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DIVISION OF EXTERNAL AFFAIRS
CHARLES H. HILL
DIRECTOR
(850) 413-6800

Public Service Commission

April 25, 2002

VIA ELECTRONIC FILING

Honorable William F. Caton, Acting Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: CC Docket No. 96-45, Federal-State Joint Board on Universal Service

Dear Mr Caton:

Forwarded herewith are Reply Comments of the Florida Public Service Commission in the above docket with regard to the Tenth Circuit Remand of the Ninth Report and Order on a federal high-cost universal service support mechanism for non-rural carriers

Sincerely,

/ s /

Cynthia B. Miller, Esquire
Office of Federal and Legislative Liaison

CBM:tf

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

In the Matter of)
)
Federal-State Joint Board on) CC Docket No. 96-45
Universal Service)
)

REPLY COMMENTS OF THE FLORIDA PUBLIC SERVICE COMMISSION

The Florida Public Service Commission (FPSC) submits these reply comments in response to the Notice of Proposed Rulemaking (Notice) released on February 15, 2002 (FCC 02-41). In this Notice, the Federal Communications Commission (FCC) requested comments on issues from the *Ninth Report and Order*,¹ remanded by the United States Court of Appeals for the Tenth Circuit.² The *Ninth Report and Order* established a federal high-cost universal service support mechanism for non-rural carriers based on forward-looking economic costs. The Court remanded the *Ninth Report and Order* to the FCC for further consideration and explanation of its decision. Specifically, the Court remanded it to the FCC to “establish an adequate legal and factual basis for the *Ninth Report and Order* and, if necessary, to reconsider the operative mechanism promulgated in that Order.” In particular, the Court concluded that the FCC did not (1) define adequately the key statutory terms “reasonably comparable” and “sufficient”; (2) adequately explain setting the funding benchmark at 135 percent of the national average; (3) provide inducements for state universal service mechanisms; or (4) explain how this funding mechanism will interact with other universal service programs.

¹ *Federal-State Joint Board on Universal Service*, Ninth Report & Order and Eighteenth Order on Reconsideration, 14 FCC Rcd. 20432(1999)(*Ninth Report and Order*)

² *Qwest Corp. v FCC*, 258 F.3d 1191 (10th Cir.2001)

Reasonable Comparability

The Joint Board recommended that reasonable comparability should be interpreted as “a fair range of urban/rural rates both within a state’s borders, and among states nationwide.”³ The FCC adopted this recommendation and elaborated by interpreting the goal of maintaining a “fair range” of rates to mean that “support levels must be sufficient to prevent pressure from high costs and the development of competition from causing unreasonable increases in rates above current, affordable levels.”⁴ The FCC later determined that “reasonably comparable must mean some reasonable level above the national average forward-looking cost per line, i.e., greater than 100 percent of the national average.”⁵ These definitions were rejected by the Court because it did not find them to be reasonable interpretations of the statutory language, which calls for reasonable comparability between rural and urban rates.

The FPSC finds merit in the proposal filed by Verizon to define “reasonably comparable” as rates in urban and rural areas that are within two standard deviations of each other or of the national mean. We agree with several commentators that “reasonably comparable” does not mean

³ Federal-State Universal Service Joint Board, Second Recommended Decision, FCC 98J-7, par. 15.

⁴ FCC, Seventh Report and Order, FCC 99-119, par. 30.

⁵ FCC, Ninth Report and Order, FCC 99-306, par. 54.

identical.⁶ Given the FCC-imposed time constraint on the Joint Board,⁷ we believe that the data recently gathered by the General Accounting Office⁸ could serve as a useful sample of rates.

Sufficiency

The Court also required the FCC to define “sufficient” more precisely so that the term can be reasonably related to the statutory principles, and then determine whether the funding mechanism will be sufficient for the principle of making all rates reasonably comparable to rates in urban areas. The FPSC believes that the Joint Board and the FCC must balance competing goals when defining "sufficiency." Specifically, the principle of achieving "reasonably comparable" urban and rural rates while maintaining the objective that the fund not be any larger than is necessary to achieve the various goals of section 254. Significant increases in the federal fund would only drive up the assessment on interstate telecommunications carriers, which would undoubtedly be passed along by carriers to end users, making telephone service less affordable for all customers.

The FPSC agrees with the comments filed by Verizon that a sufficient fund "must be one that allows reasonable comparability of rates in urban and rural areas without causing excessive demands on the total universal assessment and without impairing the amount of funds available for other universal service programs." We believe that this is consistent with the previous recommendation of the Joint Board when it found that the cost support fund should be only as large as necessary. The

⁶ Comments of Verizon, p. 6; Comments of the Ohio Consumers Counsel, the Maryland Office of Peoples' Counsel, the Maine Public Advocate Office, the Texas Office of Public Utility Counsel, and the Pennsylvania Office of Consumer Advocate, p. 4

⁷ FCC, Notice of Proposed Rulemaking and Order, FCC 02-41, par. 26.

