

Before the
Federal Communications Commission
Washington, D.C. 20554

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AUG 18 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

**UNITED STATES TELEPHONE ASSOCIATION
OPPOSITION TO PETITIONS FOR RECONSIDERATION AND/OR CLARIFICATION**

The United States Telephone Association (USTA) respectfully submits its opposition to certain petitions for reconsideration and/or clarification filed in the above-referenced docket. In particular, USTA addresses the following issues: the treatment of DEM weighting, the development of a timetable for rural carriers, the Lifeline Assistance Program, and contributors to the new universal service fund. USTA also addresses several issues regarding the education portion of universal service.

I. USTA CONTINUES TO SUPPORT THE LEC ASSOCIATION TRANSITION PLAN.

In its *Recommended Decision* released November 8, 1996 in this proceeding, the Federal-State Joint Board recommended that the Commission freeze universal service support amounts, including DEM weighting. USTA and the other LEC trade associations, the National Telephone Cooperative Association, the National Rural Telecom Association and the Organization for the Promotion and Advancement of Small Telecommunications Companies, were concerned that such a recommendation, if adopted, would have a disastrous effect of the ability of small telephone companies to continue providing high quality, ubiquitous services to customers in rural

and high cost areas of our country. The Associations believed that such a recommendation was directly contrary to the provisions of the Telecommunications Act of 1996 which require that consumers in rural, insular and high cost areas have access to 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.¹

In response, the Associations developed an alternative transition plan for revision of the current universal service support mechanisms consistent with the principles of the Act.² This plan was endorsed by the state members of the Joint Board³ and adopted with some modification by the Commission.⁴ The transition plan transfers the weighted portion of the DEM allocation to the new universal service funding mechanism. The interstate allocation of the traffic sensitive plant attributable to weighted DEM would not be transferred based upon a frozen amount. The transition plan also treats high cost support and long term support in a similar manner. The transition plan preserves incentives to invest in switching capability and provides for necessary reimbursement for small companies that invested in switching equipment between 1995 and 1997. USTA opposes reconsideration of the DEM weighting portion of the transition plan.⁵

¹47 U.S.C. § 254(b)(3).

²*Ex Parte* Letter, March 10, 1997.

³State Members' Report on the Use of Cost Proxy Models, March 26, 1997 at 2.

⁴*Report and Order*, FCC 97-157, released May 8, 1997 at ¶¶ 298-299 and 303-304.

⁵Rural Telephone Companies at 12-15.

The transition plan also appropriately recognizes that a forward-looking cost proxy model has not been developed which can be used by any rural company. The *Report and Order* states that rural carriers will begin receiving support based on forward looking economic costs “only when we have sufficient validation that forward-looking support mechanisms for rural carriers produce results that are sufficient and predictable.”⁶ There is absolutely no evidence on the record that a forward-looking cost model can ever be developed for rural companies. Therefore, until such evidence exists, the Commission should reject MCI’s request that a definite time frame for determining universal service support for rural carriers based on forward-looking economic cost be developed.⁷

II. NATIONAL CERTIFICATION FOR LIFELINE CUSTOMERS IS NOT REQUIRED.

MCI requests that the Commission establish a national certification requirement for customers of the Lifeline Assistance Program rather than to permit the states to determine their own certification requirements. As part of its recommendation, MCI suggests that Lifeline consumers provide the LEC with proof of eligibility.⁸

The *Report and Order* appropriately recognizes that the states which currently provide for Lifeline Assistance already have in place appropriate verification procedures which best meet their needs as part of their state programs. The *Report and Order* also provides an alternative for states that do not currently have eligibility requirements.⁹ The record does not justify altering the

⁶*Report and Order* at ¶ 252 .

⁷MCI at 4-5.

⁸*Id.* at 10.

⁹Section 54.400(a)(1).

states' authority in this regard. MCI does not provide any evidence that the state procedures are ineffective. The success of individual state programs further suggests that a national certification program need not be adopted. Further, the LECs should not be required to enforce eligibility requirements. The *Report and Order* requires all eligible carrier to offer Lifeline services to their customers, not just the LECs. Eligibility and certification for Lifeline Assistance should be handled by the state commissions.

III. ALL TELECOMMUNICATIONS PROVIDERS SHOULD BE REQUIRED TO CONTRIBUTE TO UNIVERSAL SERVICE.

Several petitioners seek an exemption from contributing to universal service.¹⁰ Such petitions should be rejected. The Act quite clearly states that “[a]ll providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.”¹¹ A telecommunications provider is defined as any provider of telecommunications services and telecommunications services are defined as the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.¹² The only exemption recognized by Congress was for those entities whose contributions would be *de minimis*. The Commission has no authority to exempt any carriers which otherwise meet the requirements specified in the Act. The Act also permits the Commission to include other

¹⁰Information Technology Association of America at 3, American Public Communications Council at 1, Columbia Communications Corporation at 2, Ad Hoc Telecommunications Users Committee at 11, Ozark Telecom at 3.

¹¹47 U.S.C. 254(b)(4).

