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July 23, 1999

Magalie Roman Salas, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Federal-State Joint Board on Universal Service, Access Charge Reform, CC Docket Nos. 96-45, 96-262

Dear Ms. Salas:

On behalf of the Personal Communications Industry Association, I am enclosing for filing Comments on the Further Notice of Proposed Rulemaking ("FNPRM"), FCC 99-119, released May 28, 1999, in the proceedings referred to above. These Comments are filed in response to the FNPRM and the Commission's Public Notice, DA 99-1277, released June 29, 1999, extending the filing date for comments until July 23, 1999.

If you have any questions regarding this matter, please contact me.

Respectfully submitted,

Michele C. Farquhar
Counsel for the Personal
Communications Industry
Association

Enclosures

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 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 THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

The Personal Communications Industry Association ("PCIA") 1/ hereby comments on the Further Notice of Proposed Rulemaking, FCC 99-119, released May 28, 1999, in the above-captioned proceeding ("Inputs FNPRM" or "FNPRM"). 2/

PCIA urges the FCC to ensure that universal service reform fosters full participation and open competition by all common carriers, including commercial mobile radio service ("CMRS") providers. The rules and policies the FCC adopts should encourage economically efficient entry in high-cost areas, and should promote open competition between incumbent local exchange carriers

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1/ PCIA is an international trade association representing the interests of both commercial and private users and businesses involved in all facets of the personal communications industry. PCIA's Federation of Councils include: the Paging and Messaging Alliance, the PCS Alliance, the Wireless Broadband Alliance, the Mobile Wireless Communications Alliance, the Site Owners and Managers Association, and the Private System Users Alliance.

2/ *Federal-State Joint Board on Universal Service, Access Charge Reform*, Seventh Report and Order and Thirteenth Order on Reconsideration in CC Docket No. 96-45, Fourth Report and Order in CC Docket No. 96-262, and Further Notice of Proposed Rulemaking, FCC 99-119 (released May 28, 1999) ("*Seventh Report and Order*").

("ILECs") and wireless carriers. Only in this way will consumers nationwide -- particularly those in high-cost areas -- realize the competitive promise of the Telecommunications Act of 1996 ("1996 Act"). The FCC took a very positive step to reinforce these principles when it recently reaffirmed the right of wireless carriers to seek eligible telecommunications carrier ("ETC") status. 3/

I. PCIA SUPPORTS AN EFFICIENT AND PRO-COMPETITIVE UNIVERSAL SERVICE SYSTEM

The FCC's new universal service regime should encourage the economically efficient entry of new service providers. It should achieve this objective by targeting universal service support as precisely as possible, which will also preserve the availability of telecommunications services at affordable prices. In so doing, the FCC will facilitate competition in markets supported by universal service mechanisms, particularly competition between wireline and wireless carriers.

A. The Universal Service System Should Maximize Economic Efficiency.

PCIA supports the spirit and intent of the 1996 Act and the objective of ensuring access to telecommunications services at reasonable rates. However, PCIA shares the concern, held by all contributors to the universal service fund, that the size of the high-cost fund not grow beyond that necessary to meet the needs of consumers in high-cost areas. Customers of all telecommunications carriers --

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3/ *Id.* at ¶ 72.

including customers of carriers not eligible to provide universal service -- should not be required to contribute more than is necessary to support the goals set forth in the universal service provisions of the 1996 Act.

To keep excess out of the universal service program, the FCC should adopt competitively neutral rules and policies governing the measurement and distribution of high-cost support that track as closely as possible the actual need for support in high-cost areas. First, the FCC should adopt a realistic cost benchmark to target support to the areas that need it most. The cost benchmark could also be "tapered," as suggested in the FNPRM, such that higher cost areas receive greater amounts of support. 4/

Second, the FCC should reject the Joint Board's recommendation to determine and distribute support on a study-area basis, and should maintain the earlier-adopted and more reasonable course of using relatively small geographic units, such as wire centers or exchanges. That approach will both efficiently target high-cost support and allow a meaningful opportunity for entry in high-cost markets. 5/ By contrast, as the FNPRM recognizes, using relatively large study areas will erect virtually insurmountable barriers to carriers other than ILECs who

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4/ *Id.* at ¶ 109.

