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Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98

ORDER ON RECONSIDERATION

Adopted: January 17, 2002 **Released:** January 29, 2002

By the Commission: Commissioner Abernathy issuing a separate statement; Commissioners Copps and Martin issuing a joint statement.

I. INTRODUCTION

1. In this Order on Reconsideration, we dismiss the petitions for reconsideration of the *Universal Service First Report and Order*,[1] *Local Competition First Report and Order*,[2] and *Local Competition Second Report and Order*[3] filed by those parties that have not indicated an intent to pursue their respective petitions.[4]

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[1] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997) (*Universal Service First Report and Order*) (subsequent history omitted).

[2] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (1996) (*Local Competition First Report and Order*) (subsequent history omitted).

[3] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Second Report and Order and Memorandum Opinion Order, 11 FCC Rcd 19392 (1996) (*Local Competition Second Report and Order*) (subsequent history omitted).

[4] *See Parties Asked To Refresh The Record Regarding Reconsideration of Rules Adopted In The 1997 Universal Service First Report And Order*, CC Docket No. 96-45, Public Notice, DA 01-1647 (July 11, 2001) (*Universal Service Public Notice*) (Comments due Aug. 20, 2001; Reply Comments due Sept. 4, 2001) 66 Fed. Reg. 37,963. *See also Parties Asked To Refresh The Record Regarding Reconsideration of Rules Adopted In 1996 In Local Competition Docket*, CC Docket No. 96-98, Public Notice, DA 01-1648 (rel. July 11, 2001) (*Local Competition First R&O Public Notice*) (Comments due Aug. 24, 2001; Reply Comments due Sept. 10, 2001) 66 Fed. Reg. 38,611; *Parties Asked To Refresh Record Regarding Reconsideration of Rules Adopted In 1996 In Local Competition Docket*, CC Docket No. 96-98, Public Notice, DA 01-1658 (rel. July 12, 2001) (*Local Competition Second R&O Public Notice*) (Comment due Sept. 12, 2001; Reply Comments due Sept. 27, 2001) 66 Fed. Reg. 42,499.

II. BACKGROUND

2. In July 2001, the Common Carrier Bureau (Bureau) released three public notices asking parties to refresh the record regarding petitions for reconsideration of the *Universal Service First Report and Order*, *Local Competition First Report and Order*, and *Local Competition Second Report and Order*.[5] The Bureau noted that, since the release of these orders, many of the issues raised in the petitions for reconsideration may have become moot or irrelevant in light of intervening events. For these reasons, the Bureau requested that parties that had filed petitions for reconsideration of the *Universal Service First Report and Order, Local Competition First Report and Order*, and *Local Competition Second Report and Order* file a supplemental notice indicating the issues in such petitions, if any, they still wished to have reconsidered. The Bureau stated that, to the extent that parties did not indicate an intent to pursue their respective petitions for reconsideration, the Commission would deem such petitions withdrawn and would dismiss such petitions.[6]

3. On November 14, 2001, the Bureau released a public notice announcing a list of petitioners that did not respond to the July public notices.[7] This public notice granted these petitioners a final opportunity to indicate an intent to pursue their respective petitions and was published in Federal Register and mailed directly to these parties.[8]

III. DISCUSSION

4. To the extent that parties have not indicated an intent to pursue their respective petitions for reconsideration of the *Universal Service First Report and Order*, *Local Competition First Report and Order*, and *Local Competition Second Report and Order* in response to the public notices, we deem such petitions withdrawn and dismiss these petitions. The passage of time and intervening developments have rendered many such petitions moot or irrelevant in light of intervening events. A list of the petitions for reconsideration of the *Universal Service First Report and Order* that are dismissed herein is attached at Appendix A. A list of the petitions for reconsideration of the *Local Competition First Report and Order* that are dismissed herein is attached at Appendix B. A list of the petitions for reconsideration of the *Local Competition Second Report and Order* that are dismissed herein is attached at Appendix C.[9]

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[5] *See Universal Service Public Notice; Local Competition First R&O Public Notice; Local Competition Second R&O Public Notice.*

[6] *See Universal Service Public Notice* at 2; *Local Competition First R&O Public Notice* at 2; *Local Competition Second R&O Public Notice* at 2.

