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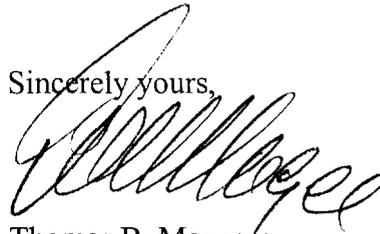
William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, DC 20554

Re: Petition for Clarification in CC Docket No. 96-45

Dear Mr. Caton:

On behalf of the Five Colleges of Ohio, there is enclosed herewith an original and 14 copies of a Petition for Clarification of the Five Colleges of Ohio. Sufficient copies have been included to provide a copy to each of the Commissioners' offices. Please direct any inquiries to the undersigned.

Sincerely yours,



Thomas B. Magee

TBM/mcl

Enclosures

0+14

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

OCT 29 1997

To: The Commission

PETITION FOR CLARIFICATION OF THE FIVE COLLEGES

Pursuant to Section 1.2 of the Commission's Rules, The Five Colleges of Ohio ("Five Colleges") hereby request a clarification from the Commission that the telecommunications services they provide do not require contributions to the Universal Service Fund and that they are not required to complete the USF worksheet.

The Five Colleges is an incorporated consortium composed of Kenyon College, Oberlin College, Denison University, Ohio Wesleyan University, and The College of Wooster. The Five Colleges provide telecommunication services to their students, faculty and administrators, but do not provide such services to the general public.

The Five Colleges is a consortium which has pooled many of their resources and service needs as a way to provide greater opportunities to the students of the member institutions and to save costs. For example, using a grant from the Mellon Foundation, the consortium is consolidating its library activities using electronic and other means so that a library patron at one of the sites will have access to the holdings of each of the other sites.

In the same manner the consortium obtains long distance service from AT&T. The long distance service which is purchased from AT&T is then made available to resident students and on-campus faculty offices. Each member institution is then billed based on use. The individual students and faculty offices of Kenyon, Denison and Ohio Wesleyan are then billed by their colleges for long distance use. The students and faculty of Oberlin and College of Wooster are billed for non-credit card use by AT&T's billing arm, "AT&T Colleges and Universities Services" (ACUS). Neither the consortium nor the individual institutions offer these services for profit. All revenues generated by consortium or individual institutions are used to cover expenses and plant upkeep. For Ohio Wesleyan, Kenyon, Denison, and Oberlin this provision of long distance service is the only interstate telecommunications service provided by any of the individual institutions, except that limited payphone service is provided by each institution as a convenience to its students. The College of Wooster provides limited payphone availability as a convenience and the students and faculty are responsible for contracting for their own long distance service. Where a service (except for payphone service) is offered, it is offered in only two capacities: (1) to faculty and staff in the performance of their jobs; and (2) to students and sometimes administrators in their college-owned residences. All payphones located on campus are provided solely as a convenience to students.

Based on the limited telecommunication service provided, the Five Colleges request the Commission to declare that they do not qualify as either

“mandatory” or “permissive” contributors to the Universal Service Fund. “Mandatory” contributors include “[e]very telecommunications carrier that provides interstate telecommunications services.”¹ The term “telecommunications carrier” is defined as “any provider of telecommunications services,”² and the term “telecommunications service” is 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.”³ The Five Colleges are not telecommunications carriers because they do not offer their services directly to the public, but instead offer their services only for internal use. As such, the Five Colleges do not hold themselves out “to service indifferently all potential users,”⁴ or to “offer indiscriminate service to whatever public its service may legally and practically be of use,”⁵ but instead offer service only to students, faculty and administrators and only for on-campus use. The Five Colleges therefore do not offer their telecommunications services “without restriction on who may receive it.”⁶ In accordance with NARUC I, NARUC II, and the

¹ 47 U.S.C. §254(d).

² 47 U.S.C. §153(44).

³ 47 U.S.C. §153(46).

⁴ National Association of Regulatory Utility Commissioners v. FCC, 553 F.2d 601, 608 (D.C. Cir. 1976) (“NARUC II”), quoted in Report and Order, “Federal-State Joint Board on Universal Service,” 7 CR 109, 62 FR 32862, at ¶785 (May 8, 1997) (“Universal Service Report and Order”).