⁸ General Accounting Office, Telecommunications - Federal and State Universal Service Programs and Challenges to Funding, GAO 02-187, rel. Feb 4, 2002.

Joint Board wished to ensure a "balance between consumers who directly receive the benefits of universal service support and those consumers who must pay for the support through their rates."⁹

To that end, the FPSC also supports Verizon's proposal to define a "sufficient" federal high-cost fund as a fund that would provide assistance to states that cannot maintain rates that are "reasonably comparable" to the nationwide average due to high costs within those states.

High-Cost Benchmark

The Court found that the FCC did not justify how the 135 percent benchmark would meet the "reasonable comparability" or "sufficiency" standards as required by the Telecommunications Act. The Court acknowledged that the FCC's selection of a benchmark would necessarily be somewhat arbitrary and acknowledged that the FCC is entitled to deference. Yet, the Court determined that the FCC adopted its current benchmark, without establishing that it made an informed, rational choice based on the record.

The FCC should retain its existing cost-based approach in identifying states that need support from the federal fund. Providing federal support to above-average cost states will promote their ability to meet the statutory objectives and prevent average or low-cost states from using rate structure changes in rural areas to artificially create a need for additional federal support. The FPSC supports the use of the current benchmark and believes there is merit to evaluating it in a manner similar to that used to determine "reasonable comparability" of rates. Verizon noted in its comments

⁹ Federal-State Universal Service Joint Board, Second Recommend Decision, FCC 98J-7, par. 47.

that such an analysis would generate a benchmark of approximately 132 percent.¹⁰ The FPSC contends that Verizon's analysis supports the current benchmark of 135 percent.

State Inducements

The 10th Circuit Court of Appeals concluded that the FCC must develop mechanisms to induce adequate state action in order to assure reasonably comparable rates between rural and urban areas. The Federal Communications Commission (FCC), in turn, has asked for comment on how it should induce states to implement a mechanism to support universal service.

The FPSC suggests that there is a way to induce states to take actions to alleviate the burden that the particular states are causing on the federal high-cost universal service support mechanism for non-rural carriers. The FCC should not however, dictate the method that states take to address high-cost support.

The FPSC does see a benefit in adding a layer of accountability into the program as to the individual states' need for high cost support. The FCC could require that state commissions provide notification of the steps their state has taken to achieve this rate comparability. The FPSC agrees with Verizon that states should be allowed to verify rate comparability within the state by showing either:

- (1) that its rates in urban and rural areas are within two standard deviations of each other; or
- (2) that its rates in rural areas are within two standard deviations of the nationwide average urban rate.

¹⁰ Comments of Verizon, p 9.

This information will shine a spotlight on those states that are not taking sufficient steps to address their state's needs.

In the alternative, the FCC should embark on a collaborative model of “state inducements” that will satisfy the Court’s remand. Under this model, the FCC would undertake an outreach with the states to develop appropriate “inducements” in instances where rate comparability within a state has not been achieved. In no way should these “inducements” be preemptive of a state legislature’s authority to make policy decisions regarding whether or not there is a state universal service mechanism. The FCC could send a few staff to meet with individual State Commissions on this matter or establish individual conference calls to develop incentives for states to address their high-cost universal service needs. Again, it seems to us that the focus should begin with those states which are net recipients of the Federal program funds.

Respectfully submitted,

/ s /

Cynthia B. Miller, Esquire
Office of Federal & Legislative Liaison
(850) 413-6082

FLORIDA PUBLIC SERVICE COMMISSION
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

DATED: April 25, 2002

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

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Federal-State Joint Board on) CC Docket No. 96-45
Universal Service)
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing comments will be mailed to the persons on the attached list.

/ s /

CYNTHIA B. MILLER
Office of Federal and Legislative Liaison
(850) 413-6082

FLORIDA PUBLIC SERVICE COMMISSION
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

DATED: April 25, 2002

Service List
CC Docket No. 96-45

The Honorable Michael Powell, Chairman
Federal Communications Commission
445 Twelfth St., SW, Rm. 8-B201
Washington, D.C. 20554

The Honorable Michael J. Copps, Commissioner
Federal Communications Commission
445 Twelfth St., SW, Rm. 8-A302
Washington, D.C. 20554

Mary E. Newmeyer
Federal/Congressional Affairs
Alabama Public Service Commission
100 N. Union St., Ste. 800
Montgomery, AL 36104

