PUBLIC NOTICE

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Federal Communications Commission
1919 M St., N.W.
Washington, D.C. 20554

DA 98-872
Released: May 13, 1998

COMMON CARRIER BUREAU SEEKS COMMENT ON PROPOSED REVISION OF 1998 COLLECTION AMOUNTS FOR SCHOOLS AND LIBRARIES AND RURAL HEALTH CARE UNIVERSAL SERVICE SUPPORT MECHANISMS

CC Docket No. 96-45

Comment Date: May 22, 1998

On May 8, 1997, the Federal Communications Commission ("Commission") released an order which, among other things, established the federal universal service support mechanisms for schools, libraries, and health care providers.[1] In part because 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,[2] the Commission instituted annual caps on both support mechanisms -- $2.25 billion for the schools and libraries support mechanism[3] and $400 million for the rural health care support mechanism.[4] In addition, the Commission specified that the universal service administrator[5] should collect $100

[1] *See* Federal-State Joint Board on Universal Service, CC Docket 96-45, *Report and Order*, 12 FCC Rcd 8776, 9002-161, paras. 424-749 (1997) (*Universal Service Order*).

[2] *Universal Service Order*, 12 FCC Rcd at 9054-56, paras. 530-32, 9140-41, para. 704

[3] *Universal Service Order*, 12 FCC Rcd at 9054, para. 529.

[4] *Universal Service Order,* 12 FCC Rcd at 9141, para. 705.

[5] In the *NECA Report and Order*, the Commission established the administrative structure of the federal universal service support mechanisms, directing NECA, as a condition of serving as temporary Administrator, to establish the Universal Service Administrative Company (USAC), Rural Health Care Corporation (RHCC) and Schools and Libraries Corporation (SLC). 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*

million per month for the first three months of

1998 for the schools and libraries support mechanism[6] and 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."[7] For the rural health care support mechanism, the Commission directed the administrator to collect $100 million for the first three months of 1998.[8] On December 16, 1997, the Commission adopted the *Third Reconsideration Order,* which revised the collection amounts, directing the administrator to collect and spend no more than $50 million for the first six months of 1998 to support the rural health care universal service support mechanism and no more than $625 million for the first six months of 1998 to support the schools and libraries universal service support mechanism.[9] The Commission took this action because it did not want to impose unnecessary financial requirements on service provider contributors to universal service by requiring the administrator to collect funds that were not needed to meet demand for universal service assistance.[10]

Consistent with section 254 of the Communications Act, as amended,[11] and the recommendations of the Federal-State Joint Board on Universal Service,[12] we remain committed to providing support to eligible schools and libraries for telecommunications services, Internet access, and internal connections. We also remain committed to providing the greatest level of support to the most economically disadvantaged schools and libraries. At the same time, however, we strive to ensure a smooth transition to the new universal service support mechanisms and to minimize disruption to consumers. We seek to provide support to schools, libraries, and rural health care providers in a manner that does not require consumers' rates to rise, and without causing rate churn. We thus seek comment on a proposal to implement a gradual phase-in of the schools, libraries, and rural health care universal service support mechanisms that takes

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Reconsideration, FCC 97-253 (rel. July 18, 1997) (*NECA Report and Order*). Among other functions, USAC collects funds from contributors and disburses those funds in accordance with the instructions of RHCC and SLC. 47 C.F.R. § 69.616. RHCC and SLC, in contrast, collect requests for support from applicants, commit funds to applicants, and monitor demand to ensure that the support mechanisms' annual monetary caps are not exceeded. 47 C.F.R. § 69.618-.619.

6 *Universal Service Order*, 12 FCC Rcd at 9056, para. 532.

7 *Universal Service Order*, 12 FCC Rcd at 9054, para. 529. The Commission further directed the administrator to "adjust future contribution assessments quarterly based on its evaluation of schools and library demand for funds, within the limits of the spending caps . . . ." *Id.* at 9055-9056, para. 532.

