

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

In the Matter of DISPATCHED BY )  
)  
Federal-State Joint Board on ) CC Docket No. 96-45  
Universal Service )  
)

### MEMORANDUM OPINION AND ORDER

**Adopted:** September 30, 1999

**Released:** October 8, 1999

By the Commission: Commissioner Furchtgott-Roth dissenting and issuing a statement.

#### I. INTRODUCTION

1. The Washington State Department of Information Services, the Office of the Superintendent of Public Instruction, the Washington State Library, the North Thurston School District No. 3, the Yakima Valley Regional Library, and Educational Service District No. 112, Vancouver (collectively, petitioners), have filed with the Commission a Petition for Reconsideration<sup>1</sup> of the Commission's *Fourth Reconsideration Order*<sup>2</sup> in the above-captioned proceeding. Petitioners first seek reconsideration of the Commission's conclusion in the *Fourth Reconsideration Order* that state telecommunications networks are not eligible to receive discounts directly from the universal service support mechanisms,<sup>3</sup> so that the Washington statewide network may be directly reimbursed for the "value-added" components of the services it provides to eligible schools and libraries.<sup>4</sup> In the alternative, petitioners seek a waiver of the statutory definition of "telecommunications carriers" that are eligible under

<sup>1</sup> Petition for Reconsideration of the Commission's *Fourth Reconsideration Order* filed by Washington State Department of Information Services, the Office of the Superintendent of Public Instruction, the Washington State Library, the North Thurston School District No. 3, the Yakima Valley Regional Library, and Educational Service District No. 112, Vancouver (filed February 12, 1998) (Washington Petition).

<sup>2</sup> *Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, Fourth Order on Reconsideration, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 5318 (1997) (*Fourth Reconsideration Order*), as corrected by *Federal-State Joint Board on Universal Service, Errata*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 2372 (1998), *appeal pending in Alenco Communications, Inc., et al. v. FCC and USA*, No. 98-60213 (5th Cir. 1998).

<sup>3</sup> *Fourth Reconsideration Order*, 13 FCC Rcd at 5424, para. 183.

<sup>4</sup> Washington Petition at 3.

section 254(h)(1)(B) of the Communications Act, as amended (the Act), to receive direct reimbursement from the support mechanisms for services the Washington network provides to eligible schools and libraries.<sup>5</sup> In this Order, we deny Washington's petition for reconsideration and its request for waiver of the statutory definition of "telecommunications carrier."

## II. BACKGROUND

### A. Section 254 and the Commission's Orders

2. Section 254(e) of the Act generally provides that only an "eligible telecommunications carrier" under section 214(e) is eligible to receive universal service support.<sup>6</sup> Congress carved out an exception in the case of schools and libraries, however, by specifying that any "telecommunications carrier," even one that did not qualify as an "eligible telecommunications carrier," is eligible for direct reimbursement for providing discounted telecommunications services to schools and libraries.<sup>7</sup> Notwithstanding this distinction, Congress clearly required that an entity be a "telecommunications carrier" in order to receive universal service support for the provision of discounted telecommunications services to schools and libraries.

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<sup>5</sup> Washington Petition at 3; *Fourth Reconsideration Order*, 13 FCC Rcd at 5426-27, paras. 186-88.

<sup>6</sup> 47 U.S.C. § 254(e). Section 214(e)(1)(A) requires an eligible telecommunications carrier ("ETC") to "offer the services that are supported by Federal universal service support mechanisms under section 254(c). . . ." Pursuant to section 254(c), the Commission, based on the recommendation of the Federal-State Joint Board, determined that the following services or functionalities will be supported by universal service mechanisms: voice-grade access to the public switched network; local usage; dual tone multi-frequency signaling; single-party service; access to emergency services; access to operator services; access to interexchange service; access to directory assistance; and toll limitation for qualifying low-income customers. *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 8807, para. 56 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, Erratum, CC Docket No. 96-45, FCC 97-157 (rel. June 4, 1997), *affirmed in relevant part sub nom Texas Office of Public Utility Counsel v. FCC*, No. 183 F.3d 393 (5th Cir. 1999), *motion for stay granted in part* (Sept. 28, 1999), *petitions for rehearing and rehearing en banc denied*, (Sept. 28, 1999) (affirming *Universal Service Order* in part and reversing and remanding on unrelated grounds). *See also* 47 C.F.R. § 54.101(a)(1)-(9). To be designated an ETC, therefore, a telecommunications carrier must offer each of these services.

