Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket Nos. 96-45 and 97-160
Methodology For Determining	)	
Universal Service Support	)	

Comments of John Staurulakis, Inc.

In response to the April 15, 1998, Public Notice, DA-98-715, related to the request of the Common Carrier Bureau seeking comments on proposals to revise the methodology for determining Universal Service support

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Summary

JSI believes that the Federal Communication Commission's (FCC's or Commission's) proposed four-step methodology for determining high-cost universal service support levels for non-rural telephone companies ö consisting of: (1) the per-line, forward-looking economic cost of providing universal service; (2) less a nationwide average per line revenue benchmark; (3) multiplied by a federal support factor of 25 percent; and (4) multiplied by eligible universal service loops ö must be modified if universal service is to be preserved and advanced.

To avoid the potential negative consequences of the plan as currently envisioned by the Commission, JSI believes that the FCC should be guided by the following four principles in revising its high-cost universal service support program:

- Include all retail telecommunications revenues in the assessment base ö international, interstate, and intrastate;
- Authorize the Universal Service Administrative Company (USAC) to collect, administer, audit, and distribute all funds based on a formula that determines the cost of supported services less the nationwide benchmark revenue, without regard to jurisdiction. This authorization would begin January 1, 1999 ö or whatever date the FCC deems appropriate for those LECs eligible to receive high-cost universal service support funding on the basis of forward-looking economic cost;
- Allow the majority of the financial benefit of universal service support to be used by the states to ensure that intrastate services supported by the federal program are maintained at a reasonably comparable rate level, nationwide; and,
- Rely on state regulatory authorities to see that funds received from the federal program are used to promote and advance universal service.

By adopting these four principles, which includes the elimination of step 3 (the application of the federal support factor of 25 percent) of the FCC's proposed four-step methodology, and by including all retail telecommunications revenues ö international, interstate, and intrastate ö in the assessment base, the Commission will ensure that its federal universal service program is not only consistent with the goals of the Act, but also consistent with the federal concept of administration that has worked successfully since 1984.

Comments of John Staurulakis, Inc.

John Staurulakis, Inc. (JSI) hereby files these comments in response to the April 15, 1998, Public Notice, DA-98-715, related to the request of the Common Carrier Bureau (Bureau) seeking comments on proposals to revise the methodology for determining Universal Service support.

JSI is a consulting firm specializing in financial and regulatory services to more than two hundred Incumbent Local Exchange Carriers (ILECs) throughout the United States. JSI assists these ILECs in the preparation and submission of jurisdictional cost studies and Universal Service Fund (USF) data to the National Exchange Carrier Association (NECA), and routinely prepares and files tariffs with the Commission on behalf of a number of these ILECs. Since the Public Notice seeks comments on issues affecting our clients in matters of cost recovery and assessments related to the universal service programs initiated by the Federal Communications Commission (FCC or Commission), JSI is an interested party in this proceeding.[1]

Introduction

In its January 26, 1998 Comments to the FCC in response to the January 5, 1998 Public Notice, DA-98-2, related to the request of the Common Carrier Bureau seeking comments in preparing its report to Congress on Universal Service under the Telecommunications Act of 1996, JSI indicated, among other things, its conviction that the Commission's decisions regarding the percentage of universal service support provided by federal mechanisms (25 percent) and the revenue base from which such support is derived (interstate only for the "high-cost" and "low income" universal support programs) are not in keeping with Congressional intent. In fact, these decisions, if implemented, will undermine the universal service principles specifically set forth by Congress to guide the Joint Board and the FCC in setting policies to preserve and advance universal service.

