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Via Messenger

March 26, 1998

Ms. Magalie Salas
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

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MAR 26 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

Dear Secretary Salas:

Enclosed please find an original and four copies of the Proposed Alternative to the Request for Referral of Designated Items by the State Members of the Section 254 Federal-State Joint Board on Universal Service for filing in the above-referenced proceeding.

Also enclosed is an extra copy which I ask that you stamp as filed and return to the messenger.

Sincerely,

**BIRCH, HORTON, BITTNER
AND CHEROT**

Elisabeth H. Ross

Elisabeth H. Ross

cc: Chairman Kennard
Commissioner Ness
Commissioner Furchgott-Roth
Commissioner Powell
Commissioner Tristani
Jim Morgan
James Casserly
Thomas Power
Kevin Martin
Kyle Dixon

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OFFICE OF THE SECRETARY

In the Matter of)
Federal-State Joint Board on)
Universal Service)
_____)

CC Docket No. 96-45

**PROPOSED ALTERNATIVE TO THE REQUEST FOR
REFERRAL OF DESIGNATED ITEMS BY THE STATE
MEMBERS OF THE SECTION 254 FEDERAL-STATE
JOINT BOARD ON UNIVERSAL SERVICE**

State members of the Section 254 Federal-State Joint Board on Universal Service (State Joint Board Members) have requested that four issues be referred to that Joint Board for a Recommended Decision. The Maine Public Utilities Commission, Vermont Department of Public Service, Vermont Public Service Board, New Mexico State Corporate Commission, and the Public Service Commission of West Virginia believe that the letter and spirit of the dual responsibilities of the FCC and state commissions established by the Telecommunications Act can be satisfied without a formal referral of these issues and the inevitable attendant delay in the implementation of the Universal Service provision of the Act.

Referral would likely impose significant delay, thereby harming high cost states such as Maine, Vermont, and New Mexico¹ that are relying upon the Commission's further modifications of its Universal Service Plan in order to achieve an adequate new system for universal service support (for

¹Other states including, but not limited to, West Virginia, Montana, New Mexico, Wyoming, and Arkansas will be harmed by delaying adequate universal service support to high cost rural areas that happen to be served by companies with over 200,000 lines.

non-rural companies) on January 1, 1999. Moreover, state commissions have actively participated in universal service fund discussions during the past six months. In these unique circumstances, the FCC should design a process for considering the high cost issues that ensures full substantive participation of, and consultation with, the State Joint Board Members without risking delay.

A. Referral to the Joint Board Will Probably Delay a Final FCC Decision.

Formal referral will require the preparation of one or more public notices, one or more comment periods, time for abstracting and analyzing comments, time for deliberating and time for writing a Recommended Decision. Considering all these steps, the Joint Board process is likely to consume several months. Commission consideration of a Joint Board recommendation would follow a similarly time-consuming administrative process.

The Commission has announced that by January 1, 1999, it anticipates establishing a new system for high cost support. If such a system is to take effect in January, carriers and states must be given adequate notice. Carriers and state commissions may want to adjust local rates to reflect revenue increases or decreases resulting from changes in support. This suggests that any further Commission order adopting a plan should be issued at least by the fall of 1998. There is simply not enough time between now and the fall of 1998 to complete each procedural step described above. Therefore, a decision to refer high cost funding issues to the Joint Board will likely delay the January, 1999 implementation date.

B. Delay Beyond January 1, 1999 Will Harm Some High Cost States.

When Congress enacted the Telecommunications Act of 1996 in February, 1996, it envisioned

that the Commission would rapidly establish the universal service mechanisms. Under Section 254(a), Congress required the Commission to appoint a Joint Board within one month. Congress set a deadline for the Joint Board to submit its report, as well as a deadline for final Commission action on the report. All of this work had to be completed within 15 months.

Congress did not set a date for implementing new universal service measures, but clearly demonstrated its intent to put the new universal service support system in place at the earliest possible time by setting a deadline for the Commission to act. On May 8, 1997, the Commission selected a date for initial implementation (for non-rural companies) of January 1, 1999. This date was almost 20 months after the order, and almost 36 months after the Telecommunications Act of 1996 became law.

Some high cost states have high local rates, high intrastate toll rates, or both. These states have been waiting for implementation of the federal high cost support system envisioned by the Act, a system guaranteeing that rates in rural areas will be affordable and reasonably comparable to rates in urban areas.