Lori Kenyon, Common Carrier Specialist
Regulatory Commission of Alaska
1016 W. 6th Ave., Ste. 400
Anchorage, AK 99501-1693

Earl Poucher, Legislative Analyst
Office of Public Counsel
111 W. Madison St., Rm. 812
Tallahassee, FL 32399-1400

Larry M. Stevens
Iowa Utilities Board
350 Maple St.
Des Moines, IA 50319

Nancy Zearfoss, Ph.D.
Maryland Public Service Commission
6 Saint Paul St., 16th Floor
Baltimore, MD 21202-6806

Mike H. Lee
Montana Public Service Commission
1701 Prospect Ave./P.O. Box 202601
Helena, MT 59601-2601

Charles Bolle, Policy Adviser
Nevada Public Utilities Commission
1150 E. William St.
Carson City, NV 89701-3105

The Honorable Kathleen Q. Abernathy,
Commissioner
Federal Communications Commission
445 Twelfth St., SW, Rm. 8-B115
Washington, D.C. 20554

The Honorable Kevin J. Martin, Commissioner
Federal Communications Commission
445 Twelfth St., SW, Rm. 8-A204
Washington, D.C. 20554

The Honorable Nanette G. Thompson, Chair
Regulatory Commission of Alaska
1016 W. 6th Ave., Ste. 400
Anchorage, AK 99501

Peter A. Pescosolido
Connecticut Dept. of Public Utility Control
10 Franklin Square
New Britain, CT 06051

Jennifer A. Gilmore
Indiana Utility Reg. Commission
302 W. Washington St., Ste. E306
Indianapolis, IN 46204

Joel B. Shifman, Esq.
Maine Public Utilities Commission
242 State St., State House, Station 18
Augusta, Maine 04333-0018

The Honorable Bob Rowe
Montana Public Service Commission
1701 Prospect Avenue/P.O. Box 202601
Helena, MT 59620-2601

Jeff Pursley
Nebraska Public Service Commission
300 The Atrium, 1200 N. St./P.O. Box 94927
Lincoln, Nebraska 68508

The Honorable Thomas J. Dunleavy
New York Public Service Commission
One Penn Plaza, 8th Floor
New York, NY 10119

Carl Johnson, Telecom Policy Analyst
New York Public Service Commission
3 Empire State Plaza
Albany, NY 12223-1350

Peter Bluhm, Director of Policy Research
Vermont Public Service Board
112 State St., Drawer 20
Montpelier, VT 05620-2701

Barbara Meisenheimer
Missouri Office of Public Counsel
301 W. High St., Ste. 250
Jefferson City, MO 65102

SBC Communications, Inc.
1401 Eye St., NW, Ste. 400
Washington, DC 20005

Lawrence E. Sarjeant
United States Telecom Assoc.
1401 H St., NW, Ste. 600
Washington, DC 20005-2164

L. Marie Guillory
National Telecommunications Coop. Assoc.
4121 Wilson Blvd., 10th Floor
Arlington, VA 22203

Richard M. Sbaratta
BellSouth Corporation
675 W. Peachtree St., NE, Ste. 4300
Atlanta, GA 30375-0001

Sidley Austin Brown & Wood LLP
AT&T Corp.
1501 K. St., NW
Washington, DC 20005

Thomas G. Fisher, Jr.
Rural Iowa Independent Tele. Assoc.
Hogan & Fisher, P.L.C.
3101 Ingersoll Ave.
Des Moines, IA 50312-3918

Jonathan E. Nuechterlein
Qwest Communications International Inc.
Wilmer, Cutler & Pickering
2445 M St., NW
Washington, DC 20036

Philip F. McClelland
Pennsylvania Office of Consumer Advocate
555 Walnut St., Forum Pl., 5th Floor
Harrisburg, PA 17101-1923

Billy Jack Gregg
West Virginia Consumer Advocate
700 Union Bldg.
Charleston, WV 25301

John T. Nakahata
Harris, Wiltshire & Grannis LLP
1200 Eighteenth St., NW, Ste. 1200
Washington, DC 20036

David L. Sieradzki
Hogan & Hartson, LLP
555 Thirteenth St., NW
Washington, DC 20004

Lori Cobos
Public Utility Commission of Texas
1701 N. Congress Ave./P.O. Box 13326
Austin, TX 78711-3326

Margot Smiley Humphrey
Holland & Knight
2099 Pennsylvania Ave., NW, Ste. 100
Washington, DC 20006

Joseph DiBella
Verizon
1515 N. Courthouse Rd., Ste. 500
Arlington, VA 22201-2909

Paul G. Afonso
Massachusetts Dept. of Telecomm. & Energy
One S. Station
Boston, MA 02110

Doug Kitch
2110 Vickers Dr., Ste. 2106
Colorado Springs, CO 80918