



**Attorney General  
Betty D. Montgomery**

December 22, 1998

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Office of the Secretary  
Magalie Roman Salas  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Room TW-A325  
Washington, DC 20554

Re: *In the Matter of Federal State Joint Board on  
Universal Service, CC Docket 96-45; Second  
Recommended Decision, DA 98-2410.*

Dear Ms. Salas

Enclosed, please find the original and six copies of the Comments of the Public Utilities Commission of Ohio in the above captioned matter.

Please return one stamped copy in the enclosed self-addressed stamped envelope.

Thank you for your assistance in this matter.

Respectfully submitted,

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FCC-MAIL ROOM

Before the

FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of	)	
	)	CC Docket 96-45
Federal-State Joint Board on	)	
Universal Service,	)	DA 98-2410
Second Recommended Decision	)	

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COMMENTS OF  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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**INTRODUCTION AND BACKGROUND**

On February 8, 1996, the President signed into law the Telecommunications Act of 1996 (1996 Act). Section 254(a)(1) of the 1996 Act required that within one month after the date of the enactment of the 1996 Act the Federal Communications Commission (FCC) shall institute a Federal-State Joint Board on Universal Service. The Federal-State Joint Board (Joint Board) consists of three commissioners of the FCC, four state commissioners, and a state-appointed utility consumer advocate nominated by a national organization of state utility consumer advocates.

On November 23, 1998, the Joint Board released its Second Recommended Decision to the FCC primarily focusing on high cost support for non-rural carriers. Specifically, in its Second Recommended Decision, the Joint Board proposes, among other things, that (1) no state should receive less support from the universal service high cost fund for non-rural carriers than it currently receives; (2) the FCC should replace the current 25/75 jurisdictional division of responsibility (*i.e.*, the FCC should determine if the cost of providing service is significantly above the national average, and if it is, determine if the state has the resources to provide the support needed;); (3) the FCC

should instruct carriers as to the extent that they are able to recover universal service charges from consumers; and (4) the FCC should take action to ensure that consumers are not misled as to the nature of universal service charges. The Joint Board's Second Recommended Decision does not address universal service funding for rural carriers, which will continue to receive funding on a cost-of-service basis until at least January 1, 2000.

On November 25, 1998, the Federal Communications Commission (FCC) released a Public Notice (DA 98-2410) inviting comment on the Joint Board's Second Recommended Decision. Comments responding to the Joint Board's recommendations are due at the FCC on December 23, 1998. The Public Utilities Commission of Ohio (PUCO or Ohio Commission) hereby submits its initial comments pursuant to the FCC's November 25, 1996 Public Notice requesting comments.

## **DISCUSSION**

### **Size of the Federal Support Mechanism**

The Joint Board recognizes that competition is currently a non-factor in determining the level of high cost support: "As competition threatens rate comparability or affordability in high cost areas served by non-rural carriers, it may be necessary to re-evaluate the appropriate level of federal support." Incumbent Local Exchange Carriers (LECs) to date have not demonstrated that implicit support has eroded as a result of competition" (Second Recommended Decision at Paragraph 50). The Ohio Commission agrees with this position. Until such time as significant competition in the local market

develops, any expansion of the existing universal service funding level for non-rural carriers is inappropriate.

The Ohio Commission believes that if the size of the fund is increased in order to ensure rates are "reasonably comparable" between urban and rural areas and among regions, such increase should not be based on a proxy model that is currently still in the development stage and for which no one has had the opportunity to evaluate the reasonableness of its output. The Joint Board also has not explicitly defined "reasonably comparable" in its recommendation. This lack of specificity makes it impossible to estimate what size of fund would result from the recommendation. We believe it is not appropriate for the FCC to make such an open-ended commitment as to the ultimate size of fund.

The PUCO does not object to a single national cost benchmark. We question, however, the arbitrary nature of the recommendation that the benchmark be set at between 115 and 150 percent of the national weighted average cost per line. We note that no justification for this recommendation is provided in the Second Recommended Decision. Given the vagueness of the recommendation for such a significant determinant of the size of the universal service fund it is, once again, not appropriate for the FCC to adopt this recommendation.