<sup>7</sup> Because section 254(h)(1)(B)(ii) states that "notwithstanding the provisions of subsection [254](e) of this section" a telecommunications carrier providing services to schools and libraries may receive reimbursement from universal service support mechanisms, the Commission interpreted the Act to allow "any telecommunications carrier" to be eligible for reimbursement under section 254(h)(1)(B). *Universal Service Order*, 12 FCC Rcd at 9015, para. 449; *see also* 47 U.S.C. § 254(h)(1)(B)(ii).

3. In the *Universal Service Order*<sup>8</sup> and the *Fourth Reconsideration Order*,<sup>9</sup> the Commission, consistent with section 254(h)(1)(B),<sup>10</sup> concluded that only "telecommunications carriers" are eligible to receive direct reimbursement from the support mechanisms for telecommunications services provided to eligible schools and libraries.<sup>11</sup> The Act defines the term "telecommunications carrier" as "any provider of telecommunications services,"<sup>12</sup> and the term "telecommunications service" as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used."<sup>13</sup> This definition mirrors the common law definition of a common carrier, and thus the Commission in the *Universal Service Order* determined that the term "telecommunications services" encompasses only telecommunications provided on a common carrier basis.<sup>14</sup>

4. Consistent with the Act and applicable precedent on the definition of common carriage, the Commission determined that "telecommunications service" is intended to encompass only telecommunications provided by a "common carrier" that holds itself out "to service indifferently all potential users," not a carrier whose "practice is to make individualized decisions in particular cases whether and on what terms to serve."<sup>15</sup> The D.C. Circuit has determined that "holding oneself out to serve indiscriminately appears to be an essential element, if one is to draw a coherent line between common and private carriers."<sup>16</sup> By contrast, a carrier that serves clients on an individualized basis, determines whether and on what terms to serve each client, and is under no regulatory compulsion to serve all

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<sup>8</sup> *Universal Service Order*, 12 FCC Rcd at 9028, para 478.

<sup>9</sup> *Fourth Reconsideration Order*, 13 FCC Rcd at 5424, paras. 187-88.

<sup>10</sup> 47 U.S.C. § 254(h)(1)(B).

<sup>11</sup> *Fourth Reconsideration Order*, 13 FCC Rcd at 5426-27, para. 187 (stating that "[s]ection 254(h)(1)(B) provides that only telecommunications carriers may receive support for providing schools and libraries with the telecommunications supported under section 254(h)(1)(B)").

<sup>12</sup> 47 U.S.C. § 153(44).

<sup>13</sup> 47 U.S.C. § 153(46).

<sup>14</sup> *Universal Service Order*, 12 FCC Rcd at 9177-78, para 785; see also *Fourth Reconsideration Order*, 13 FCC Rcd at 5413, para 164.

<sup>15</sup> *Universal Service Order*, 12 FCC Rcd at 9177-78, paras. 785-86, citing *National Association of Regulatory Utility Commissioners v. FCC*, 553 F.2d 601, 608 (D.C. Cir. 1976) (*NARUC II*).

