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September 5, 2000

Magalie Roman-Salas
FCC Secretary
Office of the Secretary
Federal Communications Commission
445 Twelfth Street, S.W., Room TW-204B
Washington, D.C. 20554

RE: Ex Parte - Two Copies filed in the Depreciation Rulemaking: *In the Matters of 1998 Biennial Regulatory Review – Review of Depreciation Requirements for Incumbent Local Exchange Carriers; CC Docket No. 98-137, Ameritech Corporation Telephone Operating Companies' Continuing Property Records Audit, et al.; CC Docket No. 99-117; GTE Telephone Operating Companies Release of Information Obtained During Joint Audit. AAD File No. 98-26*

Dear Madame Secretary:

The undersigned submits this *ex parte* filing to recite my conversation with the Chief of the Common Carrier Bureau on August 28, 2000, and in response to the June 1, 2000 *ex parte* letter filed jointly by the incumbent local exchange carriers ("ILECs") participating in the Coalition for Affordable Local and Long Distance Service ("CALLS") plan. I met with Ms. Dorothy Attwood, and explained to her that the New Hampshire Public Utilities Commission opposes the proposal for above-the-line amortization of the difference between GAAP and regulatory book depreciation, as set out in the Federal Communications Commission's Further Notice of Proposed Rulemaking ("FNPRM") in CC Docket 98-137 with respect to depreciation accounting.

I told Ms. Attwood that it is essential that if the FCC adopts the above-the-line amortization proposal in the FNPRM, the ILECs must be precluded from recovering the intrastate portion of the total amount subject to amortization. The FNPRM specifically asked the ILECs if they commit not to recover any of the amortization included in both the interstate and intrastate portions. Even though the ILECs have provided various responses to this question, they have not made a clear commitment not to recover the intrastate portion of the amortization. And, in any event, it is by no means clear whether the FCC can impose such a requirement, and even if it can, whether the FCC has the authority to enforce such a requirement.

Above-the-line FCC treatment of the GAAP/FCC depreciation differential would lead to large increases in the State jurisdictional depreciation expenses. Under the FCC's separations rules, approximately 75%, or $23.5 billion over 5 years in additional costs, would be designated as additional intrastate expenses. If this happens, the onus will be on the individual States to require below-the-line treatment and to prevent serious adverse consumer impacts. While the individual States have the authority under *Louisiana Public Service Commission v. FCC, 476 U.S. 355 (1986)* to set depreciation rates for State ratemaking purposes, it will be very difficult for us to prevent recovery of the additional GAAP-related costs. New Hampshire has a small finance division, already stretched to the limit with present responsibilities, and we have historically relied on three-way meetings with industry and the FCC

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staff to develop the basic framework for depreciation prescription. If the FCC endorses above-the-line treatment to eliminate GAAP/regulatory depreciation differences, we will be hard pressed to develop an independent depreciation framework that truly matches depreciation schedules with useful lives and salvage values.

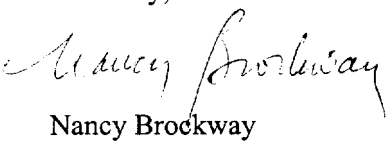
The ILECs have stated in their comments to the FNPRM that the FCC's approval of the depreciation proposal will represent the Commission's "endorsement" of GAAP depreciation factors for regulatory purposes. Above-the-line treatment will create the rebuttable presumption that GAAP depreciation parameters are valid and appropriate for all purposes.

There is no benefit to consumers at the federal level in the proposed deviation from the depreciation rates so recently approved by the Commission (December 17, 1999, Report and Order in CC Docket No. 98-137, Memorandum Opinion and Order in ASD 98-91), since the ILECs have stated they will not ask (at the federal level) for the normal consequences of such depreciation represcription: higher (interLATA) rates and revised universal service allocations. It would be unfortunate and unreasonable for the Commission to proceed with such a change, given the real and large liability at the State level. The provisions for forbearance of the December 1999 depreciation rates provide customer protection while promoting competition, and should not be abandoned nine months later.

As I stated to Ms. Attwood, if the FCC adopts above-the-line amortization of GAAP/regulatory depreciation differences, as a state Commissioner my practical choice will be whether to raise exchange rates, intra-state toll rates, or access rates. No state, not even a rate cap state, will be wholly immune from the pressure to adopt GAAP books. I advised Ms. Attwood that I had not talked to any State Commissioner who supported the FNPRM proposal.

As always, if you have any questions about this, or any other questions, please do not hesitate to give me a call at 603-271-2443.

Sincerely,



Nancy Brockway
Commissioner, NH PUC

cc: Chairman Kennard
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Commissioner Powell
Commissioner Tristani
Commissioner Furchtgott-Roth
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