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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 Board on Universal Service	)	CC Docket 96-45
	)	
Forward-Looking Mechanism for High Cost Support for Non-Rural LECs	)	CC Docket 97-160

COMMENTS OF THE ASSOCIATION FOR
LOCAL TELECOMMUNICATIONS SERVICES

The Association for Local Telecommunications Services ("ALTS")[1], pursuant to Public Notice DA 98-715 in the above-referenced proceedings hereby submits its Comments on the proposal of the Ad Hoc Working Group[2] to modify the Commission's approach to determining support for non-rural and rural carriers in high cost areas. ALTS Comments are limited to the Ad Hoc Working Group's proposal and take no position on the other proposals on which comment was sought as ALTS has had

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[1] ALTS is the national trade association representing facilities-based competitive local exchange carriers.

[2] The Ad Hoc Working Group, a group formed under the auspices of the National Association of Regulatory Utility Commissioners ("NARUC"), submitted its proposal entitled "High Cost Support: An Alternative Distribution Proposal" to the Commission in a letter to the Commission from Peter Blum, Vermont Public Service Board to Magalie Roman Salas, FCC, dated April 10, 1998. Subsequently on April 27th, the Ad Hoc Group submitted an updated version of its proposal. All references herein are to the April 27th proposal.

insufficient time to review those proposals.

ALTS recognizes the difficulty of adopting a fair and reasonable universal service program to ensure access to telecommunications services in high cost areas. Because of the differing needs and concerns of the many consumers, carriers, and regulators involved in the process of adopting such a program, ALTS supports any attempts such as the one by the Ad Hoc Group to bring parties together to try to formulate a proposal that, while not perfect from any constituent's point of view, will be legally sufficient and acceptable to all concerned. The uncertainty surrounding the universal service programs is not good for the consumer who is the intended beneficiary of the programs, nor for the industry as a whole.

The Ad Hoc Group has a number of ideas that are worth further consideration. For example, ALTS believes that consideration of individual income factors, as suggested on pages 23-24 of the proposal, warrants further study. In addition, the estimate of the total size of the fund appears to be reasonable. At the same time, however, there are significant questions that are raised by a review of the proposal and ALTS submits that without clarification the proposal should not be adopted.

I. THE AD HOC WORKING GROUP'S PROPOSAL.

The Ad Hoc Working Group states that numerous principles guided the design of the plan. Of particular import to the

members of ALTS are the following:

- Collection and distribution of high cost support should be competitively neutral.

- Federal support should create appropriate incentives for investment in the network[3]

ALTS certainly supports these goals, but it is not clear that they would be met under the Ad Hoc proposal. Under the plan the calculation and distribution of high cost support would depend upon the following steps:

> 1. Using forward-looking cost models, calculate the difference between each state's average cost and the national average. Remove the 25% of these costs already covered by interstate revenues under separations.
>
> 2. Using reported embedded costs of incumbent carriers, calculate the difference between each state's average (embedded) cost and the national average. Remove the 25% already covered by interstate revenues under separations.
>
> 3. For each state, take the lesser of the amounts from step 1 and step 2. This is the minimum amount of federal support for each state.
>
> 4. Calculate hold-harmless support for each state. For most states, this consists of support under existing support systems (i.e. support for loops and switches). For states with above average embedded costs that currently make a net contribution to federal support, the hold-harmless amount is increased to ensure that the state will not have to increase its net contribution.
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> 5. Federal support under the proposal is the greater of this "hold-harmless" amount and the minimum amount from step 3.

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[3] Proposal at 2. ALTS also agrees with most of the other principles urged by the Ad Hoc Group.

> 6. State commissions would assign federal support first to carriers who would receive support under existing systems, and distribute remaining support (if any) according to plans adopted by the states and approved by the FCC to ensure consistency with the Telecom Act. . . .[4]

The Ad Hoc Working Group states that its proposal should apply to all carriers, both large and small, urban and rural, that serve high cost areas. In addition, the proposal states that the new plan would take effect on January 1, 1999.

ALTS has three major concerns with this proposal. First, the plan seeks to guarantee to the incumbent local exchange carriers certain amounts of support regardless of the cost of provision of service. While the Act clearly seeks to ensure service at reasonable prices in high-cost areas, it should not be read as any kind of an income guarantee for carriers in high cost areas. Second, the preference given to incumbent local exchange carriers in the receipt of Universal Service support is anticompetitive and inconsistent with the principles articulated above, which purportedly guided the development of the plan. Third, the proposal appears internally inconsistent and leaves a number of important decisions to the future. Therefore, despite the desire of most parties involved to come to some resolution of these matters in a timely manner, it seems inconceivable that the plan could take effect on January 1, 1999.

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[4] Id. at 3.

II. UNIVERSAL SERVICE FUNDING SHOULD ENABLE A LOCAL EXCHANGE CARRIER IN A HIGH COST AREA TO PROVIDE SERVICE AT A REASONABLE PRICE. IT SHOULD NEVER BE AN INCOME GUARANTEE FOR ANY CARRIER.

