

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL
RECEIVED

DEC 23 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In The Matter of)

Federal-State Joint Board on)
Universal Service)

CC Docket No. 96-45
DA 98-2410

COMMENTS OF THE
TELECOMMUNICATIONS RESELLERS ASSOCIATION
ON SECOND RECOMMENDED DECISION

The Telecommunications Resellers Association ("TRA"),¹ through undersigned counsel and pursuant to *Public Notice*, DA 98-2410, released November 25, 1998, hereby comments on the *Second Recommended Decision of the Federal-State Joint Board on Universal Service*, FCC 98J-7, released November 25, 1998 ("*Second Recommended Decision*").² TRA has actively supported the efforts of the Joint Board and the Commission in furtherance of the equitable implementation of universal service requirements set forth in Section 254 of the Telecommunications Act of 1996³ and commends the Joint Board for its continued efforts to advance this goal here. The *Second Recommended Decision* sets forth numerous

¹ A national trade association, TRA represents nearly 800 entities engaged in, or providing products and services in support of, telecommunications resale. TRA was created, and carries a continuing mandate, to foster and promote telecommunications resale, to support the telecommunications resale industry and to protect and further the interests of entities engaged in the resale of telecommunications services. TRA is the largest association of competitive carriers in the United States, numbering among its members not only the large majority of providers of domestic interexchange and international services, but the majority of competitive local exchange carriers.

² In the Matter of Federal-State Joint Board on Universal Service (Second Recommended Decision), CC Docket No. 98-45, FCC 98J-7 (Nov. 25, 1998) ("Second Recommended Decision").

³ Pub. L. No. 104-104, 110 Stat. 56, § 254 (1996).

No. of Copies rec'd
List ABCDE

016

recommendations concerning the appropriate structure for facilitating the determination of federal high cost support for non-rural carriers providing supported telecommunications services in geographical areas where telephone service would otherwise be unreasonably expensive. These measures include continued reliance on forward-looking economic cost to determine the appropriate level of federal high cost support, reduction in interstate access charges to reflect the receipt of federal universal service support, and application of a nationwide, uniform standard to evaluate the level of high cost support required by non-rural carriers. TRA supports these recommendations, which are likely to advance the Commission's ultimate goal of increasing subscribership by keeping rates for supported services affordable.

The *Second Recommended Decision* also addresses issues arising out of carrier recovery of universal service assessments from consumers. TRA agrees with the Joint Board that Commission guidance concerning acceptable parameters for carrier recovery of universal service assessments from consumers would be beneficial to both carriers and consumers alike. TRA therefore strongly supports the development of "safe harbor" language which may be utilized by carriers to convey information concerning universal service assessments to consumers. At the same time, however, TRA continues to support as both wholly appropriate and necessary the Commission's policy decision that "carriers retain the flexibility to structure their recovery of the costs of universal service in many ways."⁴ Carrier flexibility would be significantly diminished, however, should the Commission adopt the recommendation of the Joint Board that the Commission undertake a comprehensive prescriptive effort, through its separate Truth-in-Billing

⁴ In the Matter of Federal-State Joint Board on Universal Service (Report and Order), 12 FCC Rcd. 8776, ¶ 855 (1997); *recon.*, FCC Rcd. 10095 (1997); *further recon.*, FCC 97-411 (rel. Dec. 16, 1997); *further recon.*, 13 FCC Rcd. 5318 (1997); *appeal pending sub. nom. Texas Office of Public Utility Counsel v. FCC*, Case No. 97-60421 (5th Cir. 1997) ("Universal Service Report and Order").

proceeding, addressing all aspects of the recovery of universal assessments from consumers and determining the precise means by which such contributions may be recovered. This level of Commission oversight would in large measure eliminate the flexibility granted carriers by the Commission to integrate recovery of universal service contributions into their overall business plans as dictated not by Commission fiat, but rather by market conditions facing those carriers. TRA urges the Commission to refrain from the adoption of overly restrictive or minutely detailed regulations which would have the effect of limiting carriers' ability to respond in a flexible manner to conditions encountered in an increasingly competitive environment.

