November 05, 2001

Ms. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street SW
Room TW-B204
Washington DC 20554

Re: ***FCC Docket No. 96-45 / Federal State Joint Board on Universal Service Seeks Comment on Review of the Definition of Universal Service***

Dear Secretary Salas:

On August 21, 2001, the Commission released a Public Notice in the above-captioned matter.[1] The Commission seeks comment on the Joint Board's review of the definition of universal service. Specifically, the Commission invites comment on what services, if any, should be added to or removed from the list of core services eligible for federal universal service support and how those core services should be defined. In response to the Public Notice and in accordance with Section 1.51(c) of the Commission's rules, 47 C.F.R. §1.51(c), the Illinois Commerce Commission ("ICC") submits its Initial Comments for inclusion in the public record.

The Commission, in its *First Report and Order* issued in 1997,[2] designated nine "core" services that are currently eligible for universal service support. These services are as follows: single-party service; voice grade access to the public switched telephone network; Dual Tone Multifrequency signaling or its functional equivalent; access to emergency services; access to operator services; access to interexchange service; access to directory assistance; and toll limitation services for qualifying low-income consumers.

As the Commission indicates in its notice, one issue that has been of particular interest since the issuance of the *First Report and Order* on universal service, is whether any advanced or high-speed services should be included within the list of core services that are eligible for universal service support.

[1] *Federal-State Joint Board on Universal Service Seeks Comment on Review of the Definition of Universal Service,* CC Docket No. 96-45, Public Notice, DA 01-J-1 (August 21, 2001)("Public Notice").
[2] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8807-25, para. 56-87 (1997) (*First Report and Order*).

Section 254 of the Telecommunications Act places a limit on the universal service support mechanisms by requiring the Commission to identify a set of telecommunications services that constitute universal service.[3] In identifying these services for universal service support, the Commission must consider certain factors and their applicability to these telecommunications services.[4] The underlying rationale for this provision is the recognition that the provisioning of services costs money and that support should, therefore, be limited to those services that meet specific criteria in order to place constraints on the amount of monetary input that will be necessary to support the system.

The Telecommunications Act of 1996[5] also provides that "[u]niversal service is an evolving level of telecommunications services that the Commission shall establish periodically . . . , taking into account advances in telecommunications and information technologies and services."[6] Pursuant to this particular statutory provision, and as the Commission indicates in its notice, the Joint Board now invites comment on what services, if any, should be added to or removed from the list of core services eligible for federal universal service support and how those services should be defined.

The ICC maintains its position that high-speed data transmissions or Internet access should not be services included in the definition of universal service. The ICC has previously filed comments with the Commission in which it has explained its reasons for excluding advanced services from the definition of universal service. [7]

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[3] 47 U.S.C. § 254(a)(1) and § 254(c)(1).

[4] These factors include whether the telecommunications services at issue: (1) are essential to education, public health, or public safety; (2) have, through the operation of the market choices by customers, been subscribed to by a substantial majority of residential customers; (3) are being deployed in public telecommunications networks by telecommunications carriers; and, (4) are consistent with the public interest, convenience, and necessity. 47 U.S.C. § 254(c)(1).

[5] Telecommunications Act of 1996, Pub.L.No. 104-104, 110 Stat. 56 (196)(TA 96). TA 96 amended the Communications Act of 1934. 47 U.S.C. §§ 151, *et seq*.

[6] 47 U.S.C. § 254(c)(1).

[7] See ICC Comments, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 (filed March 7, 2001); see also ICC Comments filed jointly with NY State Department of Public Service, Connecticut Department of Public Utility Control, and Maryland Public Service Commission, CC Docket 96-45 (filed Nov. 03, 2000). The ICC also recently reaffirmed this position by declining to expand the definition of universal service for purposes of the Illinois fund beyond the FCC's current definition of universal service, which does not include an expanded definition of voice grade access of support for advanced or high speed services. See, Second Interim Order, Illinois Independent Telephone Association, Petition for initiation of an investigation of the necessity of and the establishment of a Universal Service Support Fund in accordance with Section 13-301(d) of the Public Utilities Act, ICC Docket No. 00-0233/0335 Consolidated, at 5 (issued August 21, 2001)(adopting the FCC's current definition of universal service). Notably, in the recent ICC proceeding, no party argued to expand the definition of universal service beyond the FCC's current definition.

