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December 22, 1998

Hon. Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, S.W., Rm. TW-A325
Washington, D.C. 20554

Re: In the Matter of Federal-State Joint Board On
Universal Service - CC Docket No. 96-45, DA 2410

Dear Ms. Salas:

Enclosed is the original and six copies of the Comments of the New York State Department of Public Service on the Joint Board Second Recommended Decision in the above-captioned proceeding. A copy has been sent to the Commission's copy contractor, International Transcription Service.

Sincerely,

Lawrence G. Malone

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Enclosure

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Before the
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Federal-State Joint Board On) CC Docket No. 96-45
Universal Service)

COMMENTS OF THE
NEW YORK STATE DEPARTMENT OF PUBLIC SERVICE
ON JOINT BOARD SECOND RECOMMENDED DECISION

FILED BY
THE NEW YORK STATE
DEPARTMENT OF PUBLIC SERVICE

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Cheryl L. Callahan
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Dated: December 22, 1998
Albany, New York

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

In the Matter of)
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Federal-State Joint Board On) CC Docket No. 96-45
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NEW YORK STATE DEPARTMENT OF PUBLIC SERVICE
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INTRODUCTION AND SUMMARY

The New York State Department of Public Service (NYDPS) submits these comments in response to the Common Carrier Bureau Notice (DA 98-2410) requesting comment on the Universal Service Joint Board's Second Recommended Decision (FCC 98J-7) regarding high cost universal service support mechanisms for non-rural carriers. The Commission referred the following issues to the Joint Board:

1. An appropriate methodology for determining support amounts to be provided by federal mechanisms;
2. The extent to which federal universal service support should be applied to the intrastate jurisdiction; and
3. The extent and manner in which carriers can recover federal universal service contributions through rates, surcharges or other means.¹

The NYDPS appreciates the extensive efforts made by both the Commission and the Joint Board to solicit and consider input from all interested parties, particularly the states, on

¹ Referral Order, FCC 98-160 (July 17, 1998).

Comments of the New York State Department
of Public Service on Joint Board Second
Recommended Decision - CC Docket No. 96-45
December 21, 1998

these issues. We urge the Commission to continue seeking the Joint Board's counsel as well as input from interested parties as the process of refining the cost model and specifying the parameters of the Joint Board's recommended formula unfolds.

As telephone rates are generally affordable and meet the comparability principles enunciated in the Telecommunications Act of 1996 (the Act), the federal high cost fund need not be increased. Further, the federal fund should not be designed in a manner that preempts rate design, a responsibility of state regulatory agencies. Finally, federal universal service contributions should be funded from interstate rates.

DISCUSSION

Consistent with the requirements of the Act, the Joint Board enumerates three potential goals of a federal universal service high cost fund -- (1) mitigate extreme average cost differentials among states (rate comparability), (2) replace implicit interstate support, and (3) replace implicit intrastate support. Defining the problem in terms of these three distinct purposes, as the Joint Board has done, aids immeasurably in analyzing the issues and developing appropriate solutions. We agree with the Joint Board's conclusions with respect to each of these three issue areas.

Comments of the New York State Department
of Public Service on Joint Board Second
Recommended Decision - CC Docket No. 96-45
December 21, 1998

The NYDPS, also, concurs with the general thrust of the Joint Board's analysis and, in particular, its conclusions with respect to the appropriate purposes and size of a federal high cost mechanism. The Recommended Decision correctly observes that the purpose of the federal high cost mechanism has been and should continue to be to mitigate extreme average cost differentials among states. The Joint Board also concluded that, as the existing federal high cost mechanism has generally succeeded in enabling states to enjoy reasonably comparable rates, it need not become "significantly larger" (para. 49). We agree and believe that currently no increase in the federal fund is necessary to achieve the Act's universal service goals. We urge the Commission to hold these conclusions as primary objectives as it works with the Joint Board to develop a specific high cost funding mechanism for non-rural study areas.

