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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)	CC Docket No. 96-45
Universal Service)	(Report to Congress)

**COMMENTS
OF THE
UNITED STATES TELEPHONE ASSOCIATION**

The United States Telephone Association (USTA) respectfully submits its comments in the above-referenced proceeding. USTA is the principal trade association of the incumbent local exchange carrier (LEC) industry. Its members were the sole providers of quality and affordable universal service prior to the implementation of the 1996 Telecommunications Act . These companies have invested at least \$300 billion in building and maintaining the public switched network which includes over 170 million access lines and has achieved a nationwide penetration level of about 95 percent. This network benefits all customers and all providers of telecommunications services. USTA provides the following comments on the five questions for inclusion in the report to be submitted to Congress by April 10, 1998.

1. The Definitions Contained in Section 3 of the Telecommunications Act.

USTA believes that the definitions of "information service," "local exchange carrier," "telecommunications," "telecommunications service," "telecommunications carrier," and "telephone exchange service" contained in Section 3 are consistent with other provisions in the Act and USTA sees no need at this time to amend these definitions. However, as will be

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discussed below, USTA has not agreed with the Commission regarding the interpretation of “telecommunications services” which shall be provided under discount to schools and libraries and rural health care providers.

Of concern to USTA has been the definition of the core services which make up the definition of universal service. Both the Federal-State Joint Board (Joint Board) and the Commission have tried to balance the needs of consumers to ensure that all customers in all parts of the Nation receive the same core universal services without unreasonably burdening the new universal service mechanism by adding services which do not meet the criteria established by Congress in Section 254(c)(1). The Commission has been responsive to issues raised regarding the ability of incumbent LECs to provide those core services to ensure that these carriers may continue to provide universal service to their customers as they have in the past. In its recent *Order on Reconsideration*, the Commission modified the definitions of voice grade access to the public switched network and toll limitation to reflect current capabilities.¹ In addition, the Commission provided an opportunity for otherwise eligible carriers to seek a limited waiver if special circumstances can be shown. USTA strongly supports these provisions.

One aspect of the core definition of universal service remains unresolved as of the date of these comments. Consistent with the Joint Board’s recommendation, the Commission included local usage in the core definition. The Commission stated that the amount of local usage carriers receiving universal service support would be required to provide would be quantified by the end of 1997. While the Commission has requested and received further information on this issue, no

¹Federal State Joint Board on Universal Service, *Fourth Order on Reconsideration in CC Docket No. 96-45*, FCC 97-420 (rel. December 30, 1997).

decision has been released.

2. Application of the Section 3 Definitions.

Contrary to the Commission's determination in its universal service *Order*, internal connections and Internet access are not "telecommunications services" as defined in Section 3 and, thus should not be included with telecommunications services which legitimately meet the definition and which are provided to schools, libraries and rural health care providers under discount as directed by Congress in the Act.

The Commission's rationale for including internal connections and Internet access as telecommunications services cannot be reconciled with the definitions contained in Section 3.² The definition of "telecommunications service" in Section 3 is identical to the definition of common carrier service. In the past, the Commission has determined that internal connections and Internet access are not common carrier services.³ In addition, the definition of "information service" in Section 3 excludes telecommunications services. The Commission should not ignore the historical treatment of information services and internal connections.

In its universal service *Order*, the Commission omits reference to the definitions, and relies on Sections 254(c)(3) and (h)(1)(B) to justify its decision. While Section 254(c)(3) permits the Commission to designate additional services for schools, libraries and rural health care

²Federal-State Joint Board on Universal Service, *Report and Order*, FCC No. 97-157, (rel. May 8, 1997) at ¶¶ 450-463.

³Computer Inquiry II, *Final Decision*, 77 FCC 2d 384 (1980), *Reconsideration Order*, 84 FCC 2d 50 (1980), *Further Reconsideration Order*, 88 FCC 2d 512 (1981); Modifications to the Uniform System of Accounts for Class A and B Telephone Companies, 48 Fed. Reg. 50534 (Nov. 2, 1983); Detariffing the Installation and Maintenance of Inside Wiring, 51 Fed. Reg. 8498 (Mar. 12, 1986), *recon.* 1 FCC Rcd 1190 (1986), *further recon.*, 3 FCC Rcd 1719 (1988).

providers, that provision is limited by the definition of universal service in Section 254(c)(1) which states that universal service is an evolving level of *telecommunications* services and sets forth the criteria for determining which *telecommunications* services will be supported by Federal universal service support mechanisms. Section 254(h)(1)(B) only refers to services provided by a telecommunications carrier that are within the definition of universal service.

