STATE OF ILLINOIS

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ILLINOIS COMMERCE COMMISSION

Office of General Counsel
January 26, 2000

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Via Overnight Mail

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Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: The Illinois Commerce Commission's Initial Comments in response to the Federal Communications Commission's Public Notice, DA 99-2985.

Dear Office of the Secretary:

Enclosed please find the original and four copies of the Illinois Commerce Commission's Initial Comments in response to the Federal Communications Commission's Public Notice, DA99-2985. I have also enclosed the original and four copies of the Illinois Commerce Commission's Motion to File Initial Comments *Instanter*.

I would appreciate acknowledging receipt of the filing by returning a duplicate time stamped copy of this letter in the enclosed self addressed, stamped envelope.

Thank you for your attention to this matter.

No. of Copies rec'd 0+4
List ABCDE

Sincerely,

Sarah Naumer
Special Assistant Attorney General
Illinois Commerce Commission

Enclosures

160 North LaSalle Street, Suite C-800, Chicago, Illinois 60601-3104
Telephone [312] 793-2877 Fax [312] 793-1556 TDD ("V/TTY") [312] 814-5845

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

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

MOTION OF THE ILLINOIS COMMERCE COMMISSION TO FILE INITIAL COMMENTS *INSTANTER*

Pursuant to sections 1.46 and 1.1206 of the Commission's Rules of Practice and Procedure, 47 C.F.R. §§1.46, 1.1206, the Illinois Commerce Commission ("ICC") hereby respectfully submits this Motion to File Initial Comments *Instanter*, and in support thereof, states as follows:

1. On December 22, 1999, the Commission's Common Carrier Bureau issued a Public Notice that sought Comment on requests made to redefine "voice grade access" in section 54.101 of the Commission's universal service rules. The Public Notice stated that all Initial Comments should be filed by January 19, 2000.

2. Notwithstanding the ICC's best efforts, the ICC was unable to meet the Commission's filing deadline.

3. The ICC has a significant interest in the Commission's resolution of the issue identified by the Public Notice. Specifically, telecommunications carriers that operate in Illinois and provide interstate service are required to contribute to the Federal universal service mechanisms. 47 U.S.C. §254(d). The Commission's universal service rules do not prohibit these carriers from passing their costs of contributing to the Federal universal service mechanisms on to their end users. Accordingly, telecommunications carriers that provide interstate service in Illinois and Illinois

residents who consume those services will be affected by the Commission's resolution of the issue identified by the Public Notice. Therefore, the ICC believes that it is in the public interest for the Commission to consider the ICC's Initial Comments, and requests that the Commission accept the ICC's Initial Comments for filing *instanter*.

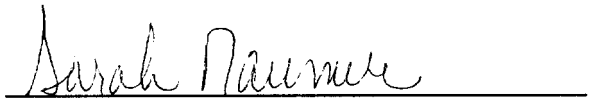
4. In the alternative, the ICC requests that the Commission accept the ICC's Initial Comments on an *ex parte* basis. Rule 1.1206 of the Commission's Rules of Practice and Procedure allows the submission of *ex parte* communications to the Commission's decision-making personnel in permit-but-disclose proceedings. 47 C.F.R. §1.1206. The Public Notice identified the instant proceeding as a permit-but-disclose proceeding. Accordingly, if the Commission decides not to accept the ICC's Initial Comments for filing *instanter*, the ICC requests that the Commission consider the ICC's Initial Comments on an *ex parte* basis.

WHEREFORE, for each and all of the foregoing reasons, the ICC respectfully requests that the Commission accept the ICC's Initial Comments for filing *instanter* or, alternatively, consider the ICC's Initial Comments on an *ex parte* basis, and for any and all other appropriate relief.

