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August 6, 2004

Hon. Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals II
445 12 Street, SW
Washington, D.C. 20554

RE: Comments of the New York State Department of Public Service in the Matter of the Recommended Decision of the Federal-State Joint Board on Universal Service released on February 27, 2004 addressing issues on universal service related to ETC, USF, and portability rules; CC Docket No. 96-45

Dear Secretary Dortch:

The New York State Department of Public Service ("NYDPS") submits these comments in response to the Federal Communications Commission's ("Commission") Notice of Proposed Rulemaking (NPRM) issued June 8, 2004. The NPRM seeks comment on the February 27, 2004 Recommended Decision ("RD") of the Federal-State Joint Board on Universal Service ("Joint Board"), concerning the process for designation of eligible telecommunications carriers ("ETCs") (NPRM ¶1). The Joint Board recommended that the Commission adopt permissive federal guidelines for states to consider in proceedings to determine whether an ETC designation is in the public interest (Joint Board RD ¶2).

The NPRM also seeks comments on the Joint Board's recommendation to limit the provision of high-cost support to a "primary" or single connection that provides a subscriber access to the public telephone network (Joint Board RD ¶3, 56;

NPRM ¶3). The Joint Board believed supporting a single connection would preserve the sustainability of the universal service fund ("USF") and would be competitively neutral (Joint Board RD ¶3). Notwithstanding its support for a single connection approach, the Joint Board recognized this approach may present significant administrative challenges and set forth three available options, discussed below, to consider limiting the scope of support (Joint Board RD ¶57, 72-80). The NPRM seeks comment on the Joint Board's suggested three options, specifically on the advantages and disadvantages of the alternative options (NPRM ¶3).

NYSDPS agrees with the Joint Board's recommendation that the Commission adopt permissive guidelines for states to follow when determining an ETC designation request but would oppose any mandatory rules. Not only does the Telecommunications Act of 1996 grant states the authority to designate ETC status (42 USC 214(e)), but also there is no reason for the FCC to mandate a specific nationwide policy. Such a "one size fits all" approach for states to follow for such designations is not warranted.

The NYDPS also supports the Joint Board's recommendation to limit high cost support to a "primary connection" or "single connection." As Commissioner Dunleavy observed in his Separate Statement accompanying the RD:

* * *Perhaps the most significant recommendation we make here today is to provide federal high cost support only for a subscriber's or household's primary connection to the telephone network. * * *
* * * I am convinced that, however much we might like to, "we simply cannot sustain a universal service program that provides support to two, three, four or more phones in most households.

Allowing support beyond just the single connection would place increased burdens on the universal service program. The single connection approach would help to minimize federal high cost support and would promote competitive and technological neutrality, while still constraining USF growth, regardless of which carrier provides the supported line.

The Commission also seeks comments on three suggested options set forth by the Joint Board for avoiding or mitigating reductions in the amount of high cost support flowing to rural

areas that may occur with implementation of the "single connection" approach (NPRM ¶3). The options are 1) to restate support in terms of support "per first line" rather than support "per line" ("restatement option")¹; 2) to provide "lump sum" payments only to incumbent ETCs ("lump sum option"); and 3) to cap per line support for competitive ETCs only, holding the incumbents harmless from loss of support ("hold harmless option") (Joint Board RD ¶ 72-80). The Joint Board did not take a position on which approach was best but rather laid out the options and recommended the Commission seek comment on the pros and cons (Joint Board RD ¶ 76).

While the single connection approach could significantly reduce some carriers' support, there is no quantitative evidence in the record demonstrating the extent to which recovery of those revenue losses are appropriate to the continuation of affordable service to the affected carriers. Thus, the NYDPS cannot conclude that any of the three aforementioned options proffered by the Joint Board are warranted. As Commissioner Dunleavy stated in his Separate Statement accompanying the RD:

* * * No rule should be thought to be permanent, yet when changes are made reasonable efforts should be made on a transitional basis to mitigate sudden and sever negative consequences.

Accordingly, if the Commission decides to implement a revenue loss recovery mechanism, the restatement option would be the preferred option as it is the only suggested option that is transitional in nature. The restatement option would simply, on a transitional basis, preserve their current support while transitioning in the "single connection" approach. As the primary purpose of universal service support is to ensure affordable access for customers and not to protect any specific carriers from competition, the "lump sum" and "hold harmless" options are inappropriate.

For all of these reasons, the NYDPS supports the RD to the extent it proposes adoption of the "single connection" approach.

¹ Specifically, a rural carrier's total current support would be divided by its number of primary lines, yielding a value for support per primary line. At the time the primary line support mechanism is implemented, the rural carrier's total support will remain unchanged and will equal its Number of Primary Lines X Support Per Primary Line. The carrier will only lose support if it loses primary lines in the future.

If the Commission chooses to adopt a revenue loss recovery scheme for incumbent ETCs, that scheme should be both limited in duration and competitively neutral. Neither the "lump sum" nor the "hold harmless" proposals meet those criteria and should not be adopted.

Very truly yours,

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