

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)

THIRD ORDER ON RECONSIDERATION

Adopted: December 16, 1997 **Released:** December 16, 1997

By the Commission (Commissioners Ness and Powell issuing separate statements; Commissioner Furchtgott-Roth dissenting and issuing a statement):

I. INTRODUCTION

1. In this Order, we reconsider, on our own motion, the Commission's decisions governing the amount of money that may be collected during the first six months of 1998 for the federal universal service support mechanisms for schools and libraries and rural health care providers.¹ We direct the administrator to collect only as much as required by demand, but in no event more than \$25 million per quarter for the first and second quarters of 1998 to support the rural health care universal service support mechanism. We direct the administrator to collect only as much as required by demand, but in no event more than \$625 million for the first six months of 1998, to support the schools and libraries universal service support mechanism. These actions will reduce the financial burdens on universal service contributors without jeopardizing the sufficiency of the support mechanisms. The Commission may revise the collection caps if we receive evidence of additional demand for services. The rules adopted in this Order will become effective upon their publication in the Federal Register.

¹ In light of pending petitions for reconsideration in this proceeding, the Commission retains jurisdiction to reconsider its own rules on its own motion. See 47 U.S.C. § 405, 47 C.F.R. § 1.108, and *Central Florida Enterprises, Inc. v. FCC*, 598 F.2d 37, 48, note 51 (D.C. Cir. 1978), cert. dismissed, 441 U.S. 957 (1979).

II. BACKGROUND

2. In the *NECA Report and Order*, the Commission established the administrative structure of the federal universal service support mechanisms.² The Commission directed the National Exchange Carrier Association (NECA) to create an independent subsidiary, the Universal Service Administrative Company (USAC), to administer temporarily portions of the support mechanisms.³ The Commission also directed NECA to create two independent corporations, Schools and Libraries Corporation and Rural Health Care Corporation, to administer portions of the schools and libraries and rural health support mechanisms.⁴ USAC, Schools and Libraries Corporation, and Rural Health Care Corporation are required to submit to the Commission quarterly projections of demand and administrative expenses for their respective support mechanisms.⁵

3. The schools and libraries and rural health care support mechanisms are newly created and have no historical data upon which to estimate accurately the demand for services in the initial months of the support mechanisms. The Commission specified that the administrator should collect \$100 million per month for the first three months of 1998 for the schools and libraries support mechanism⁶ and "adjust future contribution assessments quarterly based on its

² Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service, *Report and Order and Second Order on Reconsideration*, FCC 97-253 (rel. July 18, 1997) (*NECA Report and Order*).

³ *NECA Report and Order* at para. 30.

⁴ *NECA Report and Order* at para. 57.

⁵ 47 C.F.R. § 54.709(a)(3). On October 31, 1997, USAC, Schools and Libraries Corporation, and Rural Health Care Corporation submitted projections of demand and administrative expenses for their respective programs for the first quarter of 1998. Those figures were published in a public notice issued November 13, 1997. Proposed First Quarter Universal Service Contribution Factors, *Public Notice*, DA 97-2392 (Acct. and Aud. rel. Nov. 13, 1997). If the Commission took no further action within 14 days, those figures would be deemed approved by the Commission. 47 C.F.R. § 54.709(a)(3). On November 21, 1997 and again on December 5, 1997, the Commission extended the period during which it reserved the right to modify these contribution factors and set the projections of demand and administrative expenses at amounts that the Bureau determines will serve the public interest. Extended Review Period for First Quarter Universal Service Contribution Factors, *Public Notice*, DA 97-2510 (Acct. and Aud. rel. Nov. 26, 1997); Further Extension of Review Period for First Quarter Universal Service Contribution Factors, *Public Notice*, DA 97-2560 (Acct. and Aud. rel. Dec. 5, 1997). Once the proposed contribution factors are deemed approved by the Commission or are modified and approved in a subsequent Public Notice, USAC shall use the approved contribution factors to calculate and bill first quarter universal service contributions. *NECA Report and Order* at para. 49.

