Proceeding: UNIVERSAL SERVICE Record 1 of 1

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Submission Type: CO Submission Status: ACCEPTED Viewing Status: UNRESTRICTED

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<PROCEEDING> Docket No. 96-45, DA 98-872
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<CONFIDENTIAL> n
<PHONE-NUMBER>610-807-5571
<DESCRIPTION> Proposed Revision of Maximum Collection Amounts for Schools and Librariesand
Rural Health Care Providers, Public Notice,
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sgarrigan@beth.k12.pa.us

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<TEXT> Dear FCC
The SLC estimates the requests for e-rate funding from districts to be
$2.02 billion.
Being aware of the possibility of reducing funding to $1.67 billion I would
like to make
the following comments in support of fully funding e-rate for this year.

Since the introduction of the internet as an educational tool this
district has been
pursuing many avenues to use this technology with our students. E-rate
meets a critical
need for our school district to bring high-quality educational services
over the Internet to
all of our students.

Reducing the funding now would place an undue hardship on our school
district, which
has invested much time and energy in a good-faith application for funding
for the current
budget year.

Proceeding: UNIVERSAL SERVICE | Record 1 of 1

Applicant Name: Karen Crane, State Librarian

Proceeding Name: 96-45 | Author Name: Karen Crane, State Librarian

Lawfirm Name: =20

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Submission Type: CO | Submission Status: ACCEPTED | Viewing Status: UNRESTRICTED

Subject:

DA Number: | Exparte Late Filed: | File Number:

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The E-Rate program has the potential for a national tragedy. From the very beginning, schools and libraries have relied upon the assurances of the FCC that 2.25 billion in funding would be available in a timely fashion. In early 1998, there was a basic offer and acceptance; subsequently, tens of thousands of program participants have performed, not just by attending training sessions, filling out applications, and writing technology plans, but by re-conceptualizing their existing technology plans and by disrupting their technology acquisition programs to better leverage E-Rate funding. While the FCC may think this falls short of a legal obligation, most program participants would disagree; at a minimum, the E-Rate program constitutes a moral obligation of financial support which the FCC has extended to schools and libraries in the name of the United States Congress.=20

This is not to say that the E-Rate program should not be reformed next year or the following year. Despite all the well-intentioned efforts of SLC staff, the implementation of this program is far from perfect. Minority critics in the Commission and the Congress have many telling points to make, but these are just too little too late when it comes prematurely aborting or crippling this year=92s E-Rate program.=20

In the absence of any legal enforcement mechanism, the FCC=92s explanation that savings from access rate charge reductions would automatically transform into universal service support seems excessively naive; this should have been a factual issue and not the political one it has become. While more time is needed to address this and other issues, E-Rate funding can neither be postponed nor curtailed. Schools and libraries across the nation are depending on the receipt of over two billion dollars of support this year. =20

We will continue to encourage Alaskan schools and libraries to apply for monies under the 1998 E-Rate program with the expectation that their applications have some chance of being funded this year. The constant controversy surrounding the E-Rate program, even as it has demanded more and more time and energy from school and library administrators, has frazzled the nerves of the program=92s most ardent supporters. There comes a time, however, when controversy must end, when promises made must become promises kept: there is no acceptable alternative to the school and library communities than to fund the 1998 E-Rate program as originally authorized.=20

Record 1 of 1

Proceeding:	UNIVERSAL SERVICE
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Proceeding Name:	96-45
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Viewing Status:	UNRESTRICTED
Subject:	
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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
	)	
	)	
	)	

Comments of AirTouch Communications

Proposed Revision of Maximum Collection Amounts for Schools and Libraries and Rural Health Care Providers

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May 22, 1998

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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
	)	
	)	
	)	

Comments of AirTouch Communications on

Proposed Revision of Maximum Collection Amounts for Schools and Libraries and Rural Health Care Providers

