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Hon. Magalie Roman Salas
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Commission
445 12th Street, S.W., TWA-325
Washington, D.C. 20554

Re: In the Matter of Federal-State Joint Board
On Universal Service - CC Docket No. 96-45
and Access Charge Reform - CC Docket No. 96-262

Dear Secretary Salas:

Enclosed is an original and four (4) copies of the Comments of the New York State Department of Public Service in the above-captioned proceeding. In addition, a copy was filed using the Commission's Electronic Comment Filing System and copies were sent to all parties on the attached service list.

Sincerely,

Lawrence G. Malone

Lawrence G. Malone
General Counsel

Enclosure
cc: All Parties

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In the Matter of	)	CC Docket No. 96-45
	)	
Federal-State Joint Board on Universal Service	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	

COMMENTS OF THE NEW YORK STATE DEPARTMENT OF PUBLIC SERVICE

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COMMENTS OF THE NEW YORK STATE
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INTRODUCTION AND SUMMARY

The New York State Department of Public Service (NYDPS) submits these comments in response to the Commission's Further Notice of Proposed Rulemaking (FNPRM) in the above-captioned proceedings.[1] The Commission adopted the framework for determining federal high cost support for non-rural carriers, as recommended by the Federal-State Joint Board on Universal Service (Joint Board).[2] It concluded, however, that the record is

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[1] In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Forward-Looking Mechanism for High Cost Support for Non-Rural LECs, CC Docket No. 96-262; Seventh Report & Order and Thirteenth Order on Reconsideration in CC Docket No. 96-45; Fourth Report & Orders in CC Docket No. 96-262 and Further Notice of Proposed Rulemaking (FCC 99-119), Released May 28, 1999.

[2] In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Second Recommended Decision, Released November 25, 1998, (Joint Board Second Recommended Decision).

inadequate to decide specific elements of the support method,[3] and therefore requests further comment on several implementation issues.[4]

Specifically, the Commission seeks comment on (1) the specific level at which the national benchmark should be set, (2) the specific level of presumed state resources for high-cost support, (3) the size of the area over which area-specific costs should be estimated, and (4) how best to implement a hold harmless provision. It also seeks comment on how best to make explicit any universal service support currently implicit in interstate access charges.

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[3] Under the Commission's framework, as proposed in the Joint Board Second Recommended Decision, the need for high-cost support in an area is to be determined by first comparing the forward-looking cost of providing supported services in the area to a benchmark based on the national average cost of providing those services. Both area-specific and national average forward-looking costs are to be estimated using the "synthesis" model currently being developed by the Commission. Any calculated need (i.e., where area-specific cost exceeds the benchmark) would then be reduced by an amount reflecting the state's presumed ability to achieve reasonably comparable rates through its own resources. The Commission determined that this presumed state effort should be reflected as a fixed dollar amount per line. It further concluded that where the calculated federal support would be less than the current level of support, the current level would be maintained (hold harmless provision). The Commission committed to reviewing the entire mechanism in three years.

[4] Although the Commission adopted a general framework for determining federal universal high-cost support, it postponed implementation of the new mechanism until January 1, 2000 to complete "verification" of the forward-looking cost model.

With respect to the first issue, we note that the recently released forward looking model produces somewhat unexpected results. The model results display unexpectedly wide cost variations among study areas. Until the model is fine tuned, the Commission should continue to use existing costs for determining high cost funding. Furthermore, we recommend that the Commission calculate federal high-cost support at the study area level. The study area is generally the service area of a local exchange carrier within a state, and its use is consistent with traditional revenue requirement, rate design, and separations practices. However, if the Commission concludes that the distribution of federal high-cost support should be based on area-specific costs within a study area, it should distribute the funds using the zones established to set unbundled network element (UNE) prices.

Also, we urge the Commission to reexamine its decision to adopt a "hold harmless" provision. Instead, changes to the current federal high-cost support level should be phased-in, if necessary. Finally, the Commission should undertake an analysis of the specific services included in the definition of universal service to ensure that these services "bear no more than a reasonable share of joint and common costs"[5] before concluding

[5] 47 U.S.C. 254(k).

that implicit universal service support exists in any current interstate access charges.

I. More Reasonable Estimates of Forward Looking Costs Must Be Developed

The NYDPS is unable to suggest or support any specific level for the national cost benchmark or the presumed "state effort" using the Commission's model. The goal of the formula is to establish reasonably comparable rates, in high-cost rural and urban areas, and the Commission concluded that substantial increases in high-cost support are not now necessary to do so (para. 69). However, there does not appear to be any reasonable combination of national cost benchmark(s) and presumed "state effort" that could produce reasonably comparable rates without substantially augmenting the fund.