⁶ Federal-State Joint Board on Universal Service, *Report and Order*, 12 FCC Rcd 8776, 9056, para. 532 (1997) (*Order*).

evaluation of schools and library demand for funds, within the limits of the spending caps"⁷ The Commission further held that, between January 1, 1998 and June 30, 1998, the administrator "will only collect as much as required by demand, but in no case more than \$1 billion."⁸ For the rural health care support mechanism, the Commission directed the administrator to collect \$100 million for the first three months of 1998.⁹ In addition, the Commission instituted annual caps on both support mechanisms, \$2.25 billion for the schools and libraries support mechanism¹⁰ and \$400 million for the rural health care support mechanism.¹¹ In setting forth a collection schedule, the Commission sought to ensure that "funds will be available as needed while avoiding the potential problems arising from the accumulation of large amounts of funds in a federal universal service fund."¹²

III. DISCUSSION

4. We conclude that we should adjust downward the rate of collections for the schools and libraries and rural health care support mechanisms during the first six months of 1998. We anticipate that this action will not jeopardize the sufficiency of the support mechanisms. The annual caps were designed to estimate the maximum, rather than the actual, amount of demand for the schools and libraries and rural health care universal service support mechanisms.¹³ Based on what we have learned about the status of preparatory arrangements being made by schools, libraries, and rural health care providers to obtain the benefit of the universal service support mechanisms,¹⁴ we have no reason to believe that demand will reach the maximum projection levels in the initial implementation stages of these new support mechanisms. We do not want to impose unnecessary financial burdens on service provider contributors to universal service by requiring the administrator to collect funds that exceed demand. We also wish to ensure the successful

⁷ *Order*, 12 FCC Rcd at 9055-9056, para. 532.

⁸ *Order*, 12 FCC Rcd at 9054, para. 529.

⁹ *Order*, 12 FCC Rcd at 9145, para. 715.

¹⁰ *Order*, 12 FCC Rcd at 9054, para. 529.

¹¹ *Order*, 12 FCC Rcd at 9141, para. 705.

¹² *Order*, 12 FCC Rcd at 9055-9056, para. 532 (cite omitted).

¹³ *Order*, 12 FCC Rcd at 9054, para. 529; 9141, para. 705.

¹⁴ For example, schools and libraries are conducting technology assessments and preparing technology plans. Schools, libraries, and health care providers are also educating themselves on what services are eligible for universal service support, and the procedures for applying for support. In addition, substantial capital projects such as internal connections typically take place in the summer months, when students are not present in the instructional buildings.

implementation of the schools and libraries and rural health care support mechanisms. Accordingly, we find that it better serves the public interest to reduce the collection amounts specified in the *Order* for the first six months of 1998, as described below.

5. *Rural Health Care.* The rural health care support mechanism supports the difference, if any, between the urban and the rural rates for a telecommunications service of a bandwidth up to and including 1.544 Mbps. The rural health care support mechanism also provides limited support to health care providers that do not have toll-free access to the Internet.¹⁵ In the initial stages of implementing the rural health care support mechanism, we anticipate that demand will not exceed \$25 million per quarter during the first six months of 1998. We therefore amend our previous decision, and direct the administrator to collect only as much as required by demand, but in no event more than \$25 million per quarter for the first and second quarters of 1998 for the rural health care universal service support mechanism.

6. *Schools and Libraries.* The schools and libraries support mechanism provides discounts to eligible schools and libraries for commercially available telecommunications services, internal connections, and access to the Internet.¹⁶ Because many schools and libraries will not begin the installation of internal connections until the summer when students are not present in instructional buildings, we anticipate that initial demand for the schools and libraries support mechanism will not reach projected maximums. We therefore conclude that demand from schools and libraries in the second quarter of 1998 is unlikely to exceed substantially demand in the first quarter. Accordingly, we direct the administrator to collect only as much as required by demand, but in no event more than \$625 million for the first six months of 1998.

IV. PROCEDURAL MATTERS

7. According to the Administrative Procedure Act, substantive rules shall not become effective until 30 days after their publication in the Federal Register unless there is good cause to waive that requirement.¹⁷ We find that good cause exists to waive the 30-day requirement because the rules adopted herein are critical to the expeditious and efficient implementation of the new federal universal service support mechanisms. The Commission's regulations implementing section 254 will take effect January 1, 1998.¹⁸ The rules adopted herein are necessary to calculate

¹⁵ Such health care providers may receive support for the lesser of toll charges incurred for 30 hours of access per month to an Internet service provider or \$180 per month in toll charge credits for toll charges imposed for connecting to an Internet service provider. 47 C.F.R. § 54.621(a).

