universal service decision are required on reconsideration.

First, the Commission must not limit federal support to 25 percent of the amount necessary to serve high cost areas. A universal service program that requires each State to generate most of the universal service support needed in that State defeats its essential purpose because it would require significant increases in local service rates. Indeed, the Commission's decision would appear

⁷ Petition for Reconsideration and Clarification of the New Jersey Division of Ratepayer Advocate at 6.

to require surcharges on intrastate rates of as much as 45 percent resulting in intrastate rate increases of as much as \$20.57 per month on every line in a particular state!⁸ Increases on the order of \$10 per month would be necessary in Alaska.⁹ Such a result is plainly inconsistent with both the express language of Section 254 and Congressional intent.

*Second, the FCC should return to the recommendation of the Joint Board and base universal service contributions for high cost areas on intrastate and interstate revenues of interstate telecommunications carriers.*¹⁰ This approach will assure that universal service contributions are sufficient and predictable, as well as equitable and nondiscriminatory, just as Congress required. 47 U.S.C. §§ 254(b)(4), (5). The broadest possible universal service funding base will minimize the burden on any one set of telecommunications service consumers or providers.

This approach has several other advantages. If the Commission, as it should, concludes that a federally administered fund should be adequate to support basic telecommunications services in all parts of the Nation and bases contributions on both interstate and intrastate revenues, there will be less of a

⁸ Petition for Reconsideration and Clarification of the Vermont Public Service Board and Vermont Department of Public Service at Attachment A.

⁹ Petition for Reconsideration and Request for Clarification of the Alaska Telephone Association at 2 (increases in local rates of \$8-\$10 per month would be necessary for every access line in Alaska).

¹⁰ See Petition for Reconsideration by Wyoming Public Service Commission at 4-5; Petition for Reconsideration and Clarification of U S West, Inc. at 2-9.

need for State-administered universal service programs. This result will minimize burdens on States. It will also minimize the need for carriers (including commercial mobile radio service providers) to distinguish between interstate and intrastate traffic for universal service contribution purposes, and minimize any incentive for carriers to misclassify the jurisdictional nature of their traffic.

Third, universal service support for rural and high cost areas should be used to promote the affordability of basic telecommunications services, not to reduce interstate access charges. As recognized by several petitioners, Congress intended universal service support to be provided to promote and maintain the affordability of basic telecommunications services, particularly in rural and high cost areas.¹¹ Indeed, Section 254, particularly subsection (b), cannot be read in any other way. That goal cannot be achieved if basic telephone subscription rates increase. Increased rates for basic local telephone service will lead to lower subscription levels. Thus, to replace existing federal universal service policies that provide support for local telephone rates, with a new universal service program that reduces only interstate access charges, has the paradoxical effect of lowering interstate interexchange service rates for the smaller number of people who can afford to maintain telephone service. Surely, this is not what Congress intended. Universal service support for rural and high cost areas should be used for the

¹¹ See, e.g., Petition for Reconsideration and Request for Clarification of the Alaska Public Utilities Commission at 6, 9; Petition for Reconsideration of the Public Utility Commission of Texas at 3; Petition for Reconsideration and Clarification of the Vermont Public Service Board and Vermont Department of Public Service at 7-9.

purposes for which it was intended: to promote the affordability of basic telecommunications services for all Americans.¹²

III. ALL TELECOMMUNICATIONS CARRIERS SHOULD BE PERMITTED TO PROVIDE REDUCED RATE SERVICES TO RURAL HEALTH CARE PROVIDERS

Under Section 254(h)(1)(A) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, a telecommunications carrier must provide eligible rural health care providers with telecommunications services necessary for the provision of health care services (including instructional services) at rates that are comparable to the rates charged in urban areas. Section 54.201(a)(2) of the Commission's rules provides that only "eligible telecommunications carriers" ("ETCs") (that is, carriers providing the entire bundle of services that are to be supported in high cost areas) may obtain reimbursement from the universal service fund for services provided to rural health care providers at urban rates.

The Alaska Public Utilities Commission and General Communication, Inc. have filed petitions for reconsideration asking the Commission to change its rules so that any telecommunications carrier providing telecommunications services to eligible rural health care providers may do so at urban rates and receive reimbursement of the difference between the rural and urban rate from the

¹² See 47 U.S.C. § 254(e) (specific federal universal service fund support must be used for the purpose for which it is intended).

federal universal service fund.¹³ The State of Alaska believes the Commission's rule should be changed as requested by these petitioners for two reasons.

First, the Commission's rule conflicts with the language and legislative history of the Telecommunications Act. Section 254(h)(1)(A) imposes on all telecommunications carriers the duty to provide telecommunications services to rural health care providers at urban rates.¹⁴ This point is confirmed in the Conference Committee Report.¹⁵ Because the duty applies to all telecommunications carriers, the reimbursement mechanism must apply to all telecommunications carriers as well. The Commission's view to the contrary is not required by the Act.¹⁶

¹³ Petition for Reconsideration and Clarification of the Alaska Public Utilities Commission at 9-10; General Communication, Inc.'s Petition for Reconsideration at 1-4.

