

JOHN D. ROCKEFELLER IV
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United States Senate
WASHINGTON, DC 20510
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March 6, 1998
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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Report To
Congress

Dear Chairman Kennard,

As strong advocates for universal service, we are writing to urge you to carry out the necessary work to appropriately and adequately fund all elements of universal service. The Commission has the responsibility to deliver on the promise of universal service. This effort must be the Commission's immediate and high priority in order to avoid problems or outright failure to achieve the essential goals of universal service.

With the passage of the Telecommunications Act of 1996, we promised a bold new competitive communications system, but with the important assurance that the commitment to universal service would be maintained and updated with the decision to ensure schools, libraries and rural health care providers access to the telecommunications services that are the foundation for the Information Age. The discount mechanism that was recommended unanimously by the Federal-State Joint Board and adopted by the Commission holds that promise, but the Commission must act to ensure effective implementation.

Congress established the bold, bipartisan vision of a universal service program for schools, libraries and rural health care providers through a discount mechanism to ensure access and leverage local resources. As with the entire Act, promoting competition is a paramount issue, and we believe it is important that the discount mechanism operate in ways that also promote competition between all carriers. This will ensure that every student has access to the incredible education resources available on the Internet. Our schools and libraries need access to distance learning and modern telecommunications so every school can offer quality math, science and other advanced courses. Our children need access to computers and technology so they are fully prepared to compete in the highly technical and competitive global workforce. By 2000, sixty percent of jobs will require computer skills; right now just 22 percent of workers have those skills.

As the National Governors Association noted in their recent endorsement, "...in any program of this magnitude, there are likely to be changes and corrections that should occur through the Congressional oversight process. We, however, want to urge you to maintain the integrity of the program as contained in the original Act, including adequate funding for the first year of the program and thereafter." This is a goal we must achieve.

Our concern is that the funding system created by the Commission's May 8, 1997 order may not provide adequate support to address the discount requests from the more than 20,000 pending applications from schools and libraries. We are sure you share our view that the FCC has an obligation to make this process work, and not shortchange our children. We are

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The Honorable William Kennard

March 6, 1998

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concerned about the consequences to schools, libraries and rural health care discounts if action to assess a potential short-fall is not taken immediately and forcefully..

In addition, we have other, independent concerns about the Commission's current approach to access charges. The Commission is scheduled to provide another round of access charge reductions in July. As you know, the Commission adopted its current approach as part of its overall plan to implement the Telecommunications Act. This approach was, and remains, dependent upon the development of actual competition in the local phone market to drive down the cost of access — competition which has clearly not developed in the manner or to the extent the Commission anticipated.

We acknowledge that legal challenges from numerous telecommunications carriers against the Commission's decisions have been a key factor in delaying competition, and that the Commission has not intended this result. Nevertheless, the level of competition necessary to sustain a market-based approach to access charge reform has not developed. Until it does, we urge the Commission to review its policy, and consider other effective approaches to access reform, as has been requested by petitions before the Commission.

We believe it is also imperative that the Commission revisit its decision regarding the exemption of Internet service providers from universal service contributions and access charges. ~~New reports of offerings of voice to voice telephony and fax services over the Internet — the~~ providers of which do not pay either access charges or universal service contributions — indicate that these providers are indeed now offering telecommunications services, and that they should incur universal service obligations. Like long distance carriers, these providers rely on the local phone network to deliver and receive their services. They should not be allowed to continue to burden this system without paying their fair share for its upkeep.

We also urge the Commission to investigate the revenue reports of all sectors of the industry in order to determine whether or not industry revenues are being accurately reported. It is essential that no segment(s) of the industry be able to under-report revenues in order to reduce their contribution to universal service. Under-reporting of revenues would not only undermine adequate funding for universal service, it also raises important questions regarding the competitive neutrality of the process.

Finally, we also urge the Commission to begin a rulemaking proceeding, in tandem with the Federal Advisory Commission on Universal Service, to consider the structure and procedural mechanisms for administering these programs. Changes to the administrative structure are essential in order to address the concerns raised recently by the General Accounting Office, and we believe the program can be restructured in ways that maintain its integrity and allow it to meet the important goals we support.