INTRODUCTION

AirTouch Communications, Inc., ("AirTouch") hereby submits its comments in response to the Public Notice released May 13, 1998, in the above-captioned proceeding.[1] AirTouch provides a variety of wireless telecommunications services, including cellular and paging, both domestically and internationally. In the Public Notice, the Bureau seeks comment on a proposal to increase the schools and libraries fund requirements for the second half of 1998 by $423 million dollars over the amount assessed for the first half.[2]

[1] "Common Carrier Bureau Seeks Comment on Proposed Revision of 1998 Collection Amounts for Schools and Libraries and Rural Health Care Universal Service Support Mechanisms," DA 98-872, CC Docket 96-45 (May 13, 1998).("Public Notice").

[2] Public Notice at 4. ("We seek comment on directing the [USAC] to collect no more than $524 million per quarter for the third and fourth quarters of 1998" - a total of $1.048 Billion). As the Public Notice observes at 2, a December 1997 Reconsideration Order directed the USAC to collect no more than $625 million for the first half of 1998, yielding a funding increase of $423 million dollars.

I. THE PROPOSED REVISIONS UNLAWFULLY DISCRIMINATE AGAINST WIRELESS CARRIERS AND OTHERS WHO DO NOT PAY ILEC ACCESS CHARGES

The ostensible basis for increasing these taxes on telecommunications carriers is that long distance carriers are estimated to enjoy a significant reduction in access charges.[3] In a separate statement, Commissioner Furchtgott-Roth asks parties to address, among other things, whether wireless carriers and others who do not pay access charges should still be required to pay proportionately higher fees, despite the fact that they have received no benefits from the proposed access charge reductions.[4]

The Commission's proposed action would unlawfully discriminate against wireless carriers and others who do not accrue any benefits from access charge reductions. Section 254(b)(4) of the Communications Act requires that all contributions to universal service mechanisms be collected on an equitable and non-discriminatory basis.[5] In the Commission's proposal, the reductions in access charges "offset" the increased burden on long-distance carriers. No such cost reductions "offset" the increased burden on CMRS providers and other carriers who do not pay access charges. While the net burden on long distance carriers is theoretically neutral, the net burden on these other carriers increases. This violates the statutory requirement. It is inequitable for

---

[3]Public Notice at 2-3.

[4]Public Notice, Statement of Commissioner Harold Furchtgott-Roth, May 13, 1998 at 1.

[5]47 U.S.C. § 254(b).

the Commission to raise the funding obligation on all carriers based on the premise that certain costs incurred by some carriers, and not others, are being reduced.[6]

In addition, the Commission's calculations demonstrate the inequity of the present system. In the Public Notice and the accompanying Report to Congress, the Commission acknowledges a point that AirTouch has made earlier: that the present system is discriminatory because Incumbent LECs are largely insulated from the costs of universal service contributions.[7] In the Public Notice, the Commission observes that long-distance carriers pay for most of the local exchange carrier contributions. The result is that those carriers pay 82.5% of the program's costs although, for example, in the first half of 1998 they were nominally responsible for only 28.7% of the 624.5 million in the fund.[8] This represents a serious flaw in the existing funding mechanism. Accordingly, AirTouch recommends that the existing mechanism simply be replaced with more broadly based end-user surcharges, rather than charges on carriers, to eliminate this discrimination.

---

[6]It is unclear whether the Commission is simply observing that access charges are expected to be reduced, or whether the Commission is deliberately increasing the "productivity factor" in the access charge regime, thereby driving down access charges with the intent of using that fact as the basis for increased universal service funding obligations. If the latter is the case, that would violate the Commission's previous policy statements that calculation of the productivity factor must be based on three "economically meaningful" criteria regarding actual LEC productivity. See "Price Cap Performance Review for Local Exchange Carriers," Fourth Report and Order, CC Docket 94-1, FCC 97-159, 12 FCC Rcd 16642 (May 21, 1997), para. 5. AirTouch agrees with Commissioner Powell that tying the funding level of any universal service program to reductions in access charges is seriously questionable. See Dissenting Statement of Commissioner Michael K. Powell, "Report to Congress," FCC 98-85, May 8, 1998 at 2.