Combinations that achieve the Commission's expectations that current funding need not increase appear to provide funding to a mere handful of study areas, and combinations that provide more reasonable distributions among study areas produce unacceptably large funds. Further analysis suggests that these unacceptable outcomes stem from the somewhat unexpected results of the "synthesis" model. In particular, the forward-looking costs predicted by this model display considerably more variation than actual embedded costs and in some cases are considerably higher than comparable embedded costs. We would expect the

distribution of costs among all study areas to be similar whether measured on an embedded or a forward-looking basis. Instead, it appears that the TEIRIC model's results are considerably more skewed than are embedded cost results. Although the average forward-looking cost appears to be somewhat lower than the average embedded cost, the maximum forward-looking cost appears to be considerably higher than the maximum embedded cost. We have been unable to determine whether this unexpected result is, in fact, reasonable.[6] We suggest that the Commission continue to use existing costs for determining high cost funding until more reasonable estimates of forward-looking costs are developed.

II. Area-Specific Costs Should Be Calculated At The Study Area Level

The Commission seeks comment on the size of the area (e.g., wire center, UNE cost zone, study area[7]) over which costs should be averaged when determining the level of federal universal service support. The Joint Board recommended that

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[6] Comparison of forward-looking cost at the study area level to comparable embedded costs (including loop, local switching, local transport) establishes that median forward-looking cost equals $24.33; median embedded cost equals $29.26 (both per month per line). However, maximum forward-looking cost equals $64.41, while maximum embedded cost equals $41.85.

[7] A study area generally consists of an incumbent LEC's service area in a single state.

costs be measured on a study area basis.[8] Observing that doing so would prevent substantial increases in the size of the federal fund. The Commission agreed with the Joint Board's objective of limiting the size of the fund but declined to adopt its recommendation to use study areas for averaging costs. Instead, it took the view that federal support deaveraged to the wire center level or below could better ensure adequate support to the neediest subscribers and could encourage competitive entry in high-cost areas (para. 103). The Commission seeks comment on these conclusions and the analysis underlying them.

A. Reasonably Comparable Rates Will Be Best Achieved By Using The Study Area To Estimate The Costs Of Local Service And By Distributing The Funds Using Zones Established To Set UNE Prices

The Commission's analysis of what geographic area to use in estimating costs involves two distinct issues -- 1) the total level of federal support needed to enable each state to establish "reasonably comparable" rates, and the manner in which the total federal support in any area should be distributed. The total level of federal support should be calculated at the study area level; but the distribution of that support could be based on costs in smaller areas.

[8] Joint Board Second Recommended Decision, para. 32.

The purpose of federal high-cost support is to enable states to establish affordable and reasonably comparable intrastate rates in both rural and urban areas by transferring funds among, not within, states.[9] The Commission also concluded that costs are an appropriate surrogate for rates (para. 32). Accordingly, the federal high-cost mechanism is designed to defray intrastate, forward-looking costs that exceed the sum of the national average cost (national benchmark) and the presumed amount of state funds available to support universal service.

To accomplish this purpose, federal high cost support should transfer sufficient costs to the interstate jurisdiction to render the remaining intrastate costs in each relevant area "comparable" to those in other areas. Since this transfer of costs is an adjustment to jurisdictional separations, which are

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[9] The Commission concluded that "a primary focus in reforming the federal high-cost universal service support mechanism is to enable intrastate rates to remain both affordable and reasonably comparable across high-cost and urban areas" (para. 28). More significantly, the Commission also found that:

> ...the erosion of intrastate implicit support does not mean that federal support must be provided to replace implicit intrastate support that is eroded by competition. Indeed, it would be unfair to expect the federal support mechanism, which by its very nature operates by transferring funds among jurisdictions, to bear the support burden that has historically been borne within a state by intrastate, implicit support mechanisms (para. 46).

performed at the study area level, the high-cost calculation should similarly be undertaken at that level. Further, since intrastate rates generally have been established at the study area level, intrastate costs need be made comparable only at that level. Once intrastate costs at the study area level have been made reasonably comparable (by transferring any extraordinary cost to the interstate jurisdiction for recovery through the high cost fund), each state can perform any necessary averaging needed within the study area to ensure the comparability of rural and urban rates within the state.