8 *Universal Service Order*, 12 FCC Rcd at 9145, para. 715.

9 Federal State Joint Board on Universal Service, CC Docket 96-45, *Third Order on Reconsideration*, 12 FCC Rcd 22801 (1997) (*Third Reconsideration Order*).

10 *Third Reconsideration Order*, 12 FCC Rcd at 22803-04, para. 4.

11 47 U.S.C. § 254.

12 *See* Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Recommended Decision*, 12 FCC Rcd 87 (1997).

advantage, and reflects the timing, of access charge reductions, will provide substantial support and at the same time will minimize disruption to consumers.[13]

As of May 1, 1998, SLC projected that $2.02 billion in discounts have been requested by applicants who have filed through April 28, 1998.[14] RHCC projected that the rural health care support mechanism will require $25 million for the third quarter.[15] Although the local exchange carriers will not file their access tariffs until June 16, 1998, based on preliminary information provided by the local exchange carriers, we estimate that the July 1, 1998 access charge reductions will be approximately $700 million below current levels. Given projected access charge reductions, we estimate that the quarterly collection rate for schools and libraries could rise from $325 million (the second quarter collection rate) to approximately $524 million[16] without increasing total access and universal service payments by long distance carriers. Accordingly, schools and libraries could be funded at approximately $1.67 billion for the 1998 calendar year. Because the 75-day initial filing window period for the rural health care support mechanism just opened on May 1, 1998, we propose that the quarterly collection rate for the rural health care support mechanism remain at $25 million for the third and fourth quarters of 1998. Accordingly, rural health care providers would be funded at $100 million for the 1998 calendar year.

We, therefore, seek further comment on the Commission's decisions governing the amount of money that may be collected during the second six months of 1998 for the federal universal service support mechanisms for schools, libraries, and rural health care providers.[17] We do not seek comment on revising the annual caps adopted in the *Universal Service Order*. Rather, we seek comment on adjusting the maximum amounts that may be collected and spent during the initial year of implementation in order to ensure that collection rates do not exceed access charge reductions and to prevent rate churn for subscribers. We emphasize that any adjustments should

[13] In contrast, if we funded the schools and libraries and rural health care support mechanisms without regard for the timing of access charge reductions, carriers might well change their rates more than once in the space of a year, thereby causing excessive and unnecessary rate churn.

[14] Third Quarter 1998 Fund Size Requirements for the Schools and Libraries Universal Service Program, dated May 1, 1998, at 2.

[15] Third Quarter 1998 Projected Demand and Expenses for the Rural Health Care Universal Service Support Program, dated May 1, 1998, at 1.

[16] We reach this result in the following manner. Long distance carriers pay direct contributions to universal service and, through interstate access charges, indirectly pay for most of the local exchange carrier contributions. Directly and indirectly, long distance carriers are responsible for approximately 82.5 percent of schools and libraries and rural health care contributions. Multiplying $700 million by 1/.825 yields $848 million. We divide $848 million by 4 to find the incremental amount available for each quarter, which is $212 million. We then add $212 million to the average quarterly collection rate for the first half of 1998, $312 million (the average of $300 and 325 million). Accordingly, access charge reductions of $700 million yield $524 million as a quarterly collection rate for the third and fourth quarters of 1998.