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We know that we share the important goals of universal service with you, and we fully recognize the challenge and difficulty in fulfilling them. We feel an obligation to express these concerns and urge forceful action and leadership from you and the rest of the Commission, and as always, we are fully prepared to assist and work aggressively with you to succeed in this vital undertaking.

Sincerely,



John D. Rockefeller IV



Olympia J. Snowe

The Honorable William Kennard
Chairman
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

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United States Senate

WASHINGTON, DC 20510

March 20, 1998

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MAR 23 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

96-45
Report To
Congress

The Honorable William E. Kennard
Chairman
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Chairman Kennard:

We are writing regarding the Federal Communications Commission (FCC) review of its implementation of the universal service provisions of the Telecommunications Act of 1996. The overarching policy goal of the 1996 Act is to promote a market-driven, robustly competitive environment for all communications services. Given that, we wish to make it clear that nothing in the 1996 Act or its legislative history suggests that Congress intended to alter the current classification of Internet and other information services or to expand traditional telephone regulation to new and advanced services.

As the 1996 Act recognizes expressly, the development of the Internet - and the advanced services it supports and stimulates - has been an extraordinary advance for the American public. These services now are beginning to give Americans access to a wealth of informational, educational, social and cultural resources. School children now are starting to reap the benefits of access to a world of educational information. Emerging telemedicine applications increasingly are expanding the reach of quality health care services throughout the nation. It is estimated that the information technology sector represents 50 percent of the nation's economic growth. Indeed, the continued development of the Internet's full potential could mean 50-70 percent more new industry jobs with additional economic growth of almost \$900 billion by the year 2005.

This unparalleled success has emerged in the context of policies that favor market forces over government regulation - promoting the growth of innovative, cost-effective, and diverse quality services. It is this same pro-competitive mandate that is at the heart of the 1996 Act. While questions have been raised as to whether certain information service providers now should be subject to telephone regulation, especially in the context of universal service policy, we urge the FCC to be mindful of the success of its long standing policies that have created an atmosphere where advanced services can thrive and the American public can benefit. Simply put, Congress has not required the FCC to prepare and submit a Report on Universal Service that alters this successful and historic policy. Moreover, were the FCC to reverse its prior conclusions and suddenly subject some or all information service providers to telephone regulation, it seriously would chill the growth and development of advanced services to the detriment of our economic and educational well-being.

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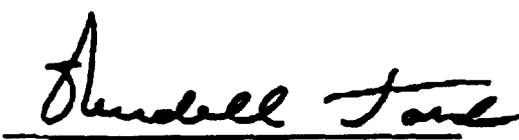
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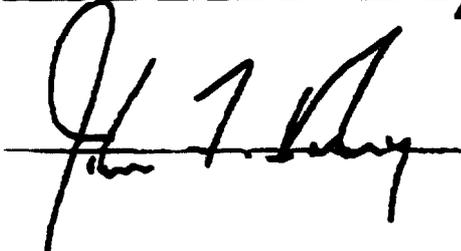
Some have argued that Congress intended that the FCC's implementing regulations be expanded to reclassify certain information service providers, specifically Internet Service Providers (ISPs), as telecommunications carriers. Rather than expand regulation to new service providers, a critical goal of the 1996 Act was to diminish regulatory burdens as competition grew. Significantly, this goal has been the springboard for sound telecommunications policy throughout the globe, and underscores U.S. leadership in this area. The FCC should not act to alter this approach.

In arguing for the extension of direct universal service obligations to ISPs, the development of "Internet telephony" services is cited as the primary reason why ISPs should contribute directly to universal service. While various types of Internet telephony now are being tested, such services currently are not good substitutes for traditional telephone service. Nevertheless, because the advent of Internet telephony does raise some important policy issues, we urge the FCC to carefully monitor developments in this area. In short, while we believe that it would be appropriate for the FCC to initiate an inquiry to better understand the emerging Internet telephony marketplace and its potential impact on the public switched network, given its early stage of development, such services should not become the excuse for regulating information service providers.