[7] *Common Carrier Bureau Announces Final Opportunity For Parties To Refresh The Record Regarding Reconsideration Of Rules Adopted In The Universal Service First Report And Order, Local Competition First Report And Order, And Local Competition Second Report And Order*, CC Docket Nos. 96-45, 96-98, Public Notice, DA 01-2636 (rel. Nov. 14, 2001) (Comments due December 20, 2001).

[8] *See* 66 Fed. Reg. 58,143 (2001).

[9] We note that Beehive Telephone Co. filed a response contending that the Commission has not fully addressed its petition for reconsideration of the *Local Competition Second Report and Order*. This allegation is incorrect because the Commission denied Beehive's petition in its entirety. *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 16559 (1999), *aff'd Beehive Tel. Co.*, Inc. v. FCC, 221 F.3d 195, 2000 WL 816013 (D.C. Cir. 2000).

5. We note that several parties have refreshed the record in response to the public notices.[10] The Commission will proceed to address these petitions for reconsideration in upcoming orders.

IV. ORDERING CLAUSE

6. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1 and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151 and 154(i), and section 1.429 of the Commission's rules, 47 C.F.R. § 1.429, the petitions for reconsideration of the *Universal Service First Report and Order*, *Local Competition First Report and Order*, and *Local Competition Second Report and Order*, as listed in the attached appendices, ARE DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

[10] The following parties filed responses indicating an intent to pursue petitions for reconsideration of the *Universal Service First Report and Order*: American Public Communications Council; AMSC Subsidiary Corp.; AT&T Corp.; Pennsylvania Public Utility Commission; Puerto Rico Telephone Company; Rural Telephone Coalition; United States Catholic Conference; United States Telecom Association; Greg Weisiger; Wyoming Public Service Commission. The U.S. Catholic Conference subsequently filed a request to withdraw its supplemental filing. *See* Letter from Christopher R. Day, Counsel for U.S. Catholic Conference, to Magalie Roman Salas, FCC, filed Dec. 7, 2001. We therefore grant this request and dismiss this petition for reconsideration. The following parties filed responses indicating an intent to pursue petitions for reconsideration of the *Local Competition First Report and Order*: Arch Communications, Inc.; Association for Local Telecommunications Service; AT&T Corp.; Margaretville Telephone Co.; National Exchange Carrier Association; Paging Network, Inc.; WorldCom, Inc. No parties filed a response indicating an intent to pursue outstanding petitions for reconsideration of the *Local Competition Second Report and Order*.