¹⁴ "*A telecommunications carrier shall, upon receiving a bona fide request, provide telecommunications services which are necessary for the provision of health care services . . . to any public or nonprofit health care provider that serves persons who reside in rural areas . . . at rates that are reasonably comparable to rates charged for similar services in urban areas*" 47 U.S.C. § 254(h)(1)(A) (emphasis added).

¹⁵ "New subsection 254(h)(1)(A) provides that *any telecommunications carrier shall, upon a bona fide request, provide telecommunications services necessary for the provision of health care services to any health care provider serving persons who reside in rural areas.*" H.R. Rep. 104-458, *supra*, at 133 (emphasis added).

¹⁶ The Commission asserts that Section 254(e) permits payments of universal service support for telecommunications services (other than advanced telecommunications services) provided to rural health care providers to be made only to ETCs. See Report and Order at ¶ 627. The State of Alaska respectfully disagrees with this reading of Section 254(e) for several reasons.

(continued...)

Second, the Commission's rule would mean that rural health care providers in Alaska would not be able to obtain the telecommunications services they need. Congress intended Section 254(h) to expand the availability of telemedicine throughout the Nation.

¹⁶(...continued)

First, the first sentence of Section 254(e), which apparently underlies the Commission's reading, says that only an ETC may receive "specific Federal universal service support." Yet, under Section 254(h), it is the rural health care provider, the educational service provider, and the library that is the recipient and beneficiary of the support, not the telecommunications carrier. The carrier is only the conduit through which such support is delivered.

Second, the first sentence of Section 254(e) applies to "specific Federal universal service support" for services that are supported in high cost areas, not services supported through Section 254(h). See H.R. Rep. 104-458, *supra*, at 131 (support to be used in the geographic area for which it is received).

Third, the Commission's interpretation of the first sentence of Section 254(e) conflicts with Section 254(h)(1)(A), and it is well settled that statutes should be construed to avoid creating a conflict between its provisions.

Fourth, the second sentence of Section 254(e) says that support received by a carrier must be used for the purpose for which it is intended. That sentence does not restrict reimbursement to ETCs and is consistent with the view that all carriers should be eligible for reimbursement for services that are in fact rendered under Section 254(h)(1)(A).

Fifth, the reference to Section 254(e) in Section 254(h)(1)(B) (but not Section 254(h)(1)(A)) is not relevant to this issue. The provision in Section 254(h)(1)(B) merely permits telecommunications providers serving schools and libraries to choose either to use their provision of discounted services as an offset to their universal service fund contributions or to seek direct reimbursement from universal service funds for the discounts they provided. This provision does not change the analysis of whether Section 254(e) restricts the ability of carriers other than ETCs to provide services to rural health care providers at urban rates and have the difference between urban and rural rates be used as an offset to their universal service fund contributions.

I come from a State, Mr. President, one-fifth the size of the United States. It is rural in nature. We have a small population. We have people in our State who are just now getting telephone service as known to the rest of the country for the whole century, almost. Now what we have assured here, as this program goes forward, is that universal service will be available to rural areas. It will be the state-of-the-art telecommunications system. It means that telemedicine will come to my State.

My State, when I first came here, had no assistance whatever for people in small villages. They had to find their way to Indian hospitals in regional areas. We created a system of clinics. Those clinics are by and large, operated by young women from the villages who have a high school education and some technical training now. This bill means telecommunications will bring telemedicine in. They will be able to have a direct exposure of patients to doctors miles and miles away. They will be able to get assistance in dealing with mothers who have complications in pregnancies.

. . . . [R]ural America will come into the 21st century with everyone else as far as telecommunications in concerned.¹⁷

Telecommunications for telemedicine in Alaska can be provided now only by interexchange carriers that are not ETCs. The Commission recognized in its Report and Order that implementing telemedicine programs in the "vast frontier areas in Alaska" has been difficult because of the lack of basic telecommunications infrastructure. Report and Order at ¶ 700. It then stated that the mechanisms adopted in the universal service decision should provide assistance in lowering distance sensitive telecommunications charges. *Id.* at ¶ 701. Yet, because of the restriction in Section 54.201(a)(2) of the Commission's rules, the provisions Congress passed to facilitate telemedicine will not benefit those who are most in need that assistance.

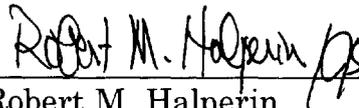
¹⁷ 142 Cong. Rec. S691-92 (daily ed. Feb. 1, 1996) (remarks of Sen. Stevens).

IV. CONCLUSION

In ruling on the pending petitions for reconsideration, the Commission should be guided by the essential purposes of Congress's landmark action in enacting the universal service provisions of the Telecommunications Act of 1996. It should promote the affordability of basic telecommunications services to all Americans, particularly those living in rural and high cost areas, and it should facilitate the delivery of basic and advanced telecommunications services to schools, libraries and rural health care providers in those parts of the Nation where assistance for those services is needed most. That is what Congress intended; that is what the Commission should do.

Respectfully submitted,

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August 18, 1997

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CERTIFICATE OF SERVICE

I hereby certify on behalf of The State of Alaska that a true and correct copy of the foregoing "Consolidated Opposition To and Comments of the State of Alaska on Petitions For Reconsideration" was served by hand delivery or first-class mail, postage prepaid, this 18th day of August, 1997, upon the following counsel of record on the attached Service List.



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