[17] 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).

not impact the level of support available to the most economically disadvantaged schools and libraries, and seek comment on ways to ensure that those entities receive adequate support.[18]

We seek comment on directing the Universal Service Administrative Company ("USAC") to collect only as much money as is required by demand, but in no event more than $25 million per quarter for the third and fourth quarters of 1998 to support the rural health care universal service support mechanism, and no more than $524 million per quarter for the third and fourth quarters of 1998 to support the schools and libraries universal service support mechanism. We also seek comment on directing the administrative corporations to neither commit nor disburse more than $100 million for the health care support mechanism or more than $1.67 billion for the schools and libraries support mechanism during the 1998 funding year.[19]

While we have not had an opportunity to review fully the statement of Commissioner Furchtgott-Roth, we do take this opportunity to note that the 60-day congressional review period referenced in that statement does not apply to "any rule promulgated under the Telecommunications Act of 1996 and the amendments made by that Act."[20]

Filing Requirements. Parties wishing to comment on these issues are directed to file comments on or before **May 22, 1998**, and to follow the following procedures. All filings should reference: **Proposed Revision of Maximum Collection Amounts for Schools and Libraries and Rural Health Care Providers, Public Notice, CC Docket No. 96-45, DA 98-872**. All interested parties should include the name of the filing party and the date of the filing on each page of their comments. Parties should include a table of contents in all documents regardless of length and should indicate whether they are filing an electronic copy of a submission via the Internet or via diskette. Pleadings must comply with Commission rules.[21] One original and five copies of all comments must be sent to Magalie Roman Salas, Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. Three copies also should be sent to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, 2100 M Street, N.W., 8th Floor, Washington, D.C. 20554. Copies of documents filed with the Commission may be obtained from the International Transcription Service, 1231 20th Street,

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[18] We note that some parties, in response to the *Windows Public Notice*, have already suggested ways to prioritize distribution of funds if necessary. *See* Common Carrier Bureau Seeks Comment on Universal Service Support Distribution Options for Schools, Libraries, and Rural Health Care Providers, *Public Notice*, CC Docket No. 96-45, DA 97-1957 (rel. Sept. 10, 1997) (*Windows Public Notice*).

[19] Pursuant to 47 C.F.R. § 54.709(a), the Common Carrier Bureau released a Public Notice today announcing the proposed contribution factors for the third quarter. *See* Proposed Third Quarter 1998 Universal Service Contribution Factors Announced, CC Docket No. 96-45, DA 98-856, *Public Notice* (rel. May 13, 1998).

[20] 5 U.S.C. § 804(2)(exempting such rules from definition of "major rule"); *see also* 5 U.S.C. § 801(a)(3)(only major rules subject to 60-day review requirement).

[21] *See, e.g.*, 47 C.F.R. §§ 1.49, 1.415, 1.419.

N.W., Washington, D.C. 20037, (202) 857-3800. Such documents are also available for review and copying at the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C., from 9:00 a.m. to 4:30 p.m.

Parties may also file informal comments or an exact copy of formal comments electronically via the Internet at: <http://www.fcc.gov/e-file/ecfs.html>. Only one copy of an electronic submission must be submitted. A party must note whether an electronic submission is an exact copy of formal comments on the subject line and should note in its paper submission that an electronic copy of its comments is being submitted via the Internet. A commenter also must include its full name and Postal Service mailing address in its submission. Parties not submitting an exact copy of their formal comments via the Internet are also asked to submit their comments on diskette. Parties submitting diskettes should submit them to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, 2100 M Street, N.W., Room 8606, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labelled with the party's name, proceeding, type of pleading (comment), date of submission, and the name of the electronic file on the diskette. Each diskette should contain only one party's pleadings, preferably in a single electronic file. Electronic submissions are in addition to and not a substitute for the formal filing requirements addressed above.

Ex parte contact. Filing of this petition initiates a permit-but-disclose proceeding under the Commission's rules.[22]

For further information on this Public Notice, contact Irene Flannery, Accounting Policy Division, Common Carrier Bureau at (202) 418-7400.

-- Action by Chief, Common Carrier Bureau --

[22] *See* 47 C.F.R. § 1.1206.

May 13, 1998

STATEMENT OF COMMISSIONER HAROLD FURCHTGOTT-ROTH

Re: Proposed Third Quarter 1998 Universal Service Contribution Factors Announced; Common Carrier Bureau Seeks Comment On Proposed Revisions of 1998 Collection Amounts For Schools and Libraries and Rural Health care Universal Service Support Mechanisms; (CC Docket No 96-45) .