The Joint Board recommends that once high cost areas within a state are identified using the proxy models and the national cost benchmark, that state's ability to finance its own universal service needs to be determined. The recommended decision suggests several ways to make this determination but does not make a specific recommendation. As with the definition of "reasonably comparable" and the lack of a

final proxy model, there are not enough specifics on this methodology to allow meaningful comment. Until such details are forthcoming, the Ohio Commission continues to support the 75/25 split of responsibility between the state and federal jurisdictions.

Whatever methodology is ultimately chosen and whatever the size of the ultimate fund, we believe that an evaluation of company earnings should be conducted prior to declaring a carrier to be eligible to receive funds. There should be a determination that any increases in the universal service requirements cannot reasonably be funded by tapping current earnings of the incumbent LECs. The PUCO maintains that Universal Service Fund (USF) must not be used to support any carriers excess earnings.

### **Hold Harmless**

Regarding the amount of federal support provided to individual carriers, the Joint Board supported the FCC's commitment to Congress that no state should receive less federal high cost assistance than it currently receives. Accordingly, the Joint Board recommended that no non-rural carrier should receive less support than the amount it currently receives through explicit mechanisms. The Joint Board further qualified this recommendation with the statement that individual carrier's support may, in fact, be reduced due to the loss of customers to competing carriers; however, the overall amount of support within that study area would not be affected. (Second Recommended Decision at Paragraphs 51-53.)

The Ohio Commission submits that one of the primary objectives of the proxy model, as it was originally contemplated in CC Docket 80-86, was to remove any incentive for inefficiencies that may have resulted from cost-based calculations of USF support levels. In particular, the Ohio Commission notes that the FCC, in its 80-286 investigation, proposed a high cost funding model based on proxy costing standards to eliminate the perverse incentive for local carriers to become less efficient under the cost of service approach currently employed. In view of this, and consistent with our previously expressed interest in limiting the overall size of the federal fund, the Ohio Commission recommends that federal high cost support for non-rural carriers should equal either the amount that a carrier currently receives through explicit mechanisms, or the amount calculated through the proxy model, whichever is less.

### **Mechanism for Distributing Support**

The Joint Board, recognizing that some states lack the authority or the desire to impose constraints or conditions on the use of federal high cost support, recommends that the FCC require carriers to certify that they will apply federal high cost support in a manner consistent with section 254 of the 1996 Act. Consequently, the Joint Board recommends that that the FCC permit, but not require, states to certify that, in order to receive federal universal service high cost support, a carrier must use the funds in a manner consistent with section 254 (*e.g.*, the state might require that federal support be targeted to those customers living in the highest cost areas within a study area). Second Recommended Decision at Paragraph 59. The Joint Board observes that, to the extent the law permits, the FCC could reduce or eliminate federal high cost support if it finds

that a carrier has not applied its federal funding in a manner consistent with section 254(e), which provides that carriers receiving universal service support "shall use the support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." Second Recommended Decision at Paragraph 59.

The Ohio Commission supports the Joint Board's recommendation to require carriers to demonstrate that federal universal service funds are being used for their intended purpose (*i.e.*, to advance universal service and to make service in high cost service areas more affordable). The Ohio Commission notes that this provision is extremely important in a situation where the incumbent local exchange carrier is grossly exceeding a reasonable rate of return on regulated services. Consequently, the Ohio Commission recommends that states and the FCC ensure that high cost support is not simply increasing the incumbent carriers' profits. To this end, consistent with the Joint Board's recommendation, states should be afforded the opportunity recommend to the FCC that federal support be denied any carrier that is exceeding a reasonable rate of return. Moreover, as a precondition of federal universal support, carriers should be required to demonstrate to the FCC, on a study area by study area basis, that federal high cost funding is necessary to maintain or advance universal service.

The PUCO observes that it is only reasonable to assume that, to the extent carriers are being assessed federal universal service support charges, such charges will be eventually borne by consumers through either surcharges or charges bundled in rates for other services. To this end, the FCC and the states must ensure that consumers are not supporting the over earnings of carriers. In support of its position on this matter, the PUCO notes that Guideline XIII in Case No. 95-845-TP-COI (*i.e.*, Ohio's local

competition proceeding) requires that unless the PUCO finds it otherwise appropriate because the involved carrier is subject to competition, ILECs are eligible for high cost funding only if such carriers return on equity does not exceed 12 percent. The guideline further provides that the ILEC must not be exempt from competition pursuant to section 251(c) of the 1996 Act and the PUCO's local competition guidelines.

