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APR 6 - 1998
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

April 6, 1998

VIA HAND DELIVERY

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

95-72

Re: *Reply to Opposition to the Petition for Reconsideration of Washington State Department of Information Services et al.*

Gentlemen/Ladies:

On behalf of Washington State Department of Information Services et al., we are filing herewith an original and four copies of a Reply to Opposition in the Universal Service proceeding, CC Docket No. 96-45, pursuant to Section 1.429 of the Commission's rules.

This Complaint is being submitted in accordance with Sections 0.401(a) and 1.419 of the Commission's rules.

Please contact this office if further information is needed.

Sincerely,

REED SMITH SHAW & McCLAY LLP

Michael J. Francesconi

Enclosures

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FEDERAL COMMUNICATIONS COMMISSION
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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
	)	
Access Charge Reform, Price Cap Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge	)	CC Docket Nos. 96-262, 94-1, 91-213, 95-72

REPLY TO OPPOSITION
TO THE PETITION FOR RECONSIDERATION OF
WASHINGTON STATE DEPARTMENT OF INFORMATION SERVICES ET AL.

The Washington State Department of Information Services ("DIS"), in conjunction with the Office of Superintendent of Public Instruction ("OSPI"), the Washington State Library, the North Thurston School District No. 3, the Yakima Valley Regional Library and the Educational Service District No. 112, Vancouver ("Petitioners"), respectfully submits this Reply to Opposition in response to the Opposition of certain parties to our Petition for Reconsideration of the Fourth Order on Reconsideration[1] in the Universal Service proceeding.[2]

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[1] In re Federal-State Joint Board on Universal Service, Fourth Order on Reconsideration, CC Docket No. 96-45, FCC 97-420 (rel. Dec. 30, 1997) ("Fourth Order").

[2] See Comments of Ameritech on Petitions for Reconsideration at 3-5; Bell Atlantic's Opposition To and Comments On Petitions for Reconsideration of Fourth Order on Reconsideration at 4; BellSouth's Comments on Petitions for Reconsideration at 5-6; and

Continued on following page

Washington State is a leader in bringing a wide array of cost-effective telecommunications services to its schools and libraries. For more than a decade, Washington State has been committed to developing sound policies that guide the State's collective acquisition and use of information and telecommunications services. State and local government purchases of telecommunications technologies and services, which include purchases made by state schools and libraries, exceed $600 million annually. State policy makers have made it a priority to ensure that the State takes advantage of its leverage as a cost-effective, volume purchaser of telecommunications services and coordinates infrastructure development to foster interoperability and avoid costly duplication of facilities, networks and administrative efforts.

Washington State, like other states, has established an organization that facilitates the cost-effective procurement, management and use of telecommunications resources so that the State's public services may take advantage of the volume benefits mentioned above--to the ultimate benefit of its taxpayers. By an act of its legislature, Washington State created the Department of Information Services ("DIS") as the state telecommunications network ("STN") to serve these functions. DIS plays a key role

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Continued from previous page

United States Telephone Association Opposition to Petitions for Reconsideration at 5.

in providing discretionary, lowest-cost services to the State's schools and libraries, and it does so on a non-profit, cost-recovery basis. All other parties to this Reply to Opposition directly benefit from the telecommunications and non-telecommunications services provided by DIS to the public schools and libraries in Washington State.

In its Petition, Washington DIS et al. requested that the Commission reconsider those aspects of its Fourth Order which determined that (1) STNs would not be eligible to receive direct reimbursement from the Universal Service Fund ("USF") and (2) schools and libraries receiving state-provided telecommunications services could not receive discounts for "value added" integration of these services, even though they would be able to receive a discount for value added by a non-state provider.[3]

The rationale provided by the Commission in the Fourth Order, and supported by those parties that oppose the DIS Petition, is that STNs cannot be directly reimbursed because they do not meet the definition of "telecommunications carrier" as set out in the Communications Act.[4]

The Commission, however, need not reach this question. Rather, it could reconsider its prior conclusions and decide that, even if STNs are not telecommunications carriers, a point

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[3] See id. ¶¶ 182-89.

[4] See 47 U.S.C. § 153(44).

we do not concede, it will make a regulatory exception that permits STNs to receive reimbursement from the USF, in the same manner as other service providers, so that the ratepaying school or library may ulitmately be reimbursed in an amount equal to a similar purchase from a non-STN. In this way, Washington DIS and similarly situated STNs may continue to serve the public trust and provide schools and libraries the most cost-effective telecommunications packages possible.

