ORIGINAL

STATE OF MARYLAND

EX PARTE OR LATE FILED

MICHAEL J. TRAVIESO
PEOPLE'S COUNSEL

SANDRA MINCH GUTHORN
DEPUTY PEOPLE'S COUNSEL

DONALD F. ROGERS
PAULA M. CARMODY
CYNTHIA GREEN-WARREN
THERESA V. CZARSKI
WILLIAM F. FIELDS
LUANNE P. McKENNA
ANTHONY C. DEPASTINA

MARYLAND PEOPLE'S COUNSEL

WILLIAM DONALD SCHAEFER TOWER
6 ST. PAUL STREET, SUITE 2102
BALTIMORE, MARYLAND 21202
(410) 767-8150
(800) 207-4055
FAX (410) 333-3616

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September 5, 2000

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

Re: *Ex Parte* Filing and CC Docket Nos. 98-137 and 99-117
AAD File No. 98-26

Dear Ms. Salas:

Pursuant to 47 CFR §1.1206(a), enclosed please find two (2) copies of an *Ex Parte* filing in the above-captioned proceeding. I ask that you include this *Ex Parte* filing in the public record pursuant to the Commission's rules.

Should you have any questions related to this matter, please do not hesitate to contact me.

Sincerely,

Michael J. Travieso

Michael J. Travieso
People's Counsel

MJT:sd
Enclosures

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August 31, 2000

Ms. Dorothy Attwood
Chief, Common Carrier Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Depreciation, CC Docket No. 98-137

Dear Ms. Attwood:

I am writing to you on behalf of the National Association of State Utility Consumer Advocates (NASUCA). As you know, NASUCA has filed reply comments (May 1, 2000) and two *ex parte* letters (May 24, 2000 and August 8, 2000) opposing the ILEC CALLS members' depreciation proposal in this docket. This letter responds to a recent *ex parte* letter dated August 22, 2000 from the CALLS ILEC members addressed to you. In that letter, the ILECs purport to address issues raised concerning increases in intrastate prices as a result of the approval of their depreciation proposal by the Federal Communications Commission. Despite the ILEC's contentions, the FCC's approval of the ILEC depreciation proposal would, without doubt, have a very negative effect on consumers of local telephone service from these ILECs. The ILEC's August 22 letter does nothing to address our concerns.

Including what is stated in the ILEC's August 22 letter, they have made three proposals which they claim address the concerns of their customers:

1. The ILECs have offered repeated assurances that they will not seek to recover <u>any</u> portion of the proposed FCC amortization amount by increasing interstate or intrastate prices;

2. Further, in any state jurisdiction that automatically mirrors FCC depreciation rates, the ILECs have explicitly agreed not to seek intrastate price increases to recover the increased intrastate amortization expense that would occur as a result of this FCC amortization action;

3. In order to answer concerns about the potential indirect impact of an FCC decision, however, the ILECs would not object to language in the Commission order that would clarify that this decision is limited to the specific circumstances of creating an amortization plan for the interstate jurisdiction.

These statements do not address even the basic concerns previously raised by NASUCA. First, NASUCA's concerns are not limited to whether the ILECs will seek to recover "any portion of the proposed FCC amortization amount" in intrastate rates. As we have previously noted, we are concerned that the ILECs will seek to recover the intrastate expense that would result from the FCC amortization action. In addition, we are also concerned that by approving the ILEC's proposal, the ILECs will seek to use intrastate financial depreciation factors in a state regulatory setting. The effect of this would be to greatly increase intrastate depreciation expense. The ILECs have completely ignored this last point and have directed their comments solely toward the amortization of the book differences. NASUCA believes that allowing the ILECs to use financial depreciation factors in the federal regulatory forum will provide a precedent which will be difficult to overcome for the ILECs to use these same financial factors in the state regulatory forum. If a commission were to permit an ILEC to do so, the ILEC's depreciation expense would double.

With respect to the ILEC's second promise, as has been previously pointed out by NARUC, a promise applicable only in "any state jurisdiction that automatically mirrors FCC depreciation rates" is a hollow promise. NARUC has indicated that it believes there are only four such jurisdictions in the United States.

With respect to the ILEC's final promise regarding an FCC order using language which would clarify that this decision is limited to "the specific circumstances of creating an amortization plan for the interstate jurisdiction," this language would accomplish nothing. The ILECs have already acknowledged, and the law is clear, that an FCC depreciation decision is not binding on state public utility commissions. However, the issue is not whether the FCC decision would be binding on state regulators, the issue is the leverage which this FCC decision would give to the ILECs in a deprecation case or other rate case which would be bound to follow in the states where the ILECs do

business. Furthermore, there are no "specific circumstances" which are unique to the ILEC's depreciation proposal. The circumstances prompting the proposal are merely that the financial books show different depreciation reserves than do the regulatory books. This is not a special circumstance but merely a fact of life for these ILECs.

Should the FCC seek to insulate state consumers from the adverse impacts of an FCC approval of this ILEC depreciation proposal, the FCC could only do so in one way. While NASUCA continues to oppose the approval of the ILEC deprecation proposal for all the reasons it has previously stated, should the FCC take this anti-consumer action, it should require a sworn affidavit signed by a representative of each ILEC that the ILEC would not seek a rate increase, rate relief, rate re-balancing, price cap relief, a rate-of-return adjustment or any other ratemaking adjustment or change in any state jurisdiction as a result of the approval by the FCC of the ILEC's depreciation proposal. Only a blanket promise by these ILECs that they will not seek rate relief, rate-of-return adjustments, accounting changes or the like would be sufficient to protect state consumers of ILEC services from the predictable adverse impacts of the FCC approval of this anti-consumer proposal.

Thank you for your consideration.

Sincerely,

Michael J. Travieso

Michael J. Travieso
People's Counsel

MJT:sd