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

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Federal-State Joint Board on Universal Service;	)	
	)	CC Docket No. 96-45
Comments on the Rural Task Force	)	
Recommendation	)	FCC-00J-3
	)	

Comments of the Public Service Commission of the United States Virgin Islands

Pursuant to the FCC's October 4, 2000 public notice,[1] the Public Service Commission of the United States Virgin Islands hereby submits its comments on the Rural Task Force Recommendation to the Federal State Joint Board on Universal Service.[2] The RTF Recommendation is a critical step in clarifying and distinguishing the universal service needs of rural and insular populations from those of urban communities. In addition, the Recommendation properly acknowledges the "substantial diversity among Rural Carriers themselves."[3] Indeed, the economic and geographic characteristics of the United States Virgin Islands – which shape the territory's universal service needs – are unique among rural and insular areas that qualify for universal service funding. The RTF Recommendation nevertheless provides that, whatever the particular characteristics of a rural or insular area, the bedrock principles of Section 254

[1] Federal State Joint Board on Universal Service, CC Docket No. 96-45, *Public Notice: Comments on the Rural Task Force Recommendation*, FCC-00J-3 (rel. Oct. 4, 2000).

[2] Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Rural Task Force Recommendation to the Federal-State Joint Board on Universal Service* (rel. Sept. 29, 2000) ("RTF Recommendation" or "Recommendation").

[3] RTF Recommendation at 11.

are addressed: universal service funding should be "sufficient"[4] while permitting investment in rural infrastructure, including for advanced services, to grow.[5]

Moreover, the Joint Board should give great weight to the RTF Recommendation due the process by which it was formulated. Acknowledging the complexity of the issues surrounding provision of universal service to rural and insular areas, the Joint Board itself called for the formation of the RTF, and took pains to make sure the body was representative of the interested parties. When called to order, the RTF represented a broad cross-section of stakeholders from America's rural and insular communities, including state public utility commissioners, state consumer advocates, and carriers. The Recommendation the RTF produced represents a hard-fought compromise, achieved only through long hours of collaboration in open sessions. Having labored to produce consensus, the RTF's "delicately crafted package" is entitled to deference. The Public Service Commission of the United States Virgin Islands strongly urges the Joint Board to adopt the Recommendation without delay to begin closing the digital divide between America's urban and rural communities.

I. THE UNIVERSAL SERVICE NEEDS OF RURAL AND INSULAR POPULATIONS – PARTICULARLY IN THE UNITED STATES VIRGIN ISLANDS – DIFFER CONSIDERABLY FROM THOSE OF URBAN POPULATIONS, AND MERIT A DISTINCT APPROACH

The RTF Recommendation properly accounts for the fact that the economic and geographic characteristics that distinguish rural and insular areas from urban areas also contribute to differing

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[4] 47 U.S.C. § 254(b)(5).

[5] *See* 47 U.S.C. § 254(c)(1) ("Universal service is an evolving level of telecommunications services that the Commission shall establish . . . taking into account advances in telecommunications and information technologies and services.") and § 254(b)(3) ("[L]ow-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including . . . advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas.")

universal service needs. Congress recognized as much in the Communications Act of 1996. The Act provides that:

> Consumers in all regions of the Nation, including … those in rural, insular, and high cost areas, should have access to telecommunications and information services … that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charges for similar services in urban areas.[6]

The difference between the geographic and economic conditions prevailing in rural and insular, as opposed to urban, areas is particularly stark in the United States Virgin Islands.

Geography, topography and climactic conditions add significantly to the cost of providing telecommunications services in the United States Virgin Islands. While some areas of the mainland United States are considered isolated from the rest of the country, over 1200 miles of ocean separate the United States Virgin Islands from the mainland U.S. This isolation has the effect of dramatically increasing the costs of all products delivered to, and sold in, the territory because of the simple fact that it costs so much more to ship and deliver goods to the islands.[7] Topography and geology also serve to drive up costs. For example, because the islands are the product of volcanic activity the terrain is mostly hilly with many rugged, mountainous areas. Thus, the telecommunications transmission facilities require additional guying and anchoring and the distances between points are increased.

Additionally, telecommunications providers operating in the United States Virgin Islands face a harsh climate that substantially increases operating costs. The salt water air is corrosive and inhospitable to telecommunications equipment. Exposed equipment does not last as long here as it would in another

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[6] 47 U.S.C. § 254(b)(3).

[7] The Islands' cost of living is thirty percent higher than the national average.

climate or additional measures must be taken to protect the equipment. Moreover, the islands are located right in the heart of the area vulnerable to the ravages of hurricanes.[8] Given the terrain, the bulk of the population resides on the coastal regions of the territory, and, as a result, the bulk of the telecommunications facilities are found there as well. Such facilities must be built to withstand (or, more properly, minimize the exposure of) the significant hurricane threat or the telecommunications provider must budget for this contingency.

