**Before the Federal Communications Commission**
**Washington, DC 20554**

| | | |
|---|---|---|
| IN THE MATTER OF | ) | |
| | ) | |
| FEDERAL-STATE JOINT BOARD ON | ) | CC DOCKET NO. 96-45 |
| UNIVERSAL SERVICE | ) | |

**COMMENTS OF THE MISSOURI PUBLIC COUNSEL**

## I. Introduction

The Missouri Office of the Public Counsel ("MOPC") offers these comments in response to the Federal Communications Commission's ("FCC") request for comments on the Recommended Decision of the Federal-State Joint Board on Universal Service ("Joint Board"), released October 16, 2002 ("Recommended Decision.") [1] The Missouri Public Counsel is a State agency charged with representing the interest of Missouri's investor owned utility consumers. We appreciate the opportunity to comment further on the issues remanded to the Commission for further consideration.

MOPC is supportive of a number of aspects of the Recommended Decision. However additional clarification and actions are necessary to fulfill the 1996 Telecommunications Act's ("Act") mandates that support be sufficient to preserve and advance universal service and to ensure that consumers in all regions have access to reasonably comparable services at rates that are reasonably comparable to those in urban areas.

### Reasonable Comparability and Sufficiency

The Recommended Decision appropriately shifts the final evaluation of "reasonable comparability" and "sufficiency" of the non-rural, high cost support mechanism away from a limited comparison of model cost at the federal level. Instead, the Recommended Decision focuses the evaluation of success exactly where it should be; on the actual rates that consumers must pay to maintain the basic supported services. This recognition of rates as the bottom line measure of success is what the law envisions. Looking at rates as a measure of success ensures that combined federal and/or state support are sufficient to achieve the comparability goal of the Act.

The FCC should clarify that it is not simply enough to compare rates for an existing service such as basic local service. Section 254(b) of the Act in part indicates that rates in rural, insular and high cost areas should be compared to rates in urban areas to determine reasonable

[1] Public Notice, DA 02-2976, 67 Fed. Reg. 71121 (2002), issued on November 5, 2002.

comparability. However, the service associated with those rates must also be reasonably comparable. Calling scope should be a major consideration in evaluating the standard for "reasonable comparability" of universal service. The measure should also recognize all mandatory recurring charges required to retain universal service including, but not limited to, flat rate basic local service charges or the estimated charges for a specified minimum level of local calling where applicable, touch-tone charges if mandatory, mandatory EAS charges, the SLC, any mandatory number portability charge and any rate reductions associated with a direct flow-through of high cost universal service support. Recognizing the minimum mandatory charges a consumer must bear to retain service is the most appropriate method for identifying what a consumer must pay for universal service. Other elements, such as taxes and deaf relay charges although appropriately included may produce insignificant insight into differences relative to the burden of including them in the analysis.

MOPC supports the Joint Board 's conclusion that the support mechanism for non-rural carriers will be "sufficient" if it ensures that rural rates of non-rural carriers throughout the nation are reasonably comparable to urban rates. While ultimately the goal is to ensure that federal and state universal service efforts are sufficient in concert, the sufficiency of specific universal service mechanisms could be evaluated independently in order to identify "weak links" and targeted remedies where deficiencies exist. If rates for similar services are reasonably comparable and the rates are affordable that would demonstrate sufficiency of the high cost mechanism in preserving and advancing universal service.

**Justifying 135% Benchmark**

MOPC does not find the justification for setting the cost benchmark precisely at the 135% level to be persuasive. However, we believe that the other protections in the Recommended Decision will be adequate to achieve sufficiency. Under the RD, states are empowered to monitor rates, verify the need for federal support and to seek additional funding if the state believes that additional support is needed. The Commission should be open to alternative courses of action if the investigation produces data that indicates that the 135% is not sufficient.

**State Inducements**

The RD includes appropriate inducements to promote reasonable comparability of rates. States have the ultimate authority to determine just and reasonable intra-state rates as well as an independent responsibility to preserve and advance universal service. There is no reason to believe that states will fail in meeting these responsibilities or to impose intrusive federal inducements at the onset. The RD is consistent with the requirement that separate federal and state rate authority. State verification, rate comparisons and opportunities to petition for additional federal support provide a sufficient initial "carrot" and "stick".

## IV. Conclusion

MOPC appreciates the opportunity to comment on the proposed rules. This Office has been involved in promoting the goals of universal service and offers its comments to assist the Commission carryout its duties and to address the deficiencies identified by the 10th Circuit

Court of Appeals. MOPC hopes its comments are helpful and asks the Commission give them due consideration.

Respectfully submitted,

**OFFICE OF THE PUBLIC COUNSEL**

**BY:** _____

M. Ruth O'Neill
Assistant Public Counsel (Bar No. 49456)
200 Madison Street, Ste. 650
P. O. Box 7800
Jefferson City, MO 65102
Telephone: (573) 751-4857
Facsimile: (573) 751-5562