Introduction and Summary

Today, the Common Carrier Bureau releases a Public Notice announcing the proposed universal service contribution factors for the third quarter of 1998 that will automatically go into effect if the Federal Communications Commission takes no action within 14 days of publication in the Federal Register. In addition, the Bureau releases a Public Notice seeking comment on adjusting the maximum amount that may be collected and spent during this initial year of the schools and libraries program.

For the reasons described below, I object to the current proposals. I also note that the full Commission must take action to adjust the collection rate for the remainder of this year, and I encourage parties to comment on my concerns and make other suggestions regarding the Commission's plans for universal service.

Specifically, I hope that the parties address at least the following issues:

-- The overall size of the schools and libraries fund, whether it needs to be reduced, and the effect on local and long distance telecommunications ratepayers of all of access charge reductions being used for schools and libraries.

-- Whether wireless carriers and others who do not pay access charges should still be required to pay proportionately higher universal service fees, despite the fact that they have received no benefits from the proposed access charge reductions.

-- Whether it would be in the taxpayers' interest for the Commission to postpone the schools and library program until January 1, 1999, providing time to reevaluate its scope and scale while also finishing what should have been its first priority, namely, the establishment and funding of the rural and high-cost program.

-- The amount of consumer benefit that would ensue by reducing the schools and libraries funding to provide only discounts in telecommunications services.

-- Whether the Commission should fund 100% of the requests for telecommunications service discounts first.

-- Whether, under the Telecommunications Act, the Commission has the discretion to prioritize among bona fide applications.

-- The District of Columbia District Court decision that held a similar mandatory contribution to the Intellectual Infrastructure Fund -- known as the "Preservation Assessment" -- to be an illegal tax, not ratified by Congress.

-- The effect of Virginia ordering MCI to stop applying federal surcharges on intrastate bills and revenues.

-- Whether any rule that the Commission might adopt regarding the schools and library program and the third quarter contribution factors related thereto will trigger the mandatory procedural requirements of the Congressional Review Act.

I. The Bureau's Proposal Denies Consumers All the Benefits of Deregulation And Will Place Increased Pressure on Local Rates

First, I have become increasingly convinced that we are implementing this new program in a way that will increase the rates that some telecommunications consumers must pay. As I have stated previously, the size and scope of the current schools and libraries program is far in excess of what was envisioned by Congress and thus beyond the Commission's authority to establish. The Schools and Libraries Corporation projected that, as of May 1, 1998, $2.02 billion in discounts has been requested by applicants. The Contribution Factor Public Notice proposes a fully funded schools and libraries program, with an increase of $365 million for a total third quarter contribution of $690 million and a contribution factor that more than doubles. I cannot support such a dramatic increase when the current contribution rate has already raised many consumers' rates.

A separate Bureau Public Notice proposes revisions of the amount collected. That Notice indicates that the entire $700 million in access charge reductions estimated for July should be used to increase the quarterly contributions to the schools and libraries program from $325 million to approximately $524 million.[1] I cannot support this proposal. I remain troubled by the Bureau's assumption that *all* reductions in access charges should be used for funding the schools and libraries program, as this presumption denies consumers all the benefits of deregulation and places upward pressure on local rates. Moreover, there is no assurance that the consumers who benefit from access charge reductions will be the same consumers who will bear the new universal service burden. For example, business consumers could disproportionately benefit from the access charge reduction while residential consumers pay for new universal service fees. The issue should not be whether, despite massive tax increases that just offset decreases in federal access fee and charges,

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[1] Such a quarterly contribution would result in a fund of $1.67 billion for 1998.

IXCs have no net differences in costs. The issue should be whether, absent massive new taxes, consumers would be better off.