¹⁶ *Order*, 12 FCC Rcd at 9006-9023, paras. 431-462.

¹⁷ 5 U.S.C. § 553(d).

¹⁸ *See Order*, 12 FCC Rcd at 8851, 9261-9262, paras. 135, 985-990.

the first quarter 1998 universal service contribution factors and primarily affect the administrator of the support mechanisms.¹⁹ In order to collect contributions in February 1998, the administrator must know what the contribution factors will be before beginning the billing process in January 1998.²⁰ The rules, therefore, do not place additional burdens on the administrator. They enable the administrator to carry out its existing responsibilities. In addition, certain carriers must file tariffs in December 1997 that reflect the contribution factors.²¹ Moreover, the rules adopted herein reduce the financial burdens imposed on universal service contributors by minimizing the amounts collected in the first six months of 1998. Thus, we find that good cause exists to make the rules adopted herein effective upon their publication in the Federal Register.

V. SUPPLEMENTAL FINAL REGULATORY FLEXIBILITY ANALYSIS

8. As required by Section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. § 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking and Order Establishing Joint Board (NPRM).²² In addition, the Commission prepared an IRFA in connection with the Recommended Decision, seeking written public comment on the proposals in the NPRM and Recommended Decision.²³ A Final Regulatory Flexibility Analysis (FRFA) was included in the *Order*.²⁴ The Commission's Supplemental Final Regulatory Flexibility Analysis (SFRFA) in this Order conforms to the RFA, as amended.²⁵

¹⁹ Proposed First Quarter Universal Service Contribution Factors, *Public Notice*, DA 97-2392 (rel. Nov. 13, 1997); Extended Review Period for First Quarter Universal Service Contribution Factors, *Public Notice*, DA 97-2510 (rel. Nov. 26, 1997); Further Extension of Review Period for First Quarter Universal Service Contribution Factors, *Public Notice*, DA 97-2560 (rel. Dec. 5, 1997).

²⁰ Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service, *Second Order on Reconsideration in CC Docket No. 97-21*, CC Docket Nos. 97-21, 96-45, FCC 97-400 (rel. Nov. 26, 1997).

²¹ Access Charge Reform, *et. al.*, CC Docket No. 96-262, *et. al. First Report and Order*, FCC 97-158 (rel. May 16, 1997); *Errata* (rel. June 4, 1997); *Order on Reconsideration*, 12 FCC Rcd 10119 (rel. July 10, 1997); *Order on Reconsideration*, FCC 97-368 (rel. Oct. 10, 1997).

²² In the Matter of Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking and Order Establishing a Joint Board, CC Docket No. 96-45, 11 FCC Rcd. 18,092 (1996) (NPRM) at paras. 135-42.

²³ 61 Fed. Reg. 63,778, 63,796 (1996).

²⁴ *Order*, 12 FCC Rcd at 9219.

²⁵ See 5 U.S.C. § 604. The Regulatory Flexibility Act, 5 U.S.C. § 601 *et seq.*, was amended by the "Small Business Regulatory Enforcement Fairness Act of 1996" (SBREFA), Subtitle II of the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA).

A. Need for and Objectives of this Report and Order and the Rules Adopted Herein.

9. The Commission is required by section 254 of the Act, as amended by the 1996 Act, to promulgate rules to implement promptly the universal service provisions of section 254. On May 8, 1997, the Commission adopted rules whose principle goal is to reform our system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition. In this Order, we reconsider one aspect of those rules. In order to reduce financial burdens on all contributors to universal service, we reconsider, on our own motion, the amounts that will be collected during the first six months of 1998 for the schools, libraries, and rural health care support mechanisms.

B. Summary and Analysis of the Significant Issues Raised by Public Comments in Response to the IRFA.

10. Other than those described in the *Order*,²⁶ no additional comments were filed in response to the IRFAs described above.

C. Description and Estimates of the Number of Small Entities to Which the Rules Adopted in This Report and Order will Apply.