### **Assessing Contributions From Carriers**

The Joint Board notes that, in its Universal Service decision, the FCC determined that assessment of contributions for the interstate portion of the high cost and low income support mechanisms shall be based solely on the end-user interstate telecommunications revenues, and assessments of universal service support for eligible schools, libraries and rural health care providers shall be based on interstate and intrastate end user revenues. The FCC also concluded that carriers shall be permitted to recover their contributions to universal service support mechanisms only through rates for interstate services. Second Recommended Decision at Paragraph 62.

The Joint Board indicates that its recommendation on this matter is tentative pending the decision of the Fifth Circuit Court on whether the FCC may properly place assessments on all revenues (both intrastate and interstate) for universal service contributions. The Joint Board recommends that, if the Fifth Circuit rules that the FCC may place assessments on intrastate and interstate revenues, the FCC may want to adopt that methodology for high cost support. However, if the FCC finds that it intends to base federal support on all revenues, the FCC should find that states may do

the same for their intrastate mechanisms. Second Recommended Decision at Paragraph 63.

Regardless of the Fifth Circuit's decision, the Ohio Commission maintains that the FCC should continue to adhere to its policy that federal high cost and lifeline universal assessments should be recovered through charges on interstate services only. If the FCC were to permit the recovery of federal universal service programs through charges to end users for both interstate and intrastate usage, carriers would erroneously be permitted to recover under the intrastate jurisdiction costs for federal lifeline and high cost assistance that are incurred by the carrier under the interstate jurisdiction. Moreover, if the FCC adopts the position that it should base assessments (and the recovery of assessments) for federal high cost support on the LECs' intrastate and interstate revenues, local service rates could increase perversely contrary to the goal of promoting universal service. However, if the FCC determines that it will allow the recovery of federal universal service charges through charges for interstate and intrastate services (and the Fifth Circuit's decision allows for such charges), the Ohio Commission supports the Joint Board's recommendation that states also be permitted to place assessments on both interstate and intrastate service revenues to recover costs involved with intrastate programs.

#### **Carrier Recovery of Universal Service Contributions From Consumers**

The Joint Board recognizes that the choice of whether to collect universal service assessments from end users via a line-item charge on their bills should remain with the carriers, and that carriers are free to tell consumers that the carrier is required to pay to

support universal service. However, the Joint Board recommends that the Commission give careful consideration to a rule that provides that, for carriers that choose to pass through a line item charge to consumers, the line item assessment be no greater than the carrier's universal service assessment rate. The Joint Board states that such a rule will help prevent consumers or classes of consumers from being charged excessively for a carrier's universal service contribution. The Joint Board also seeks to prevent carriers attempts to exercise market power and recover through universal service, believing that they can describe those charges as mandated by the Commission or federal action. Furthermore, the Joint Board is concerned that consumers may be less likely to engage in comparative shopping for a carrier if they are led to believe that certain charges are fixed by the FCC or federal government. Second Recommended Decision at Paragraph 69.

The PUCO concurs with the recommendation of the Joint Board concerning the pass through of universal service charges. Allowing any carrier to pass through universal service charges to its customers at a rate greater than the carrier's universal service assessment is both anti-competitive and misleading. If the FCC adopts the Ohio Commission's recommendation to continue to limit the recovery of universal service funding costs/payments to additional charges on interstate services only, we observe that LECs will recover their USF contributions through additional interstate access charges to IXC's. Consequently, IXC's will be required to pay USF related expenses in two ways: (1) through charges assessed to IXC's directly from the federal USF administrator, and (2) through interstate access surcharges rendered by the LECs. Taking this scenario into consideration, the FCC may want to contemplate permitting

IXCs to recover both charges (*i.e.*, the charges rendered by the USF administrator and the additional USF related charges included in the LECs' access charges).

## CONCLUSION

In closing, the PUCO wishes to thank the FCC for the opportunity to file comments responding to the Joint Board's Second Recommended Decision.

Respectfully submitted,

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