APPENDIX A

PETITIONS FOR RECONSIDERATION OF THE *UNIVERSAL SERVICE FIRST REPORT AND ORDER*

Commenter	Date filed
Ad Hoc	7/17/97
AirTouch Communications, Inc.	7/17/97
Alaska Public Utilities Commission	7/17/97
Alaska Telephone Association	7/17/97
Alliance for Public Technology	7/14/97
ALLTEL	7/17/97
American Petroleum Institute	7/16/97
Arkansas Public Service Commission	7/16/97
Benton Foundation/Edgemont Neighborhood Coalition	7/23/97
Cellular Telecommunications Industry Assoc.	7/17/97
Columbia Communications Corp.	7/17/97
Comcast Cellular Communications, Inc.	7/17/97
Fidelity Telephone Company	7/17/97
Florida Dept. of Education	7/17/97
Florida Dept. of Management Services	7/17/97
Florida Public Service Commission	7/16/97
GE American Communications, Inc.	7/17/97
Georgia Dept. of Administrative Services – Info.Tech.	7/17/97
General Communications, Inc.	7/17/97
Global Village Schools Institute	6/25/97
GVNW	7/11/97
ITCs, Inc.	7/17/97
Information Technology Assoc. of America	7/16/97
Iowa Telecommunications and Technology Commission	7/17/97
Kansas Corporation Commission	7/17/97
MCI Telecommunications Corporation	7/17/97
National Association of State Telecommunications Directors	7/17/97
National Exchange Carrier Association, Inc.	7/17/97
New Jersey Division of the Ratepayer Advocate	7/17/97
New York Library Association	7/17/97
NEXTEL Communications, Inc.	7/17/97
Ozark Telecom, Inc.	7/17/97
Personal Communications Industry Association	7/17/97
ProNet Inc.	7/17/97
Rural Telephone Companies	7/17/97
Sandwich Isles	7/17/97
Sprint Corp.	7/17/97
Sprint Spectrum L.P.	7/17/97
Teletouch Licenses, Inc.	7/17/97
TelHawaii, Inc.	7/17/97
Texas Public Utilities Commission	7/16/97

Time Warner Communications Holdings, Inc.	7/17/97
United Utilities	7/16/97
U.S. Catholic Conference, et al.	7/17/97
US WEST	7/17/97
Vermont Public Service Board	7/17/97
Washington State Dept. of Information Services	7/17/97
Western Alliance	7/17/97

APPENDIX B

PETITIONS FOR RECONSIDERATION OF THE *LOCAL COMPETITION FIRST REPORT AND ORDER*

Commenter	Date filed
Airtouch Paging, Cal-Autofone and Radio Electronic Products Corp.	9/30/96
American Electric Power Service Corporation, et al.	9/30/96
American Public Power Association	9/30/96
Association of American Railroads	9/30/96
Carolina Power & Light Company	9/30/96
Cellular Telecommunications Industry Association	9/30/96
Colorado Public Utilities Commission	9/27/96
Comcast Cellular Communications, Inc. and Vanguard Cellular Systems, Inc.	9/30/96
Consolidated Communications Telecom Services Inc.	9/30/96
Consolidated Edison Company of New York, Inc.	9/30/96
Cox Communications, Inc.	9/30/96
Delmarva Power & Light Company	9/30/96
Duquesne Light Company	9/30/96
Edison Electric Institute, et al.	9/30/96
Florida Power & Light Company	9/30/96
General Communication, Inc.	9/30/96
Information Technology Association of America	9/30/96
Kalida Telephone Company, Inc.	9/30/96
Local Exchange Carrier Coalition	9/30/96
Lower Colorado River Authority	9/30/96
Meek, Representative Carrie P.	9/23/96
National Cable Television Association, Inc.	9/30/96
Pacific Gas and Electric Company	9/30/96
Pennsylvania Power & Light Company	9/30/96
Pilgrim Telephone, Inc.	9/30/96
Public Service Commission of Wisconsin	9/27/96
Public Utilities Commission of Ohio	9/30/96
Rand McNally & Company	9/30/96
Sprint Corporation	9/30/96
Teleport Communications Group Inc.	9/30/96
Texas Public Utility Commission	9/26/96
Time Warner Communications Holdings, Inc.	9/30/96
UTC, The Telecommunications Association	9/30/96
Washington Utilities and Transportation Commission	9/30/96
Weldon, Representative Dave	9/23/96
WinStar Communications, Inc.	9/30/96

APPENDIX C

PETITIONS FOR RECONSIDERATION OF THE *LOCAL COMPETITION SECOND REPORT AND ORDER*

Commenter	Date filed
Airtouch Paging/PowerPage	10/7/96
Ameritech	10/7/96
AT&T	10/7/96
BellSouth Corp.	10/7/96
GTE Service Corp.	10/7/96
MCI Telecommunications Corp.	10/7/96
New York State Dept. of Public Service	10/7/96
NYNEX Telephone Companies	10/7/96
Rural Telephone Coalition	10/7/96
U.S. Telephone Association	10/7/96