II. The Proposal Will Increase Rates for Wireless and Other Telecommunications Services That Do Not Pay Access Charges

Not only does the plan outlined in the Bureau Notice use every cent of access charge reduction for new universal service programs, but it will cause an *increase* in fees for other telecommunication services. The Public Notice calculates that a $700 million reduction in access charges will yield $848 million in additional funds for schools and libraries.[2] How is this possible? Because the majority anticipates increasing all contribution rates equally, even though almost 20% of the schools and libraries contributors will not benefit from reduced access charges. Thus, for example, wireless carriers will be required to pay proportionately higher fees, despite the fact that they have received no access charge reduction. I encourage parties to comment on the equity of this approach and the effect it will have on consumers.

III. The Commission Continues to Place a Higher Priority on the Schools and Libraries Program Than on the Rural High-Cost Program

I am also concerned that the majority continues to use all access reductions for new universal service fees while the high-cost program has not been fully implemented. As I argued in previous reports to Congress, "the potential pot of revenue that the FCC can collect for universal service from fees on interstate services is limited."[3] Some potential universal service beneficiaries have been "promised" enormous and unending benefits, long before there are actual revenues for these programs and long before other potential universal service beneficiaries (rural, high-cost programs) have voiced all of their concerns. It would be in the taxpayers' interest for the Commission to postpone the schools and library program until January 1, 1999, thereby providing time to reevaluate the scope and scale of that program while also finishing what should have been its first priority, namely, the rural and high-cost program.

IV. The Commission has Already Mandated that Sufficient Funds be Collected to Meet the Entire Demand for Telecommunications Services, and Discounts For Other Services or Facilities Should Be Postponed

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[2] Common Carrier Bureau Public Notice Seeking Comment on Proposed Revision of 1998 Collection Amounts for Schools and Libraries and Rural Health Care Universal Service Support Mechanisms, rel. May 13, 1998, nt. 16.

[3] Dissenting Statement of Commissioner Harold Furchtgott-Roth Regarding the Federal-State Joint Board Report to Congress, rel. April 10, 1998.

Significantly, this entire dilemma has been caused, at least in part, by the Commission's misguided and unlawful decision to fund inside wiring and other non-telecommunications services. As I explained in the April 10th report to Congress, the Commission has no statutory basis to provide direct financial support for non-telecommunications services and to non-telecommunications carriers. According to the Schools and Libraries Corporation's own estimates, the vast majority of the program's demand is for non-telecommunications services and facilities.[4] The vast majority of demand is for funds to provide inside wiring -- what should be an ineligible facility. Indeed, the amount *already* collected this year would almost fully fund the demand for telecom services.

Instead, as I suggested in our May 8, 1998 Report to Congress, I favor dramatically decreasing the schools and libraries contribution for the third and fourth quarter, thus allowing the benefits of the reduced access charges implemented last year and those planned for this July to flow directly to consumers. I believe the Commission should reduce the current quarterly contribution rate for schools and libraries from $325 million to a mere $25 million, and I specifically request parties to comment on this proposal. Such a reduction would allow previous access charge reductions and those contemplated for this July to flow to consumers directly, while still providing more than sufficient funds -- $675 million for 1998 -- to pay for *all* of the telecommunications services that have been requested by any school this year.

In contrast to the Bureau's proposal to provide "the greatest level of support to the most economically disadvantaged schools and libraries,"[5] I ask parties to comment on whether the Commission should fund 100% of the requests for telecommunications service discounts first. I believe that any funding for internal connections and Internet access is prohibited; even the majority, however, argues that such funding is not required by Section 254(h) but rather is merely permitted. Wouldn't it make more sense to postpone -- or at least make a lesser priority -- the funding of services that if not legally questionable are certainly not statutorily required? This proposal would ensure that at least some portion of every schools' request would be eligible for support.