Several of the entities opposing the State of Washington's Petition also argue that, because STNs do not pay into the Universal Service Fund, they should not be entitled to draw from that Fund. Under that logic, however, it is the majority of (or perhaps all) telecommunications carriers which should not be entitled to seek reimbursement.

In reality, those carriers are nothing more than <u>conduits</u> through which contributions to the Fund are collected and through which they are disbursed. As has become readily apparent in recent month to ratepayers, to members of Congress and to advocates for the public interest, it is consumers who pay for universal service . . . and it is consumers who should benefit from it.

How then can one rationalize a system in which those consumers, under the regulatory scheme which has been adopted, will be doubly burdened when it comes to support for their schools and their libraries. Not only are those consumers

bearing the increased costs of universal service on their individual phone bills, but they are paying those costs as taxpayers of states with telecommunications networks when those costs are passed on to STNs in the bills they pay.[5] Yet, as a result of the Commission's narrow reading of the statute, those same consumers are being deprived of the benefit of buying efficiencies which have resulted from the creation of STNs and which, if exploited, could stretch the buying power of Universal Service Fund dollars.

For the reasons set out below, Washington DIS submits that the creation of such an exception is not only within the power of the Commission, but that such action is necessary to the furtherance of the goals of Universal Service and the preservation and protection of the public interest.

While Section 254(h)(1)(B) of the Act provides that it is the telecommunications carriers that provide service at discount rates to eligible schools and libraries that shall be entitled to apply to the Universal Service Fund for reimbursement of the discounted amount, Section 254(h)(2)(A) gives the

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[5] While the Commission has received more than ample evidence of who is, in actuality, paying into the Universal Service Fund, the State of Washington submits herewith just one more example. See letter dated February 5, 1998, from Lori A. Sechrist, District General Manager, Arch Paging, to Ellen Wolfhagen, State of Washington, Department of Information Services, seeking modification of a contract with the State of Washington to include a new charge as "a result of legislation which Congress adopted last year" to, inter alia provide discounted service to public schools, libraries and certain health care providers.

Commission freedom to expand Universal Service support to non-telecommunications carriers. Washington DIS et al. believe that it was the clear intent of Congress to maximize the availability of telecommunications services to schools and libraries. To facilitate this objective, Congress drafted inherently flexible statutory language that permits the Commission to amend its previous orders. Such language is contained in Section 254(h)(2) of the Communications Act and has been used extensively by the Commission to justify certain exceptions to the "telecommunications carriers only" reading of the statute.

For example, in paragraph 590 of its Report and Order,[6] the Commission extended the eligibility to directly obtain reimbursement for ratepayer discounts from the Universal Service Fund to non-telecommunications carriers, even those which are not owned or controlled by telecommunications carriers, or which have not entered into "joint ventures, partnerships or other business arrangements" with them. Here, the Commission reasoned that it was "artificial" to make a distinction between those entities that offer non-telecommunications services to schools and libraries simply on the basis of structure.[7] Likewise, it is artificial and discriminatory to make a distinction between providers of any like-services wherein the only substantive

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[6] In re Federal-State Joint Board on Universal Service, Report and Order, CC Docket No. 96-45, FCC 97-157, 12 FCC Rcd. 8776 (rel. May 8, 1996) ("Report and Order").

[7] See id. ¶ 590.

difference between the providers lies in the fact that one is a private entity and the other is a public one.

Such a distinction penalizes states, like Washington, which have long-standing policies in support of education and which have spent years and millions of their own state tax dollars to develop telecommunications infrastructures supporting schools and libraries, in addition to other state-run public support entities. Telecommunications carriers which provide telecommunications services and any carrier which provides non-telecommunications services may currently recover a portion of all costs, including assorted administrative costs, associated with the provision of that service. This benefit has unjustly been kept from STNs. In the course of providing service to schools and libraries, STNs also incur administrative costs that must be accounted for. Other providers are permitted to roll these costs into their total costs (and ultimately their charges to ratepayers), and as such, they can recover a portion from the direct reimbursement received from the Fund. To forbid STNs the same benefit ultimately is to cause the ratepayers to pay more than necessary for the provision of service.