Section 254(b)(5) of the Telecommunications Act of 1996 provides that universal service support should be "sufficient" to preserve and advance universal service. Congress placed a limit on the size of the monetary contributions that will be required to fund the Federal universal service support mechanisms by limiting the set of services that will be entitled to support. The guidelines that Congress enacted in subsection 254(c) serve to accomplish the Congressional objective of limiting the set of services that qualify for support. The Commission directly recognized the underlying rational that supports the need to engage in this congressionally mandated balancing act in its *First Report and Order* when the Commission stated as follows: "supporting an overly expansive definition of core services could adversely affect all consumers by increasing the expense of the universal service program and thus, increasing the basic cost of telecommunications for all."[8]

It would be premature to conclude that market forces have failed and that subsidization of advanced services deployment is the only means available to the Commission for ensuring "access to advanced telecommunications and information services is provided in all regions of the Nation."[9] Only in the last two to three years have residential high-speed services become a mainstream offering. The ICC believes that more time is necessary to determine whether government intervention is required to spur on the deployment of advanced services. The ICC echoes the sentiments of Chairman Powell by making a distinction between market challenge and market failure.[10] In short, the fact that the deployment of advanced services is facing certain challenges in some high-cost areas does not necessarily imply that market forces have completely failed.

Even assuming, *arguendo*, the Commission were to determine that the "use" of advanced services is progressing too slowly, the ICC questions the effectiveness of including advanced services into the definition of supported services as a proposed solution. It appears that even though adoption rates are not at the "desired" levels, the vast majority of Americans have *access* to advanced services.[11] The ICC maintains that the Commission's focus needs to be on availability rather than adoption. There is simply not enough evidence at this point in time to support the notion that the inclusion of advanced services into the definition of supported services benefits anything other than increased profits for the supported companies.

With the current federal universal service support (and therefore contributions) at such high levels, inclusion of advanced services could be the "straw that breaks the camel's back." The use of telecommunications services should not be discouraged any further with additional universal

[8] *First Report and Order*, 12 FCC Rcd at 8811-12, ¶ 64.
[9] 47 U.S.C. § 254(b)(2).
[10] Chairman Michael Powell at the National Summit on Broadband Deployment (October 25, 2001) Washington, D.C.
[11] Chairman Michael Powell, referring to a recent J.P. Morgan report which concludes that by the end of the year, 85% of American households will have access to either cable modem or DSL service.

service contributions. If the Commission believes that additional benefits to society will be achieved by supporting the deployment of advanced services, it should look to a "tax base" different from the current one. The ICC believes this "industry tax" has served its purpose and reached its end. Several studies show that a significantly more efficient (i.e., less economically distortive) collection of any socially beneficial support dictates that such collections be made from the broadest tax base possible.[12] These studies show that economic inefficiencies resulting from collecting involuntary contributions are negatively correlated to the size of the tax base. In other words, levying a "fee" on certain telecommunications services creates significantly more economic distortions than imposing a "fee" on a broader tax base (e.g., income tax).

Finally, there is a danger that additional subsidies are likely to discourage facilities-based entry into high-cost markets. The ICC believes it is more appropriate to give alternative facilities-based providers a chance to deploy and offer advanced services using any type of technology. While it might be uneconomical to deploy advanced services using the existing copper infrastructure, other technologies have the potential to offer advanced services at substantially lower costs. The Commission needs to be as technology-neutral as possible when it comes to estimating the cost of deploying advanced services. If the Commission employs a policy that is not technology neutral there is a real risk that the entrance of carriers using alternate technologies such as fixed wireless and satellite would be substantially hindered because the ILECs' receipt of universal service funding would subsidize the ILECs' provisioning of advanced telecommunications and information services, thereby placing any new competitors deploying alternative technologies to provide these services at a substantial competitive disadvantage.

Instead, the Commission should continue to rely on the marketplace to promote the deployment of advanced services. The ICC notes that the level and speed of technological change in the telecommunications industry has been remarkable and appears to be increasing. The ICC believes that it is the marketplace that has driven this change. Continued consumer demand for advanced telecommunications and information services should encourage new and existing carriers to devise new ways to provide these services at market supportable costs rather than through universal service.

For all the aforementioned reasons, the ICC respectfully requests that the Commission refrain from including advanced services into the definition of supported core services. Even if the Commission determines that advanced services deployment needs additional support, the Commission ought to look at means different from simply increasing universal service contributions from users of certain telecommunications services in accordance with the Illinois Commerce Commission's recommendations.

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[12] *See*, for example, Taxation by Telecommunications Regulation, Jerry Hausman, NBER Working Paper No. 6260, November 1997, JEL Nos. H21, L51.

Sincerely,

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