Geography, topology and climate translate directly into higher telephone rates for customers in the United States Virgin Islands. Both business and residential rates exceed those on the mainland. With respect to business lines in the United States Virgin Islands, the single line flat rate is more than two times the average rate for a business line on the mainland ($49.85 vs. $21.72).[9] Residential customers also feel the pinch. Residential rates in the United States Virgin Islands are 63% higher than the average rate in rural parts of the U.S. mainland ($11.51 vs. $8.55).

The difficulties created by geography are further aggravated by economic factors. The GDP per capita in the territory is quite low. In the United States Virgin Islands the per capita GDP is $18,287 (1998 est.),[10] compared to the U.S. average of $31,500 (1998 est.).[11] The low GDP translates into personal

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[8] The effects of a direct hit on the islands can be devastating. As a result of Hurricane Marilyn (Sept. 1995), an estimated 80 percent of the homes and businesses on St. Thomas were destroyed and at least 10,000 people were left homeless. Another 30 percent of the homes on St. John were destroyed and 60 percent were roofless and about 20 to 30 percent of homes in St. Croix received damage. Total costs of the damage ran to around $3 billion. National Hurricane Center, Tropical Prediction Center, *Preliminary Report on Hurricane Marilyn* <http://www.nhc.noaa.gov/1995marilyn.html> (last updated 1/8/99).

[9] *See* Common Carrier Bureau, FCC, *Reference Book of Rates, Price Indices and Expenditures for Telephone Service* (June 1999).

[10] *See* World of Information Key Indicators (10/31/99), *available at*, 1999 WL 12946076.

[11] *See* CIA World Factbook (1999).

poverty. According to the 1990 census, nearly a quarter of the Islands' population live below the poverty line.[12] Even accounting for people living above the poverty line, the United States Virgin Islands is not particularly well-off when compared to the U.S. For instance, the average disposable income here is only sixty percent of that of the United States.

Given the lower level of wealth and the increased costs of living, it is not surprising to find that penetration rates in the United States Virgin Islands are lower than the national average. According to recent figures, the United States Virgin Islands has a penetration rate of approximately 88 percent. This figure is nearly 10 percent lower than the United States' penetration rate of just over 94 percent.[13]

Notwithstanding the hardship imposed by geographic and economic conditions unique to the United States Virgin Islands, the territory is a loyal and strategic part of the United States in the Caribbean. The islands must not be left on the wrong side of the digital divide through poor policy choices that fail to ensure that insular areas attain a robust and modern telecommunications infrastructure. The RTF Recommendation is a positive step towards ensuring that such oversight does not occur. The Recommendation recognizes the breadth and diversity of factors that contribute to high costs in rural and insular areas, and provides a mechanism for universal service to keep pace with those costs while allowing for investment in modernization of the telecommunications infrastructure.

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[12] *See* 1990 Census of Population, Social and Economic Characteristics, Virgin Islands of the United States (1990 CP-2-55) (noting that 23.2 percent of the people in the U.S.V.I. live below the poverty line). By comparison, in the mainland U.S., less than 14 percent of the population lives below the poverty line.

[13] *See* Industry Analysis Div., Common Car. Bureau, FCC, *Trends in Telephone Service*, Table 17.2 (Sept. 1999).

II. THE RTF RECOMMENDATION ADDRESSES THE BEDROCK PRINCIPLES OF SECTION 254: PROVIDING FOR "SUFFICIENT" UNIVERSAL SERVICE SUPPORT AND ALLOWING INVESTMENT IN RURAL INFRASTRUCTURE TO GROW

Section 254(b)(5) of the Communications Act provides that universal service funding shall be "specific, predictable and sufficient."[14] On a forward going basis, Section 254(c)(1) permits the definition of universal service to evolve.[15] The RTF Recommendation furthers both of these principles by providing sufficient funding for the existing operations of carriers serving rural and insular areas while allowing for growth to meet future needs.

A. By Raising The Cap On Universal Service Funding For Rural and Insular Areas And Adopting An Embedded Cost Model, the RTF Recommendation Addresses The Statutory Requirement That Universal Service Funding Should Be "Sufficient"

The RTF Recommendation goes a long way to correct for the significant shortfall in universal service funding for rural and insular areas that might occur if the non-rural universal service mechanism were applied indiscriminately. Specifically, the Commission has adopted a Forward Looking Economic Cost ("FLEC") model for non-rural carriers. FLEC is designed, among other things, to prevent windfalls where universal service payments to non-rural carriers exceed the carriers' actual costs. With respect to carriers serving rural and insular areas, however, FLEC is a solution in search of a problem. Despite the extensive record in the FCC's *Unserved and Underserved Areas* rulemaking,[16] there is no evidence to suggest rural and insular service providers are being overcompensated. Indeed, there is evidence to the contrary. In the United States Virgin Islands, for example, the telephone penetration rate is only 88% as

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[14] 47 U.S.C. § 254(b)(5).