Analyzing the costs in smaller geographic areas, as suggested in the FNPRM, would substitute interstate for intrastate cost recovery to a greater degree than warranted. For example, where intrastate rates in a study area already meet the Act's affordability and comparability standards <u>without</u> any federal high cost support, one might still show an apparent need for federal support in the higher cost parts of that study area by calculating that need at the wire center or UNE zone level. Costs in the "high-cost" part of the study area could significantly exceed the national benchmark, although the study

area average cost does not.[10] This apparently needed support is in fact being provided through existing intrastate rates; any federal support to this study area would simply replace existing intrastate support, an unintended result. A federal mechanism is appropriate only when transfers of funds among states is necessary. No federal mechanisms is required to make such transfers within a single state.

How the needed interstate support, once calculated, should be recovered by the carrier poses different issues entirely. The Commission recognizes as much in seeking comment

[10] For example, assume the average cost in the study area is $20, while the average cost in each of its three UNE zones is $10, $20, and $30, respectively. If the national benchmark is $25, no federal support would be calculated at the study area level ($20 average cost is less than benchmark), but if need were calculated at the UNE zone level, the highest cost zone would need $5 per line in federal support ($30-$25).

on four alternative distribution schemes.[11] If the Commission believes deaveraging is necessary, it should calculate the total amount of federal support at the study area level but provide for distribution of those funds on the basis of a showing of need in a smaller geographic area. This approach will allow federal support to be more directly targeted to high-cost areas within study areas. Inasmuch as the Commission's mandatory UNE deaveraging may become the most significant driver of local rate design, deaveraging federal high cost support on the same UNE-zone basis makes more sense than the proposed deaveraging to the wire center level.

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[11]
1) Calculate total support amounts at the study area level, but distribute those totals based on relative costs of the wire centers within the respective study areas;

2) Calculate support at a more granular level (UNE zone or wire center), but provide only a uniform percentage of the support so calculated;

3) Calculate support at a more granular level (UNE zone or wire center), but cap the amount available to any state at a fixed percentage of the total fund;

4) Calculate support at a more granular level (UNE zone or wire center), but raise the benchmark or support incremental percentages of the amounts over a series of benchmarks (much like the existing system).

B. The Federal High-Cost Fund Should Not Be Used To Subsidize Competitive Losses

The FNPRM's suggestion that greater federal support may be needed in high-cost areas in anticipation of developing local competition is inconsistent with the Commission's determination that federal high-cost support is not intended to replace implicit intrastate support that is eroded by competition (para. 46). The purpose of federal high cost support is to enable every state to establish "comparable rates" by transferring, where necessary, a greater proportion of total cost to the interstate jurisdiction for recovery through the federal high-cost fund. This goal is to be achieved without regard to the level of local competition in any area.

Each state must develop its own policies to deal with competitive losses. As competition develops, each state will be able to maintain its "comparable" rates through various means (e.g., intrastate rate design, an intrastate "high-cost" fund, or even tax policy), if the state deems any such action necessary. As the Commission observed (para. 46), using the federal high-cost fund to replace implicit intrastate support would be unfair. Federal high-cost support need not, indeed should not, be calculated at a more granular level (i.e., below the study area level) in order to provide greater funding in anticipation of competitive losses.

III. The Federal Universal Service Program Should Not Include a Hold Harmless Provision

The Commission adopted the Joint Board recommendation for a hold harmless provision[12], and it seeks further comment on whether that provision should apply on a state-by-state or a carrier-by-carrier basis (para. 117). As noted in our prior comments,[13] we oppose any hold harmless provision in the federal high-cost support mechanism. Once established, a hold harmless provision, even if reviewed after three years, will come to be seen as a perpetual entitlement, locking in unjustifiable support and needlessly higher interstate rates.

The purpose of the Universal Service high-cost fund is to support those areas of the country whose costs are deemed to be too high to permit comparable rates. See FNPRM para. 28 and 47 U.S.C. 254(b)(3). Maintaining a hold harmless provision to ensure that current support levels for any state or carrier are in no event reduced runs counter to this purpose. If the high-cost support mechanism works as intended, support could be directed to "high-cost" areas, but a hold harmless provision

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[12] Under this provision, a carrier or state would continue to receive its current level of federal high-cost support if the new forward-looking cost formula showed that less support was justified.