In its comments, JSI expressed the view that a plain reading of the Act, as well as the Commission's own experience, dictates that the federal high-cost universal service support mechanism should represent a comprehensive solution to universal service in high-cost-to-serve areas nationwide, should not be dependent for its success on the independent actions of 50 separate state regulatory bodies, and should ensure that the vast majority of the support mechanism's financial benefit be available in the intrastate jurisdictions to allow "·consumers in all regions of the Nation· [to] have access to telecommunications services and information services, including interexchange and advanced telecommunications services and information services, that are reasonably comparable to those provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas." In its Report to Congress, the FCC affirmed its right to assess all telecommunications revenues, regardless of jurisdiction.[2]

Further, JSI stated its belief that the FCC's current administrative rules for bifurcated, high-cost, universal service support would result in the administrative burden of 50 state high-cost funds, and would discriminate against high-cost, less densely populated states; e.g., North Dakota could require a 35 percent surcharge on retail customer bills, while California would need only a 2 percent surcharge.[3]

To avoid the potential negative consequences currently envisioned, JSI proposed that the Commission should be guided by the following four principles in revising its universal service support programs:

- Include all retail telecommunications revenues in the assessment base ö international, interstate, and intrastate;
- Authorize the Universal Service Administrative Company (USAC) to collect, administer, audit, and distribute all funds based on a formula that determines the cost of supported services less the nationwide benchmark revenue, without regard to jurisdiction. This authorization would begin January 1, 1999 ö or whatever date the FCC deems appropriate for those LECs eligible to receive high-cost universal service support funding on the basis of forward-looking economic cost;
- Allow the majority of the financial benefit of universal service support to be used by states to ensure that intrastate services supported by the federal program are maintained at a reasonably comparable rate level, nationwide;
- Rely on state regulatory authorities to see that funds received from the federal program are used to promote and advance universal service.

JSI concluded that if the FCC were to establish a comprehensive system for universal service support and administration, the required surcharge could be uniform and nationwide, e.g., an overall 4 percent surcharge, nationwide, rather than a program that sees a 35 percent surcharge in a high-cost state but only a 2 percent surcharge in a low-cost state. To do this, the FCC need only modify its "four-step" proposed methodology by eliminating the federal support factor of 25 percent, and by including all retail telecommunications revenues ö international, interstate, and intrastate ö in the assessment.[4]

JSI urges the Commission to give consideration to these four principles in its deliberations leading to a universal service support mechanism which will, in fact, preserve and advance universal service.

The FCC's Proposals For Federal, High-Cost, Universal Service Support Cannot Be Reconciled With the Intent of the Act

In Section 254 of the Telecommunications Act of 1996, Congress set forth, among other things, the universal service principles it intended for the Joint Board and the FCC to follow in setting policy. Section 254(b) established universal service principles, among which include the following:

- Quality services should be available at just, reasonable, and affordable rates;
- Access to advanced telecommunications and information services should be provided in all regions of the nation;
- Consumers in all regions of the nation, including low-income consumers and those in rural, insular, and high-cost areas, should

have access to telecommunications and information services, including interexchange and advanced services, that are reasonably comparable to those services provided in urban areas and that are available at rates reasonably comparable to rates charged for similar services in urban areas; and

- There should be specific, predictable and sufficient federal and state mechanisms to preserve and advance universal service.

In its May 7, 1997 *Report and Order* on Universal Service, the FCC prescribed that the level of federal high-cost universal service support for non-rural LECs would be the result of the forward-looking economic cost of the supported services less a benchmark amount based on the nationwide average revenue per line, and multiplied by 25 percent. Further, as opposed to support mechanisms for the schools and libraries and rural heath care, the FCC decided that contributions required to support the high-cost universal service support mechanism would consist only of interstate and international retail revenues.

In implementing the Act's universal service provisions, JSI believes that in at least three respects, the FCC ö unwittingly or not ö violated the intent of Congress embodied in the universal service principles: First, by setting the federal share of financial support for the high-cost universal service support mechanism at 25 percent, the FCC undermined Congressional intent to create a "national" universal service program that affords "reasonably comparable" services and rates to all consumers, regardless of where they live. Such an approach, which places 75 percent of the burden on individual states, in effect creates 50 separate universal service programs. Moreover, it forces high-cost, low-density states, such as North Dakota and Montana, which each have substantially less than a million access lines and virtually no urban centers, to account for the lion's share of universal service support for their rural citizens in exactly the same manner as low-cost, high-density states, such as New York and California, which can spread these costs over millions of access lines and numerous metropolitan areas.