January 26, 2000

Respectfully submitted,

ILLINOIS COMMERCE COMMISSION



Sarah Naumer
Special Assistant Attorney General
160 N. LaSalle, Suite C-800
Chicago, Illinois 60601
(312) 793-8183
snaumer@icc.state.il.us

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

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

INITIAL COMMENTS OF THE ILLINOIS COMMERCE COMMISSION

The Illinois Commerce Commission ("ICC") hereby respectfully submits these Initial Comments in response to the Public Notice issued on December 22, 1999, which seeks comment on requests made to redefine the Commission's "voice grade access" requirement as used in section 54.101 of the Commission's rules, 47 C.F.R. §54.101, for purposes of universal service.[1]

PRELIMINARY STATEMENT

The Telecommunications Act of 1996 ("TA96") added a new section 254 to the Communications Act of 1934 which is entitled "Universal Service," and which governs the Commission's prescription of universal service rules. 47 U.S.C. §254. In compliance with Section 254, the Commission has identified a set of services which constitute universal service and which are supported by universal service mechanisms.[2] Voice grade access with a minimum frequency

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[1] Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Public Notice, DA99-2985 (rel. Dec. 22, 1999)("Public Notice").

[2] Federal-State Joint Board on Universal Service, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 8811 (rel. May 8, 1997), as corrected by Federal-State Joint Board on Universal Service, Errata, CC Docket No. 96-45, FCC 97-157 (rel. June 4, 1997), aff'd in part, rev'd in part, remanded in part sub nom., Texas Office of Public Utility Counsel v. FCC, 183 F.3d 393 (5th Cir. 1999), motion for stay granted in part, No. 97-60421 (Sept. 28, 1999), petitions for reh'g and reh'g en banc denied, No. 97-60421 (Sept. 28, 1999)("Universal Service Order").

range of 300 Hz to 3,000 Hz[3] is included in the set of services for support, while data transmission and Internet access are not included. Universal Service Order at ¶¶64, 83.

The Public Notice was initiated in response to requests by certain state commissions and the Rural Utilities Service (collectively "Petitioners") to widen the frequency range, or bandwidth, over which voice grade access must occur to 200 Hz or 300 Hz to 3,400 Hz or 3,500 Hz. However, the reason behind the requested change has to do with access to the Internet and other information services and not with voice grade access. See, Public Notice at 2. Specifically, while the Internet and other information services are accessible over the voice grade network as currently defined in the Commission's rules, a wider bandwidth is needed to obtain access at a speed of 28.8 kilobits per second ("kbps"). Accordingly, the issue in this proceeding is whether a wider voice grade access bandwidth requirement should be imposed for purposes of universal service in order to allow rural consumers to access the Internet and other information services at a speed of 28.8 kbps.

The ICC supports the public policy goal of providing consumers in all areas of the Nation with access to the Internet and other information services at the greatest speeds possible. However, it is the ICC's opinion that the Telecommunications Act of 1996 ("TA96") prohibits the Commission from

[3] Initially, the Commission held that voice grade access should occur in a frequency range between 500 Hertz ("Hz") and 4,000 Hz. The Commission reconsidered that determination on its own motion. Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge, Fourth Order on

supporting faster access to the Internet and other information services through universal service mechanisms because high speed data transmission and Internet access are not contained within the Commission's definition of universal service. Also, from the principles contained in section 254 upon which the Commission is to base its universal service policies, it is clear that Congress recognized that differences exists between the public network in urban and rural areas, and expected the Commission to account for those distinctions when using universal service rules to promote the provisioning of advanced telecommunications and information services, such as high speed access. Accordingly, the ICC recommends that the Commission decline to increase the minimum frequency range required for voice grade access in the Commission's universal service rules at this time.

Nonetheless, if the Commission decides to adopt an increased bandwidth requirement in this proceeding, the ICC recommends that the Commission use a phase-in approach to implement the requirement. Increasing the bandwidth requirement would require significant network upgrades in rural areas and, therefore, would impose substantial costs on eligible telecommunications carriers and the universal service support mechanisms. A phase-in approach would avoid shocks to the system that would likely result from an immediate imposition of such costs.

Reconsideration, CC Docket No. 96-45, Report and Order, CC Docket Nos. 96-45, 96-262, 94-1, 91-2213, 95-72, 13 FCC Rcd 5318, 5328-29, ¶16 (1997)("Fourth Reconsideration Order").

DISCUSSION

I. UNIVERSAL SERVICE MECHANISMS CANNOT BE USED TO SUPPORT SERVICES THAT ARE NOT CONTAINED IN THE COMMISSION'S DEFINITION OF UNIVERSAL SERVICE.

