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December 20, 2002

Hon. Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals II
445 12 St., SW
Washington, D.C. 20554

RE: Comments of the New York State Department of Public Service in the Matter of the Recommended Decision of the Federal-State Joint Board on Universal Service, released on October 16, 2002, addressing issues from the Tenth Circuit Remand; CC Docket No. 96-45

Dear Secretary Dortch:

The New York State Department of Public Service ("NYDPS") submits these comments in response to the Public Notice issued by Federal Communications Commission's (Commission) Wireline Competition Bureau (Bureau) on November 5, 2002. The Bureau seeks comment on the Recommended Decision (RD) of the Federal-State Joint Board on Universal Service (Joint Board), released October 16, 2002, addressing issues from the 10th Circuit remand of the Commission's Ninth Report and Order (Order).¹ The Order established a federal high-cost universal service support mechanism for non-rural carriers. The Court remanded the Order to the Commission for further explanation of its decision.

The Joint Board recommends continued use of the non-rural support mechanism established in the Order, including use of

¹ Quest Corporation v. FCC, 258 F.3d 1191 (10th Cir. 2001).

forward-looking, statewide average costs and a benchmark of 135% of a national average cost to determine non-rural high-cost support.² The Joint Board also recommends implementation of a supplementary rate review as a check on sufficiency of non-rural support. Additionally, the Joint Board proposes that states be given an opportunity to seek further federal support based on comparisons of rates.

The NYDPS supports the Joint Board's recommendations insofar as they would clarify and maintain the existing mechanism of determining high cost support for non-rural carriers. These recommendations would continue to support the principle that consumers in "rural, insular and high-cost areas" should have access to services "that are available at rates that are reasonably comparable to rates charged for similar services in urban areas."³ They would also continue "specific, predictable and sufficient federal and state mechanisms to preserve and advance universal service."⁴ Because, as the Joint Board and Commission found rates in rural, suburban, and urban America generally are affordable and reasonably comparable, the current, non-rural, high-cost mechanism should not be expanded.

We, therefore, oppose the Joint Board's recommendation that states be able to seek additional "targeted" support by comparing rates, and addressing other factors that affect the comparability of their rates. The Joint Board has not demonstrated a need for supplemental funding.⁵

² Specifically, the forward-looking mechanism implemented in the Order determines the amount of federal support to be provided to non-rural carriers in each state by comparing the statewide average cost per non-rural carrier, as estimated by the Commission's cost model, to a national cost benchmark of 135% (RD at ¶4).

³ 47 USC §254(b)(3).

⁴ 47 USC §254(b)(5).

⁵ Indeed, such a demonstration would necessarily conflict with the Board's basic finding that the current non-rural high-cost mechanism does indeed provide "sufficient" support for carriers.

As the Joint Board recognizes, it is extremely difficult, if not impossible, to make meaningful rate comparisons among states.⁶ The largest challenge in performing meaningful rate comparisons is the difficulty of normalizing rates to recognize the varying local calling capabilities they may encompass. This is the principal reason that the Joint Board and Commission have now twice concluded that cost analysis, as a proxy for rate analysis, is the preferred approach. In this RD, the Joint Board did not even address the complex rules and algorithms that would be necessary to perform such normalizations, make such rate comparisons and, most importantly, determine appropriate amounts of supplemental support.

Although the Joint Board has only loosely described its proposed rate comparison, it seems to contemplate calculating the proposed supplemental support based on a comparison of each wire center's rate to a national benchmark rate. If true, it would reverse its own finding that high-cost support should be calculated based on statewide, not wire center, costs. That would fundamentally alter the Commission's role in high cost support, which as both the Joint Board and the Commission have found, is to effect necessary state-to-state transfers of monies, not transfers within states.

As Commissioner Dunleavy observed in his Separate Statement accompanying the RD:

...in the final analysis, the uncertainty that surrounds this ill-defined support proposal is its most troubling attribute. Until the extremely difficult decisions have been made about how to normalize rates and what criteria to apply in determining supplemental support, it is impossible to even estimate how much support it might produce or where that support might go. Potential recipients cannot even guess how much support they ultimately will receive; payers can only speculate on how much cost they will be asked to bear. Consequently, the Commission will be hard pressed, in my view, to explain to the court how its mechanism will, in fact, produce reasonably comparable rates.

⁶ RD at ¶19.

For all of these reasons, the NYDPS supports the RD except the recommendation that states be permitted to seek further funding based on a comparison of rates.

Very truly yours,

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