MEMORANDUM

TO:COMMISSIONER NELSON

COMMISSIONER SMITH

COMMISSIONER HANSEN

JOE CUSICK

FROM:DON HOWELL

DATE:JANUARY 2, 1997

RE:SUBMITTING USF COMMENTS TO THE FCC, CC DOCKET NO. 96-45

Last week we discussed submitting comments to the FCC concerning the Joint Board’s recommended changes to the federal Universal Service Fund.  The FCC’s Recommended Decision (423 pages) proposes to implement provisions of the federal Telecommunications Act of 1996.  More specifically, we discussed submitting comments regarding the discounts for eligible schools and libraries.

BACKGROUND

Section 254(h) of the federal Act provides that eligible “elementary schools, secondary schools and libraries [using telecommunications services] for educational purposes” received such services “at rates less than the amounts charged for similar services to other parties.”  47 U.S.C. § 254(h)(1)(B).  This subsection goes on to declare that “States, with respect to intrastate services, [should] determine [what discount] is appropriate and necessary to ensure affordable access to and use of such services by such entities.”  Id.

A.  Eligible Facilities

1.  Schools.  A school eligible for intrastate discounts must be an elementary or secondary school as defined in the Elementary and Secondary Act of 1965.  This Act, found at 20 U.S.C. §§ 8801(14) and (25) defines elementary and secondary schools as “nonprofit institutional day or residential school[s] that provide elementary education [and] secondary education, as determined under State law.”  See Decision at ¶ 574 n. 1864.  The term secondary education does not include education beyond grade 12.  The federal Act also restricts service discounts to schools having endowments less than $50 million.

2.  Libraries.  The eligibility for libraries was restricted to those institutions that do not operate as a for-profit business and must be eligible to participate in state-based plans for funds under Title III of the Library Services and Construction Act, 20 U.S.C. § 351(a)(5).  Decision at ¶ 574 n. 1866.  Eligible libraries would include “public libraries” that serve free of charge all residents of a community, district, or region and receive its financial support in whole or in part from public funds.  “Research libraries” may also be eligible for discount if such libraries make their services available to the public for free, have collections which are not available to the public through public libraries, and are not an integral part of an institution of higher education.(footnote: 1)

B.  The Various Discounts

1.  The Basic Discounts.  In its Decision, the Joint Board recommended that the FCC implement discounts ranging from 20% to 90%.  ¶ 555.  As indicated in the chart below, the “discount matrix” is based upon the percentage of students involved in the national school lunch program.  In addition to the percentage of the students involved in the national school lunch program, the matrix also contains variables for whether the telecommunications providers are low, mid, or high cost providers.  In addition to this “basic” discount, the Joint Board recommended that schools and libraries located in high cost areas or in “economically disadvantaged” areas receive larger discounts.  See ¶¶ 557 and 561.

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| DISCOUNT MATRIX | COST OF SERVICE (estimated percent in category) |
| HOW DISADVANTAGED?  based on percent of students in the national school lunch program (estimated percent in category) |  | low cost  (67%) | mid-cost  (26%) | highest cost  (7%) |
| < 1 (3%) | 20 | 20 | 25 |
| 1-19 (30.7%) | 40 | 45 | 50 |
| 20-34 (19%) | 50 | 55 | 60 |
| 35-49 (15%) | 60 | 65 | 70 |
| 50-74 (16%) | 80 | 80 | 80 |
| 75-100 (16.3%) | 90 | 90 | 90 |

2.  High Cost Areas.  To ensure that schools and libraries in high cost service areas have “affordable” access to and use of necessary telecommunications services, the Joint Board recommends that the FCC should provide additional support to such schools and libraries.  The Joint Board observed that merely giving discounts may not make the rates “affordable,” and consequently,  recognized that deeper discounts may be necessary.  The Decision neither recommended the percentage of additional funding nor delineated how the FCC should calculate what constitutes a high cost area.  Addressing the latter, the Decision suggested that the FCC could define “high cost” areas by considering the unseparated loop costs of the incumbent LEC.  “If unseparated loop costs exceed a nationwide threshold, then the area may be considered “high cost” and schools and libraries located in that area would be given a greater discount.”  Decision at ¶ 560.  In calculating the additional or greater discount, AT&T suggested that such additional discounts may represent the difference between the cost of providing services to urban facilities as compared to providing service to rural facilities.

3.  Economically Disadvantaged Schools and Libraries.  The Joint Board also recommended additional discounts for eligible recipients located in economically disadvantaged areas.  The Board noted that § 254(h)(1)(B) does not explicitly mandate a greater discount for economically disadvantaged schools but the Act does grant the FCC discretion to determine whether such a discount is necessary.  ¶ 561.  As with the case of eligible recipients located in high-cost areas, the Joint Board noted that such additional discounts may be necessary “to make access to and use of such [telecommunications] services affordable for disadvantaged schools and libraries.”  Id.