<sup>16</sup> *National Association of Regulatory Utility Commissioners v. FCC*, 525 F.2d 630, 642 (D.C. Cir.) (*NARUC I*), cert. denied, 425 U.S. 992 (1976).

indifferently, is a private carrier for that particular service.<sup>17</sup> The Commission found that state telecommunications networks offer services to specified classes of entities, and do not offer or plan to offer their services "indifferently to any requesting party[.]"<sup>18</sup> Thus, the Commission determined that statewide telecommunications networks do not meet the definition of "telecommunications carrier."<sup>19</sup>

5. Accordingly, the Commission concluded that state telecommunications networks are not eligible for direct reimbursement from the support mechanisms for the provision of telecommunications services, pursuant to section 254(h)(1).<sup>20</sup> The Commission found, however, that "state telecommunications networks that procure supported telecommunications and make them available to schools and libraries constitute consortia that will be permitted to secure discounts on such telecommunications on behalf of eligible schools and libraries."<sup>21</sup> The Commission further determined that prohibiting state telecommunications networks from receiving direct reimbursement from the support mechanisms pursuant to section 254(h)(1) was consistent with the Commission's determination in the *Universal Service Order* that consortia of schools and libraries are authorized only to secure discounts on such services on behalf of their eligible members, but that they will not be able to receive direct reimbursement from the universal service support mechanisms for providing such services.<sup>22</sup>

6. Pursuant to section 254(h)(2), however, state telecommunications networks may secure discounts on Internet access and internal connections in their capacity as consortia, or may receive direct reimbursement, as non-telecommunications carriers, from universal service support mechanisms for providing such services to eligible schools and libraries.<sup>23</sup> In the *Universal Service Order*, the Commission concluded that section 254(h)(2)(A), in conjunction with section 4(i), authorizes the Commission to permit discounts and funding mechanisms to

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<sup>17</sup> *Southwestern Bell Telephone Co. v. FCC*, 19 F.3d 1475, 1481 (D.C. Cir. 1994), citing *NARUC II*, 533 F.2d at 609. Private carriers do not serve everyone on "equal terms." Some examples of private carriers are "cable TV companies, [and] telecommunications carriers providing private lines to large users." Noam, Eli M., *Will Universal Service and Common Carriage Survive the Telecommunications Act of 1996?*, 97 Colum. L. Rev. 955 (May 1997).

<sup>18</sup> *Fourth Reconsideration Order*, 13 FCC Rcd at 5427, para. 188.

<sup>19</sup> *Id.* at 5427, para. 187.

<sup>20</sup> *Id.* at 5427, para. 188.

<sup>21</sup> *Id.* at 5423, para. 182.

<sup>22</sup> *Id.* at 5424, para. 183, 5427-28, para. 188 (citing *Universal Service Order*, 12 FCC Rcd at 9005-23, 9028, 9072, 9084-90; 47 C.F.R. §§ 54.501(a), 54.517).

<sup>23</sup> *Id.* at 5423-24, para. 182, 5428-29, para. 190.

enhance access to advanced services provided by non-telecommunications carriers.<sup>24</sup> The Commission noted that "[t]he goal of competitive neutrality [for which its rules must strive, pursuant to section 254(h)(2)] would not be fully achieved if the Commission only provided support for non-telecommunications services such as Internet access and internal connections when provided by telecommunications carriers."<sup>25</sup> Thus, in the *Fourth Reconsideration Order*, the Commission concluded that although state telecommunications networks do not constitute telecommunications carriers that are eligible for reimbursement for making available telecommunications pursuant to section 254(h)(1)(B), such networks that make Internet access and internal connections available to schools and libraries are eligible as non-telecommunications carriers for direct reimbursement from the support mechanisms for providing these services.<sup>26</sup>

### B. The Washington Petition

7. Petitioners state that the Washington statewide network operates on a "full cost recovery basis," to provide "computing and telecommunications services to state agencies, local governments, and other public entities."<sup>27</sup> The enabling state legislation does not authorize the Washington network to provide services to the private sector.<sup>28</sup> According to the petitioners, the Washington network relies on private telecommunications companies for the provision of telecommunications services; the network, however, "adds value" to those services in a variety of ways.<sup>29</sup> Petitioners assert that the network's services are geared to reduce costs and to tailor services to conform to the business needs of the state's public organizations.<sup>30</sup> Petitioners explain that the network predominantly aggregates its subscribers' intrastate telecommunications demand, and then "adds value" to basic carrier services by either integrating service elements purchased from other carriers and other product and service providers "by employing switches or other electronics to produce a tailored service," or by collaborating with such carriers "to assume responsibility for some aspects of service delivery as a way to further reduce costs and/or tailor services to better fit the business needs of public

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<sup>24</sup> *Universal Service Order*, 12 FCC Rcd at 9084-9090, paras. 589-600.