First and foremost it must be remembered that the purpose of the Universal Service provisions in the 1996 Act is to ensure that consumers in all parts of the nation have access to reasonably priced telecommunications services. As ALTS has argued many times, the best way to encourage efficiency in the provision of telephone service and to satisfy the Act's universal service goals is to encourage competition in all local markets. Competition will lower the cost of service, give consumers more choices and encourage the provision of better and different services.

The plan prepared by the Ad Hoc Working Group, however, in including a "hold-harmless" level for each state that "ensure[s] that no state, and no carrier, receives less support per line than it received under the old system"[5] provides an income guarantee to incumbents and does not encourage more efficient provision of service by incumbents. In no way can the universal service provisions of the 1996 Act be read as contemplating that result. The beneficiaries of universal service support must be consumers, not carriers.

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[5] Id. at 20.

III. ANY UNIVERSAL SERVICE SUBSIDY MUST BE DISTRIBUTED IN A COMPETITIVELY NEUTRAL MANNER AND MUST BE FULLY PORTABLE TO ANY CARRIER PROVIDING SERVICE.

As noted above, the plan calls for support to be distributed first to carriers that receive support under existing Universal Service systems. In the text of the proposal the Ad Hoc Working Group explains that the amount of support would be distributed in two portions, a "hold-harmless" portion and a discretionary portion. The hold-harmless amount would be distributed to eligible telecommunications carriers based upon prior federal support of that carrier. The problem with this is that the only carriers that previously received support are the incumbents. Competitive carriers on the other hand, have not previously been eligible for support and thus would not be eligible for any of the hold-harmless support. This is not competitively neutral and will discourage new entrants from providing service in high cost areas. This, in turn will result in fewer choices for consumers in those areas.

Congress did not enact a new section of the Communications Act in order to continue support in the same manner that it had been provided previously. Instead, the new section of the Act was intended to bring Universal Service subsidies into the open (the natural result of which would be to limit any subsidy to the minimum amount necessary to satisfy the Universal Service goals), and to encourage "[a]ccess to advanced telecommunications and

information series . . . in all regions of the country".[6] In addition the Commission has rightfully determined that distribution of Universal Service subsidies should be on a fair and competitively neutral basis, pursuant to Section 254(b)(7).[7] None of these goals are satisfied by the "hold-harmless" proposal which, instead of encouraging innovation will simply reward incumbent carriers for past investment.

Under the plan proposed by the Working Group, the discretionary portion (if there is any) would be distributed pursuant to a plan for distribution to be submitted to the FCC by each state. The states apparently would be allowed to design methods that it believes are appropriate for the distribution of the funds (if any) "as long as the plan meets the statutory goal of ensuring reasonably comparable rates in urban areas." Thus, there is no guarantee that the funds would be distributed in a competitively neutral manner[8] or even that the federal purposes of the Universal Service provisions of the Act will be satisfied.

IV. INCONSISTENCIES WITHIN THE PLAN AND UNANSWERED QUESTIONS PREVENT THE PLAN FROM TAKING EFFECT ON THE REQUESTED DATE.

In the introduction of the paper submitted to the Commission

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[6] 47 U.S.C. § 254(b)(2).

[7] cite to FR&O.

[8] While there is a statement on page 23 of the proposal that "[s]tate plans would also need to be competitively neutral" the fact that there would be 50 separate plans would make it almost impossible to guarantee competitive neutrality

the working group states that after identifying the cost of service using a forward looking proxy model and then embedded costs, step three would be to determine the "lesser amount from these two steps and that lesser amount would be the "minimum amount of federal support for each state."[9] However, in the body of the submission the working group states that step 3 "limit[s] support to the lesser of forward-looking need or embedded need [to] conserve federal financial resources . . . ."[10] Thus, it is not clear whether the lesser of the cost model or embedded cost is the lower or upper limit of federal universal service support.

In addition, there are numerous issues that are raised in the submission that would have to be addressed prior to any adoption of the proposal.[11] The proposal would be a major change to the Joint Board and Commission determinations relating to Universal Service. Even if the Commission finds some merit to the proposals it would make a mockery of the Commission's initial proceeding and the thousands of man hours that went into the

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[9] Id. at 3.

[10] Id. at 20.

[11] For example, as noted above the proposal states that each state would be required to submit a plan to the FCC relating to the distribution of the discretionary portion of federal support. The Commission would be extremely hard pressed to review 50 separate plans even if the states were able to submit such plans in a timely manner. In addition, the proposal states that the "FCC might want to seek public comment on whether state commission will require legislative authority to distribute federal funds in this manner." Proposal at n.48. Each of these steps would take an inordinate amount of time to complete.

initial proceeding to adopt the Working Group's proposal without a full set of comments and replies. There is simply insufficient time to do that prior to the January 1, 1999, date proposed in the plan for adoption.

CONCLUSION

For the foregoing reasons, the Commission should not adopt the Ad Hoc Working Group's proposal as it stands, but should continue to evaluate the proposal and work with all groups to attempt to come to a resolution of the high cost universal service issues that satisfies Section 254 of the Act, is competitively neutral, and results in subsidies that can be carefully quantified, targeted and explicitly linked to the provision of service to persons who might not otherwise be able to afford service.

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May 15, 1998

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of May, 1998, copies of the foregoing Comments of the Association for Local Telecommunications Services were served via first class mail, postage prepaid, or by hand as indicated to the parties listed below.

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