¹²47 U.S.C. §§ 153(46) and (43).

providers, which may not meet the definitions, if including them would be in the public interest.¹³

Congress added the provisions on universal service to the Act in recognition of the fact that universal service is a national public policy goal. Since all providers benefit from the preservation and advancement of ubiquitous public networks, all providers should contribute to universal service. The Commission, based on the recommendation of the Joint Board was correct in construing broadly the intent of Congress regarding the base of contributors for universal service. Including all telecommunications providers is the best way to ensure that contributions are equitable and nondiscriminatory, as required by the Act.

Further, most telecommunications providers are able to pass through their contributions to their customers which allows them to avoid the burden of supporting universal service. Therefore, the Commission need not adopt any arbitrary reduction in the amount that a provider is required to contribute.¹⁴ No such reduction has been justified in the record and a reduction for one class of provider would neither be competitively neutral, equitable nor non-discriminatory. Petitions seeking exemption from universal service funding obligations should be rejected as contrary to the nation-wide objective to preserve and advance universal service.

¹³47 U.S.C. 254(d).

¹⁴Personal Communications Industry Association at 2 and Teletouch Licenses, Inc. at 7.

IV. ISSUES RELATING TO THE SCHOOLS AND LIBRARIES PORTION OF UNIVERSAL SERVICE.

Several petitions seek clarification that state networks are eligible for universal service support for the provision of specified services to eligible schools and libraries.¹⁵ The Act clearly states that only telecommunications carriers may be eligible for support.¹⁶ The Act defines telecommunications carrier as any provider of telecommunications service and telecommunications service, as explained above, means the offering of telecommunications for a fee directly to the public or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.¹⁷ The Commission has no authority to permit entities which do not meet the definition of telecommunications carrier to receive universal service support under the education portion of the universal service fund.

Further, the Iowa Telecommunications and Technology Commission also requests that it be permitted to receive direct reimbursement from the universal service fund based on its total costs separate from any state support it receives.¹⁸ The Commission adopted a mechanism, based on the unanimous recommendation of the Joint Board, that provides funding for discounts to eligible schools and libraries on supported services. Iowa's request runs counter to that mechanism and would appear to suggest that all telecommunications providers subsidize Iowa's

¹⁵Iowa Telecommunications and Technology Commission at 3, National Association of State Telecommunications Directors at 1, Florida Department of Education at 2 and Florida Department of Management Services at 2.

¹⁶47 U.S.C. 254(h)(1)(B).

¹⁷47 U.S.C. 153(44) and (46).

¹⁸Iowa Telecommunications and Technology Commission at 6.

state-wide telecommunications network. Iowa's request should be rejected.

Several petitions raised questions concerning the creation of consortia consisting of eligible and non-eligible entities for purposes of participating in the schools and libraries portion of the universal service mechanism.¹⁹ While the *Report and Order* permits such consortia, the Commission should clarify that the pre-discount price for a consortium consisting of eligible and non-eligible entities purchasing interstate services from an incumbent LEC must be the interstate tariff price. This is consistent with existing regulations that require incumbent LECs to only offer interstate tariff prices for interstate services. Incumbent LECs are not required to offer prices below tariff to respond to a consortia consisting of eligible and non-eligible members. This restriction on incumbent LECs underscores the competitive inequity perpetuated by the Commission's refusal to permit much-needed pricing flexibility for incumbent LECs.

One petitioner requests clarification that the standard rates²⁰ charged by state telecommunications organizations to schools and libraries qualify as pre-discount rates.²¹ The Commission should ensure that such rates do not include administrative and other non-eligible costs.

¹⁹Alliance for Public Technology, et.al. at 3 and Washington State Department of Information Services at 1.

²⁰Nothing should interfere with the Commission's determination in ¶ 489 that a provider would not be required to match a price it offered to a customer who is receiving a special regulatory subsidy.

²¹National Association of State Telecommunications Directors at 1.

Finally, a petitioner suggests that network adapter cards and codec boards for personal computers should be included as supported services for eligible schools and libraries.²² As stated in its comments, USTA does not believe that the Act permits internal connections to be included as supported services. This suggestion highlights the difficulty in classifying supported services under the Commission's definition. However, equipment such as codec boards, which function as video "modems" and network adapter cards, which reside within a personal computer, are even beyond the Commission's definition and should not be considered as a supported service.

V. CONCLUSION.

Based on the foregoing, USTA urges the Commission to reject the petitions for reconsideration of the issues discussed above.

Respectfully submitted,

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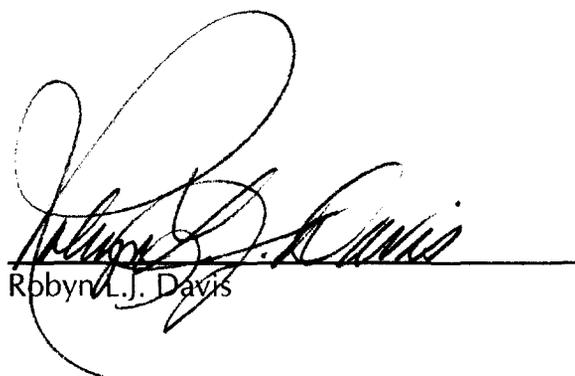
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August 18, 1997

²²American Association of Educational Service Agencies at 3.

CERTIFICATE OF SERVICE

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