BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

IN THE MATTER OF FEDERAL-	**§**	
STATE JOINT BOARD ON	**§**	**CC DOCKET NO. 96-45, ET AL.**
UNIVERSAL SERVICE, ET AL.	**§**	

COMMENTS OF THE STATE OF TEXAS

NOW COMES THE STATE OF TEXAS (State), by and through the Office of The Attorney General of Texas, Consumer Protection Division, Public Agency Representation Section, and files these its comments on the Further Notice of Proposed Rulemaking released February 26th, 2002 in FCC Order No. 02-43. These comments are timely filed pursuant to the Commission's subsequent order in DA-02-783.

The Public Agency Representation Section of the Office of the Attorney General submits these comments as the representative of state agencies and state universities as consumers of telecommunications services in the State of Texas.

Governmental Entity Exemption

The State appreciates the Commission's reiteration of the principle that the federal universal service fund fee is imposed on carriers, who are not required to pass this fee through to end users. The passing through of taxes, fees and regulatory assessments to governmental entities is an issue that is of particular concern to this office. In many instances, governmental entities are specifically exempted from such pass throughs. See 26 U.S.C. §4253 (i) &(j). In others, they are set at de minimis and predictable levels, the subscriber line charge being one example. And in still others, the carriers are precluded from passing the cost along to their customers due to their contractual arrangements.

We do not believe that "taxing" governmental units is ever appropriate and while we understand the constraints imposed on the Commission by the prohibition against discrimination, we do not believe that unreasonable discrimination occurs when governmental entities, which are, after all, tax supported, are exempted from paying the taxes of other entities. This charge has many characteristics of a tax, in that it is imposed on all providers of interstate telecommunications services and is used for the governmental purpose of providing universal telecommunications service in all parts of the country.

The logic which should be applied to this issue is the same as that employed in the *Report and Order* portion of this *Further Notice*, in which circularity is eliminated. The exclusion of contributions from the contribution base is commendable and is certainly an application of common sense to the collection issue. Likewise, the Commission should strongly consider exempting governmental entities from the possibility of a passthrough for similar reasons. In ¶ 112, the Commission states, "Such "circularity" leads to inflation in universal service line items, which adds to customer confusion regarding the reasons for mark ups."

The same circularity exists in requiring tax-supported entities to pay a universal service fee, which they must then collect from taxpayers who are already required to pay this fee when they purchase their own services. Likewise, any governmental entity which is tax-supported must raise additional revenue from taxpayers to pay the taxes and fees of others if these are permitted to be passed through. Unlike a business, governments cannot simply raise the prices of our goods or services to cover these costs. If they can not be eliminated, they should at least be absolutely predictable.

Lifeline customers are proposed to continue to be exempted, in ¶ 40, on the premise that the

number of connections they are responsible for is de minimis. Apparently, they represent only 5.9 million out of 235 million connections. It would appear that state government lines, which are ultimately paid for by many of these same customers, could be exempted under the same analysis. Our latest estimate of the number of connections for the State of Texas' governmental institutions is between 40,000 and 50,000, far less than the "de minimis" 5.9 million being considered for exemption by the Commission as lifeline connections. Assuming, quite generously, that all states have the same number of government connections as Texas, this still amounts to, at most, 2.5 million connections, less than half as many as are being exempted under the lifeline exemption. Exempting state governments from the passthrough makes abundant sense and we urge the Commission to do so.

Connection-based Assessment

Barring the complete exemption from contribution passthroughs of governmental entities, which is by far the most desirable result, a connection-based assessment may be the most viable alternative. This would at least allow fairly precise budgeting of FUSF payments, due to the predictability allowed by simply counting connections to determine the amount owed. This would only be true, however, if carriers were allowed to pass through only and exactly the amount assessed on them by a precise formula.

Bearing the budgetary constraints of governmental entities in mind, the proposal to collect according to connections outlined in the *Further Notice* beginning at ¶ 34 is flawed in one major respect. That is, it treats all multi-line "business" customers equally for purposes of carrier calculation of the requisite portion of the assessment. By requiring all multiline business connections to be assessed to make up the universal funding needs not met by the $1 per connection collections,

the proposed mechanism continues the practice of burdening not-for profit, tax-supported institutions with a large share of the universal service contribution to be potentially passed through by the carriers. Essentially, taxpayers will continue to be burdened by having to pay to support the extra contributions imposed upon these institutions.

Our proposed modification would be to treat governmental institutions just as single line businesses are to be treated, and assess them $1 per connection. This would at least reduce somewhat the uncertainty and financial burden, and would give predictability to a budgeting process that normally does not include the ability to pass increased costs on to customers. In addition, it would benefit the residential and small business customers already benefitted in the proposal, by reducing the potential of additional state tax support required from them.

In ¶51, the Commission speaks to the variation contemplated in the multi-line assessment. We are not, as the statement in that paragraph suggests, better equipped to understand the basis for fluctuating recovery amounts. This is exactly the scenario which causes difficulty for governmental entities due to its lack of predictability. Calculating the assessment on the basis of funding needs rather than a specific precise amount is precisely what causes severe difficulty in the governmental planning and budgeting process. Also, assessing higher costs on the basis of the speed of the connection, with higher-speed connections paying more, appears to us to be a penalty imposed upon those governmental institutions choosing to use more efficient and innovative technologies and again assumes that all multi-line "business" users are equal and can absorb these costs into their overhead.

Other Issues

The State agrees that any mark-up of these charges as they are passed through to the

customer should be prohibited as suggested in ¶s 72 and 96. If the charge is permitted to be assessed on end use customers, it should be a strict pass through of the set amount to maintain predictability for the customer.

Centrex and PBX systems, being comparable, should be treated in the same manner, as described in ¶56. If the Commission's proposed methodology is used, it must be consistent between the two types of systems in how connections are counted.

We do support the proposal that there will not be a charge by both the LEC and the IXC for the same connection, as described in ¶ 63.

We also support the proposal in ¶108 that the line item be uniformly labeled as the Federal Universal Service Fee, and do not believe that this raises First Amendment concerns.

The State of Texas appreciates this opportunity to provide comment on this further notice of proposed rule making.

Respectfully submitted,

JOHN CORNYN
Attorney General of Texas

HOWARD G. BALDWIN, JR.
First Assistant Attorney General

JEFFREY S. BOYD
Deputy Attorney General for Litigation

PAUL D. CARMONA
Chief, Consumer Protection Division

MARION TAYLOR DREW
Public Agency Representation Section Chief

_____

ROGER B. BORGELT
Assistant Attorney General
State Bar No. 02667960
Consumer Protection Division
Public Agency Representation Section
P.O. Box 12548
Austin, Texas 78711-2548
Voice: (512) 475-4170
Fax: (512) 322-9114
E-Mail:roger.borgelt@oag.state.tx.us

Date: April 22nd, 2002