Nor does the inclusion of the term “information services” in Section 252(h)(2)(A) justify including information services as telecommunications services. That section only refers to access to information services, not to the services themselves.

Many parties in addition to USTA objected to the inclusion of internal connections and Internet access in comments submitted to the Commission. For example, the New York State Education Department noted that including internal connections as a supported service could result in a disproportionate drain of funds that could jeopardize the availability of the subsidy for telecommunications services for those institutions that are most in need.⁴ The Delaware Public Service Commission noted that expenditures for inside wiring will likely quickly exhaust the fund which could disadvantage states that have already undertaken the responsibility to wire their schools.⁵ The North Dakota Public Service Commission also objected to the inclusion of internal connections as a supported service explaining that in North Dakota, internal connections are the responsibility of the property owner.⁶

⁴Comments of New York State Education Department filed December 19, 1996 at 7.

⁵Comments of the Delaware PSC filed December 19, 1996 at 6.

⁶Comments of the North Dakota PSC filed December 19, 1996 at 3.

Nothing in the Act permits the Commission to designate non telecommunications services as universal service eligible for support. If Congress had intended that both telecommunications services and non telecommunications services could be considered universal service it would have so specified in the Act. USTA believes that the Commission must limit eligible services to telecommunications services.

3. Contributions to Universal Service Under Section 254(d).

USTA has long maintained that pursuant to Section 254(d), as well as 254(b)(4), all providers of telecommunications services must contribute to universal service. In addition, Congress gave the Commission the authority to include any other provider of telecommunications service, even if it does not meet the definition contained in Section 3, if it would be in the public interest to do so. The only exception to this mandate was for providers whose contributions would be *de minimis*. The Commission has no authority to exempt any providers which otherwise meet the Section 3 definitions. Section 254(d) properly reflects the fact that Congress intended universal service to be a national public policy. Since all providers benefit from the preservation and advancement of ubiquitous public networks, all providers should contribute to universal service.

The Commission has correctly interpreted that section of the Act, although in its recent *Order on Reconsideration* the Commission exempted systems integrators, broadcasters, and non-profit schools, universities, libraries and rural health care providers from the requirement to contribute to universal service.⁷ USTA maintains that the Commission lacks authority to exempt

⁷*Order on Reconsideration* at ¶ 277.

providers unless it can be shown that the provider does not meet the Section 3 definition of telecommunications provider.

4. Eligibility to Receive Support Under Sections 254(e), 254(h)(1) and 254(h)(2).

By misapplying the definition of telecommunications service as described above, the Commission has created an anomaly which certainly was not intended by Congress. Non telecommunications providers, such as electricians who commonly provide internal connections or information service providers who provide Internet access, would be permitted to receive universal service support if internal connections and Internet access are treated as telecommunications services. Such a result is squarely in violation of Section 254(e) which specifies that only eligible telecommunications carriers are eligible to receive Federal universal service support and Section 214(e) which states similarly that a common carrier designated as a eligible telecommunications carrier under paragraph (2) or (3) shall be eligible to receive support in accordance with Section 254. Likewise, Section 254(h)(1)(B) also limits universal service support to telecommunications carriers providing service under that paragraph.

Such a result would also require telecommunications carriers to contribute to universal service for the benefit and support of non contributors. This is surely not intended since the Commission and the Joint Board agreed that the new universal service mechanisms are to be based on the principle of competitive neutrality.

In addition, as explained above, the Commission has held that information services and internal connections are not common carrier services and that entities providing them are not common carriers. The definitions in the Act does not alter those determinations.

USTA is also concerned that some otherwise eligible carriers will not offer the defined universal services to customers on a stand-alone basis, but only as part of a package which also includes toll, video, or custom calling features in order to “cherry-pick” only the lucrative, high volume, high revenue customers. In order to ensure competitive neutrality, USTA has petitioned the Commission, pursuant to Section 254(e), to require all eligible carriers to offer the defined universal services on a stand-alone basis at the affordable rate established by the state. This would not preclude additional offerings which package universal service with other services, but would ensure that states have the ability to ensure that a carrier is truly eligible for universal service support. USTA’s petition for reconsideration of this issue is pending at the Commission.