SEPARATE STATEMENT OF COMMISSIONER KATHLEEN Q. ABERNATHY

Re: *Federal-State Joint Board on Universal Service; Petitions for Reconsideration of the Universal Service First Report and Order; Petitions for Reconsideration of the Local Competition First Report and Order; Petitions for Reconsideration of the Local Competition Second Report and Order,* CC Docket Nos. 96-45, 96-98, Order on Reconsideration

I am encouraged that the Commission is taking this step to reduce the substantial backlog of outstanding petitions for reconsideration in the local competition and universal service dockets. I write separately, however, to express my disappointment that the petitions we dismiss today have become moot simply because we have allowed them to remain pending so long. Rather than periodically cleaning up our dockets in this fashion, we should adopt procedures to ensure that such backlogs do not develop in the first place.

I have spoken publicly about the need for more expeditious processing of petitions for reconsideration and applications for review.[11] The local competition and universal service dockets dramatically illustrate the problem: most of the petitions for reconsideration we dismiss today have been pending for more than five years, and the remaining petitions have been pending more than four years.

I recognize that, in some cases, the Commission appropriately declined to resolve particular issues, because they were being decided by the courts of appeals. But allowing so many petitions to remain pending for so long undoubtedly created substantial uncertainty in the marketplace. And much of this uncertainty could have been avoided if the Commission had established procedures to ensure that petitions placed on the back burner do not remain there indefinitely.

Where petitions for reconsideration raise no new issues, I encourage the Commission to consider the use of form orders to deny such petitions within a fixed — and relatively short — time frame. Petitions for reconsideration that simply rehash or elaborate on arguments that already have been considered and rejected by the Commission seldom require a great deal of time or new analysis to resolve. If the Commission were subject to a deadline of, for example, 45 days, it could deny most petitions, using a form order, for the reasons that prompted the original decision.

Absent such a mechanism, there appears to be no means of preventing situations like the one we are faced with here — where scores of petitions have been pending so long that the passage of time has rendered them moot. I look forward to working with my colleagues and the Office of General Counsel to develop new procedures that will ensure that the agency disposes of petitions for reconsideration in a timely manner.

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[11] *See* FCBA Luncheon Address, September 17, 2001, *available at* www.fcc.gov/Speeches/Abernathy/2001/spkqa102.html.

JOINT STATEMENT OF
COMMISSIONERS MICHAEL J. COPPS AND KEVIN J . MARTIN

Re: *Federal-State Joint Board on Universal Service; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Order on Reconsideration, CC Docket Nos. 96-45 & 96-98

We write separately to express our support for the Commission's efforts to reduce its backlog of outstanding petitions. Clearing this backlog enables this Commission to work from a clean slate, allowing us to make decisions on current matters faster and thereby promote regulatory stability. We thus commend the Chairman for making the elimination of outstanding petitions a priority.

At the same time, we recognize that the means by which this Order reduces backlog, although necessary in this instance, is far from ideal. In this Order, we dismiss petitions for reconsideration that went unresolved for such a long time that we found it necessary to require parties affirmatively to indicate whether they still wished to pursue them. Allowing petitions to become moot solely due to the Commission's failure to act is unfortunate, at best. More problematically, the process used here raises the possibility that a party may fail to indicate its intention to pursue its petition only because it failed to receive notice of the Commission's intentions.

Nevertheless, we vote for this item because the Commission conducted substantial outreach to ensure that parties – and in particular non-traditional stakeholders that may not have representatives in Washington – had actual notice before a petition was dismissed. Indeed, additional outreach at our request determined that several parties whose petitions were going to be dismissed in fact still wished to pursue them. Those petitions have now been removed from the list of petitions we dismiss today. We commend the Commission for undertaking these efforts. In the future, we hope that actions such as today's order are not needed. But if they are, we expect that the Commission will undertake the kind of substantial outreach efforts it undertook here.