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July 23, 1999

Re: CC Docket Nos. 96-45 and 96-262

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 Twelfth St. S.W.
TW-A325
Washington, D.C. 20554

Dear Ms. Salas:

Enclosed, please find an original and six copies of the comments of Omnipoint Communications, Inc. in CC Docket Nos. 96-45 and 96-262.

Sincerely,

Benjamin H. Dickens, Jr.
Mary J. Sisak
Attorneys for
Omipoint Communications, Inc.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

COMMENTS OF OMNIPOINT COMMUNICATIONS, INC.

Omnipoint Communications, Inc. (Omnipoint), by its attorneys, hereby files comments in response to the Commission's Further Notice of Proposed Rulemaking (FNPRM)[1] in the above-referenced proceeding. In the FNPRM, the Commission requests comments on a number of issues concerning the implementation of universal service support for non-rural local exchange carriers (LECs). Omnipoint limits its comments to the issues discussed below.

I. NO SPECIFIC RESTRICTIONS SHOULD BE APPLIED TO WIRELESS CARRIERS CONCERNING THE APPLICATION OF SUPPORT

Pursuant to Section 254 of the Act, carriers can only use federal universal service support "for the provision, maintenance, and upgrading of facilities and services for which the support is intended."[2] The Commission seeks comment on what specific restrictions, if any, are necessary to achieve this requirement. Specifically, the Commission seeks comment on the Joint Board's recommendation that the Commission require carriers to certify that they will comply with

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[1] Federal-State Joint Board on Universal Service, Access Charge Reform, Seventh Report & Order and Thirteenth Order on Reconsideration in CC Docket No. 96-45, Fourth Report & Order in CC Docket No. 96-262 and Further Notice of Proposed Rulemaking, CC Docket No. 96-45, CC Docket No. 96-262, FCC 99-119, released May 28, 1999.

federal high-cost support in accordance with the statute and that the Commission should permit states to certify that, in order to receive federal universal service support, a carrier must use such funds in a manner consistent with section 254. The Commission also seeks comment on whether making federal support available as carrier revenue, to be accounted for by the state in the rate setting process, will sufficiently fulfill the requirement in Section 254(e). For states that lack authority to impose conditions on the use of federal high-cost support by carriers, the Commission suggests that even those states "would be able to certify to the Commission that a carrier within the state had accounted for its receipt of federal support in its rates or otherwise used the support for the 'provision, maintenance, and upgrading of facilities and services for which the support is intended' in accordance with section 254(e)."[3]

The Commission should only require wireless carriers to certify that they will comply with federal high-cost support in accordance with the statute. The Commission should not require or permit any state action in connection with wireless carrier rates because the states have no authority over those rates. Accordingly, any such provision would be in violation of Section 332(c)(3) of the Act.

In addition, any certification or requirements should only be imposed at the federal level to ensure uniformity in the application of such requirements and to minimize the administrative burden on carriers. If the Commission allows or requires the states to "certify" compliance with Section 254(e), carriers that are receiving federal support in a number of states would face multiple reviews of the same practices and different states could potentially reach different conclusions as to whether a carrier's practice was in compliance with Section 254.

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[2] 47 U.S.C. Section 254(e).

[3] FNPRM at para. 115.

Moreover, the Commission has ample authority to ensure compliance with the Act and its rules through the forfeiture provisions in Section 503 of the Act. Accordingly, self-certification by wireless carriers in combination with the Commission' authority under Section 503 of the Act, is sufficient to ensure compliance with Section 254(e).

II. HIGH COST FUNDS SHOULD BE DISTRIBUTED TO CARRIERS

The Commission requests comment on whether it should distribute universal service high-cost support directly to the state commissions, rather than to carriers, if it implements the hold-harmless provision on a state-by-state basis. Omnipoint urges the Commission to reject this approach, as it was rejected by the Joint Board, because it would impose unnecessary costs on carriers, it would be administratively burdensome and it would create more uncertainty for carriers in determining whether they qualify for support and the amount of support for which they may qualify.

The Commission, in agreement with the Joint Board, has found that the amount of explicit federal support should not increase significantly from current levels. Omnipoint strongly supports this conclusion, not only because the record evidence demonstrates that current levels of support are sufficient, but also because excessive amounts of support will only drive up the cost of service to all customers. Similarly, inefficient and burdensome universal service processes, like distributing federal support to the states, will also unnecessarily drive up carriers' costs and, ultimately, charges for service to consumers by adding another administrative layer to the process. In addition, it would be extremely burdensome for carriers to deal with many jurisdictions, each with its own rules and processes, to receive federal support, rather than just one.

Moreover, as recognized by the Commission, carriers need to have some degree of certainty when assessing whether they qualify for support and the amount of support for which they qualify. Allowing states to redistribute support if incumbent local exchange carriers experience a decrease in support, however, will only increase the level of uncertainty in the process. Accordingly, Omnipoint urges the Commission to reject this approach. Instead, the Commission should allocate and distribute federal support.

III. CONCLUSION

Omnipoint supports the Commission's conclusion that the amount of explicit federal support should not increase significantly from current levels. Omnipoint urges the Commission to also ensure that its federal universal service procedures do not unnecessarily impose administrative burdens and costs on carriers that ultimately, increase charges to consumers. For this reason and the reasons discussed herein, Omnipoint urges the Commission only to require wireless carriers to certify that they will comply with federal high-cost support in accordance with the statute and to distribute federal high-cost funds to carriers, not to states.

Respectfully submitted,

OMNIPOINT COMMUNICATIONS, INC.

By: _____

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