<sup>25</sup> *Id.* at 9087, para. 594.

<sup>26</sup> *Fourth Reconsideration Order*, 13 FCC Rcd at 5429, para. 190.

<sup>27</sup> Washington Petition at 4.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* Examples listed in the petition of such "value added" network services are: education intranet, switched ISDN services for two-way interactive video, long distance, local telephone service, and service components to Centrex service. *Id.* at 5-6, 9.

<sup>30</sup> *Id.* at 3, 5, 7.

organizations."<sup>31</sup> Petitioners list the state's education intranet and switched ISDN services for two-way interactive video as examples of the Washington network services that "go beyond basic telecommunications services."<sup>32</sup> Petitioners also list a variety of service components to the network's Centrex services, and long distance services for public organizations, to which the network has "added value."<sup>33</sup> Petitioners assert that the costs associated with the state network's value-added services account for more than twenty percent of the users' costs, and exceed the costs associated with a simple "buyers' consortium."<sup>34</sup> Petitioners state that the costs associated with such services are currently charged to the subscribing public entities, including schools and libraries, that purchase the state network's services.<sup>35</sup>

8. Petitioners request that the Commission allow the Washington network to receive direct reimbursement from the support mechanisms, pursuant to section 254(h)(2), for a new "advanced service" that includes the state network's "value-added" services provided to schools and libraries.<sup>36</sup> In the alternative, petitioners request that the Commission waive the statutory definition of "telecommunications carrier" to include the Washington network within the meaning of the term, for purposes of the schools and libraries universal service support mechanism.<sup>37</sup>

9. On March 25, 1998, United States Telephone Association (USTA), Ameritech, Bell Atlantic, and BellSouth filed with the Commission their respective Oppositions to Petitions for Reconsideration of the *Fourth Reconsideration Order* (Oppositions), including the

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<sup>31</sup> *Id.* at 7.

<sup>32</sup> *Id.* at 5-6.

<sup>33</sup> *Id.* at 5-6, 9-10. The listed service components to Centrex are: analysis of subscriber requirements and development of appropriate service orders; an automated system for service order processing; project management support for new service initiation; a single point-of-contact for subscribers regardless of the particular carrier involved in service provision; on-line service functions such as line feature changes; a billing system that generates simple, easy to understand statements and billing detail that is tailored to meet the subscriber needs; a 24-hour, seven-day-a-week help desk; network monitoring and technical support; optional access to state network long distance services; and optional access to cost-effective voice messaging. *Id.* at 9. The listed long distance value-added elements are: switching infrastructure and related facilities; network design and engineering; and network operation and management. *Id.* at 10.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 2-3, 6.

<sup>36</sup> *Id.* at 3.

<sup>37</sup> *Id.*

Washington Petition for Reconsideration.<sup>38</sup> USTA, Ameritech, Bell Atlantic, and BellSouth urge the Commission to deny the petitioners' request that the Washington network receive reimbursements directly from the support mechanism for providing telecommunications services to eligible schools and libraries. They argue that it would be inconsistent with section 254(h)(1)(B) to allow states to be reimbursed from the fund because state networks do not meet the statutory definition of "telecommunications carriers."<sup>39</sup> BellSouth also argues that state-government sponsored networks discriminate in their selection of entities that are entitled to purchase and benefit from their services by restricting participation, and that such networks do not permit even the entire class of statewide schools and libraries that are eligible to receive discounted services to participate, including eligible private institutions.<sup>40</sup> Bell Atlantic and Ameritech further argue that, because the services provisioned by state networks are telecommunications services that carriers routinely offer to end users, these services do not qualify as advanced services.<sup>41</sup>