The Joint Board also concluded that, while the Commission has the authority to identify and remove implicit support in interstate access charges (para. 23), the states hold such authority to remove implicit support in intrastate rates. The Recommended Decision correctly observed that "[s]tates possess the jurisdiction and responsibility to address these implicit support issues through appropriate rate design and other mechanisms within a state" and that "[t]he federal support

Comments of the New York State Department
of Public Service on Joint Board Second
Recommended Decision - CC Docket No. 96-45
December 21, 1998

mechanism should not be contingent upon, nor should it require, any particular action by the state" (paras. 25 and 26).

We agree that states bear the responsibility of dealing with intrastate support mechanisms and may not be required to establish any particular intrastate mechanism as a condition of obtaining federal universal service support. What was left unsaid, but follows logically, from the Recommended Decision's acknowledgment of state jurisdiction over this matter, is that addressing implicit intrastate support issues is not a proper role of the federal support mechanism. We ask the Commission, therefore, to make this finding. Further, the federal support mechanisms should not intrastate rate design issues. The Joint Board acknowledged and supported the Commission's "hold harmless" commitment (para. 4) and suggested that no non-rural carrier receive less than its current level of federal high cost support (para. 53). While we share the goal of mitigating significant rate impacts (para. 51), we do not agree that existing levels of federal high cost funding should be preserved in perpetuity, especially where the new mechanism would suggest that funding should be reduced or eliminated. If the new mechanism accurately identifies federal funding needs, there can be little justification for maintaining "unneeded" support. Indeed, the outcome of such a policy would undermine the Joint Board's

Comments of the New York State Department
of Public Service on Joint Board Second
Recommended Decision - CC Docket No. 96-45
December 21, 1998

recommended goal that the size of the federal fund not increase significantly. Further, it could cause concomitant unnecessary increases in consumers' bills. We, therefore, urge the Commission to allow support reductions indicated by the new mechanism to occur at the same time as any support increases, whether on a flash cut basis or transitionally.

Finally, the Joint Board tentatively concludes, pending the outcome in Texas Office of Public Utility Counsel v. FCC, No. 97-60421 (5th Cir. 1997), that the Commission may consider assessing universal service contributions based on carriers' interstate and intrastate revenues.² If the Commission does base federal contributions on total revenues, no portion of the cost should be recovered through intrastate rates.³

CONCLUSION

Federal high cost efforts should mitigate extreme average cost differentials among states to enable reasonable rate

² The Commission previously concluded that the federal universal service high cost support contributions would be based solely on interstate revenues. However, it, also, concluded that it could assess carriers on the basis of total revenues -- both interstate and intrastate -- and direct carriers to seek recovery of their federal contribution in part from intrastate rates. Universal Service Order, 12 FCC Rcd 8776, para. 807.

³ The Act preserves state jurisdiction over intrastate rates. 47 U.S.C. §§152(b), 254. This issue is under review in Texas Office of Public Util. Counsel v. FCC.

Comments of the New York State Department
of Public Service on Joint Board Second
Recommended Decision - CC Docket No. 96-45
December 21, 1998

comparability. Such federal support should be eliminated or reduced where the evidence indicates that current levels of support are no longer necessary.

Further, the federal program should not be designed to enable or effect intrastate rate design, now or in the future, and it may not direct that carriers recover their interstate costs from intrastate rates. We look forward to working cooperatively with the Commission in the development of the federal universal service program.

Respectfully submitted,



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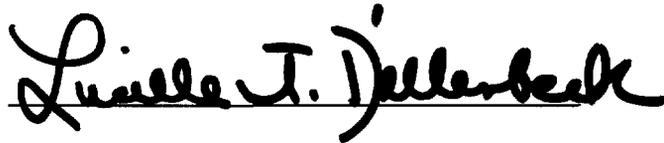
Dated: December 22, 1998
Albany, New York

In the Matter of

Federal-State Joint Board On Universal Service
CC Docket No. 96-45

CERTIFICATE OF SERVICE

I, Lucille T. Dillenbeck, hereby certify that an original and six (6) 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 by First Class Mail, postage prepaid, to all parties on the attached service list.

A handwritten signature in black ink that reads "Lucille T. Dillenbeck". The signature is written in a cursive style and is positioned above a horizontal line.

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