5. The Percentage of Universal Service Support Provided by the Federal Mechanisms and the Revenue Base.

In August, 1997, USTA President and CEO Roy Neel wrote a letter to then FCC Chairman Reed Hundt, attached hereto, which highlighted issues of concern to rural telephone companies as defined by the Act. Among those issues were the Commission’s decision that the universal service mechanism for rural, high cost and insular areas will support 25 percent of the difference between forward-looking economic cost (based on a cost proxy model which has not yet been determined) and the appropriate revenue benchmark (which also has not yet been determined although the Commission did find that revenues from the provision of non universal services would be included in the benchmark).

USTA supported the Commission’s decision to establish a Rural Task Force to evaluate the feasibility of a cost proxy model for rural carriers, since none of the proxy models developed for non rural carriers accurately reflect the costs incurred by rural carriers to provide service. A

proxy model which does not reflect the actual costs incurred by rural carriers to provide service in rural areas will arbitrarily reduce universal service available to rural customers thereby threatening the ability of rural carriers to provide affordable rates as well as the necessary network upgrades to maintain high quality service or to provide access to advanced services.

However, in its letter, USTA recommended that the Rural Task Force also consider the impact of the Commission's formula on rural carriers. It is USTA's view that the Commission's approach, which leaves the bulk of support for the states to provide, will create an extreme hardship in rural states which do not have the resources to fund over 75 percent of the costs of providing universal service in rural areas. As to the revenue benchmark, even the state members of the Joint Board recognized that a revenue benchmark which includes revenues from access and discretionary services, may not be appropriate in the changing telecommunications marketplace.

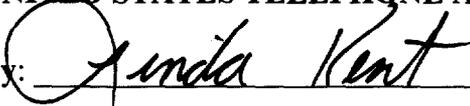
In addition, USTA would recommend that the funding base for universal service for rural carriers be addressed by the Rural Task Force. USTA has supported the use of both inter- and intrastate retail revenues as the basis upon which universal service support is determined. A mechanism for rural carriers which relies solely on interstate revenues creates a hardship for rural states. A state such as Wyoming, with less than 300,000 customers, does not have sufficient intrastate revenues to fund the state fund which would be necessary to maintain universal service under the Commission's decision.

The Commission's formula to determine the amount of Federal support represents a significant departure from the current program for rural carriers which depend heavily on universal service to provide customers in rural areas with high quality, affordable service and

does not recognize the unique circumstances which characterize the provision of service in rural areas. Such circumstances are briefly described in the attached letter. Congress determined that all customers, including rural customers, should have access to telecommunications and information services that are reasonably comparable to those provided in urban areas at rates reasonably comparable to rates in urban areas. The Commission must implement the Act in order to make that principle a reality.

Respectfully submitted,

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January 26, 1998
Attachment



August 25, 1997

The Honorable Reed E. Hundt, Chairman
Federal Communications Commission
1919 M Street, NW - Room 814
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Re: Preserving Universal Service in Rural America

Dear Chairman Hundt:

One of the overriding principles listed by Congress as the basis for the development of a new universal service policy is to ensure that consumers in all regions of the Nation, including customers in rural areas, have access to telecommunications and information services as well as advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas, at rates that are reasonably comparable to rates charged for similar services in urban areas.¹ This section guarantees that customers in rural areas do not become the telecommunications "have nots" of the 21st century.

Congress also recognized that rural telephone companies are sufficiently different from other companies to warrant different regulatory treatment.² Such treatment is justified by an examination of the circumstances under which they operate. Rural telephone companies are much more dependent upon access charge revenues than other companies. Approximately sixty percent of their revenues come from access charges, both Federal and state. While rural telephone companies generally have lower prices for local service, there are significant differences in the service itself. The calling scope is typically much smaller for rural telephone companies and customers must make toll calls to reach friends, schools and doctors. Rural telephone companies generally serve a lower number of subscribers per square mile, on average

¹47 U.S.C. § 254(b)(3).