⁵ National Association of Regulatory Utility Commissioners v. FCC, 525 F.2d 630, 642 (D.C. Cir. 1976) (“NARUC I”).

⁶ Second Report and Order, “Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services,” 9 FCC Rcd 1411, at ¶¶265, 65 (Mar. 7, 1994) (“CMRS Second Report and Order”). In the CMRS Second Report and Order, the Commission ruled, *inter alia*, that industrial and land transportation services are not available “to the public” or “to such classes of eligible users as to be effectively available to a substantial portion of the public.” *Id.* at ¶86. As a basis for this ruling, the Commission noted that “many of these private land mobile services are specifically targeted to specific businesses, industries, or user groups,” and concluded that “these services are limited under our rules to highly specialized uses for restricted classes of eligible users.” *Id.* at ¶¶84, 86. The telecommunications offered by the Five Colleges are likewise “specifically targeted.”

Universal Service Report and Order, therefore, the Five Colleges do not qualify as “telecommunications carriers,” and therefore should not be considered “mandatory” contributors to the Universal Service Fund.

The Five Colleges also should not be considered “permissive” contributors to the Universal Service Fund. The 1996 Telecommunications Act provides that the Commission may require “[a]ny other provider of interstate telecommunications” to contribute to the Fund, “if the public interest so requires.”⁷ Pursuant to this “permissive” authority, the Commission established that “private service providers that offer their services to others for a fee” and “payphone aggregators” must also contribute to the Universal Service Fund.⁸ The Commission explained that “private service providers that offer their services to others for a fee” include those entities that not only serve their own internal needs, but also “provide services or lease excess capacity on a private contractual basis.”⁹ Since the Five Colleges provide telecommunications only to serve their own internal needs and do not provide services or lease excess capacity on a private contractual basis, the Five Colleges do not qualify as “private service providers that offer their services to others for a fee.”

The Five Colleges likewise are not “payphone aggregators.” An “aggregator” is defined as “any person that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises, for

⁷ 47 U.S.C. §254(d).

⁸ Universal Service Report and Order at ¶794.

⁹ Universal Service Report and Order at ¶796.

interstate telephone calls using a provider of operator services.”¹⁰ The payphones located on campus are made available for the convenience of students, who are enrolled at the colleges for full semesters at a time. They are therefore not made available to the “public” or to “transient” users of the college campus.

In addition, the rationale cited by the Commission for establishing these “permissive” contributors to the Universal Service Fund does not apply to the Five Colleges. In establishing that private service providers that offer their services to others for a fee and payphone aggregators should be required to contribute, the Commission cited concerns about “competitive neutrality.”¹¹ The Commission reasoned as follows:

[W]e find that the public interest requires both private service providers that offer interstate telecommunications to others for a fee and payphone aggregators to contribute to the preservation and advancement of universal service in the same manner as carriers that provide “interstate telecommunications services” because this approach reduces the possibility that carriers with universal service obligations will compete directly with carriers without such obligations.¹²

Since the Five Colleges do not offer their services to the public, the Five Colleges do not compete with carriers that provide “interstate telecommunications services.” The on-campus services offered by the Five Colleges, therefore, do not raise any concerns about competitive neutrality because the Five Colleges is primarily a user of services not a reseller of such services. The Five Colleges also should not be required to

¹⁰ 47 U.S.C. §226(a)(2).

¹¹ Universal Service Report and Order at ¶795.

¹² Universal Service Report and Order at ¶795.

contribute to the Universal Service Fund because its long distance provider is required to contribute to the Universal Service Fund.

Finally, the public interest supports the Five Colleges' request for declaratory ruling. The Five Colleges provide important higher education opportunities for thousands of students in the State of Ohio. The telecommunications provided by the Five Colleges to their students, faculty and administrators is provided in order to support these higher education goals. Moreover, burdening educational and library institutions like the Five Colleges with Universal Service Fund requirements, including the extensive paperwork requirements for completion of the Universal Service Fund worksheet, is inconsistent with the goals of universal service, which are to provide financial support to other educational and library institutions around the country.

Wherefore, for the reasons stated above, the Five Colleges respectfully request the Commission to issue a declaratory ruling that the Five Colleges are not required to contribute to the Universal Service Fund and, therefore, are also not required to complete the Universal Service Fund worksheet.

Respectfully submitted,

The Five Colleges of Ohio



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