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October 26, 1998

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

RE: In the Matter of Federal/State Joint Board on Universal Service - CC 96-45; Forward Looking Mechanism for High Cost Support - CC 97-160; DA 98-715; **Ex Parte Comments of New York State Department of Public Service**

Dear Secretary Salas:

The New York State Department of Public Service (NYDPS) submits for filing an original and two (2) copies of its ex parte comments in the above-captioned matters.

Sincerely,

Lawrence G. Malone

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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
Forward-Looking Mechanism For High Cost Support	))	CC Docket No. 97-160 DA 98-715

EX PARTE COMMENTS OF
NEW YORK STATE DEPARTMENT OF PUBLIC SERVICE

The New York State Department of Public Service (NYDPS) submits the following comments in response to questions posed by the Federal/State Joint Board on Universal Service (Joint Board) and discussed during a conference call with other state commissions conducted by the Board on October 9, 1998. The questions relate to a series of issues concerning support mechanisms for "high cost" areas that were referred to the Joint Board by the Federal Communications Commission in July.[1]

I. Overview

The NYDPS supports the efforts of the Joint Board and Commission to implement programs to achieve the universal service goals of the Telecommunications Act of 1996 (the Act). As a threshold matter, telephone rates in the United States are generally affordable and meet the comparability principles enunciated in the Act. Thus, we believe the Joint Board and Commission should begin their deliberations with the rebuttable

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[1] In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Order and Order on Reconsideration (hereinafter Referral Order), FCC 98-160, adopted July 13, 1998, released July 17, 1998.

presumption that no increase in any carrier's total interstate revenue requirement currently is necessary to achieve the Act's universal service goals.

Section 254 of the Act sets forth the principle of state and the federal responsibility for universal service.[1] The Act, however, does not suggest that one universal service fund be adopted. State and federal universal service efforts share a common overall goal, but need not jointly address the components of universal service. For example, rate comparability between states can only be addressed by a federal mechanism, but intrastate "rate rebalancing" in the name of universal service is better done by those most familiar with local conditions (see also § 254(f)).

Both the Joint Board[2] and the Commission[3] have previously concluded that there existed three federal mechanisms to support "high cost" areas -- the Universal Service fund (high cost assistance), DEM Weighting, and Long Term Support (LTS). Neither the Joint Board nor the Commission determined that any other portion of the interstate access charge structure was or is

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1 Section 254(b)(5)- "There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service."

2 In the Matter of Federal-State Joint Board on Universal Service, CC Docket 96-45, Recommended Decision, FCC 96J-3, Adopted November 7, 1996, released November 8, 1996, para. 187.

3 In the Matter of Federal-State Joint Board on Universal Service, Report and Order, FCC 97-157, adopted May 7, 1997, released May 8, 1997, para. 208.

"implicit" universal service support. In its referral order,[1] the Commission now implies that such is the case and asks the Joint Board whether access charges should be reduced to transition this undefined and unquantified, implicit support to explicit support. To the extent implicit universal service support can be identified in current interstate access charges, it should be included for recovery through a federal high cost mechanism only to the extent it is removed from those access charges. We are, however, unable to assist the Joint Board in defining or quantifying any amount in interstate access charges that properly should be identified as universal service support because there has not been a thorough discussion of what constitutes "universal service support" in this context.

In view of the foregoing, the NYDPS urges the Joint Board to develop and recommend a federal support mechanism for "high cost" areas that does not increase the current total interstate revenue requirement. While it may be found that redistribution of currently available high cost support is desirable to improve "rate comparability," it has not been shown that the total amount of federal support need be increased. We further urge the Board not to recommend a federal universal service support mechanism that is deliberately designed to enable or assist states in the "rebalancing" of intrastate rates or creating intrastate universal service programs. Finally, we can offer the Board no advice on whether or how much universal

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1 Referral Order, para. 6, item (2)(a)

service support may now be implicit in interstate access charges.

II. Responses to the Joint Board's Specific Questions

1. What is the purpose of the high cost fund?

The fundamental purpose of a federal high cost fund is to offset, through interstate rates, a portion of costs of the local telephone network in areas with exceptionally high costs (i.e., to effect state-to-state revenue transfers to help defray exceptionally high local costs).

2. To what extent should the high cost fund be used to reduce implicit subsidies in interstate rates, intrastate rates, or both?

The federal high cost fund should NOT be used to make intrastate "subsidies" explicit, nor should receipt of such funds be conditioned in any way on any state's intrastate rate design.