[7]See Public Notice at 3, n.16; Comments of AirTouch Communications on Report to Congress, January 26, 1998 at 27.

[8]See Report to Congress, FCC 98-85, at para. 22 (2Q 1998 fund expects to receive $179 M from ILECs, $266 M from IXCs, $87 M from CMRS, and $92.5 M from other = $624.5 M; 179/624.5 = 28.7%).

Even if the Commission attempts to point to reductions in interconnection charges paid by CMRS providers to LECs, this is not sufficient to meet the non-discrimination requirement.[9] Neither the Public Notice nor the Report to Congress issued the same day demonstrate how these reductions provide "offsets" equal to that of the reductions in access charges. In order to meet the statutory requirement, any "offset" would need to be equal for all telecommunications carriers.

Moreover, the Commission cannot point to reductions in LEC-CMRS interconnection rates (or, for the most part, to access charges) as a source of "new" funding for the schools and libraries program since the reductions are the result of transitioning implicit high-cost support to an explicit fund. In order for such "offsets" to have any value, the Commission must count the same dollar twice. Claiming that increases in the tax burden of the schools and libraries fund are neutralized through these reductions is misleading. Because it would violate the statute, the Commission's proposed increase should not be adopted.

II. THE COMMISSION'S PROPOSED REVISIONS PERPETUATE MISTAKEN BELIEFS THAT UNIVERSAL SERVICE PROGRAMS CAN BE FUNDED WITHOUT CONSUMERS BEARING THE COSTS

It is fundamentally impossible as a matter of economics for the Commission to tax telecommunications carriers and yet avoid any rate impacts on the services they provide. The Public Notice seems to suggest that the Commission's proposals will allow the new

[9] See "Report to Congress," FCC 98-85, May 8, 1998, Attachment E at 3.

schools and libraries fund to increase in size without any new costs to consumers.[10] But even if "consumers' rates do not rise," as the Public Notice states, consumers will bear the burden. As Commissioner Chong explained in her separate statement regarding the Joint Board decision, the Commission should make no mistake about the fact that the ultimate contributor to new universal service programs will be consumers.[11]

It is a fundamental principle that even if a tax is nominally levied on carriers only, the burden of the tax is borne by consumers in addition to the owners and employees of the carriers themselves.[12] Thus, even if consumer rates do not rise, the effect of increased taxes is rather that the consumer enjoys a smaller reduction in long-distance prices than would otherwise be the case.[13] As Commissioner Furchtgott-Roth explains, the FCC has an opportunity to put more than $5 Billion dollars back in the pockets of ordinary Americans who purchase telecommunications services.[14]

---

[10]Public Notice at 2. AirTouch is puzzled by the Commission's interest in avoiding "rate churn." The Public Notice observes that if funding increases were not timed to access charge reductions, carriers might change their rates more than once in the space of a year. Id. But the Commission must certainly expect that, in competitive industries such as long-distance and CMRS, carriers will change rates frequently, offer a number of rate plan options, and constantly adjust to competitive market changes. Whatever the basis of this concern with "rate churn," it does not suggest a pro-consumer, pro-competitive view.

[11]Universal Service Recommended Decision, 12 FCC Rcd 87 (1996), Separate Statement of Commissioner Rachelle B. Chong.

[12]See Comments of AirTouch Communications on Report to Congress, January 26, 1998 at 19, n.32.

[13]AirTouch has previously explained that taxing certain telecommunications services, such as long-distance, to subsidize others results in deadweight losses of billions of dollars per year. Id. at 20, n.35 (Jerry Hausman study calculates deadweight loss of $2.25 for every dollar of tax placed on interstate telecommunications services). Moreover, the effect is the same whether the tax is explicit or implicit.

[14]Dissenting Statement of Commissioner Harold Furchtgott-Roth, Report to Congress, FCC 98-85, May 8, 1998 at 4.