In the *Second Recommended Decision*, the Joint Board states that "[w]e continue to believe that federal high cost support should be based on forward-looking economic costs."⁵ TRA concurs in the Joint Board's recommendation. As the Joint Board has previously held, "it is vital that the Commission use forward-looking economic costs as the basis for determining support levels. . ."⁶ This is true because reliance on embedded costs, whether those costs are above or below forward-looking costs, would provide distorted information to incumbents and new entrants alike, encouraging inefficient investment. Indeed, the Joint Board felt, and the Commission agreed, that "support based on embedded costs could jeopardize the provision of universal service."⁷ A support structure based upon forward-looking economic costs, on the other hand, "will allow us to construct a universal service support mechanism that will preserve and

⁵ Second Recommended Decision, FCC 98J-7 at ¶ 27.

⁶ In the Matter of Federal-State Joint Board on Universal Service (Recommended Decision), 12 FCC Rcd. 87, ¶ 275 (1996).

⁷ Id. Holding that "a forward-looking economic cost methodology is the best means for determining the level of universal service support," the Commission noted that such a cost methodology "creates the incentive for carriers to operate efficiently and does not give carriers any incentive to inflate their costs or to refrain from efficient cost-cutting." Universal Service Report and Order, 12 FCC Rcd. 8776 at ¶ 266.

advance universal service and encourage efficiency."⁸ These concerns are no less valid here, where the Joint Board strives to provide a more definitive framework for determining a level of federal support sufficient not only to maintain continued affordability of telephone service but also to ensure "reasonable comparability" of rates between urban and non-urban areas.

TRA remains a staunch advocate of the reduction of interstate access charges to cost and wholeheartedly agrees with the Joint Board's assessment that the Commission has the authority to "eliminate implicit support from interstate access rates".⁹ Indeed, TRA has recently urged the Commission, in connection with the refreshing of the record in the ongoing Access Charge Reform rulemaking proceeding, to take affirmative steps to reduce interstate access charges to cost.¹⁰ Accordingly, TRA agrees with the Joint Board that as implicit support is removed from interstate access charges and replaced with explicit universal service support, "interstate access rates, such as the carrier common line charge (CCLC), presubscribed interexchange carrier charge (PICC), or subscriber line charge (SLC), be reduced dollar for dollar to reflect the corresponding explicit support."¹¹

Finally, as the Joint Board notes, although both rate setting methods and goals may vary across jurisdictions,¹² "the need for nationwide reasonably comparable rates" is a significant

⁸ Id. at ¶ 276.

⁹ Id. at ¶ 23.

¹⁰ See, generally, Comments and Reply Comments of the Telecommunications Resellers Association, In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers; Amendment of the Commission's Rules Regarding Access Charge Reform and Price Cap Performance Review for Local Exchange Carriers, CC Docket Nos. 96-262, 94-1, RM No. 9210, (filed October 26, 1998 and November 9, 1998, respectively).

¹¹ Second Recommended Decision, FCC 98J-7 at ¶ 23.

¹² Id. at ¶ 19.

goal in restructuring universal service mechanisms.¹³ As defined in the *Second Recommended Decision*, "reasonable comparability . . . refer[s] to a fair range of urban/rural rates both within a state's borders, and among states nationwide."¹⁴ TRA agrees with the Joint Board's conclusion that the establishment of a consistent nationwide measurement of rate comparability will be difficult without a national standard and thus supports the recommendation that the Commission "reconsider its decision to allow state cost studies to be used in place of the federal model for non-rural companies . . . it is more appropriate that the federal universal service support mechanisms be based upon a national yardstick for determining cost."¹⁵

The *Second Recommended Decision* goes on to urge the Commission, through its separate Truth-in-Billing proceeding, to consider the establishment of "standard nomenclature that carriers could use on their bills to consumers regarding universal service charges" and further suggests "'Federal Carrier Universal Service Contribution' as standard nomenclature describing any universal service line item on consumer bills."¹⁶ TRA does not object to adoption of "Federal Carrier Universal Service Contribution" as standard nomenclature. Indeed, TRA's carrier members have been diligently attempting to comply with the obligation to provide consumers "complete information regarding the nature of the universal service contribution" and "careful[ly] convey information in a manner that does not mislead by omitting important information"¹⁷ without describing universal service assessments as either a governmentally mandated tax or

¹³ *Id.* at ¶ 2.