²See, for example, 47 U.S.C. at §§ 153(47), 251(c) and 251(b).

only about nineteen customers. But, this average masks a wide range. Over half of rural companies have eight subscribers or less per square mile. Non-rural companies, on the other hand, have an average of 400 customers per square mile.

The rural company's customer base typically is primarily residential. On average, a rural telephone company's customer base has only eighteen percent business customers. In contrast, non-rural LECs have an average of 36 percent business customers in their customer base.

These circumstances make rural telephone companies especially vulnerable to the loss of even one large customer to competition. The loss in access revenues could be disastrous for the rural telephone company trying to continue serving its high cost, low volume customers.

Rural telephone companies rely heavily on federal universal service support. Rural costs are typically higher than urban costs. These costs are, as noted above, spread among a very small customer base. For example, small rural companies lack the purchasing power of larger companies which prevents them from negotiating volume discounts and utilizing economies of scale to reduce costs. Small, rural companies generally do not have the options available to companies with larger serving areas which would allow them to utilize economies of scope in configuring their network operations.

In its Order on Universal Service, the Commission adopted an appropriate transition plan for rural telephone companies and their customers based on the recommendation of the state members of the Joint Board.³ This transition plan preserves incentives to invest in the network, protects small businesses located in rural areas and avoids administrative burdens. More important, it properly recognizes that a forward-looking cost proxy model has not been sufficiently developed to be used by any rural company. The transition plan meets the needs of rural companies and adheres to the principles contained in the Act. However, the future for these companies is uncertain.

The Commission concludes that the universal service mechanism for rural, high cost and insular areas will support 25 percent of the difference between the forward-looking economic cost (based on a cost proxy model which has not yet been determined) and the appropriate revenue benchmark (which has not yet been determined). While the Commission notes 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." Indeed, an important responsibility of the Joint Board is to oversee a Rural Task Force that will be evaluating the feasibility of a cost proxy model for rural carriers.

³*State Members' Report on the Use of Cost Proxy Models*, CC Docket No. 96-45, March 26, 1997.

USTA wishes to emphasize its view that this Rural Task Force must also study the effect of providing federal support for only *25 percent* of the *difference* between proxy costs and a revenue based benchmark. Such an approach will leave the bulk of support for the states to provide. It may be extremely difficult for rural states to raise sufficient funds. Leaving 75 percent of the funding responsibility to the states must be carefully studied by the Joint Board as well. It would be a serious departure from the current program for rural companies.

A revenue-based benchmark, particularly one that includes revenues from access and discretionary services will only perpetuate implicit support contrary to the Act. The state members noted that a revenue benchmark may not be appropriate due to the changing marketplace.

The Commission adopted the state members' recommendation that the Joint Board appoint a rural task force to identify issues unique to rural carriers and to analyze the appropriateness of the proxy cost models for rural carriers. The cost proxy model is only part of the equation. USTA hopes that this letter highlights some of the other issues critical to rural telephone companies and urges the Joint Board to direct the rural task force to analyze all of the issues which affect the determination of universal service support for rural telephone companies. These companies are determined to continue to serve rural, residential customers with high quality, affordable telecommunications, information and advanced services. Universal service support is essential if these customers are to be part of the "haves" of the 21st century. USTA looks forward to working with the rural task force and the Joint Board on these important issues.

Cordially,

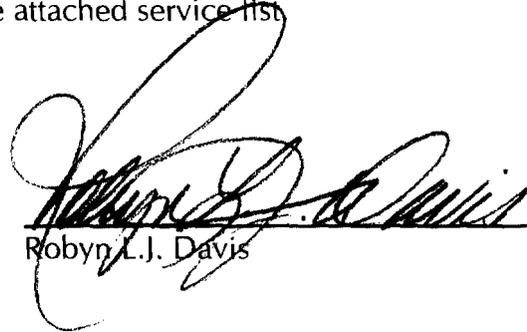
A handwritten signature in black ink, appearing to read "Roy M. Neel". The signature is fluid and cursive, with the first name "Roy" being the most prominent.

Roy M. Neel
President and CEO

cc: Joint Board Staff

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I, Robyn L.J. Davis, do certify that on January 26, 1998 Comments of the United States Telephone Association were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the persons on the attached service list



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