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November 30, 2000

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

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

Re: COMMENTS OF NETWORK OPERATOR SERVICES, INC.
Federal-State Joint Board on Universal Service, CC Docket No. 96-45

Dear Ms. Salas:

On behalf of Network Operator Services, Inc. ("NOS"), enclosed please find an original and four (4) copies of its comments in the above-referenced proceeding. Please date stamp and return the enclosed extra copy of this filing.

Should you have any questions regarding this matter, please do not hesitate to contact us.

Very truly yours,

Tamar E. Finn

Russell M. Blau
Tamar E. Finn

Counsel for Network Operator Services, Inc.

Enclosures

cc: Susan Freeman (NOS)
Sheryl Todd (3 copies and diskette copy)
International Transcription Service (diskette copy)

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Petition for Forbearance from Enforcement of Sections 54.709 and 54.711 of the Commission's Rules by	)))	
	)	
Operator Communications, Inc. d/b/a Oncor Communications, Inc.	))	

COMMENTS OF NETWORK OPERATOR SERVICES, INC.

Network Operator Services, Inc. ("NOS"), by its undersigned counsel, submits these comments in response to the Commission's Further Notice of Proposed Rulemaking and Order in the captioned matter.[1] Because of the competitive advantage provided to certain carriers under the current universal service assessment mechanism, NOS supports amendment of the Commission's rules to provide for the recovery of contributions through a fixed percentage, end-user surcharge. Alternatively, NOS supports implementation of the proposal to assess contributions based on current revenues, or to shorten the interval between accrual of revenues and assessment of contributions.

I. The Existing Universal Service Assessment Methodology Should be Modified

The existing universal service assessment methodology does not achieve competitive neutrality. Currently, contributions to the universal service fund are determined by applying the contribution factor to carriers' revenues from the preceding year. This mechanism plainly benefits those carriers whose revenues have increased since the preceding year, since their

[1] *Federal-State Joint Board on Universal Service*, FCC 00-359, CC Docket No. 96-45 (rel. November 9, 2000).

contribution is a smaller percentage of their current year's revenue, and conversely disadvantages those whose revenues have declined. In a year in which its revenues decline, the carrier's universal service assessment will be a higher proportion of its current year revenue base than carriers with increasing or stable revenues.

The current mechanism especially benefits newly established long distance providers, since they are not obligated to accrue their universal service contributions during their first year of providing long distance service.[2] As a result, established providers or carriers with declining revenues may need to charge their end-users non-competitive rates in order to generate the additional revenue needed to meet their universal service contributions. In a competitive sector such as the long distance market, pass-through of a carrier's inequitable assessment will essentially price the carrier's services out of the market and cause the carrier to lose customers. Furthermore, new entrants and carriers with increasing revenues can either undercut the prices of other carriers or charge the same rates and earn an additional profit. This discriminatory effect impairs the ability of certain carriers to provide competitive telecommunications service because they will have to charge their end users higher rates to collect the necessary fees for their universal service contribution.

NOS has experienced the discriminatory effect of the current universal service mechanism. In a recent year, NOS's end-user revenue decreased by approximately one-third. If it tried to assess the full cost of its universal service contribution on its significantly smaller end-user base, NOS would have had to charge those end-users much more than its competitors. The

[2] Indeed, it would be difficult for a carrier to accrue contribution liabilities in the first year of its operation, even if it wanted to do so, since the applicable contribution factor is not established until the year in which the contribution is due.

effects of recovering its universal service assessment from fewer and fewer end-users threatened NOS's ability to provide telecommunications services at competitive rates.

Bankrupting competitive telecommunications carriers and reducing consumer choice is clearly inconsistent with universal service policy goals and statutory requirements. As demonstrated by NOS's own experience, the current assessment methodology detrimentally affects some carriers' competitive ability to provide telecommunications services and violates the Commission's principle of competitive neutrality. Consequently, basing universal service contributions on prior year revenues, without true-up, results in a contribution assessment against carriers with declining revenues that is both inequitable and discriminatory. Another negative consequence of the current mechanism is that its effect is similar to a retroactive tax on carriers. By assessing the universal service contribution based on prior year revenues, carriers' current revenues are being retroactively taxed.

II. The Commission Should Adopt a Fixed Percentage, End-User Surcharge

NOS supports replacement of the current mechanism with a methodology that provides for recovery of carriers' universal service contributions through a fixed percentage, end-user surcharge. This approach can be achieved by determining the percentage of estimated telecommunications revenues that would be needed to generate sufficient revenue to fund universal service. Once the industry-wide percentage is determined, the universal service contributions would be derived based on each carrier charging their end-users the surcharge.