This is true even if competition, innovation, market growth or other factors are contributing to aggregate rate decreases. The Commission correctly observes that customers of CMRS services are seeing significant reductions in prices notwithstanding new universal service obligations.[15] But this observation begs the question of whether consumers will bear the burden of these new obligations. The answer is, as it must be, that they will, and it is incorrect to suggest otherwise.

As Commissioner Powell points out, it is a fallacy to assume that one can "pay for" new universal service programs to support schools and libraries out of the Commission's reductions in access charges (or LEC-CMRS interconnection charges), maintain the current level of high cost support, and avoid any net effect to consumers. Because it fails to acknowledge that the reduction in access charges is largely tied to the transition to an explicit high-cost subsidy plan, the Commission's calculation of the proposed "acceptable" funding increase is misleading.

In the Public Notice, for example, the Commission calculates the funding increase for the schools and libraries program based on an access charge reduction of $700 million. But in the May 8 Report to Congress, the Commission identifies only a $35 million net decrease in IXC costs, once new explicit high cost fund payments are taken into account.[16] Particularly given the importance of ensuring that public information about these charges is accurate, the Commission should heed Commissioner Powell's

[15] See, e.g., Report to Congress, FCC 98-85, May 8, 1998, para. 27.

[16] Report to Congress, FCC 98-85, Attachment E at 5.

suggestion to "acknowledge that the Act's addition of various universal service programs to the traditional high cost, low income and other programs will require the overall amount of universal service subsidies to rise relative to the sum of implicit and other subsidies that existed prior to the Act's passage."[17]

New burdens on wireless carriers, in particular, are not "offset" by reductions in interconnection charges. LEC-CMRS interconnection charges were lowered toward forward-looking cost levels (as the 1996 Act directed) because the previous LEC rates included amounts necessary to support universal service provided by LECs.[18] These amounts were removed from access charges and interconnection rates and instead funded by explicit high-cost universal service programs, to which CMRS carriers contribute.[19]

Assuming that this process has taken place,[20] the net effect of reduced access charges or interconnection charges and new explicit high-cost payments is neutral - not a net reduction. New obligations to fund the schools and libraries fund are simply a new tax imposed on wireless carriers, the costs of which are not counter-balanced anywhere else. Consequently, any change in LEC-CMRS interconnection charges does not mitigate

[17]Dissenting Statement of Commissioner Michael K. Powell, Report to Congress, FCC 98-85, May 8, 1998 at 2.

[18]While access charges may also have been reduced for other reasons, such as increased LEC productivity, any reduction of LEC-CMRS costs toward forward-looking cost levels has been purely to eliminate either excess profits or implicit subsidies for high-cost and low-income service. See, e.g., Comments of USTA, 95-185 and the attached study (March 4, 1996) (explaining how LEC-CMRS interconnection rates include subsidies toward high-cost and low income universal service obligations).

[19]See "Report to Congress," May 8, 1998, para. 27.

[20]AirTouch believes some LEC interconnection rates still do not properly reflect forward-looking costs.

the fact that new funding obligations to pay for new programs for schools and libraries will be borne by consumers.

CONCLUSION

The proposal to increase schools and libraries funding obligations for all carriers on the basis that other costs of certain (but not all) providers are decreasing is patently discriminatory and violates the Communications Act. In addition, the Commission's proposal is based on an economic fallacy that it can introduce (much less increase) new funding obligations to support connections for schools and libraries without increasing carriers' costs or while hiding the costs from consumers. The proposal should not be adopted and in general, the Commission should not link access charge reductions to funding for the schools and libraries or rural health care universal service programs.