The federal fund may be used to make interstate "subsidies" explicit only to the extent such implicit "subsidies" can be identified. However, we do not believe the universal service fund should be used simply to make additional interstate access charge reductions, unless and until implicit subsidies are identified.

3. How large should the fund be?

The current "high cost fund" for non-rural carriers (apparently, around $150 - $200 million) is sufficient. This amount refers only to the portion of the fund that is intended to lower intrastate costs in high cost areas. Again, until the implicit subsidies are identified, a larger fund is unnecessary.

4. Should the fund be capped?

Yes. Absent a change in the definition of "basic" service, there should be no need to increase federal high cost funding in a declining cost industry.

5. Should there continue to be a shared responsibility between the federal and state jurisdictions for the high cost fund? If so, what should be the respective roles of the state and federal jurisdictions (i.e., 75/25)?

We do not agree that responsibility for the current federal high cost effort is shared between the jurisdictions. The two jurisdictions share responsibility for ensuring universal service, but the intrastate jurisdiction bears no responsibility for funding the federal high cost program.

The 75/25 issue is a "red herring." The federal jurisdiction bears 100% of the responsibility for funding 100% of whatever federal high cost support is determined to be necessary. Whether and to what extent any state bears a responsibility to "fund" universal service is entirely up to that state and bears no presumptive relationship to the amount of federal support deemed necessary for that state.

6. Should the funds be directly disbursed by the federal administrator to companies or should the state have the option of receiving and disbursing the funds?

The federal administrator should disburse funds directly to carriers and adjust the separations process to ensure assignment of the appropriate additional costs to the interstate jurisdiction.

7. Should revenues from low-cost, high density states be used to fund universal service in high-cost, low density states (i.e., should high cost revenues flow from state to state), and, if so, should there be conditions, limits, or qualifications for the transfers?

Although Section 254 suggests this, such transfers should be limited in magnitude, as noted in our response to question one. They may be conditioned on the state's certification that the potential recipient carrier requires such funding, but may not be conditioned on the state taking any other action, in particular on the state implementing either intrastate "rate rebalancing" or a universal service fund.

8. Should the high cost fund be funded by interstate revenues, intrastate revenues, or both?

The federal high cost fund should be funded by interstate revenues only.

9. Should states (not carriers) be held harmless under the new fund, at least for some transition period? This may include states continuing to receive the same support, states limited to outflows at current levels, and/or states having their net inflow/outflow dollars remain the same.

States need not be "held harmless" per se, but if the total interstate revenue requirement is not increased, as we recommend, each state would, in fact, be "held harmless" on an outflow basis. In the event the Joint Board recommends changes to the specific allocation of the funds, it would be reasonable for increases and decreases to the carriers' funding levels to be transitioned over several years if necessary to mitigate significant rate impacts.

III. Conclusion

In conclusion, the NYDPS urges the Joint Board to develop and recommend a federal support mechanism for "high cost" areas that does not increase the current total interstate revenue requirement. We further urge the Board not to recommend a federal universal service support mechanism that is designed to enable or assist states in "rebalancing" their intrastate rates or creating intrastate universal service programs. Finally, we can offer the Board no advice on whether or how much universal service support may now be implicit in interstate access charges.

Respectfully submitted,

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Dated: October 26, 1998

CC Docket No. 96-45 In the Matter of

Federal-State Joint Board on Universal Service

CC Docket No. 97-160 In the Matter of
DA 98-715

Forward-Looking Mechanism for High Cost Support for Non-Rural LECs

Ex Parte Comments of New York State Department of Public Service

CERTIFICATE OF SERVICE

I, Jacquelynn R. Nash, hereby certify that on October 26, 1998 an original and two (2) copies of comments in the above-captioned proceeding were sent via Airborne Express to Magalie Roman Salas, Secretary to the Federal Communications Commission. In addition, copies were sent on October 26, 1998 via Airborne Express to:

Commissioner Susan Ness, FCC
Commissioner Gloria Tristani, FCC
Commissioner Harold Furchgott-Roth, FCC
Emily Hoffnar, Federal Staff Chair, FCC
Julia Johnson, State Chair, Florida PSC
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David Baker, Commissioner, Georgia PSC
Martha Hogerty, Public Counsel for the State of Missouri
Patrick Wood, III, Chairman, Texas PUC
Laska Schoenfelder, Commissioner, South Dakota PUC

Copies were also sent on October 26, 1998, via First Class Mail, postage prepaid, to all parties on the attached service list.

Jacquelynn R. Nash

Jacquelynn R. Nash

Dated: October 26, 1998
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