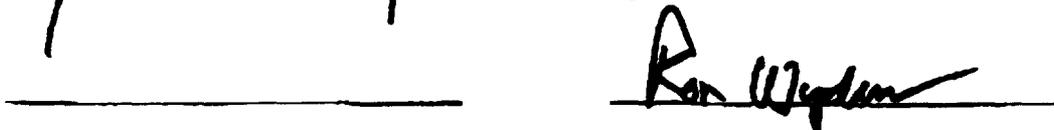
We look forward to the issuance of your final report to Congress on these issues. To assist you in your understanding of the Congressional perspective, please make this correspondence part of the public record in the FCC's proceeding.

Sincerely,







cc: The Honorable Susan Ness
The Honorable Harold Furchtgott-Roth
The Honorable Michael Powell
The Honorable Gloria Tristani



Federal Communications Commission
Office of the Secretary

To:

Ashcroft
Abraham
John Kerry
Wyden
Ford

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United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

96-45

Report To Congress

March 16, 1998

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MAR 23 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

The Honorable William E. Kennard
Chairman
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Dear Chairman Kennard:

As the Chairman of the Senate Committee on Commerce, Science, and Transportation, I wish to express my views on one of the principal issues the Commission will address in a report to Congress pursuant to Section 623 of Public Law 105-119.

Section 623 of the Commerce, Justice, and State Appropriations Act of 1998 directs the Commission to review its implementation of the universal service provisions of the Telecommunications Act of 1996 ("1996 Act"). Among other things, the Commission is directed to review its interpretation and application of the definitions of various terms added to the Communications Act by the 1996 Act; the impact of the Commission's interpretation of these definitions on universal service; the application of these definitions to "mixed or hybrid services"; and the extent to which the Commission's interpretation is consistent with the plain language of the Communications Act.

While the Commission's report is of the utmost importance, I wish to emphasize that the Commission should not interpret Congress's directive as an instruction to change its conclusions regarding the proper classification of Internet services. Nothing in the 1996 Act or the legislative history supports the view that Congress intended to subject information service providers to the current regulatory scheme applicable to common carriers which is, if anything, too intrusive and burdensome.

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The stated intent of the 1996 Act is to replace the current approach of prescriptive regulation of segmented markets with a "pro-competitive, deregulatory" paradigm. It was certainly not Congress's intent in enacting the supposedly pro-competitive, deregulatory 1996 Act to extend the burdens of current Title II regulation to Internet services, which have historically been excluded from regulation. Such a result would be directly contrary to the will of Congress as shown in Section 230(b)(2) of the 1996 Act, which declares unequivocally that it is the policy of the United States "to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation" (emphasis added). In short, it would be incompatible with both the letter and the intent of the 1996 Act if the Commission were to extend its regulations to this heretofore-unregulated new medium.

Congress deliberately structured section 254 of the Communications Act to ensure the continuing availability of basic telecommunications services at affordable rates throughout the Nation. At the same time, Congress directed that these subsidies, historically buried in cost allocations and bundled into the prices for retail and intercarrier services, be made explicit. This requirement was designed in part to ensure that only the minimum necessary subsidies were required from subscribers and carriers, and to expose the subsidy system itself to the kind of public scrutiny that was not possible prior to the enactment of the 1996 Act. Section 254 charges the Commission, in conjunction with the Federal-State Joint Board and the State public utility commissions, with developing a carefully-structured universal service system that furthers the goals of universal service in a manner that is fair to all consumers.

Section 254(h)(1) requires telecommunications carriers to provide necessary services to rural health care providers at rates comparable to those charged in urban areas, and to provide universal service to schools and libraries at a discounted rate. Section 254(h)(2) directs the Commission to establish competitively neutral rules to enhance access to advanced telecommunications and information services for health care providers, schools, and libraries. As you know, I am adamantly opposed to efforts to expand these directives to create large new bureaucracies and that siphon money unnecessarily from the fund into fund administration and thereby impose unwarranted costs on telephone companies and their subscribers. I am equally concerned that, in implementing these provisions in a "competitively neutral" fashion, the Commission not act in a manner that is contrary to the careful definitional scheme embodied in the 1996 Act.