The Joint Board specifically sought comments on what threshold standard should be used to determine when schools and libraries serve populations of economically disadvantaged students.  In particular, the Decision observed that such information may be gleaned from poverty data provided by the U.S. Department of Education, Census Bureau data, or interpolated from the national school lunch program.  ¶ 564.  The Board envisioned that the entity responsible for ordering discounted telecommunication services self-certify its economically disadvantaged status.  “For schools ordering telecommunications and other covered services at the school district level,” the Board sought to ensure that the discounts be applicable to “each school’s percentage of students eligible for the national school lunch program, if [such] program is selected as the appropriate measure of economic disadvantage.”  ¶ 567.

OTHER ISSUES

1.  Spending Cap.  The Joint Board suggested that the FCC set an annual cap on discounts for schools and libraries of $2.25 billion per year.  Unused monies on an annual basis would be “rolled-over” for expenditure the following year.  At such time that annual expenditures reached $2 billion, the Board recommended that prioritization take place.  “Under the rules of priority, only those schools and libraries that are most economically disadvantaged and had not yet received discounts from the universal service mechanism in the previous year would be granted guaranteed funds, until the cap is reached.”  ¶ 556 (emphasis added).  The second priority would be other economic disadvantaged schools and libraries, followed by all other eligible schools and libraries.  ¶ 556.

2.  Jurisdiction.  The Decision recognizes several times that it is the FCC’s responsibility to set the discount for interstate services and the states’ authority to set the discount available to schools and libraries utilizing intrastate services.  The Decision implicitly recognizes that some states may not choose to implement the three discounting mechanisms or may not select the same level of discounts as the FCC.  To implement the discount mechanism, the Decision recommended that the FCC “recognize that it can provide for federal universal service support to fund intrastate discounts.”  ¶ 573.  Disbursements of federal USF funds would be conditioned upon states implementing “intrastate discounts at least equal to the discounts on interstate services . . . [before] federal universal service support for schools and libraries in that state” was made available.  States wishing to provide an intrastate discount less than the federal discount, could seek a waiver from the FCC.

In a departure from existing USF practices, the Joint Board recommended that  calculation of an interstate carrier’s USF contribution be based on its interstate and intrastate revenues.  Depending on a number of yet unknown variables (costing models, eligibility thresholds, range of discounts, etc.) the estimates for funding the USF range from $5.0 billion to $14 billion annually.  This range represents a radical change from the current explicit high cost fund of approximately $750 million.

State Board members Kenneth McClure and Laska Schoenfelder dissented from that portion of the Decision recommending that USF contributions  from interstate carriers be based upon their interstate and intrastate revenues.  Both State Commissioners asserted that only interstate revenues should be utilized to fund the federal USF program. This allows intrastate telecommunications revenues to be used for funding complimentary state Universal Service programs.  In contrast, State Commissioners Julia Johnson and Sharon Nelson concurred with the recommended Decision to fund the schools and library discounts through an assessment on interstate and intrastate revenues.  Decision, p. G-5.

Finally, one Federal Commissioner and one State Commissioner voiced concern  about the overall size of the federal USF.  Commissioner Schoenfelder cautioned that a federal USF fund “that taxes consumers billions of dollars a year is not only inconsistent with congressional intent, but could be extremely harmful nationwide to consumers.  By supporting the services at this level, average rates for all consumers may increase and it may harm competition which is the principal objective of the [telecommunications] law.  Id. at p. G-7 through -8.  Likewise, FCC Commissioner Chong stated in her separate concurrence and dissent expressed a similar concern. She observed that the Decision attempts to balance two competing interests—advancement of Universal Service goals versus the impact that a huge fund may have on the bills of telecommunication users, particularly low income individuals.  Id. at p. G-13.  “Let us make no mistake about who will foot the bill for this Universal Service program.  It is not the telecommunications carriers, but the users of telecommunications services to whom these costs will be passed through in a competitive marketplace.”  Id.

3.  Other Requirements.  The Joint Board also recommended that eligible schools and libraries join in consortia with other customers in the community to obtain the requested telecommunications services.  Although the Decision recognizes that some “gaming” of the process may occur, the Joint Board believed that limiting the creation of consortiums to just eligible carriers would not be in the public interest and that record keeping measures will provide sufficient safeguards to ensure that a consortium process is not abused.  ¶ 596.

4.  USF Credits and Reimbursements.  Telecommunications carriers who provide USF services and contribute to the federal USF may choose either to be reimbursed by the fund administrator or may offset their USF contributions.  Any non-telecommunications carrier supplying requested services to schools and libraries would only be entitled to reimbursement.  ¶ 613.

What issues does the Commission desire to address in its comments?

Don Howell

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**FOOTNOTES**

1:

 Public and non-profit rural health care providers are also entitled to USF assistance.  Such providers are eligible for reduced rates that are equal to the urban rates for USF “core” services and other services.  Carriers providing the reduced rates may offset their USF contributions or be reimbursed.  The Board suggested that the FCC seek additional comments on the needs and costs of serving rural health care providers.