11. Because the rules adopted herein apply to the administrator of the support mechanisms, the rules will not directly affect small entities. It is possible, however, that small entities will indirectly be affected by these rules. In the FRFA at paragraphs 890-922 of the *Order*, we described and estimated the number of small entities that would be affected by the new universal service rules. The rules adopted herein may apply to the same telecommunications carriers and entities affected by the universal service rules. We therefore incorporate by reference paragraphs 890-922 of the *Order*.²⁷

D. Summary Analysis of the Projected Reporting, Recordkeeping, and Other Compliance Requirements and Significant Alternatives and Steps Taken to Minimize the Significant Economic Impact on a Substantial Number of Small Entities Consistent with Stated Objectives.

12. In the FRFA to the *Order*, we described the projected reporting, recordkeeping, and other compliance requirements and significant alternatives and steps taken to minimize

²⁶ *Order*, 12 FCC Rcd at 9220-9223, paras. 875-881.

²⁷ *Order*, 12 FCC Rcd at 9227-9241, paras. 890-922.

significant economic impact on a substantial number of small entities consistent with stated objectives associated with the Administration section of the *Order*. Because the rules adopted herein may only marginally affect those requirements, we incorporate by reference paragraphs 980-981 of the *Order*, which describe those requirements and provide the following analysis of the new requirements adopted herein.²⁸ Under the rules adopted herein, the administrator is instructed to collect during the first six months of 1998 no more than \$625 million for the schools and libraries support mechanism and \$50 million for the rural health care support mechanism.

VI. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1-4, 201-205, 218-220, 254, 303(r), 403, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 218-220, 254, 303(r), 403, and 405, section 1.108 of the Commission's rules, 47 C.F.R. § 1.108, and section 553 of the Administrative Procedure Act, 5 U.S.C. § 553, Part 54 of the Commission's rules, 47 C.F.R. Part 54, is amended as set forth in Appendix A hereto, effective upon publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

²⁸ *Order*, 12 FCC Rcd at 9259, paras. 980-981.

**Separate Statement
of
Commissioner Ness**

Re: Universal Service, Third Order on Reconsideration

Today, we are just weeks away from implementing one of the seminal achievements of the 104th Congress, one that was wisely crafted to prepare our Nation for the challenges and opportunities of a new century. Beginning January 1, 1998, the Snowe-Rockefeller-Exon-Kerrey provisions of the Telecommunications Act of 1996 will go into effect, and discounts for communications services will thereafter be made available to schools, libraries, and public and non-profit rural health care facilities from Alaska to Florida. At the same time, we will also strengthen and expand the program which enables low-income consumers to obtain communications services, and we will renew our efforts to make support for services delivered in high-cost areas compatible with the increased competition we are working so diligently to promote.

Our society, our culture, and our economy will be stronger as a result.

Twenty-one months ago, as required by Congress, this Commission established a federal-state Joint Board to implement the universal service provisions of the Telecommunications Act of 1996. That Joint Board recommended, and this Commission adopted, detailed rules to provide universal service support for low-income consumers, for consumers in high-cost areas, and for schools, libraries, and public and non-profit rural health care facilities.

Over the course of these many months, innumerable questions have arisen, been debated robustly on a public record, and been successfully resolved. In virtually every instance, the answers were unanimous. Four state and three federal regulators, as well as a consumer advocate, Republican and Democratic alike, worked to achieve consensus on virtually every detail regarding the collection, distribution, and administration of universal service funding. The universal service mechanisms that resulted were designed to be enormously beneficial, fiscally responsible, compatible with competition, and consistent with legislative intent.

Today's order is not the occasion for a comprehensive review of those decisions, though I am confident that they will withstand close scrutiny. Today's order presents only a narrow issue: whether to use the "spigot" we created so that funds are not collected in excess of reasonably anticipated demand.

Congress was right to be enthusiastic about the benefits that would flow, throughout our nation, by increasing the opportunity for classrooms, libraries, and rural health care facilities to be connected to the information superhighway. But Congress has also been clear about its hope that these new responsibilities could be accommodated in a way that would avoid rate increases for

residential ratepayers. As one who has been actively involved throughout the Joint Board's and Commission's deliberations, I can attest that we have taken pains, at every turn, to fulfill all of Congress's objectives.