JSI suggests that the FCC's decision to make the states responsible for 75 percent of "federal" universal service support is contrary to the provisions of Section 254(b), and serves to distinctly disadvantage small and rural states that do not have the luxury of significant urban population bases on which to offset the costs of providing local service to high-cost rural customers. The 25-75 split represents a major departure from Congressional intent to create national policy and, rather than building on the federal-state partnership in promoting universal service, such a bifurcated approach actually creates a major point of contention between the states and the federal government.[5]

Second, in concert with its decision to fund only 25 percent of the cost of universal service, the FCC concluded that the funding derived through this new interstate support mechanism would not be available for use by states so that they could offset the need for high local rates. Clearly, this is wholly inconsistent with long-standing FCC policy, initiated in 1983.[6]

JSI notes that if the 25 percent interstate funding rule becomes effective on January 1, 1999, as proposed, it will result in the elimination of the availability of the portion of the approximately $826 million, the 1998 level of USF, applicable to non-rural companies and used by them to keep intrastate rates lower than they otherwise would be. In other words, states will not only be saddled with 75 percent of the costs of universal service, but they also will be confronted with the realization that historically available federal support will be eliminated for non-rural companies on January 1, 1999.[7]

Third, and in opposition to the majority of state members of the Joint Board, the FCC proposed that high-cost universal service support be based on contributions from interstate and international retail revenues ö and exclude intrastate ö revenues. Thus, we contend, the Commission has decided on a formula that significantly understates the potential revenue base and undermines the "national" perspective for universal service, as articulated by Congress in Section 254(b).

Finally, JSI believes, then FCC Commissioner Rachel Chong well illustrated the inherent conflict between the FCC's Order and Congressional intent. In a separate, part-concurring and part-dissenting statement, Commissioner Chong stated:

> "While I support our decision to decline to exercise the entirety of our authority as to some portions of the federal universal service program, I read the statute as standing for the proposition that Congress granted the Commission authority pursuant to Section 254 to set up a comprehensive federal universal service program ·. As a result, I think it would be a better reading of Section 254 to allow the Commission to assess universal service contributions on the revenues (either interstate or intrastate) of interstate carriers, because it most accurately embraces the spirit of the national social programs (schools and libraries, rural health care, low income, rural, insular, high-cost) proposed or mandated in this section." (emphasis added)

JSI Recommendations For a Federal Program, Consistent With the Act

JSI believes that it is in the national public interest to develop a federal program for universal service that will achieve the objectives set forth in Section 254 of the Act. Moreover, a Federal program based upon all telecommunication revenues would broaden the assessment base, thereby reducing obvious funding irregularities across states, and would further the goal of competitive neutrality irrespective of jurisdictional traffic. JSI encourages the Commission to reconsider and revise its universal service policy to incorporate the following principles, thereby creating a federal program consistent with the goals specified in the Act:

1. Establish a federal fund that is based upon total national telecommunications revenues ö international, interstate, and intrastate.
2. Authorize the Universal Service Administrative Company (USAC) to collect, administer, audit, and distribute all funds based on a formula that determines the cost of supported services less the nationwide benchmark revenue, without regard to jurisdiction. This authorization would begin January 1, 1999 ö or whatever date the FCC deems appropriate for those LECs eligible to receive high-cost universal service support funding on the basis of forward-looking economic cost;
3. Provide that the majority of revenues received by eligible telecommunication carriers be available to the states to ensure that intrastate services ö e. g., basic local exchange service and intrastate access ö are maintained at a reasonably comparable rate level, nationwide.
4. Rely on state regulatory authorities to see that funds received from the federal program are used to promote and advance universal service.

The FCC proposed a four-step methodology for determining high-cost universal service support levels consisting of: (1) the per line forward looking economic cost of providing universal service; (2) less a nationwide average per line revenue benchmark; (3) multiplied by a federal support factor of 25 percent; and (4) multiplied by eligible universal service loops. JSI believes that the FCC need only modify its "four-step" proposed methodology by eliminating step 3, the application of the federal support factor of 25 percent, and by including all retail telecommunications revenues ö international, interstate, and intrastate ö in the basis of the assessment.

By adopting these four principles, the Commission would establish a federal high-cost universal service program that is not only consistent with the goals of the Act, but that would also be consistent with the federal concept of administration that has worked successfully since 1984. Further, the existing universal service program administration has demonstrated that a federal organization can complement and enhance the goals that state regulators have established for the carriers under their jurisdiction.