Section 254 places a limit on the universal service support mechanisms by requiring the Commission to identify a set of telecommunications services that constitute universal service. Id. at §254(a)(1), (c)(1). In identifying services for universal service support, the Commission must consider the extent to which telecommunications services:

> (A) are essential to education, public health, or public safety;
> (B) have, through the operation of the market choices by customers, been subscribed to by a substantial majority of residential customers;
> (C) are being deployed in public telecommunications networks by telecommunications carriers; and
> (D) are consistent with the public interest, convenience, and necessity.

Id. at §254(c)(1). Implicit in these provisions is the recognition that the provisioning of services costs money, and that support should be limited to those services that meet specific criteria in order to place constraints on the amount of monetary input which will be necessary to support the system.

In this case, the Petitioners have asked the Commission to support services which are not contained in the Commission's definition of universal service with universal service mechanisms.[4] Specifically, in the Universal Service Order, the Commission held that universal service does not include high

speed data transmission or Internet access. Universal Service Order at ¶¶64, 83. The only relevant service which the Commission included in the definition of universal service for purposes of this proceeding was voice grade access to the public switched network. Id. at ¶63. The Commission defined voice grade access is the "ability to place calls, and thus ... the ability to signal the network that the caller wishes to place a call," and the "ability to receive calls, and thus ... the ability to signal the called party that an incoming call is coming." Id. Based on industry standards, the Commission found that voice grade access occurs in a frequency range between approximately 300 Hz and 3,000 Hz. Fourth Order on Reconsideration at ¶16.

Accordingly, a wider bandwidth is not needed to provide voice grade access. Instead, the increased frequency range would be intended for carriers to provide consumers with faster than voice grade access to the Internet and other information services. The Public Notice even recognizes this fact:

> [The Petitioners] do not suggest that the 300 Hz to 3,000 Hz frequency range specified in the Commission's rules is insufficient to ensure appropriate quality of voice transmission over the public switched telephone network. Rather, they are concerned that the Commission's current voice grade access bandwidth requirement does not ensure that rural consumers using 28.8 kilobits per second (kbps) modems to access the Internet and other information services can achieve data transmission speeds reasonably comparable to those achieved by non-rural consumers using 28.8 kbps modems.

[4] While the Commission is able to reconsider the set of services included in the definition of universal service, 47 U.S.C. §254(c), the issue of whether data transmission and Internet access constitute universal service is not within the scope of the Public Notice.

Public Notice at 2. Given the Commission's exclusion of data transmission and Internet access services from the definition of universal service, section 254 prohibits the Commission from redefining voice grade access bandwidth for the sole purpose of supporting these excluded services with universal service funds.

II. THE PUBLIC POLICY PROVISIONS OF SECTION 254 INDICATE THAT THE COMMISSION SHOULD ACCOUNT FOR DISTINCTIONS IN THE URBAN AND RURAL NETWORKS WHEN IMPLEMENTING UNIVERSAL SERVICE RULES THAT ARE DESIGNED TO PROMOTE ADVANCED TELECOMMUNICATIONS AND INFORMATION SERVICES.

In addition to requiring the Commission to define the set of services that comprise universal service, section 254 establishes a set of principles to guide the Commission in the formulation of its universal service policies. In relevant part to this proceeding, section 254 states as follows:

> ACCESS TO ADVANCED SERVICES.-Access to advanced telecommunications and information services should be provided in all regions of the Nation."
>
> ACCESS IN RURAL AND HIGH COST AREAS.-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 services and advanced telecommunications and information services, that are <u>reasonably comparable</u> to those services provided in urban areas and that are available at rates that are <u>reasonably comparable</u> to rates charged for similar services in urban areas.

47 U.S.C. §254(b)(2), (b)(3)(emphasis added). Accordingly, section 254 instructs the Commission to strive for reasonable comparability, rather than identity, between advanced telecommunications and information services in rural and urban areas. Implicit in section 254's reasonable comparability standard is the recognition that the public switched network generally has a different make-

up in rural areas than in urban areas, and that carriers will likely incur greater costs to provide services in rural areas than in urban areas.