As I said in my separate statement when we adopted the rules last May, we are committed to ensuring "a smooth take-off that will avoid creating unsustainable financial burdens on carriers or consumers, allowing competition and growth and declining prices -- rather than rate increases -- to supply the necessary funds." Our action today is fully consistent with that vision.

Separate Statement of Commissioner Michael K. Powell

I write separately to explain the bases upon which I support the reductions in universal service contributions adopted in this *Third Order on Reconsideration*. Specifically, I support this order because it recognizes the importance of constantly evaluating universal service programs to ensure that government is burdening carriers that contribute to these programs no more than is necessary to satisfy statutory requirements. This order reduces the financial burden on carriers and endeavors to do so in a way that does not overly favor any particular universal service program.

The Telecommunications Act of 1996 requires that the services eligible for universal service support be "available at just, reasonable and affordable rates" in "all regions of the Nation, including low-income consumers and those in rural, insular and high cost areas." 47 U.S.C. § 254(b)(1), 254(b)(3). The Commission is duty-bound to ensure that there are "specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service." 47 U.S.C. § 254(b)(5).

At the same time, the Act requires that universal service contributions be collected from telecommunications carriers pursuant to section 254(d). 47 U.S.C. § 254(d). I firmly believe that the benefits of the pro-competitive, deregulatory framework that Congress created when it adopted the Act can never be fully realized if contributions to universal service programs become so large that they overtax carriers' ability to bring such benefits to consumers. In particular, we must be vigilant in our efforts to limit these contributions to the amounts absolutely necessary to fulfill the universal service statutory mandate, lest carriers pass on these contributions to consumers in the form of higher prices. Thus, while the Commission must provide for adequate support of universal service, we also must take affirmative steps to minimize the financial burden on carriers imposed by this support. By this order, the Commission takes one such step.

In addition, I believe that the various recipients of universal service support are all equally entitled to benefit from such support. Section 254 of the Act provides no basis for the Commission to favor certain classes of recipients over others with respect to the level or timing of universal service support flows. *See generally* 47 U.S.C. § 254. Thus, in addition to furthering the goal of minimizing universal service obligations where possible, the order we adopt today squares some of the incongruity that existed among programs and, consequently, helps fulfill our statutory duty to ensure that all universal service programs are treated equitably.

In his dissenting statement, Commissioner Furchtgott-Roth raises a number of sobering and extremely valid questions about our entire universal service approach. In particular, I am troubled that we are marching ahead with mechanisms and procedures that are premised on prior commission decisions that are still under reconsideration. I sincerely hope that we take the opportunities presented by future reconsideration orders and, as Commissioner Furchtgott-Roth

recommends, the Stevens Report, which is due to the Congress in April of next year, to examine fully our current and future universal service efforts.

Dissenting Statement of Commissioner Harold Furchtgott-Roth

Slightly less than two years ago, Congress passed, and President Clinton signed into law, the Telecommunications Act of 1996, certainly the most important change in American communications law in more than two generations. It was not merely a change in law; it was a change in the fundamental relationships among business, government, and consumers of communications services.

The Past

Before, the government was the omnipresent intermediary between consumer and business. It was the government who told consumers from which business they could purchase which services. It was the government that told businesses which services they could provide to which customers.

In a regulated market without competition, there was little reason for consumers to be well informed. What good is information to a consumer who has no choice?

The Present

No more. Today, under the Telecommunications Act of 1996, telecommunications consumers, not government intermediaries, are sovereign. It is consumers, not government agencies, that have the legal right to choose their service providers. It is the market, rather than government regulations, that will ultimately govern prices and the quality and availability of services to telecommunications consumers.

The Telecommunications Act of 1996 does more than just open up markets to competition; it also formalizes a system of universal service. Competition benefits all consumers, and Section 254 of the Act attempts to ensure that the benefits of competition--innovation, higher quality of service, and lower prices--are available to all consumers, including those in high cost areas, schools and libraries, and rural health care facilities. The benefits of Section 254 are intended for consumers, and it is therefore particularly important that the regulations implementing Section 254 be subject to notice and comment by consumers and not by just a small, select group of businesses.

