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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Federal-State Joint Board on
Universal Service

CC Docket No. 96-45

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COMMENTS OF
MOBILE SATELLITE VENTURES SUBSIDIARY LLC

Introduction

By Public Notice published at 66 Fed. Reg. 58143-58145 (November 20, 2001), the Common Carrier Bureau ("Bureau") requested that interested parties update the record regarding petitions for reconsideration filed in response to the First Report and Order in CC Docket No. 96-45, 12 FCC Rcd 8776 (1997) (*Universal Service Order*). Mobile Satellite Ventures Subsidiary LLC ("MSV") hereby submits the following comments.¹

MSV filed a Petition for Clarification or Reconsideration ("Petition") in the above-referenced docket on July 17, 1997. In that Petition, MSV requested that the Federal Communications Commission ("Commission") address four issues related to high cost area support and one issue related to support for rural health care providers. In December 1997, the Commission released an Order in which it addressed two of MSV's five issues. *See* Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45,

¹ The Petition for Clarification or Reconsideration was filed by AMSC Subsidiary Corporation, which subsequently changed its name to Motient Services, Inc. ("MSI"). On November 21, 2001, the Commission approved the assignment of licenses and authorizations from MSI and TMI Communications and Company, LP to Mobile Satellite Ventures Subsidiary LLC. *See* Order and Authorization, *In the Matter of Motient Services, Inc. and TMI*

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96-262, 94-1, 92-213, 95-72, *Federal-State Joint Board on Universal Service; Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, 13 FCC Rcd 5318 (rel. Dec. 30, 1997) at ¶¶ 8-14.

The remaining issues were not addressed. MSV requests that the Commission now consider the remaining three issues discussed in MSV's pending Petition.

Discussion

I. High Cost Support

MSV's satellite system is uniquely positioned to provide high-quality, low-cost fixed site and mobile communications in rural and remote areas. The relief MSV requests will facilitate the use of this system to provide supported services in these areas.

A. Restriction on Per-line Support for Resale Service

Pursuant to Section 214(e), 47 U.S.C. § 214(e), the Commission determined in its First Report and Order that "pure" resellers of telecommunications service are ineligible for universal service support. The Commission was concerned that extending eligibility to resellers would allow resellers to double-recover universal service support. That is, the reseller would obtain support both directly, from the funding mechanism, and indirectly, from wholesale prices that incorporate the incumbent's universal service support payment.

Noting that not all facilities-based carriers will obtain universal service support, MSV requested that the Commission reconsider its decision to bar *all* resellers from support payments. In its Petition, MSV requested that resellers be deemed eligible for support when they resell the services of a facilities-based carrier that is not a recipient of universal service subsidies. This

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Communications and Company, LP, Assignors and Mobile Satellite Ventures Subsidiary LLC,
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more flexible approach to eligibility promotes not only universal service, but facilities-based competition as well.

Through payments made by their reseller-customers, underlying facilities-based carriers that do not directly receive universal service support can obtain indirect support for the provision, maintenance, and upgrading of facilities and services, as contemplated by Section 254(e), 47 U.S.C. § 254(e). This modified universal service framework is consistent with and advances the Commission's "commitment to ensuring that facilities-based competitors, including those that are small entities, have the incentive and ability to invest in alternative infrastructure and innovative technologies, while, at the same time, ensuring that incumbents retain similar incentives and capabilities." Fourth Report and Order, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 2001 FCC LEXIS 4303 (rel. Aug. 8, 2001) at ¶ 14.

B. Advertising Throughout the Service Area

Section 214(e)(1)(B), 47 U.S.C. § 214(e)(1)(B), requires that a carrier advertise the availability of the supported services and related charges using "media of general distribution." *See also* 47 C.F.R. § 54.201(d)(2). MSV requested clarification that, in the case of nationwide system, a carrier may place an advertisement in a nationally-circulated publication in lieu of advertising locally in each area where it may provide service.

Since it released its First Report and Order, the Commission has recognized that it is in the self-interest of eligible telecommunications carriers ("ETCs") to advertise. As it recently explained, "given that ETCs receive universal service support only to the extent that they serve customers, we believe that strong economic incentives exist, in addition to the statutory

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Assignee, DA 01-2732 (rel. Nov. 21, 2001).

obligation, to advertise the universal service offering.” Memorandum Opinion and Order, *Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, 16 FCC Rcd 48 (rel. Dec. 26, 2000) at ¶ 15.

These economic incentives, in conjunction with the deregulatory thrust of the Telecommunications Act, warrant flexibility in determining what advertising satisfies the statutory standard. While it may be reasonable for a carrier operating in a geographically-confined area to undertake television, radio, newspaper and/or billboard advertising in that limited area, imposing similar requirements on a nationwide carrier, like MSV, is costly and inefficient. The Commission should affirm that advertising in a nationally-circulated publication satisfies the statutory requirement to advertise “in media of general distribution.”

II. Applicable Rate for Mobile Telecommunications Services to Rural Ambulances and Other Rural Emergency Medical Vehicles

In its 1997 Petition, MSV requested that the Commission adopt a market-oriented approach to determining rates that are “reasonably comparable to rates charged for similar services in urban areas in that state” (the “urban rate”). 47 U.S.C. § 254(h)(1)(A). Specifically, MSV requested that the Commission establish that the urban services that are “similar” to MSV’s rural emergency medical communications are the terrestrial mobile communications services typically used by ambulances and other emergency medical vehicles in a state’s urban areas.

In 1999, the Commission revised the policy adopted in the First Report and Order for determining the urban rate. Rather than requiring a comparison of the tariffed or publicly available base rates to determine the amount of support, the Commission directed the universal service Administrator to “calculate support based upon all actual distance-based charges.” Sixth

Order on Reconsideration in CC Docket No. 97-21; Fifteenth Order on Reconsideration in CC Docket No. 96-45, *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.; Federal-State Joint Board on Universal Service*, 14 FCC Rcd 18756 (1996) at ¶32. The Commission revised its policy based on the finding that “most of the base rates for telecommunications service elements charged to rural health care providers are already reasonably comparable to those charged in urban areas.” *Id.*

The revised policy appears predicated on the assumption that service will be provided by terrestrial carriers whose charges are distance-sensitive and thus result in higher costs in rural areas. Calculating support based on actual distance-based charges extends significant subsidies to users, and thus operators, of terrestrial systems that price on a distance-sensitive basis. Because the cost of MSV’s satellite system is the same in rural and urban areas, however, this revised policy places MSV at a competitive disadvantage vis-à-vis such operators. The Commission should rectify this apparent oversight by granting the requested relief and directing the Administrator to calculate USF support for MSV users in a competitively-neutral manner. Specifically, support for rural health care providers that use MSV’s services should be calculated on the basis of actual airtime usage rates that MSV charges for calls outside a customer’s predefined talk-group.²

² MSV’s rate plans allow for unlimited dispatch minutes per month for calls within a pre-defined talk group, but impose per-minute airtime rates for calls outside this group.

Conclusion

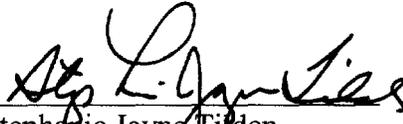
Accordingly, MSV hereby urges the Commission to clarify and reconsider the issues discussed herein to the extent necessary.

Respectfully submitted,

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December 20, 2001

CERTIFICATE OF SERVICE

I, Angela Green Dortch, a secretary with the law firm of Shaw Pittman LLP, hereby certify that on this 20th day of December 2001, served a true copy of the foregoing by hand delivery upon the following:

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