It seems apparent that there would be considerable efficiency in administration afforded by having one organization administer the national universal service policy. If states wish to augment the federal program to further their specific policy objectives, the additional state administration would be minimal as compared to the state administration as currently proposed by the FCC. Also, national administration of the program would allow state regulatory authorities to use their resources to focus on policy issues rather than on collection, administration, auditing, and distribution.

Consistent with the Act, the federal program would allow eligible carriers to apply a majority of the funds received from the program to intrastate activities. This would ensure that the Commission satisfies the program goal, as intended by Congress, to provide for comparable services at comparable rates across the nation.

Finally, using the total base of telecommunications revenues to support universal service is consistent with the goals of a national social policy. As has been mentioned, a balkanized approach would result in some states having a surcharge of more than 35 percent, while other states would see a 2 percent surcharge. (These percentages are compared with the 4 percent surcharge on all telecommunications revenues we propose using the "blended" total fund amounts required for price-cap carriers. [See footnote 2.])

It is only logical that low-cost states would want to be removed from the federal program because they would be able to pool their vast resources and large populations to achieve state-specific goals with a surcharge lower than the national total base surcharge. However, giving low-cost states this opportunity does not promote national policy, and it certainly does not comport with the goals and intentions of Congress as specified in the Act. JSI believes that a federal program is the most cost-effective and efficient way to accomplish the goals of universal service.

Respectfully submitted,

John Staurulakis, Inc.

Bruce Schoonover
Executive Vice President

Date: April 27, 1998

Footnotes

[1] While JSI primarily represents rural telephone companies and the universal service support program being considered in this proceeding will initially be directed toward non-rural telephone companies only, JSI is concerned that the precedent established for non-rural telephone companies beginning January 1, 1999 will ultimately affect rural companies as well. See May 7,1997, *Report and Order on the Federal-State Joint Board on Universal Service*, CC Docket 96-45 (para. 203-204).

[2] See paragraph 18, CC Docket No. 96-45, Report To Congress, Released April 10, 1998.

[3] These percentages were derived from the "Ad Hoc Proposal" (see page 5 of the April 15, 1998 Public Notice) analysis, which is based on combining the results of the current BCPM and Hatfield models into a "blended or averaged" result. It is clear that the current models continue to be flawed and, therefore, produce erroneous results. JSI acknowledges these failings and, in fact, recognizes that the FCC has yet to determine if a FLEC-based, high-cost universal service fund is appropriate for rural telephone companies. Nevertheless, regardless of the level of the funding, the "Ad Hoc Proposal" analysis illustrates the relative magnitude of the differences that can be expected among states using a bifurcated universal service program as currently proposed by the FCC.

[4] The May 7,1997, *Report and Order on the Federal-State Joint Board on Universal Service*, CC Docket 96-45, required that beginning January 1, 1999, non-rural carriers would establish universal service support levels based on (1) the per line forward looking economic cost of providing universal service; (2) less a nationwide average per line revenue benchmark; (3) multiplied by a federal support factor of 25 percent; and (4) multiplied by eligible universal service loops.

[5] In the Senate Commerce Committee's March 12, 1997 oversight hearings, then FCC Chairman Reed Hundt noted that he had reversed his position on this issue because several states had complained that they had already established their own universal service programs and did not want to participate in a federal program. Sen. Byron Dorgan (D-ND) replied that he was not concerned with those states because universal service is a national policy, not a state-by-state policy (see NTCA *Washington Report*, March 17, 1997).

[6] As far back as 1984, both the FCC and the Joint Board signaled their recognition of the need for summary solutions to the need for adequate and specific support assistance for telephone companies serving high-cost areas. In the November 15, 1984 *Recommended Decision and Order* in CC Docket No. 80-286, the Joint Board noted that it had recommended, and the FCC had adopted, a high-cost assistance plan that "involves an additional interstate cost allocation for study areas with high (non-traffic-sensitive) local exchange costs. This is <u>designed to reduce the intrastate cost allocation and keep local rates lower than they would otherwise be</u>." (emphasis added) (see para. 48).

7 *Report and Order*, see para. 268.

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