One of the hallmarks of competitive markets is that information is priceless to consumers. Informed consumers spend their money wisely and search for lower prices and higher quality services. Providers that can reduce costs and innovate flourish. Providers that cannot go out of business. In a competitive market, government should never restrict the access to, or discourage the free flow of, information to consumers.

The Proposed Universal Service Contribution Factors

On November 13, 1997, the Common Carrier Bureau issued a notice of universal service contribution rates for the first quarter of 1998. I requested, and the other Commissioners agreed to, a one-week delay in the effectiveness of the contribution rates. It was subsequently extended until December 16, 1997.

In my view, the November 13 Notice presents more questions than answers about the previously established universal service rules. Why is there more than one federal universal service fund? Why are some funds based on both interstate and intrastate revenues, while others on just interstate revenues? Why are the definitions of telecommunications services for schools and libraries narrowly defined for contributors but broadly defined for recipients? What is significant about January 1, 1998 as a date to begin schools and library funding? Why is the size of schools and libraries funds essentially the same as for high cost funds? Why are the administrative costs for the schools and libraries program relatively high? Why are the salaries for administrators of the schools and libraries program so high, and yet an up-to-date budget for the organization so unavailable?

Some of these issues were partially addressed in the Commission's May 8 Report and Order, but it was clear from my confirmation process that few if any Senators were entirely pleased with the Commission's decisions on universal service. During the confirmation process, I promised to work to try to improve the Commission's interpretations of universal service; I did not promise to rubber stamp past Commission decisions on universal service.

Consumers should be the ultimate beneficiaries of competitive market forces. In a competitive market, reduced costs lead to reduced prices, and consumers benefit. Over the past two decades, costs of long-distance services have fallen, and prices paid by consumers have fallen as well. Informed consumers simply will not pay more than they must. Without government interference, that is how all competitive markets work.

The Current Order

There is a disturbing theme that underlies the universal service order adopted today by the majority of the Commission, as well as the former Commission Order of May 8. Based on these Orders, any reductions in access charges resulting from Commission actions in other proceedings will not lead to any reduction in costs and prices for long-distance services. Instead, those reductions translate entirely into increased universal service contributions. One set of government-set charges goes down, another goes up, and consumers are left in the dark.

The November 13 Notice embodied Universal Service Fund caps from the May 8 Order, which in turn were based on recommendations from the Joint Board on Universal Service. I do not fully agree with the caps in the May 8 Order. For example, I believe that the amounts to be collected for schools and libraries were too high and would stifle lower prices for consumers. But at least the factors in the November 13 Notice, derived from the May 8 Order, have a written record as a basis. And they are based on full public notice and comment.

The same cannot be said for the Third Order on Reconsideration and the First Quarter 1998 Universal Service Contribution Factors Revised Public Notice released today. Between November 13 and now, the Commission acknowledges no additional information specifically on which it has based its altered order and altered contribution factors. And now the results of the altered numbers are not to be subject to public notice and comment before they become effective.

The integrity of the Commission must be maintained in all of its proceedings, and most particularly in universal service proceedings. Section 254(d) requires that "every telecommunications carrier that provides interstate telecommunications services" contribute to federal universal service mechanisms. Surely, universal service fund contribution rates must be based on a detached review of a public record, rather than negotiations with an individual firm, or even a group of firms. It has been reported, however, that the Commission has "decided to reduce the charges after the carriers said the fee could lead to higher rates and after AT&T and MCI threatened to specify the charge on the bills they send to customers." *Fund to Aid Technology in Schools Facing Big FCC Cuts*, New York Times, December 15, 1997 at D-1. Apparently, "the agency worried that if millions of Americans began seeing such fees on their bills, popular support for deregulating the telecommunications industry could begin to erode." *Id.*

On Monday December 8, *Communications Daily* first reported that the "Commission prefers that they [universal service costs] be rolled into rates." I do not share such a preference or endorse such efforts. Moreover, I am aware of no statutory authority for the Commission to restrict or limit the content of billing information between a carrier and its customers. Indeed, Section 254(e) requires that funding mechanisms for universal service must be explicit. No carrier should have its billing information restricted or limited by the Commission. Despite this clear mandate for fully informing consumers, however, "[t]he administration, which has touted the program as the centerpiece of President Clinton's education goals, would rather that customers not know." *Itemized list of phone fees hotly debated*, USA Today December 15, 1997 at B-12. Moreover, it has been reported that "the FCC . . . ha[s] been pushing hard to get major long-distance carriers to agree not to put line-item charges on residential phone bills at least until July." *FCC Postpones Ruling on Internet Connections*, Washington Post, December 13, 1997 at F-9. I cannot endorse such efforts to "mask this for a while, to take some pressure off from the Hill," *id.*, and object to such a deception being perpetrated on the American consumer.