In further support of permitting non-telecommunications carriers to access the Fund directly, the Commission held that Section 254(h)(2) granted it broad authority "to enhance access to advanced telecommunications and information services,

constrained only by the concepts of competitive neutrality, technical feasibility and economical reasonableness."[8] Thus, "discounts and funding mechanisms that are competitively neutral, technically feasible and economically reasonable [and] that enhance access to advanced telecommunications and information services fall within the broad authority of Section 254(h)(2)."[9]

The bundled service packages available from Washington DIS clearly fall within funding mechanisms for advanced telecommunications and information services contemplated by Congress and the Commission. These arrangements enhance the power and flexibility of the telecommunications resources available to the schools and libraries which they serve. The aggregate buying power of the DIS and other STNs allows them to obtain the best possible service for schools and libraries at the most affordable price, usually far beyond anything the schools and libraries could achieve on their own. By any reasonable definition, the attributes and activities of the DIS, in procuring a wide range of services and equipment from multiple vendors, in bundling the equipment and services into a wide array of simple and sophisticated service offerings, and in providing these services to eligible schools and libraries that wish to receive them, should qualify them as providers of advanced telecommunications and information services and make them

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8 See Report and Order, ¶ 591.

9 See id.

eligible to receive Universal Service support. Additionally, the statutory elements of competitive neutrality, technical feasibility and economic reasonableness, are all inherent in the Washington DIS statutory mandate and operating procedures.

It should also be noted that while Congress did impose certain controls on the qualifications of entities that may draw from the Universal Service Fund, it never intended for such controls to serve as barriers to efficient and affordable service. The legislative history to the Universal Service statute notes that Section 254(e) was "not intended to prohibit support mechanism that directly help individuals afford universal service."[10] By failing to use Section 254(h)(2), the language intended to provide the Commission with flexibility to implement the Universal Service program, the parts of the statute have been construed too narrowly and have retarded support mechanisms to the ultimate detriment of school and library ratepayers.

Washington DIS et al. believes there is ample evidence in the Universal Service Fund legislative and regulatory language and history to indicate that such networks are precisely the kind of efficient, centralized entity which both Congress and the Commission sought to encourage through the Universal Service Fund polices. Such networks are leaders in the provision of telecommunications and information services to schools and

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[10] H.R. Conf. Rpt. No. 104-458, at 129 (1995).

libraries across the nation. Washington DIS et al. supports the Commission's efforts to date to implement Universal Service, and hopes that the information provided in this submission will enable the Commission to implement the Universal Service process in a way which takes maximum advantage of the efficiencies available because of the efforts undertaken by STNs. Allowing Washington DIS to seek direct reimbursement from the Universal Service Fund for the discounts it would pass on in their entirety to their eligible schools and libraries is a reasonable and logical way to realize this objective. Washington DIS et al. thanks the Commission for its consideration.

Respectfully submitted,

WASHINGTON STATE DEPARTMENT OF INFORMATION SERVICES ET AL.

By: Judith L. Harris

Judith L. Harris
Michael J. Francesconi

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Its Attorneys,
Serving as Special Assistants
to the State Attorney General

David W. Danner
Of Counsel
WASHINGTON DEPARTMENT OF
INFORMATION SERVICES

April 6, 1998

Arch PAGING

Arch Paging
5580 Pacific Hwy. East, Ste. D
Tacoma, WA 98424
253 922-4595 • Fax 922-5060

February 5, 1998

State of Washington
Department of Information Services
Attn Ellen Wolfhagen
P.O. Box 42445
512 12th Avenue SE
Olympia, WA 98504-2445

Dear Ellen,

Per your conversation with Penni Scott/Foust yesterday, please accept this letter as Arch Paging's request to modify contract T98-MST-008, Wireless Paging Equipment and Services. The modification is to add the following:

Federal Universal Service Fee: $ .18 per pager, per month

This new charge is a result of legislation which Congress adopted last year. As part of the Telecommunications Act of 1996, Congress directed the Federal Communications Commission to establish a new universal service program to which ALL telecommunications carriers, including paging carriers, are required to contribute. The new program is intended to insure that consumers in rural, high cost areas receive telephone service at rates comparable to those paid by persons living in urban and suburban areas, to subsidize telephone services for certain low-income persons, and to provide discounted service to public schools, libraries and certain health care providers. In response, the FCC established a new $5 billion program which became effective on January 1, 1998. This charge is intended to recover only that portion of the contributions which Arch is assessed. This fee will be collected by Arch and forwarded in its entirety to the Federal Government.

This is not a price increase. This is a charge assessed by the Federal Government. Please keep in mind that *all telecommunications providers* will be assessed this fee, therefore had this contract been awarded to any other carrier, the State of Washington master contract would not escape the fee or a modification to the contract.

I appreciate your attention to this matter. Please let me know what, if any, further action you require from Arch Paging to ensure that all agreements made between Arch Paging and State of Washington entities are modified to include the Federal Universal Service Fee.

Sincerely,

Lori A. Sechrist

Lori A. Sechrist
District General Manager