

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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Secretary

October 14, 2004

Honorable Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals II
445 12th Street, S.W.
Washington, D.C. 20554

Re: Response to Request for Comments from the Federal-
State Joint Board on Universal Service, Dated 8/16/04

Dear Secretary Dortch:

Attached hereto are an original and four copies of comments of the New York State Department of Public Service (NYDPS), submitted in response to a request for comments from the Federal-State Joint Board on Universal Service, dated August 16, 2004.

Thank you for your attention to this matter.

Very truly yours,

Dawn Jablonski Ryman
General Counsel
NYS Department of Public Service
3 Empire State Plaza, 18th Floor
Albany, New York 12223-1350

Enclosures (5)

**FEDERAL COMMUNICATIONS COMMISSION
Washington, DC**

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

**COMMENTS OF THE NEW YORK STATE
DEPARTMENT OF PUBLIC SERVICE**

Introduction and Summary

The New York State Department of Public Service (NYDPS) submits these comments in response to the request of the Federal-State Joint Board on Universal Service (Joint Board). In a Public Notice, released August 16, 2004, the Joint Board, pursuant to a request of the Federal Communications Commission (Commission), seeks comment on certain rules of the Commission relating to high-cost universal service support.

The NYDPS urges the Joint Board to recommend to the Commission that, regardless of the mechanism used, universal support be made available on a non-discriminatory basis to all Eligible Telecommunications Carriers (ETC) serving a particular area. In short, the high-cost mechanism eventually chosen should not become a barrier to competition.

Discussion

In its Public Notice, the Joint Board seeks general comments on three broad issues referred to it by the Commission. First, the Joint Board asks for comments regarding what definition the Commission should use for designating a "rural telephone company" for universal services purposes. Second, the Joint Board seeks comments regarding the

mechanism to be employed by the Commission to determine the amount of universal support in areas served by rural carriers. Finally, the Joint Board, requests comments regarding how the Commission should treat carriers that acquire exchanges from unaffiliated carriers where those exchanges have been receiving universal support, specifically asking whether the Commission should retain, repeal or modify §54.305 of its rules which deals with such transactions.

In these comments, the NYDPS does not take any position with regard to the Joint Board's first and third questions. As to the second question, rather than taking a position regarding the specific mechanism that should be used to determine the amount of support, the NYDPS addresses only the broader implications for competition and efficiency raised by the Joint Board's request. In that regard, the NYDPS recommends that whatever system eventually is employed to calculate a carrier's level of universal support, all competing ETCs in that area need to be provided the same level of support.¹ Employing a system that would provide a different level of support to competitors, for example, determining support based on the modality of the communications system used, serves as a disincentive to competitors serving customers in rural and high-cost areas, as well as a disincentive to the deployment of better, more efficient technologies.

Commission regulations promulgated under the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56, (the Act) specifically grant to State commissions the authority to designate the common carriers that receive ETC status in their respective

¹ For example, if support is distributed on a per line basis, all ETCs serving a given area should receive the same amount of support per line for serving an eligible line.

states.² So long as a carrier meets certain requirements, the State commission can declare more than one carrier as an ETC.³ As part of the process, the State commission is required to find that the designation of additional ETCs "is in the public interest."⁴ The NYDPS believes that all carriers, including intermodal competitors,⁵ should be given a chance to compete on an even playing field. To achieve the foregoing, all competitors must have an equal opportunity to compete for all available revenue streams for serving a given customer, whether the stream consists of revenue from rates charged to the end user, accumulated via intercarrier charges, or derived from universal service support.

The use of a mechanism that would provide disproportionate support to different competitors based upon their individual costs, rather than allowing a competitor to retain its cost advantage, encourages an inefficient service provider to continue being inefficient.⁶ Thus, the Joint Board should avoid recommending any mechanism that would calculate a disparate amount of support for competitors.

² 47 C.F.R. § 54.201.

³ 47 C.F.R. § 54.201(c).

⁴ 47 C.F.R. § 54.201(c).

⁵ The recommendation contained herein is consistent with the NYDPS' policy of promoting competition in all areas, including rural and high-cost areas, as well as not creating barriers to the development of innovative technologies.

⁶ As a basic example, for a given area, if Company X uses a system whereby its costs are \$60, Company Y uses a system whereby its costs are \$50 and Company Z employs a system whereby its costs are \$40, and each competitor is given a different amount of support such that its final costs are equal to \$30 (Company X receives \$30, Company Y receives \$20 and Company Z receives \$10), then Company X has no incentive to deploy a more efficient system because it is able to compete with Company Z without making any changes. Additionally, Company Z is not rewarded for its ability to keep its costs down. To avoid the foregoing result each competitor should be given the same amount of support.

In making this recommendation, the NYDPS observes that the primary purpose of universal service support is to ensure affordable access for customers, not to protect any specific carriers from the results of competition. Indeed, to employ any rule that would impede competition would run counter to the Act's recognized purpose of "foster[ing] a competitive market in telecommunications."⁷

Conclusion

For all the foregoing reasons, the NYDPS recommends that the Joint Board recommend to the Commission a mechanism that will insure that competitors are provided an equal amount of universal service support to provide an incentive for the development of competition, as well as promoting efficiency.

Respectfully submitted,

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⁷ *United States Telcom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (USTA II).