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FEDERAL COMMUNICATIONS COMMISSION
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SEP 11 '97

June 13, 1997

FEDERAL COMMUNICATIONS
COMMISSION
OFFICE OF SECRETARY

Lawrence G. Malone
General Counsel
New York State Dep't of Public Service
3 Empire State Plaza
Albany, NY 12223-1350

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

Dear Mr. Malone:

You have raised questions with respect to certain conclusions regarding the scope of the FCC's authority discussed in the Commission's May 8, 1997, Universal Service Order (Report and Order, In the Matter of Federal-State Joint Board on Universal Service, FCC 97-157, CC Docket No. 96-45), and the appropriate timing of any judicial challenge to those conclusions. In our view, the issue would be ripe for review if and when the Commission exercises its authority in a manner that aggrieves a state commission.

At paragraph 813 of the Commission's Order, the Commission concluded that it "has jurisdiction to assess contributions for the universal service support mechanisms from intrastate as well as interstate revenues and to require carriers to seek state (and not federal) authority to recover a portion of the contribution in intrastate rates." However, the Commission "expressly decline[d] to exercise the entirety of this jurisdiction" and, instead, decided to "assess and permit recovery of contributions to the rural, insular, and high cost and low-income support mechanisms based only on interstate revenues." Order at ¶¶ 813, 824. The Commission explained that it believes that, among other things, this approach "serves the public interest because it continues the traditional informal partnership between the federal government and the states in supporting universal service." Order at ¶ 824.

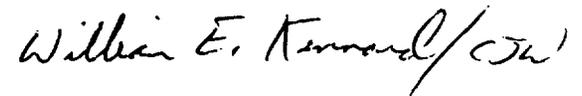
The FCC's Office of General Counsel is of the opinion that any judicial challenge to paragraphs 813 through 823 of the Order would not be ripe at this time because the Commission as of yet has not crystallized its position regarding the proper treatment of the recovery of intrastate revenues and in any event has not required carriers to seek a portion of the contribution in intrastate rates. Therefore, in response to any judicial challenge to a subsequent Commission order in which the Commission may claim that authority, the

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Commission would not argue that the challenge was untimely because the jurisdictional challenge should have been raised in response to the May 8, 1997, Universal Service Order.

Please contact me if you have any questions concerning this matter.

Sincerely,

A handwritten signature in black ink that reads "William E. Kennard" followed by a stylized monogram or initials, possibly "WJK".

William E. Kennard
General Counsel