Further delay by the Commission, for whatever cause, will harm these states and their ratepayers. Three years after the Act's passage is none to soon to provide the relief that Congress mandated and so clearly anticipated would be delivered expeditiously.²

Vermont in particular has waited a long time for relief. Four and one-half years ago, in September, 1993, the Vermont Public Service Board and Vermont Department of Public Service

²Delay also could increase the chances that the Commission's action establishing the 25-75 split will be declared invalid by a court. That question is now under review in the Fifth Circuit Court of Appeals in New Orleans. Texas Office of Public Utility Counsel et al. v. FCC, Docket No. 97-60421.

filed a petition for a waiver of the Commission's existing rule that provides substantially less federal loop support to high cost companies serving more than 200,000 lines. The Commission has never acted on that petition.

As is still true today, approximately 85% of Vermont's customers are served by a regional Bell company with more than 200,000 lines. The great majority of these customers are rural customers,³ notwithstanding that the Commission has chosen to consider their incumbent local exchange carrier as a "non-rural" carrier.

When Vermont filed its petition in 1993, New England Telephone's Vermont customers were paying rates that were more than \$5.00 per month higher than they should have been if the Commission had supported their rural high cost carrier properly. Today, the harm continues, although its magnitude is reduced.⁴ Vermont remains a state with both high costs and rates that are not reasonably comparable to rates charged in urban areas. The Commission should not delay any further in fulfilling the promise of the Telecommunications Act of 1996.⁵

C. A More Streamlined Procedure Is Appropriate.

Joint Boards play a vital role in the decision-making process. They invite collaboration between state and federal regulators, and lead to productive and efficient resolutions of difficult and

³For example, Vermont does not have a single city with a population of 50,000 or more.

⁴Currently, rates paid by Bell Atlantic customers could be reduced by \$2.79 per month if the Commission supported Bell Atlantic's Vermont lines in a manner similar to other rural areas served by smaller carriers.

⁵The Commission has heard testimony on March 6, 1998 from Commissioner Bruce Hagen of North Dakota revealing a similar problem in his state.

complex issues. The Commission should find ways to preserve and increase the vitality of the Joint Board process.

After the Commission issued its May 8, 1997 order, it urged the states to try to work out a universal service plan that would be acceptable to both high and low cost states. Accepting that invitation, an Ad Hoc Group convened in the summer of 1997 (under the auspices of the NARUC Committee on Communications), to develop such a proposal. Membership in that Ad Hoc Group has been open to all states, and its meetings have been open to any and all states wishing to participate, as well as to the Section 254 Joint Board members and their staff.⁶ The Ad Hoc Group has developed an alternative to the Commission's May 8, 1997 approach to high cost funding. Although that proposal continues to evolve, it has been filed with the FCC⁷ and has been the subject of considerable discussion.

It is important that states have a meaningful opportunity to speak and to collaborate in the decisional process on high cost support. In this case, the involvement of the states has already been substantial through the Ad Hoc Group and through discussions of that group's proposal at two NARUC meetings. While other plans may deserve consideration, the states have already had significant opportunity to participate in the development of at least one universal service fund distribution plan.

In light of the state activity that has already occurred, and the need for expeditious resolution, a formal referral to the Joint Board is unlikely to be the most efficient and effective means to achieve

⁶In November of 1997, NARUC adopted a resolution encouraging the Ad Hoc Group to continue its efforts.

⁷Ex Parte presentations to various FCC Commissioners and staff were made on January 15, 1998, February 6, 1998, March 2, 1998, and March 3, 1998.

the objectives of the Joint Board process. Instead, the Commission should use a more streamlined approach that could, in these circumstances, provide sufficient substantive state participation.

The Commission should, as an alternative to formal referral, involve the state members of the Joint Board pervasively in any further Commission proceedings involving universal service issues in CC Docket 96-45. That participation should include, but not be limited to, the state Joint Board member involvement set forth in Section 410(c) of the Communications Act, which states:

[T]he State Members of the Joint Board shall sit with the commission en banc at any oral argument that may be scheduled in the proceeding. The Commission shall also afford the State Members of the Joint Board an opportunity to participate in its deliberations, but not vote, when it has under consideration the recommended decision of the Joint Board or any further decisional action that may be required in the proceeding. (emph added).

The Commission should schedule at least one oral argument prior to any further decision which includes the State Joint Board Members en banc. It should provide specific opportunity for State Joint Board Members to comment, orally and in writing, on high cost proposals under consideration by the Commission. The Commission should also afford state members of the Joint Board an opportunity to participate in its deliberations, consistent with section 410(c).

A process that includes State Joint Board Members in all en banc hearings relating to these Universal Service issues, coupled with the involvement of State Joint Board Members in open deliberations, will ensure adequate state participation regarding the universal service issue without unduly delaying a Commission decision.

Conclusion

As an alternative to the formal referral sought by the State Joint Board Members, the Commission should adopt a more streamlined, but equally effective approach for obtaining State participation in further decisions actions in this case, that will permit the increased universal service support that is required under § 254 of the Act to be implemented by January 1, 1999.

Respectfully submitted this 26 day of March, 1998.

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