Specifically, copper loops are generally longer than 18,000 feet in rural areas because many customers are located more than 18,000 feet from serving wire centers in rural areas, a characteristic which does not hold true for urban areas. As a result, copper telecommunications loops that serve rural subscribers are generally longer than 18,000 feet. Since the capability of loops to carry voice transmissions declines when loops exceed 18,000 feet, rural loops typically have devices attached to improve voice transmission capability. These devices include load coils, bridge taps, low-pass filters and range extenders.

Unfortunately, these devices have the adverse effect of restricting the capability of loops to carry data transmissions at the speeds sought by the Petitioners because they decrease bandwidth capacity. Therefore, changes to the public switch network would need to be made in rural areas to achieve the bandwidth capacity recommended by the Petitioners. The necessary upgrades to the rural network could be accomplished either by removing the devices that are designed to improve voice capability from the loops or by replacing the existing plant facilities with large gauge wire, coax or fiber optics that would accommodate the bandwidth capacity requested by the Petitioners. Clearly, the cost of undertaking either of these activities would be extremely expensive. Further, if the upgrade is accomplished through the removal of the devices that are designed to improve voice capability, then the quality of voice transmissions in rural areas is going to decline.

The substantial costs that would be imposed to upgrade the current rural network would have two effects on the universal service support mechanisms. First, universal service mechanisms are supported by contributions from telecommunications carriers. 47 U.S.C. §254(d), (f). Also, telecommunications carriers ultimately recover their costs, including their universal service costs, from end users. The increased cost of providing supported services would place greater obligations on top of already significant obligations imposed on contributing telecommunications carriers, and ultimately, on end users in net contributing states.

Second, carriers have an obligation to provide all of the services that comprise universal service in order to receive support. Many rural carriers would need to either incur the costs of upgrading their networks or forgo support. A choice to forgo support would inhibit the achievement of one of section 254's goals which is to provide sufficient support such that the core set of services defined by the Commission as universal service are available at just, reasonable and affordable rates. 47 U.S.C. §254(b)(1). Also, such a choice could result in a barrier to other carriers serving the rural market and, as a result, could inhibit the development of a competitive market.

Considering these substantial costs, the principle of reasonable comparability indicates that the Commission should not support faster access to the Internet and information services with universal service funds. Instead, as an alternative, the Commission could rely on the marketplace to promote faster access in rural areas. The ICC notes that the level and speed of technological

change in the telecommunications industry has been remarkable and appears to be increasing. The marketplace has driven this change. If consumer demand for high-speed access in rural areas exists, then demand will fuel the market by encouraging carriers to devise new ways to provide faster access at market supportable costs rather than through universal service.

III. THE COMMISSION SHOULD PHASE-IN THE WIDER BANDWIDTH REQUIREMENT IF THE COMMISSION DECIDES TO GRANT THE PETITIONERS' REQUEST.

The harms identified above that would result from the inclusion of data transmission at speeds requested by the Petitioners in the definition of universal service would be significant. In the ICC's opinion, the harms could be somewhat ameliorated if the Commission phased-in the new bandwidth requirement. Specifically, the Commission could only require carriers to meet the requirement for new or replaced equipment. Notably, at least one Petitioner appears to contemplate implementation of the requirement on a phased-in, incremental basis. See, RUS *Ex Parte* Presentation ("[r]ural bandwidth [revisions] could be phased in"). This "phased-in" approach is desirable, because it would enable carriers to bring existing copper loops into compliance when these facilities are replaced and otherwise maintained, avoiding high costs associated with immediate compliance and concomitant adverse impacts upon carriers, and pressure upon funds available for universal service support. Accordingly, the ICC recommends that the Commission consider this approach if it decides to grant the Petitioners' request.

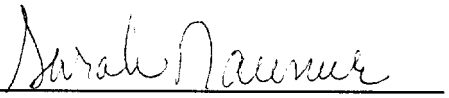
CONCLUSION

For each and all of the foregoing reasons, the Illinois Commerce Commission respectfully requests that the Commission deny the Petitioners' request to increase the bandwidth requirement for voice grade access for purposes of universal service.

January 26, 2000

Respectfully submitted,

Illinois Commerce Commission



Myra Karegianes
General Counsel and
Special Assistant Attorney General

Sarah Naumer
Special Assistant Attorney General
160 N. LaSalle, Suite C-800
Chicago, Illinois 60601