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

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
 )  
San Carlos Apache Telecommunications Utility, Inc. )  
 )  
Petition for Waiver )  
of Sections 36.611 and 36.612 )  
of the Commission's Rules )

CC: 96-45

DA 00-1018

COMMENTS  
OF THE  
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

The National Telephone Cooperative Association (NTCA)<sup>1</sup> submits the following comments in response to the Commission's *Public Notice*, DA 00-1018, released on May 8, 2000, in the above-captioned proceeding.<sup>2</sup> NTCA supports the petition and urges the Commission to grant it expeditiously.

I INTRODUCTION

In 1996, San Carlos Telecommunications Utility, Inc., (San Carlos) purchased an exchange from US West Communications, Inc. (US West), which previously offered service on the San Carlos Apache Reservation in Arizona. At the time of the purchase, US West received no universal support for the exchange. On April 19, 1996, San Carlos and US West filed a joint petition for waiver of the definition of a study area contained in Part 36 Appendix-Glossary of the FCC's rules in connection with the purchase by San Carlos of the exchange consisting of 686

<sup>1</sup> NTCA is a national association of over 500 local exchange carriers that provide service primarily in rural areas. All NTCA members are small carriers that are defined as "rural telephone companies" in the Telecommunications Act of 1996 (Act), 47 U.S.C. § 153(37). Approximately half of NTCA's members are organized as cooperatives.

<sup>2</sup> See Petition for Waiver of Sections 36.611 and 36.612 of the Commission's Rules, April 10, 2000, ("Petition").

<sup>3</sup> In the Matter of the Petitions for Waiver Filed by San Carlos Apache Telecommunications Utility, Inc. and US West Communications, Inc. Concerning Sections 61.41(c)(2), 69.3(e) and the Definition of a "Study Area" contained in

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access lines.<sup>3</sup> In addition, San Carlos sought a waiver from the Commission to permit it to operate under rate-of-return regulation after acquiring the exchange which at the time was operated under price cap regulation. On November 8, 1996, the FCC granted the study area and price cap waiver.<sup>4</sup>

In 1997, San Carlos began providing basic telephone service to the 686 access lines on the Reservation through the analog facilities acquired from US West. Since 1997, San Carlos has deployed facilities and now provides service to over 1800 access lines on the Reservation. The Commission's rules, however, preclude San Carlos from receiving its full Universal Service Fund (USF) payments contemporaneously with the expenditure of funds during its initial phase of expanding service throughout the Reservation. The lack of contemporaneous universal support funding will likely frustrate San Carlos' existing and future efforts to maintain and continue to expand service to unserved and underserved areas of the Reservation. To avoid such an outcome, on April 10, 2000, San Carlos San Carlos filed a petition for waiver of Sections 36.611 and 36.612 of the Commission's rules, seeking USF support for the period of September 1997 through August 1999, so that it may continue to provide and extend reasonably-priced local telephone service to previously unserved and underserved portions of the Reservation.

## **II GRANTING SAN CARLOS A WAIVER IS IN THE PUBLIC INTEREST**

Under the FCC's current rules each local exchange carrier (LEC) must submit cost and loop count information to the National Exchange Carrier Association (NECA) on or before July 31<sup>st</sup> of each year in order to determine which study areas are entitled to receive an expense adjustment for purposes of universal service support.<sup>5</sup> Data used in these submissions must

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Part 36 Appendix-Glossary of the Commission's Rules (released November 8, 1996).

<sup>4</sup> 11 FCC Rcd 14591 (1996) (San Carlos Study Area and Price Cap Waiver Order).

<sup>5</sup> 47 C.F.R. §§ 36.611 and 36.612.

<sup>6</sup> 47 C.F.R. §36.601(b).

obtained as of December 31<sup>st</sup> of the preceding calendar year for each July 31<sup>st</sup> filing.<sup>6</sup> The July 31<sup>st</sup> data filings form the basis of high cost funding requirements in the next succeeding calendar year. Consequently, a two-year lag time is built into the current universal support rules. The two-year lag was originally intended to facilitate the administration of the high cost support mechanism by providing "carriers ample time to collect and review data, and provided time for NECA and the Administrator to process and evaluate the data before support payments were made."<sup>7</sup> For many carriers with historical data the two-year lag does not create any financial harm. For some carriers, however, when historical data is not available, the rules result in a delay in the full amount of universal service support received by a carrier, thereby creating a financial harm that may affect the deployment of service in needy areas.