[15] 47 U.S.C. § 254(c)(1).

[16] Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, CC Docket No. 96-45*, Further Notice of Proposed Rulemaking*, 14 FCC Rcd 21177 (1999).

opposed to 94% for the rest of the country.[17] This data suggests more universal service funding is needed.

The RTF Recommendation addresses the need for additional universal service funds for rural and insular areas, and provides for funding to keep pace with costs on a forward-going basis, including in emergencies. The most immediate and needed fix included in the Recommendation is separating the High Cost Line ("HCL") fund for carriers serving rural and insular areas from the fund for non-rural carriers, and re-basing the cap on the newly separated fund.[18] This change alone should make an additional $118.5 million available for universal service in rural and insular areas.[19] As the needs of rural and insular service providers grow and change over time, the new HCL fund would keep pace because the cap is indexed, based on an annual "Rural Growth Factor."[20] In addition, the Recommendation includes a "safety net" feature, enabling a carrier to obtain additional funding – under special circumstances and based on a determination of the federal universal service fund administrator – where the new indexed HCL cap limits a study area's expense adjustment.[21] These common sense features ensure that growth and modernization of the telecommunications infrastructure in rural and insular areas will not be limited arbitrarily.

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[17] *See* Letter from Maria Tankenson Hodge, Legal Counsel of the Public Service Commission of the United States Virgin Islands, to the FCC (Oct. 12, 1999)(reporting a telephone penetration rate of 87.8% for the United States Virgin Islands); FCC's 1999 *Monitoring Report* (reporting a national average telephone penetration rate near 94%).

[18] RTF Recommendation at 24.

[19] *Id.* at 24, n.46.

[20] *Id.* at 25.

[21] *Id.* at 27.

The RTF Recommendation also adopts an embedded cost model to fairly allocate funding. Forward-looking cost models systematically underestimate the cost of serving insular areas. The error arises because such cost models fail to account for variations in geography. However, as discussed in Section I, *supra,* the geography, topology, and climate of the United States Virgin Islands greatly influence the cost of linking a customer to the network. The Commission itself recognized that customer location is important to determining costs.[22] RTF merely proposes a cost model that takes this reality into account. In doing so, the Recommendation implements an earlier policy of the Joint Board that "rural carriers serving high cost insular areas . . . should continue to receive universal service support based on their embedded costs."[23]

Finally, cognizant of the possibility that universal service might become a barrier to entry, the RTF proposes measures to make universal service funding portable. The Recommendation proposes establishing portable per line support.[24] Such a mechanism should improve the prospects for competition in rural and insular areas.

B. The Public Service Commission of the United States Virgin Islands Strongly Supports The "No Barriers To Advanced Services" Policy Of The RTF Recommendation

The RTF Recommendation properly recognizes that, while the FCC may not yet have added advanced services to the definition of "basic telecommunications services," Section 254(b)(2) presently

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[22] Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Forward-Looking Mechanism for High Cost Support for Non-Rural LECs, *Further Notice of Proposed Rulemaking*, FCC 99-120, at ¶ 23 (rel. May 28, 1999) ("*Input FNPRM*").

[23] *Federal-State Joint Board on Universal Service* (*Recommended Decision*), 12 FCC Rcd 87, 308 (Joint Bd. 1996).

[24] RTF Recommendation at 37.

requires *access* to advanced services.[25] While basic telephone service is the bare minimum that people need to participate in the old economy – and important progress remains to be made on telephone penetration rates in the United States Virgin Islands– access to advanced services is the minimum required to participate in the new economy. A universal service policy that creates obstacles to participating in the Information Age denies opportunities for economic growth. Accordingly, the Public Service Commission of the United States Virgin Islands supports RTF's "no barriers to advanced services" policy, which recommends the use of universal service funds to deploy telecommunications plant not only capable of supporting basic telephone service, but also of providing access to advanced services.[26] To ensure implementation, the Joint Board should also accept RTF's recommendation that "the [universal service] fund be sized so that investment in rural infrastructure will be permitted to grow."[27]

III. CONCLUSION

The Public Service Commission of the United States Virgin Islands supports the RTF Recommendation. Because of geographic and economic factors, the universal service needs of the United States Virgin Islands, like many rural and insular areas, differ significantly from urban communities. The RTF Recommendation takes these factors into account, provides funding to address the unique needs of rural and insular communities, and fairly apportions funding based upon embedded costs.