### III. DISCUSSION

10. For the reasons discussed below, we deny the Washington Petition. We first note, however, that the Commission has been, and remains, fully cognizant of the important role of state networks in procuring, overseeing, and managing telecommunications resources within states.<sup>42</sup> Although we concluded that section 254(h)(1)(B) precludes a finding that state networks are eligible to receive reimbursement directly from the support mechanisms for telecommunications services provided to schools and libraries, we also concluded that state telecommunications networks that procure supported telecommunications and make them available to eligible schools and libraries constitute consortia that are authorized to secure

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<sup>38</sup> This Memorandum Opinion and Order addresses only those matters discussed in the oppositions filed by USTA, Ameritech, Bell Atlantic, and BellSouth, that are relevant in the context of the Washington Petition.

<sup>39</sup> USTA Opposition at 4; Ameritech Opposition at 4; Bell Atlantic Opposition at 4; BellSouth Opposition at 5-6.

<sup>40</sup> BellSouth Opposition at 6.

<sup>41</sup> Bell Atlantic Opposition at 4; *see also* Ameritech Opposition at 5.

<sup>42</sup> Fourth Reconsideration Order, 13 FCC Rcd at 5417-23, paras. 169-81. In the *Fourth Reconsideration Order*, the Commission considered the comments/petitions submitted by state networks and their representatives, *e.g.*, the National Association of State Telecommunications Directors (NASTD); Iowa Communications Network (ICN); Georgia Dept. of Administrative Services - Information Technology (DOAS-IT); Florida Dept. of Management Services (DMS), as well as comments and oppositions to petitions for reconsideration submitted by GTE, BellSouth, Bell Atlantic, Ameritech. We note that Washington State is a member of NASTD. *See* Washington Petition at 2.

discounts on such services on behalf of their eligible members.<sup>43</sup> In addition, the Commission found that non-telecommunications carriers, including statewide networks, are eligible to receive direct reimbursement from the universal service support mechanism for the provision of Internet access and internal connections to eligible schools and libraries.<sup>44</sup> To the extent, therefore, that the Washington network provides Internet access and internal connections to eligible schools and libraries, it is eligible to receive direct reimbursement from the universal service support mechanisms for providing these services.

11. We find no basis for petitioners' contention that the *Fourth Reconsideration Order* inappropriately minimizes the role that state networks play in providing telecommunications services by treating state telecommunications networks as consortia that simply act as "buyers."<sup>45</sup> To the contrary, in the *Fourth Reconsideration Order*, we fully recognized the advantages to schools and libraries resulting from the efforts of the various state networks in procuring supported telecommunications. We recognized, for example, the efforts of the various state networks to achieve optimum intrastate technological efficiencies and conserve their respective state's resources through services provided to public schools, libraries, and other public entities.<sup>46</sup> We sought to promote and maintain the benefits provided by state telecommunications networks to eligible schools and libraries by authorizing those networks to secure discounts on telecommunications services on behalf of eligible schools and libraries and to pass through those discounts to those schools and libraries.<sup>47</sup>

12. The Commission, in the *Universal Service Order*, designated only access to Internet and internal connections as services that non-telecommunications carriers are eligible to provide to schools and libraries at a discount, pursuant to section 254(h)(2) and 4(i).<sup>48</sup> The services that the Washington network provides (e.g., local business office functions,

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<sup>43</sup> *Fourth Reconsideration Order*, 13 FCC Rcd at 5424, para. 183.

<sup>44</sup> *Universal Service Order*, 12 FCC Rcd at 9085, para. 591; *Fourth Reconsideration Order*, 13 FCC Rcd at 5414, para. 165, 5428-29, para. 190.