5/ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, First Report and Order, 12 FCC Rcd 8776, ¶ 193 (1997) ("*Universal Service First Report and Order*") ("calculating support over small geographic areas will promote efficient targeting of support."); *id.* at ¶ 184 (stating, in the context of defining eligible carriers' service areas, that "service areas should be sufficiently small to ensure accurate targeting of high cost support and to encourage entry by competitors.").

may wish to provide universal service in high-cost areas, 6/ thus severely undercutting principles of competitive neutrality.

Third, the FCC should provide support based on the forward-looking costs of the most technologically efficient way to serve a high-cost area, regardless of whether the technology is wireline or wireless. 7/ This approach would simultaneously keep the size of the fund in check and facilitate economically efficient entry. To do otherwise would result in a universal service fund that is much larger than necessary to ensure all consumers have access to telecommunications services. Also, consumers in low-cost areas would ultimately pay significantly more than necessary to support their high-cost brethren. The only way to avoid these pitfalls is to ensure that universal service support is determined and distributed based on the lowest cost technology for serving a high-cost area.

B. The Universal Service System Should Promote Competition.

The FCC must adopt universal service rules and policies that contribute directly to the two core principles of the 1996 Act -- promoting competition in local markets and advancing universal service in a competitive environment. 8/ To achieve this objective, the FCC must enable all potential competitors -- incumbents

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6/ *Seventh Report and Order* at ¶ 103.

7/ For example, if it costs $75 per month to serve a customer in a high-cost area with wireless technology, but $225 to serve that same customer with wireline technology, or vice versa, universal service support for all carriers should be based on the $75 cost of providing service, not the $225 cost.

8/ *Universal Service First Report and Order*, 12 FCC Rcd at ¶¶ 46-55.

and new entrants alike -- to compete in all markets, including those for which universal service support is available. PCIA believes that it is critical that the FCC take steps to enable CMRS providers to become full participants in this manner.

If the FCC wishes to realize the goal of head-to-head wireline-wireless competition, 9/ the universal service rules and policies must ensure that CMRS carriers that might provide universal service in high-cost areas are placed on an equal competitive footing with wireline carriers generally, and ILECs specifically. The ultimate success of CMRS or ILEC service offerings in high-cost areas should be driven by consumer choice, not a regulatory system that improperly picks winners and losers.

Wireline-wireless competition will not evolve, however, unless the FCC ensures that all new entrants, including CMRS providers, are eligible to receive universal service support in high-cost areas identical to that received by the ILECs.

9/ The FCC has on many occasions affirmed its commitment to promoting competition between wireless and wireline service providers. *See, e.g., Calling Party Pays Service Offering in the Commercial Mobile Radio Services*, WT Docket No. 99-207, Declaratory Ruling and Notice of Proposed Rulemaking, FCC 99-137, ¶¶ 3-4, 20 (rel. July 7, 1999) (noting "potential to expand wireless market penetration [and] opportunity to provide a near-term competitive alternative to [ILECs] for residential consumers"); *Provision of Competitive Networks in Local Telecommunications Markets*, WT Docket No. 99-217, Notice of Proposed Rulemaking and Notice of Inquiry in WT Docket No. 99-217, and Third Further Notice of Proposed Rulemaking in CC Docket No. 96-98, FCC 99-141, ¶¶ 5, 10, 12, 15 (rel. July 7, 1999) (stating goal of enabling "service providers using wireless technology to compete with the incumbent LECs"); Press Statement of Chairman William E. Kennard on "Wireless Day," rel. June 10, 1999 (citing need "to improve the ability of wireless providers to compete on equal footing with wireline providers."); *Telephone Number Portability*, 11 FCC Rcd 8352, 8434-8436 (1996).

This means that universal service rules and policies must not discriminate or disadvantage any provider of telecommunications service based on incumbency, or the technology relied upon to provide the service, and that wireless carriers must be able to be designated as ETCs just as easily as all other carriers. 10/

The FCC has recognized time and again the need for such competitive and technological neutrality in the new universal service regime. 11/ Underlying this necessity is the 1996 Act's imperative that consumer choice -- and not regulatory fiat -- drive the evolution of telecommunications services. Thus, the FCC must carefully and thoughtfully craft a competitively neutral universal service regime in which subsidies provided by support mechanisms are explicit, portable, and available equally to all current *and* potential market participants.