In specific instances, the Commission has recognized that the potential harm caused by the two year delay and has waived its rules to allow the carrier offering service to a previously underserved or unserved area to use current data and projected data to determine USF support payments.<sup>8</sup> In this instance, the Commission should also recognize the potential harm to San Carlos caused by the delay and grant it a waiver from the rules. San Carlos' low-income subscribers are clearly among the intended beneficiaries of high-cost universal service support. Without the waiver, San Carlos will not receive \$659,271 in USF support this year. Without the additional funding, San Carlos will likely have to increase its local rates to low-income Native Americans to recover the costs associated with providing service. Higher local rates in turn will

<sup>6</sup> 47 C.F.R. §36.601(b).

<sup>7</sup> Comments filed by the United States Telecom Association (USTA) and the National Exchange Carrier Association (NECA), *In the Matter of Federal-State Joint Board on Universal Service, Promoting Deployment and Subscriberhip in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, FCC 99-204, p. 8 (December 17, 1999).

<sup>8</sup> See *Border to Border Communications, Inc.*, 10 FCC Red. 5055 (1995); *South Park Telephone Company*, 13 FCC Red. 198 (1998); and *Sandwich Isles Communications, Inc.*, 13 FCC Red. 2407 (1998).

lead to lower subscribership and jeopardize the future availability and viability of service on the Reservation. Such a result is not in the public interest.

Approval of the petition would certainly further the Commission's goal of providing Universal Service to all Americans. In the absence of immediate interstate cost recovery, including USF, San Carlos will encounter substantial difficulty in providing and expanding service to residents on the Reservation. It is in the public interest, therefore, for San Carlos to receive USF support as soon as possible in order that the benefits of upgraded equipment and new service can be brought to the Reservation and the effort to provide Universal Service continued. Granting the request will also further the Commission's efforts to promote the deployment and subscribership in unserved and underserved areas, including tribal and insular areas.

**III CONCLUSION**

Based on these reasons, NTCA supports the petition and urges the Commission to grant it expeditiously.

Respectfully submitted,  
NATIONAL TELEPHONE COOPERATIVE  
ASSOCIATION

By: \_\_\_\_\_  
L. Marie Guillory  
(703) 351-2021

By: \_\_\_\_\_  
Daniel Mitchell  
(703) 351-2016

Its Attorneys

4121 Wilson Boulevard, 10<sup>th</sup> Floor  
Arlington, VA 22203

May 22, 2000

CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Comments of the National Telephone Cooperative Association in DA 00-1018 was served on this 22nd day of May 2000 by first-class U.S. Mail postage prepaid, to the following persons on the attached list:

\_\_\_\_\_  
Gail C. Malloy

Chairman William E. Kennard  
Federal Communications Commission  
445 12th Street . SW. Room 8-B201  
Washington, D.C. 20554

Commissioner Michael Powell  
Federal Communications Commission  
445 12th Street . SW. Room 8-A204  
Washington, D.C. 20554

Commissioner Harold W. Furchtgott-Roth  
Federal Communications Commission  
445 12th Street . SW. Room 8-A302  
Washington, D.C. 20554

Magalie Roman Salas, Secretary  
Federal Communications Commission  
445 12th Street, S.W., TW-A325  
Washington, D.C. 20554

David Cosson, Esq.  
Kraskin, Lesse & Cosson, LLP  
2120 L Street, N.W., Suite 520  
Washington, D.C. 20037

Commissioner Gloria Tristani  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW. Room 8-C302  
Washington, D.C. 20554

Commissioner Susan Ness  
Federal Communications Commission  
445 12<sup>th</sup> Street . SW. Room 8-B115  
Washington, D.C. 20554

International Transcription Service  
445 12<sup>th</sup> Street, S.W., Room CY-B400  
Washington, D.C. 20554

Sheryl Todd  
Accounting Policy Division  
Common Carrier Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 5-B540  
Washington, D.C. 20554