In effect, the Bureau's proposal disadvantages some schools twice. The Commission's rules already consider a schools' economic status in determining the level of support to which they may qualify. Now the Commission is proposing to take economic status into account to determine whether the schools are even eligible for participation, despite the fact that the schools have submitted a bona fide request under our rules. If the Commission's rules already addressed

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[4] Federal-State Joint Board Report to Congress, rel. April 10, 1998, Attachment D; total demand for telecom services is only $655,688,020, while total demand for Internet services is $88,208,299 and total demand for internal connections is $1,275,399,870.

[5] Common Carrier Bureau Public Notice Seeking Comment on Proposed Revision of 1998 Collection Amounts for Schools and Libraries and Rural Health Care universal Service Support Mechanisms, rel. May 13, 1998, at 2.

such discrepancies in economic advantage adequately, then the newest proposal seems, at best, unfair to schools that will now be prohibited from participating, if not altogether arbitrary. Indeed, I do not see how the Commission has the discretion to prioritize among bona fide applications. The universal service provisions mandate that "upon a bona fide request" the "telecommunications carriers . . . shall" provide a discount.[6] All of the applications that meet our previous rules are bona fide requests, and I encourage commenters to address the propriety and legality of differentiating among them.

V. Administrative Expenses for the Schools and Libraries Corporation Are Exorbitant and Have Not Been Justified

This Public Notice also establishes the administrative expenses for the Schools and Libraries Corporation. In objecting to the second quarter contribution factors, I noted that SLC was allocated almost four times as much money for administrative expenses as the high-cost/low income funds and that the administrative budget increased from $2.7 million to $4.4 million or by 65% in just one quarter. These increased administrative expenses continue in the third quarter, despite the fact that, in their latest filing, the Schools and Libraries Corporation indicates that it still cannot provide an accurate estimate of all its administrative costs for the first quarter.[7] I cannot endorse this disparity -- and certainly not one of this magnitude -- between the administrative expenses of the Schools and Libraries and those of the other universal service corporations, especially without more adequate safeguards against excessive spending.

VI. Recent Decisions That Contradict the Commission's Legal Determinations Need To Be Addressed

In addition to commenting on the effect of GAO's conclusions, I hope that some parties will comment on two recent legal developments. First, as I have previously indicated, I believe that the universal service contributions, at least to the extent they are providing support for non-telecommunications services, may not be fairly characterized as mere "fees." In general, taxes can be distinguished from administrative fees by determining the recipient of the ultimate benefit: a tax is characterized by the fact that "it confers no special benefit on the payee," "is intended to raise general revenue," or is "imposed for some public purpose."[8]

In *Thomas v. Network Solutions*, the District of Columbia District Court recently found a similar mandatory contribution to the Intellectual Infrastructure Fund -- known as the

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[6] 47 U.S.C.A. section 254(h)(1)(B).

[7] Third Quarter 1998 Fund Size Requirements for the Schools and Libraries universal Service Program, dated May 1, 1998.

[8] *Thomas v. Network Solutions*, 1998 WL 191205 (D.D.C. 1998).

"Preservation Assessment" -- to be an illegal tax, not ratified by Congress.[9] Money from that fund was used for the "Next Generation Project," a "program aimed primarily at upgrading the Internet infrastructure, improving the speed and accuracy of information delivery, and increasing access for schools."[10] The Court held that the preservation assessment was "clearly a tax" as it was collected "for the government's use on public goals, and not in any way to defray regulatory costs."[11] I encourage parties to comment on the implications that this case may have for the Commission's universal service program.

Second, I continue to object to the fact that the contributions for the schools, libraries, and rural health care support mechanisms are based not only on *inter*state but also on *intra*state revenues. As I have described on several occasions, the legality of this approach to calculating contributions is highly questionable.[12] As I read the Communications Act, it does not permit the Commission to assess contributions for universal service support mechanisms based on intrastate revenues. Rather, the Act makes clear that the power to collect charges based on such revenues rests within the exclusive province of the States.