10/ Wireless carriers have successfully been designated as ETCs in some states. *See, e.g., Yelm Telephone Company, et al*, Docket No. UT-970333 (Washington Utilities and Transportation Commission, Dec. 27, 1997); *Eligible Telecommunications Carriers in Arkansas*, Docket No. 97-326-U (Arkansas Public Service Commission, Nov. 7, 1997); *Designation of Eligible Telecommunications Carriers Under Part 54 of Title 47 of the Code of Federal Regulations*, Docket No. 05-TI-162 (Public Service Commission of Wisconsin, Dec. 23, 1997); *All Incumbent Local Exchange Carriers, Sprint PCS, and MGC Communications, Inc., to Designate Eligible Communications Carriers Pursuant to the Federal Communications Commission's Report and Order (FCC 97-157) in the Matter of Federal-State Joint Board on Universal Service (CC Docket No. 96-45)*, Resolution T-16105 (Public Utilities Commission of California, Dec. 16, 1997). In other states, however, wireless providers have fought an uphill battle not faced by ILECs or new wireline entrants. *See, e.g., Western Wireless Corporation Petitions for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket No. 96-45, Public Notice, DA 99-1356 (rel. July 19, 1999).

11/ *Seventh Report and Order* at ¶ 10 (*citing Universal Service First Report and Order*, 12 FCC Rcd at 8802, 8858-59).

II. THE UNIVERSAL SERVICE FUND MUST NOT UNREASONABLY PROTECT THE CURRENT BENEFICIARIES OF FUNDING

The FCC should be vigilant against extending vestiges of the old universal support system -- based on implicit subsidies available only to incumbent providers -- into the new universal service program. To the extent it is necessary at all, any "hold harmless" guarantee adopted should be phased out by a date certain, at most a year from implementation of the new rules. In addition, the FCC should not allow the current non-cost-based access charge system to infect the new universal service regime.

A. ILECs Should Not Be Entitled to Open-Ended "Hold-Harmless" Support.

Any "hold harmless" approach the FCC adopts pursuant to the FNPRM should, consistent with competitive entry, hold states, not carriers, harmless, and should do so for a limited time only, with a phase-out on a date certain. There is no reason to believe that a "hold harmless" mechanism is even necessary to avoid "significant rate increases." 12/ The FCC's new universal service program should endeavor to advance the competitive interests of consumers -- who, after all, pay the costs of support -- and not the pecuniary interests of the ILECs.

To the extent the FCC finds a "hold harmless" approach necessary at all, it should certainly be phased out on a date certain, at most within one year.

12/ *Contra, id.* at ¶ 117.

That amount of time should be enough for carriers and states to adjust to changes in support. 13/

B. ILECs Should Not Be Permitted to Recover Non-Cost-Based Access Charge Revenues Through the Universal Service System.

PCIA applauds the FCC's progress toward making all universal service support explicit, as evidenced by the FNPRM's proposal to remove the implicit support resident in excessive ILEC interstate access charges. As it does so, the FCC should guard against inadvertent replacement of existing implicit subsidies with new ones. The FCC should not simply shift revenues out of access charges and into the high-cost fund. Doing so would result in the perpetuation of the flaws of the implicit subsidy system. It certainly would not result in a targeted and effective high cost fund. 14/

13/ Moreover, to the extent any "hold harmless" period is adopted, ILECs should not be compensated for support lost due to capture of its customers by competitive entrants rather than due to the termination of implicit subsidies. Such an outcome obviously flies in the face of competitive neutrality, as the FCC has recognized. *See, e.g., id.* at ¶ 74. Likewise, it is equally obvious that new entrants must be eligible to receive the same amount of support as ILECs at all times under the new regime -- even the "hold harmless" period -- if the ideal of competitive entry is to be anything more than an empty promise.

14/ There is another key reason, based in competitive and technological neutrality, for removing implicit subsidies found in ILEC access charges: CMRS providers do not file access charge tariffs, and as a practical matter do not collect access charges from IXCs. Thus, CMRS providers do not benefit from implicit access charge subsidies.

III. CONCLUSION

The FCC must take steps in this docket to secure the benefits of the new universal service system for customers of all common carriers, including CMRS providers. Competitive and technological neutrality should remain the FCC's guiding principles in this regard, which will help advance economically efficient entry in high-cost areas, and open wireline-wireless competition to the benefit of consumers everywhere.

Respectfully submitted

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July 23, 1999

CERTIFICATE OF SERVICE

I, Venita Otey, hereby certify that on this 23rd day of July, 1999, copies of the foregoing Comments on the Further Notice of Proposed Rulemaking in CC Docket No. 95-45 were served on the parties listed below by hand delivery or first class mail.

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