[13] See Comments of the New York State Department of Public Service on Joint Board Second Recommended Decision, December 22, 1998, pp 4-5.

would water down that mechanism by providing funding to areas that do not have higher costs. Moreover, since no area would receive less funding, a hold harmless provision essentially guarantees that the size of the fund will increase, also contrary to the Commission's stated goals. Indeed, an effort to hold all areas harmless while limiting the size of the fund could have the unfortunate consequence of underfunding truly high cost areas.

We therefore urge the Commission to adopt a mechanism that reflects current funding needs. Any resulting immediate and substantial reductions in federal support could be mitigated by moving to the new support mechanism over a few years.[14] At the very least, the Commission should establish a date certain for ending reliance on hold harmless funding levels.

In sum, neither state-by-state nor carrier-by-carrier hold harmless provisions will really hold all customers harmless. The market would be better served by allowing both increases and decreases of federal support to occur as suggested by the mechanism. These new arrangements could be phased-in over time, if necessary to avoid significant, immediate rate effects.

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[14] For example, one-third of any area's increase or decrease in support could be allowed in the first year, with the remaining two-thirds phased-in over the ensuing two years.

IV. The Interstate Access Rate Structure Must Be Examined To Determine The Level Of Implicit Universal Support

The Commission seeks comment on its proposals to remove "existing implicit support in interstate access charges" and make such support explicit (para. 123 et. seq.). The Commission tentatively concludes it "should require price cap LECs to reduce their interstate access rates to reflect any increased explicit federal high-cost support they receive." (para. 130) Generally, the Commission proposes rate adjustments to its price cap rules that would reduce Carrier Common Line Charges (CCLC), multi-line subscriber line charges (SLC), and multi-line Primary Interexchange Carrier Charges (PICC). For non-rural rate-of-return LECs, the Commission proposes reducing the CCLC and perhaps the multi-line business SLC.[15]

We agree that interstate access charges should be reduced at least to the extent the Commission creates explicit support to replace any universal service support it determines now to be implicit in those charges. We do not agree, however, with the Commission's broad characterization of universal service support. Payments by access customers, collectively or

[15] The FNPRM's focus on reducing the CCLC and multi-line PICCs suggests the Commission believes that at least some recovery of common line costs (primarily loop costs) through other than fixed end user charges necessarily constitutes universal service support.

individually, that exceed the incremental costs of their access services do not necessarily constitute "implicit" support to universal service.

Before concluding that interstate access rates contain implicit universal service support, the Commission should examine whether services considered universal in fact fail to cover their costs. For example, it must determine whether "services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services." (47 U.S.C. §254(k)). The "common line" costs at issue in the FNPRM unquestionably are "joint and common costs" used in the provision of nearly all telecommunications services, including those in the definition of universal service. Until it determines that "the services in the definition of universal service" fail to bear "a reasonable share" of those joint and common costs, the Commission cannot reasonably find that any implicit universal service support exists, much less that it exists in interstate access charges in general or the CCLC or PICC in particular. We urge the Commission undertake such an analysis before it unnecessarily creates greater universal service support.[16]

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[16] Increasing monthly end user charges to provide that support may be detrimental to the very universal service goal that the fund is intended to protect.

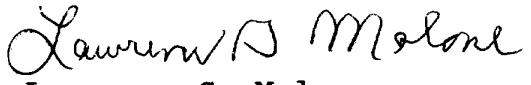
CONCLUSION

The NYDPS recommends that the Commission refrain from using the "synthesis" model because it produces unacceptable, counter intuitive results. Federal high-cost support should be calculated at the study area level, consistent with traditional revenue requirement, rate design, and separations practices. If the Commission deems it necessary to further target the distribution of federal support within a study area, it should consider deaveraging the study area's total support among the zones previously mandated for unbundled network element prices.

The Commission should reexamine its decision to adopt a "hold harmless" provision, mitigate sudden losses of support, if necessary, by phasing in any changes to an area's current support level. Finally, we recommend that the Commission undertake an analysis of the extent to which a reasonable share of joint and common costs are borne by services included in the definition of

"universal service" before finding that universal service support is implicit in current interstate access charges.

Respectfully submitted,



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Albany, New York

In the Matter of

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

Access Reform Charge
CC Docket No. 96-262

CERTIFICATE OF SERVICE

I, John R. Baugh, hereby certify that an original and four (4) copies of comments in the above-captioned proceeding were sent via Airborne Express to Magalie Roman Salas, Secretary of the Federal Communications Commission. In addition, a copy was filed using the Commission's Electronic Filing System and copies were sent by First Class Mail, postage prepaid, to all parties on the attached service list.

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