¹⁴ *Id.* at ¶ 19.

¹⁵ *Id.* at ¶ 31.

¹⁶ *Id.* at ¶ 72.

¹⁷ Universal Service Report and Order, 12 FCC Rcd. 8776 at ¶ 855.

surcharge. These carriers would welcome more concrete guidance from the Commission, including adoption of safe harbor standard nomenclature by which the universal service contribution could be uniformly identified on end user bills.

At the same time, however, as TRA explained in its Comments in the Truth-in-Billing proceeding, billing remains a critically important competitive tool for small carriers, used as one of the key means of differentiating their services. Indeed, carriers go to great lengths to custom-tailor a billing format responsive to the particular business needs of individual business customers. It is essential to the maintenance of good customer relationships that carriers retain the ability to meet the billing format needs dictated by their end user customers. In recognition of these important competitive issues, the Commission should refrain from micromanaging the billing process to the point of dictating the precise manner, the precise amount of universal service contribution which may be assessed upon particular consumers, and the precise language which must be used by carriers choosing to do so. Providing a safe harbor description of charges designed to recover universal service contributions which carriers may -- but need not -- utilize, on the other hand, could alleviate much of the confusion and uncertainty currently facing carriers who for reasons of competitive necessity choose to pass through or recover universal service contributions as consumer bill line items rather than through generalized rate increases. And unlike the Joint Board's recommendation "that the Commission provide to telecommunications carriers that contribute to universal service strict guidance regarding the extent to which they can recover their universal service contributions from consumers,"¹⁸ the development of consensus safe harbor language would provide that guidance without unduly restricting carrier flexibility in the recovery of universal service assessments.

¹⁸ Second Recommended Decision, ¶ 68.

The Commission has established a mandatory contribution mechanism pursuant to which telecommunications common carriers are obligated to remit funds to a governmentally established universal service fund administrator in support of federal universal service programs. In so doing, the Commission has acknowledged that carriers will need to compensate for the imposition of this explicit cost of supporting universal service mechanisms. As one means of doing so, the Commission has expressly sanctioned the recovery of universal service contributions from end users.¹⁹ Despite the mandatory nature of carrier contributions, however, the Commission has cautioned carriers against identifying line items for the recovery of universal service assessments from consumers as a "tax" or a "surcharge" in any way mandated by the federal government. Thus, carriers unwilling or unable to accept an outright reduction in revenues or to compensate for the assessment of universal service contributions through general rate increases (the only alternatives to end-user recovery of assessments) have struggled to accurately describe universal service contribution recovery without the ability to use the two words most suited to the purpose, "tax" or "surcharge".

TRA understands the Commission's reluctance to be perceived as the initiator of a tax, a "charge by the governmental on the income of an individual, corporation, or trust . . . [t]he objective . . . [of which] is to generate revenue to be used for the needs of the public".²⁰ Unfortunately, adoption of the Joint Board's well-intentional, but in this respect ill-advised, recommendation -- that the Commission exercises its official authority to mandate the precise amount carriers may recover from individual customers and in precisely what form such recovery may be accomplished -- goes far beyond simply providing guidance to carriers to facilitate their

¹⁹ Universal Service Report and Order, 12 FCC Rcd. 8776 at ¶ 855.

²⁰ Black's Law Dictionary, 6th Edition, West Publishing Co. (1990).

efforts to convey the nature of the universal service contribution line item in a straightforward and nonmisleading manner. While the issuance of guidelines is certainly not equivalent to the imposition of a tax, implementation of the Joint Board's recommendation would effectively reduce the Commission to nothing more than a taxing authority and accordingly, should be avoided. To the extent, however, that the Commission elects to adopt the Joint Board's recommendation, it should at a minimum openly acknowledge the effect of that decision. Under those circumstances, it would be disingenuous for the Commission to continue clinging to the notion that the universal service assessment is not a tax.

Respectfully submitted,

**TELECOMMUNICATIONS
RESELLERS ASSOCIATION**

By: 
Charles C. Hunter
Catherine M. Hannan
HUNTER COMMUNICATIONS LAW GROUP
1620 I Street, N.W.
Suite 701
Washington, D.C. 20006
(202) 293-2500

December 23, 1998

Its Attorneys