Respectfully submitted,

By:____________________
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May 22, 1998

Proceeding: UNIVERSAL SERVICE

Record 1 of 1

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CHRISTINE TODD WHITMAN
Governor

BLOSSOM A. PERETZ, ESQ.
Ratepayer Advocate
and Director

May
21, 1998

VIA EXPRESS MAIL
Maggie Roman Salas, Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Proposed Revision of Maximum Collection Amounts for Schools and Libraries and Rural Health Care Providers
Public Notice
CC Docket No. 96-45
DA 98-872

TO THE HONORABLE COMMISSION:

Enclosed please find an original and six copies of Comments to be filed with the Commission in the above-referenced matter. Please time/date stamp the additional copy and return it to the undersigned in the enclosed, stamped envelope. Also please note that an exact copy of these comments are being submitted electronically via the Internet.

Respectfully submitted,
BLOSSOM A. PERETZ, ESQ., RATEPAYER ADVOCATE, NJ DIVISION OF THE RATEPAYER ADVOCATE

By:____________________________
Lawanda R. Gilbert, Esq.
Assistant Deputy Ratepayer Advocate

cc: Sheryl Todd, Accounting Policy Division, Common Carrier Bureau (3)
ITS

Before the

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Proposed Revision of Maximum Collection Amounts for Schools and Libraries and Rural Health Care Providers	)))))	CC Docket No. 96-45
Public Notice	)	DA 98-872

COMMENTS OF THE NEW JERSEY DIVISION OF THE RATEPAYER ADVOCATE

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May 21, 1998

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INTRODUCTION

Pursuant to 47 *C.F.R.* §§ 1.49, 1.415, and 1.419, the New Jersey Division of the Ratepayer Advocate ("Advocate" or "Ratepayer Advocate") respectfully submits these comments on the Proposed Revision of Maximum Collection Amounts for Schools and Libraries and Rural Health Care Providers issued by the Federal Communications Commission (FCC) in the above-referenced Public Notice for the implementation of universal service directives under the Federal Telecommunications Act of 1996 ("Act" or "1996 Act").[1] The Ratepayer Advocate is a reorganized state agency created pursuant to the New Jersey Reorganization Plan No. 001-1994[2]. Our traditional role, to protect and advance the interest of residential ratepayers in New Jersey, has been broadened to include representation of all classes of ratepayers -- residential, commercial, industrial and small business -- and to be more involved in the policy and planning of laws and regulations which impact all New Jersey ratepayers. Our new mandate in the area of policy and planning is designed to afford all classes of consumers a stronger voice in long range planning and policy development. We consider New Jersey schools and libraries among the more

[1] 47 *U.S.C.* §§ 151 *et seq.*

[2] See *N.J.S.A.* 52:27E-50 *et seq.*

important and deserving classes of consumers, and have actively advocated on their behalf in a number of proceedings.

The FCC seeks comment on its proposal which ultimately affects the number of schools and libraries that will be successful in their quest for funding in the provision of discounted telecommunications services, as mandated by the 1996 Act. The FCC's proposal recommends a gradual phase-in of the universal service support mechanisms that will coincide with access charge reductions. To implement this "phase-in," the FCC proposes a reduction in the maximum amounts to be collected and spent during the initial year of implementation of the universal service support mechanisms, to a level which will not increase total dollars paid by long distance carriers for both access charges and universal service fund assessments. Under the FCC's proposal, the quarterly collection rates for the third and fourth quarter of 1998 would be limited to no more than $524 million/quarter for schools and libraries and $25 million/quarter for rural health care providers; providing a total funding for the 1998 calendar year of $1.67 billion for schools and libraries and $100 million for rural health care providers.

With regard to the proposal, the Ratepayer Advocate's comments are focused on emphasizing the importance of keeping the promise of the 1996 Act which contemplates the deployment of advanced telecommunications services for **all** eligible schools and libraries at discounted rates. If that promise is not realized, many children across the nation will be denied access to information age technology. We would not like to see that happen, and we don't believe that this is what Congress or the FCC intended.