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[25] 47 U.S.C. § 254(b)(2).

[26] RTF Recommendation at 22.

[27] *Id.* at 23.

Moreover, the Recommendation permits investment in rural infrastructure to grow, ensuring that residents of the United States Virgin Islands and other insular communities will have access to economic opportunities in the new economy.

Respectfully submitted,

PUBLIC SERVICE COMMISSION OF THE UNITED STATES VIRGIN ISLANDS

By: /s/ Walter L. Challenger

Walter L. Challenger, Chairman
Public Service Commission of the
United States Virgin Islands
P.O. Box 40
Charlotte Amalie, USVI 00804

November 3, 2000

CERTIFICATE OF SERVICE

I, Christine Peyton, hereby certify that I have caused a copy of the foregoing "Comments of the Public Service Commission of the United States Virgin Islands" to be served on this 3rd day of November, 2000, by United States mail, first class postage, pre-paid, upon the following parties:

/s/ Christine Peyton
Christine Peyton

The Honorable Susan Ness
Commissioner, FCC Joint Board Chair
Federal Communications Commission
445 12th Street, SW, Rm. 8-B115H
Washington, DC 20554

The Honorable Harold Furchtgott-Roth
Commissioner
Federal Communications Commission
445 12th Street, S.W., Rm. 8-B115H
Washington, DC 20554

The Honorable Gloria Tristani
Commissioner
Federal Communications Commission
445 12th Street, S.W., Rm. 8-B115H
Washington, DC 20554

The Honorable Laska Schoenfelder
Commissioner, State Joint Board Chair
South Dakota Public Utilities Commission
State Capitol, 500 East Capitol Street
Pierre, SD 57501-5070

The Honorable Martha Hogerty
Public Counsel
Missouri Office of Public Counsel
301 West High St.
Suite 250
Truman Building
P.O. Box 7800
Jefferson City, MO 65102

The Honorable Bob Rowe
Commissioner
Montana Public Service Commission
1701 Prospect Avenue
P.O. Box 202601
Helena, MT 59620-2601

The Honorable Patrick H.Wood, III
Chairman
Texas Public Utility Commission
1701 North Congress Avenue
P.O. Box 13326
Austin, TX 78711-3326

The Honorable Nanette G. Thompson
Chair
Regulatory Commission of Alaska
1016 West Sixth Avenue, Suite 400
Anchorage, AK 99501-1693

Rowland Curry
Chief Engineer
Texas Public Utility Commission
1701 North Congress Avenue
P.O. Box 13326
Austin, TX 78701-3326

Greg Fogleman
Economic Analyst
Florida Public Service Commission
2540 Shumard Oak Blvd
Gerald Gunter Bldg.
Tallahassee, FL 32399-0850

Mary E.Newmeyer
Federal Affairs Advisor
Alabama Public Service Commission
100 N. Union Street, Ste. 800
Montgomery, AL 36104

Joel Shifman
Senior Advisor
Maine Public Utilities Commission
242 State Street
State House Station 18
Augusta ME 04333-0018

Peter Bluhm
Director of Policy Research
Vermont Public Service Board
Drawer 20
112 State St., 4th Floor
Montpieller, VT 05620-2701

Charlie Bolle
Policy Advisor
Nevada Public Utilities Commission
1150 E. Williams Street
Carson City, NV 89701-3105

Carl Johnson
Telecom Policy Analyst
New York Public Service Commission
3 Empire State Plaza
Albany, NY 12223-1350

Lori Kenyon
Common Carrier Specialist
Regulatory Commission of Alaska
1016 West 6th Ave, Suite 400
Anchorage, AK 99501

Susan Stevens Miller
Assistant General Counsel
Maryland Public Service Commission
16th Floor, 6 Paul Street
Baltimore. MD 21202-6806

Tom Wilson
Economist
Washington Utilities & Transportation Commission
1300 Evergreen Park Drive, S.W.
P.O. Box 47250
Olympia, WA 98504-7250

Philip McClelland
Senior Assistant Consumer Advocate
PA Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923

Barbara Meisenheimer
Consumer Advocate
Missouri Office of Public Counsel
301 West High St., Suite 250
Truman Building
P.O. Box 7800
Jefferson City, MO 65102

Earl Poucher
Legislative Analyst
Office of the Public Counsel
111 West Madison, Rm. 812
Tallahassee, FL 32399-1400

Ann Dean
Assistant Director
Maryland Public Service Commission
16th Floor, 6 Paul Street
Baltimore, MD 21202-6806

David Dowds
Public Utilities Supervisor
Florida Public Service Commission
2540 Shumard Oaks Blvd.
Gerald Gunter Bldg.
Tallahassee, FL 32399-0850