I was not a party to these negotiations. I suspect that hundreds of millions of American consumers were not a party either. I am reluctant to support any new fees or taxes on consumers; I will never support any new fees or taxes negotiated in secret, without public notice and comment.

This Order, along with the accompanying Bureau Public Notice, also affirms the administrative expenses as proposed by the Universal Service Administrative Company (USAC). The Schools and Libraries Corporation and the Rural Health Care Corporation are each allocated more than twice as much money to administer certain aspects of those support mechanisms than is allocated to administer the substantially larger High Cost Fund. I cannot endorse this disparity, while knowing that many members of Congress are equally concerned with High Cost areas as with Schools and Libraries and Rural Health Care.

Preserving Universal Service and Fulfilling Section 254

I am committed to the full and proper implementation of all sections of the Communications Act, including Section 254. Implementation must be clearly within the law and clearly reflecting Congressional intent. I understand the great Congressional interest in all subsections of Section 254. I am not persuaded that the steps the Commission has taken to date fully meet all of the requirements of Section 254. With these reservations and my concerns regarding the effects that this action will have on rates, I endorse recent congressional requests that we delay the implementation of these new universal service programs until their impact on consumers can be more fully assessed and until we have engaged in a more comprehensive review of these programs.

Chairman Bliley of the House Commerce Committee has specifically requested that the Commission "delay implementing these programs until the impact on ratepayers can be more fully assessed." I agree with his concern that "neither Congress, nor the general public has had a sufficient opportunity to comment on the new 'tax rates' being imposed on telecommunications carriers." In addition, Senator Stevens and Congress have wisely requested that the Commission review several aspects of universal service in a study that will be due in the Spring of 1998. That study will provide the most appropriate proceeding in which to review the Commission's approach to universal service and to ensure that that approach is consistent with Congressional intent. I see no need to begin implementing these programs on January 1, 1998 in the face of such direct Congressional concerns. Indeed, in response to recent questions from Chairman Bliley, Chairman Kennard agreed that this date is not statutorily required, but rather "the earliest feasible date."

American telecommunications consumers will be confronted with many changes in their bills this winter: new subscriber line charges and presubscribed interexchange carrier charges to name but two. For universal service to succeed it must be as consistent as possible with the statute and Congressional intent. I am not convinced that the universal service plans in place

today are on as firm a footing as possible or as needed. Rather, I recommend that the Commission delay implementation of the new universal service programs until we have had the opportunity to fully assess the impact that these new programs will have on consumers. It would be prudent to wait for the findings of the study for Senator Stevens before proceeding with substantial changes to the current universal service mechanisms for low income Americans and for high cost and rural areas of America. Despite these concerns, however, I do support the recommended funding for the low income and high cost programs.

It is with great regret that I must respectfully dissent from the majority decision on the Federal-State Joint Board on Universal Service, Third Order on Reconsideration, CC Docket 96-45 and the First Quarter 1998 Universal Service Contribution Factors Revised and Approved Public Notice.

Rule Changes

Part 54 of Title 47 of the Code of Federal Regulations is amended as follows:

Part 54 -- UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

Authority: 47 USC Secs. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

§ 54.507 **Cap.**

2. Section 54.507 is amended by revising the second sentence of paragraph (a) to read as follows:

(a) * * * First, no more than \$625 million shall be collected or spent for the funding period from January 1, 1998 through June 30, 1998. * * *

* * * * *

§ 54.623 **Cap.**

3. Section 54.623 is amended by adding a new sentence at the end of paragraph (a) to read as follows:

(a) * * * No more than \$50 million shall be collected or spent for the funding period from January 1, 1998 through June 30, 1998.

* * * * *