Indeed, it has been reported that at least one state -- Virginia -- has ordered that MCI stop applying federal surcharges on intrastate long distance calls made in that state and make appropriate refunds to customers.[13] Specifically, the Virginia State Corp. Commission ordered that: MCI stop billing "federal universal service fee" (FUSF) and usage-based "national access fee" (NAF) on intrastate calls placed by business customers in the state; MCI cease future application of FUSF to intrastate portion of residential bills; MCI refund, with interest, all fees that have been collected so far. I would also encourage parties to comment on this development and how it will effect the contribution factors as proposed by the Bureau.

VII. Any Action taken By The Commission Triggers the Congressional Review Act, and Congress Must be Given 60 Days to Review the Agency Action Prior To Any Commission Order Taking Effect.

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[9] 1998 WL 191205 (D.D.C. 1998).

[10] Id. at 3-4.

[11] Id. at 5.

[12] Separate Statement of Commissioner Harold Furchtgott-Roth Regarding the Second Quarter 1998 Universal Service Contribution Factors, rel. March 20, 1998; Dissenting Statement of Commissioner Harold Furchtgott-Roth Regarding the Federal-State Joint Board Report to Congress, rel. April 10, 1998.

[13] Communications Daily, May 11, 1998.

It should not be forgotten that any ultimate Commission decision may trigger the procedural requirements of the Congressional Review Act. Current law requires that before any major agency rule -- defined as having an effect on the economy of $100 million or more -- can take effect, the Federal agency promulgating the rule shall provide Congress with an opportunity to review the rule and express their disapproval.[14] Thus, I believe that whatever rule this Commission ultimately adopts regarding universal service contributions, it cannot take effect until 60 days after publication or submission, providing Congress with an opportunity to express its disapproval of the agency determination through resolutions. I encourage parties to comment on whether any rule that the Commission might adopt regarding universal service and the third quarter contribution factors will trigger this requirement, and whether that is an additional reason to delay implementation of the schools and libraries program.

Conclusion

With so many general concerns and specific questions about the legality of this new program, I cannot support the allocation of an additional $365 million or an additional $200 million to the Schools and Libraries Corporation under either proposal submitted for public comment. I reiterate my desire that the Commission delay further implementation of this new universal service program until we have addressed all aspects of universal service -- including rural and high cost issues -- at the end of this year. Such a delay will provide us the opportunity to reconsider some of our legal conclusions related to the implementation of this new program, as I believe we must do.

[14] 5 U.S.C.A. section 801, et seq.

May 13, 1998

Separate Statement of Commissioner Gloria Tristani

Re: *Common Carrier Bureau Seeks Comment on Proposed Revision of 1998 Collection Amounts for Schools and Libraries and Rural Health Care Universal Service Support Mechanisms, Public Notice*

This Public Notice seeks comment on some of the proposals described in last week's Report to Congress. It can be therefore be deduced that the Commission has not yet reached a decision on those issues on which it seeks comment. A statement accompanying last week's Report to Congress seemed to imply that a majority of commissioners has already settled on a particular funding level for the School and Library Program. As should be clear from the caption of this Public Notice, however, final action has not been taken. Any contrary implication would be inaccurate and detrimental to the Commission's decision-making process.

A statement last week also alleged that secret deals are being made between regulators and carriers regarding universal service programs. As put forth, those allegations could be read to mean that I have been party to such an arrangement. This implication is regrettable and undermines my ability to work with my colleagues at the Commission in a respectful and collegial manner.

I would also note my disagreement with the suggestion that a majority of commissioners is attempting to force carriers to conceal universal service charges on their telephone bills. I read the relevant paragraph of the Report to Congress as indicating our insistence on truthful, as opposed to deceptive or inaccurate, descriptions of telephone-related charges. We might as well pack our bags and go home if we are unwilling to safeguard consumers' welfare in this way.

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