I. ALL ELIGIBLE SCHOOL AND LIBRARY APPLICANTS SHOULD RECEIVE THE UNIVERSAL SERVICE BENEFITS PROMISED UNDER THE 1996 ACT.

The provision of access to information age technology for schools and libraries undoubtedly is one of the most important issues to be tackled by Congress and the FCC in this decade. The Report and Order[3] issued by the FCC in May 1997 (*Universal Service Order*), which adopted the recommendations of the Federal State Joint Board on Universal Service (Joint Board) provided an adequate framework to ensure that the nation's schools and libraries are able to meet the technological needs of all citizens in the information age. The recommendation of the Federal-State Joint Board, which was adopted and approved by the FCC, established the universal service fund for schools and libraries at $2.25 billion annually. That figure was carefully and deliberately calculated by the Joint Board as the amount required to ensure that **every** eligible school and library throughout the country receive the benefits mandated by

[3] *See* Federal State Joint Board on Universal Service, CC Docket No. 96-45, *Report and Order* (May 7, 1997).

Congress in the passage of the 1996 Act.

However, subsequent FCC decisions have materially weakened the framework established in the *Universal Service Order.* The ability of schools and libraries to rely on assistance from the federal schools and libraries fund appears increasingly uncertain, and has constantly deteriorated since May 1997. The original maximum collection amount of $1 billion for the first six months which was set forth in the *Universal Service Order* in May 1997 for support of schools and libraries nevertheless contemplated that the annual cap would remain at $2.25 billion. In December 1997, the FCC, on its own motion, reduced the collection level to $625 million for the first half of 1998 in its *Third Order on Reconsideration,*[4] though retaining intact the annual cap at $2.25 billion. In this current proceeding, the FCC is now proposing to reduce the level of collections in support of schools and libraries for the last half of 1998, and reduce the annual funding cap by some $580 million. Were the FCC to do that, there can be no doubt that many eligible schools and libraries will be denied benefits intended by the Act.

[4] Federal State Joint Board on Universal Service, CC Docket No. 96-45, *Third Order on Reconsideration* (December 16, 1997) at ¶1. (*Third Order on Reconsideration*)

Throughout its implementation of the universal service support mechanisms for schools and libraries, the FCC has continually stated that adjustments in the collection rate were aimed at preventing an accumulation of funding at levels that would exceed demand, and thereby impose unnecessary financial burdens upon carriers contributing to the fund.[5] However, the FCC also consistently emphasized that these reductions in the collection rate "would not jeopardize the sufficiency of the support mechanisms."[6] Although the intent of the FCC's current proposal to tie access charge reductions to the provision of discounts for schools and libraries in order to avoid excessive and unnecessary rate churn is a noble and well meaning goal, we must not lose sight of the fact that this will significantly decrease the availability of much needed funding for schools and libraries seeking to provide students with much needed access to advanced telecommunications services. Thus, regardless of the reasons for considering such a proposal, the hard facts that remain are pointed up by the FCC's own figures: the FCC has **already** received requests for $2.02 billion in funding, but now proposes to **collect** only $1.67 billion for the 1998 funding year. The irreconcilability of those figures means that a great many schools and libraries will be denied funding for critically needed access to educational technology.

The enormity of the resources needed to complete this task is clearly evident from the from the proposals filed with the fund administrator. However, the importance of the effort for our children and their future is equally compelling. According to a survey to determine interest

[5] *See Universal Service Order; Third Order on Reconsideration.*

[6] *Third Order on Reconsideration* at ¶4.

in the E-Rate program conducted by a coalition of schools and libraries organizations, the Education and Library Networks Coalition (EdLiNC), 67% of respondents said that the E-Rate will increase the amount of money they can spend on technology; 73% of respondents said that the E-Rate will increase the use of technology; and 57% said that the E-Rate will allow them to purchase new services.[7]

[7] Press Release, *Survey Finds 84% of Schools and Libraries in the US Intend to Apply for E-Rate Discount; Program a Huge Success, Demand for Funding Support from Schools and Libraries Corporation Confirms Overwhelming Need for E-Rate,* EdLiNC (date).