<sup>45</sup> Washington Petition at 9-10 (contending that the Washington network's dissimilarity to other consortia lies in the fact that the network's "value-added" service components account for more than twenty percent of the total rates charged to users and clearly exceed the costs associated with a simple "buyers" consortium). *See also Fourth Reconsideration Order*, 13 FCC Rcd at 5424, para. 183.

<sup>46</sup> *See Fourth Reconsideration Order*, 13 FCC Rcd at 5424, para. 183 (recognizing the significant benefits that state networks provide to schools and libraries by stating that, "in terms of, *among other things*, purchasing services in bulk and passing on volume discounts to schools and libraries.") (emphasis added); *see also Universal Service Order*, 12 FCC Rcd at 9028, para. 479.

<sup>47</sup> *See Fourth Reconsideration Order* at 5424-25, para 183.

<sup>48</sup> *Universal Service Order*, 12 FCC Rcd at 9084-90, paras. 589-600.

operations systems support, and administrative services) do not constitute either Internet access or internal connections. Moreover, the services listed in the petition,<sup>49</sup> which petitioners want classified as "advanced services," are too broad and non-specific for consideration as a category of "advanced services."<sup>50</sup> Therefore, we decline to carve out a new category of "advanced services" eligible for support under section 254(h)(2) at this time, and conclude that the Washington network's "value-added" services should not be designated as advanced services under section 254(h)(2).

13. We also deny petitioners' request that the Commission revisit or waive applicability of the statutory definition of a "telecommunications carrier" to include the Washington network within the meaning of the term for purposes of the schools and libraries mechanism.<sup>51</sup> We lack the authority to waive a statutory provision.<sup>52</sup> Moreover, as discussed earlier, in the *Universal Service Order* the Commission concluded that, to meet the statutory definition of a telecommunications carrier, a carrier must offer its services on a common carrier basis.<sup>53</sup> In light of the NARUC cases, a key factor in determining common carrier status is whether a carrier "holds [itself] out to serve indifferently all potential users."<sup>54</sup> Pursuant to the enabling state legislation, the Washington network operates on a "full cost recovery basis," to provide computing and telecommunications services to state agencies, local governments, and other public entities, but not to the private sector.<sup>55</sup> Because the petitioners do not explain sufficiently how the Washington network meets the definition of a "telecommunications carrier," we find no basis for revisiting this issue as applied to the Washington network. Accordingly, we find that the Washington network is not a telecommunications carrier eligible to receive direct reimbursement for the provision of

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<sup>49</sup> Washington Petition at 5-7; nn.30, 34 *supra* for examples of "value added" network services and service components to Centrex listed in the petition.

<sup>50</sup> See 47 C.F.R. § 1.429(c) (requiring that petitions for reconsideration state with particularity the respects in which petitioner believes the action taken should be changed).

<sup>51</sup> Washington Petition at 3 and 14.

<sup>52</sup> See USTA Opposition at 4; Ameritech Opposition at 4; Bell Atlantic Opposition at 4; BellSouth Opposition at 5-6.

<sup>53</sup> *Universal Service Order*, 12 FCC Rcd at 9177-78, para 785; see also *Fourth Reconsideration Order*, 13 FCC Rcd at 5413, para 164.

<sup>54</sup> *National Association of Regulatory Utility Commissioners v. FCC*, 525 F.2d 630, 642 (D.C. Cir.) (*NARUC I*), cert. denied, 425 U.S. 992 (1976); *National Association of Regulatory Utility Commissioners v. FCC*, 553 F.2d 601, 608-09 (D.C. Cir. 1976) (*NARUC II*) (*NARUC Cases*).

<sup>55</sup> Washington Petition at 4.

discounted telecommunications services to schools and libraries pursuant to section 254(h).<sup>56</sup>

#### IV. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 4(j), 254, and 403 of the Act, 47 U.S.C. §§ 154(i), (j), 254, and 403, and section 1.429 of the Commission's rules, 47 C.F.R. § 1.429, that the Petition for Reconsideration filed February 12, 1998, by the Washington State Department of Information Services, the Office of the Superintendent of Public Instruction, the Washington State Library, the North Thurston School District No. 3, the Yakima Valley Regional Library, and Educational Service District No. 112, Vancouver, IS DENIED.