The 1996 Act explicitly differentiated between "telecommunications,

"telecommunications services," and "information services." Each of these terms has a specific meaning, and while these terms obviously bear a close relationship to one another, they are clearly distinct. "Telecommunications" refers to the transmission of information of a user's choosing between two points, without any change in the form or content of the information. Telecommunications can be provided through individually negotiated contracts or on a common carrier basis. The provision of telecommunications on a common carrier basis - that is, to all users indifferently or to such segments of the public as to be effectively available to the public indifferently -- is "telecommunications service."

On the other hand, an "information service" is the offering of a capability for "generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications." As the Commission correctly noted, the House derived this definition of "information services" from the Modification of Final Judgment in the AT&T divestiture case, and during the House-Senate conference, the Senate receded to the House definition. This explanation of the origins of the definition of information services is laid out explicitly in the conference report on the 1996 Act. It is emphatically not the case that these definitions have no history or precedent in the Commission's rules or in court decisions.

While the capabilities that make a service an "information service" may also enable the transmission of information from one point to another, Congress distinguished between information services and telecommunication services to reflect the distinction set forth in the Modification of Final Judgment and the Commission's Second Computer Inquiry proceeding between those services that offer pure transmission capacity and others that somehow enhance that transmission capacity even if there is no change in the information transmitted. The adoption by Congress of separate definitions for "telecommunications," "telecommunications service," and "information service" must be understood in this historical context.

In particular, an information service is the offering of particular capabilities via telecommunications, but is itself not telecommunications or a telecommunications service. A service can be an "information service" even if it does not furnish content to the subscriber, but rather furnishes "the capabilities" to store, retrieve, or generate information. Thus, electronic mail, voicemail, and even Internet access - none of which may involve the furnishing of new information or content to a subscriber, and all of which may involve the transmission of information between two points of the user's choosing - are information services. Those who would classify these services as "telecommunications" because they enable the transmission of information of the

user's choosing ignore the separate statutory definition of "information services," and would essentially read the latter term out of the law for all but content-based services. This was not Congress's intent.

Congress made the clear distinction between the offering of pure transmission - telecommunications - and the offering of "information services" that are provided via telecommunications that enable customers to generate, store, or retrieve information. Only telecommunications services are subject to common carrier regulation. Extending common carrier regulation to information services such as e-mail, voicemail, and Internet access to regulatory burdens would be disastrous to the growth and development of services that have flourished over the last two decades in no small measure because they were not freighted with tariffing, resale, and other obligations imposed on common carriers. Nor is extending common carrier regulation definitionally, but forbearing from exercising such regulation, a satisfactory alternative. Quite aside from the fact that doing so would contradict both the letter and intent of the Act, the state of permanent uncertainty that this approach would unavoidably cause would chill future development of Internet-based services and thereby disserve the public interest.

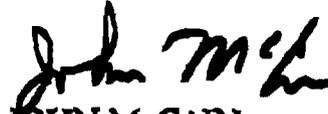
Recent public announcements about the advent of commercially available "Internet telephony" services suggest a possible partial convergence, in the future, between information services and telecommunications. It would be grossly premature, however, to attempt to address concerns about such services today, given their early stage of development.

It is impossible to predict where new technology will lead, and I believe that imposing the existing - and overly burdensome - telecommunications regulatory framework on these emerging new services and technologies is simply bad policy. As I am sure you know, the European Commission recently reached a similar conclusion in finding that Internet telephony in its current form should not be subject to regulation. In the final analysis, the answer is emphatically not to extend a regulatory regime that Congress has recognized to be outmoded in its current operation to new technologies. Instead, the Commission should devote its efforts to devising ways in which both the existing providers of telephony as well as new digital service providers are incented to provide new services on an efficient and largely regulation-free basis.

This letter is not written to advance the interests of any party to this proceeding. Please include this letter in the record of your pending proceeding, and otherwise treat it in conformity with all the Commission's procedural and ethical rules.

Thank you for your consideration of my views.

Sincerely,


JOHN McCAIN
Chairman