The fixed percentage, end-user surcharge should be adopted by the Commission because it satisfies the statutory requirements for the federal universal service support mechanism. The surcharge is specific since carriers' assessment will be an exact percentage of their current revenues and carriers could more easily predict their contributions since the fixed percentage would be applied to their current revenues. Additionally, although an individual carrier's revenues might vary widely from year to year, total industry revenues should be far less variable. In fact, according to Commission statistics, telecommunications revenues have consistently increased annually since 1992.[3] Consequently, this mechanism is unlikely to generate a shortfall in the universal service fund and should generate sufficient funds for universal service because the fixed percentage will be applied against the base of increasing interstate revenues.

A mechanism based on a fixed percentage, end-user surcharge is also competitively neutral for all carriers. Unlike the current mechanism, the surcharge lacks any discriminatory effect against carriers because it is applied equally to each carrier's current revenues. This aspect of the fixed percentage, end-user surcharge best demonstrates its effectiveness in achieving competitive neutrality for all carriers.

In addition to benefiting carriers in a competitive manner, the surcharge provides benefits to telecommunication end-users as well. As previously demonstrated, the surcharge enables carriers to avoid charging higher rates to compensate for declining revenues and therefore provides greater certainty that end-users will be charged competitive rates, even if their carrier's revenues decline. Another benefit for consumers is that the fixed percentage component of the surcharge will reduce consumer confusion by clearly specifying the amount of the additional fee for universal service.

Another advantage of the fixed percentage, end-user surcharge includes minimizing carriers' administrative burdens in collecting their universal service contributions. Unlike the current mechanism, carriers would not be required to compile revenue reports from the previous

[3] *Trends in Telephone Service*, Industry Analysis Division (March 2000).

year and carriers with declining revenues would not need to manage the assessment of universal service contributions against a shrinking customer base.

III. Proposal to Assess Contributions Based on Current Revenues

Although NOS strongly urges the Commission to implement the fixed percentage, end-user surcharge, NOS also supports, as a second-best alternative, the adoption of an assessment methodology based on current-year revenues. This proposal is competitively neutral because it does not discriminate against carriers with declining revenues. Whether a carrier's revenues increase or decrease, its universal service contribution will be assessed against its current revenues rather than its potentially disproportionate prior year revenues. Assessing universal service fund contributions on current year revenues would also ameliorate the effects on carriers of substantial reductions in year-to-year revenues, such as NOS experienced. Although an individual carrier's revenues might vary widely from year to year, total industry revenues should remain relatively constant.[4] Thus, adopting a current-year mechanism should neither result in a shortfall in the universal service fund nor hinder the Commission's ability to predict revenues that are used to set contribution factors.

Although the proposal to assess contributions based on current revenues would increase the number of revenue filings for each carrier, the proposal is not as burdensome as the current mechanism since monthly reporting is more feasible than compiling revenue data over a six month time period. Furthermore, many carriers already file monthly reports regarding state universal service requirements. Therefore, the benefits of this proposed methodology outweigh the requirement of more frequent revenue reporting for purposes of assessing universal service contributions.

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[4] *Trends in Telephone Service*, Industry Analysis Division (March 2000).

The proposal based on current revenues could also be offered as an option to the current mechanism. This option would achieve competitive neutrality by requiring carriers to commit to a certain assessment methodology while providing a flexible alternative for carriers experiencing a significant revenue decrease. In order to avert a shortfall in the universal service fund under this proposal, once a carrier makes the current-year contribution, the carrier should not be permitted to abandon that election in a subsequent year in order to avoid paying a larger universal service contribution when its revenues increase.

IV. Universal Service Contribution Assessment with a Shorter Interval

NOS does not oppose the alternative of replacing the current methodology with a shortened interval between the accrual of revenues by carriers and the assessment of universal service contributions based on those revenues, although as explained below this proposal is not preferred. While this proposal requires carriers to report their revenues more quickly than under the current methodology, NOS believes it is feasible for carriers to file reliable revenue information within thirty days of the close of a quarter. Unlike the recommendations to implement the surcharge or to assess contributions based on current year revenues, this proposal does not eliminate the competitive advantage provided to certain carriers. For this reason, NOS prefers implementation of the fixed percentage, end-user surcharge or the contribution methodology based on current revenues. However, by reducing the interval between accrual of revenues and assessment of contributions from 12-18 months to 3-6 months, the proposal reduces the risk that a carrier's revenues will decline significantly during the shortened interval. This alternative is therefore less discriminatory than the current mechanism because it reduces the competitive advantage provided to certain carriers.

V. Conclusion

NOS urges the Commission to remedy the anti-competitive effects of the current assessment methodology and to implement a fixed percentage, end-user surcharge, or, alternatively, to assess contributions based on current revenues. If either of these preferred alternatives is not implemented, NOS recommends that the Commission at least shorten the interval between revenue accrual and assessment of contributions.

Respectfully submitted,

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