15. IT IS FURTHER ORDERED, pursuant to section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, that the request for waiver of the statutory definition of "telecommunication carrier," IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION  
  
Magalie Roman Salas  
Secretary

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<sup>56</sup> This conclusion is consistent with the Commission's declaratory ruling on a petition by the Iowa Telecommunications and Technology Commission ("ITTC"), operating the Iowa Communications Network ("ICN"), a statewide network. *Federal-State Joint Board on Universal Service, Declaratory Ruling*, CC Docket No. 96-45, 14 FCC Rcd 3040 (1999) (*ICN Declaratory Ruling*), *petition for review pending, State of Iowa v. FCC*, D.C. Cir. No. 99-1149 (filed April 19, 1999). In that proceeding, the Commission similarly considered, but rejected, ITTC's argument that ICN is a "telecommunications carrier," eligible to receive direct universal service support for the provision of discounted telecommunications services to schools, libraries, and rural health care providers under sections 254(h)(1)(A) and (B) of the Act. *Id.* at 3050-3051, paras. 22-23, 29. Because ICN serves only a customer base that has been selected by the Iowa legislature and does not offer its services to the public or any other requesting party, the Commission concluded that ICN does not offer its services on a common carrier basis, and is therefore not a telecommunications carrier eligible to receive direct universal service support for the provision of discounted telecommunications services to schools, libraries, and rural health care providers under sections 254(h)(1)(A) and (B) of the Act. *Id.* at 3056-3057, para. 30.

**DISSENTING STATEMENT OF  
COMMISSIONER HAROLD FURCHTGOTT-ROTH**

*Re: Federal-State Joint Board of Universal Service, Declaratory Ruling Regarding the Washington State Department of Information Services, CC Docket 96-45.*

I respectfully disagree with the decision that the Washington statewide network may not receive direct reimbursement from the universal service support mechanism for providing discounted services to schools and libraries under section 254(h)(1)(B) of the Communications Act, as amended. As discussed in the statement that I issued in dissent from the Commission's denial of the Iowa Telecommunications and Technology Commission's similar petition,<sup>1</sup> I think that Congress contemplated that state telecommunications networks would receive precisely the sort of universal service funding for which petitioners ask.

Section 254(h)(1)(B) is aimed at ensuring that a very narrow category of end users – schools and libraries – receives discounted telecommunications services. As petitioners point out, statewide networks are designed specifically to provide telecommunications services to the very class of end users that section 254(h)(1)(B) is designed to assist.<sup>2</sup> That a statewide network does not offer its services to the private sector simply has no logical bearing on whether it should be permitted to receive universal service support under section 254(h)(1)(B), and the Commission's unthinking application of its requirement that "telecommunications carriers" be "common carriers" makes no sense in this context. In other instances, the Commission has interpreted section 254 far more freely, and in my view, there is room for similar flexibility here.

Accordingly, I believe that the Commission's rigid application of its definition of "telecommunications carrier" is inconsistent with section 254(h)(1)(B), and I dissent from its denial of petitioners' request for relief.

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<sup>1</sup> See Dissenting Statement of Commissioner Harold Furchtgott-Roth Regarding Federal-State Joint Board on Universal Service, CC Docket 96-45, FCC 99-10 (rel. Feb. 18, 1999), *petition for review pending, State of Iowa v. FCC*, D.C. Cir. No. 99-1149 (filed Apr. 19, 1999).

<sup>2</sup> See Petition for Reconsideration of the Commission's *Fourth Reconsideration Order*, filed by Washington State Department of Information Services, the Office of the Superintendent of Public Instruction, the Washington State Library, the North Thurston School District No. 3, the Yakima Valley Regional Library, and Educational Service District No. 112, Vancouver (filed Feb. 12, 1998).