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☞ Details: Audit Report 06-5: Universal Service Fund, Public Service Commission

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS

2005-06
(session year)

Joint
(Assembly, Senate or Joint)

Committee on Audit...

COMMITTEE NOTICES ...

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INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
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  (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
  (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (September 2012)

REINHART
BOERNER VAN DEUREN s.c.
ATTORNEYS AT LAW

July 28, 2006

Sandra J. Paske
Secretary
Wisconsin Public Service Commission
610 North Whitney Way
Madison, WI 53705-2729

Dear Ms. Paske:

Re: Biennial Review of Universal Service Fund Rules
Docket No. 1-AC-198

Enclosed for filing on behalf of United States Cellular Corporation and Sprint Nextel Corporation are Comments and Suggested Modifications to the Proposed Universal Service Fund Rules.

If you have any questions concerning this matter, please feel free to contact me.

Yours very truly,

/s/ Peter L. Gardon

Peter L. Gardon

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Enc.

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BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

Biennial Review of Universal Service Fund Rules Docket No. 1-AC-198

COMMENTS AND SUGGESTED MODIFICATIONS TO PROPOSED UNIVERSAL SERVICE FUND RULES

INTRODUCTION

Pursuant to the Notice of Hearing issued on June 2, 2006, United States Cellular Corporation ("U.S. Cellular") and Sprint Nextel Corporation ("Sprint Nextel") submit the following comments and suggested modifications to the proposed universal service fund rules.

COMMENTS

Assessing wireless providers without significant changes to the proposed universal service fund rules will stymie industry growth and ultimately lead to higher costs for Wisconsin consumers. The wireless marketplace is currently one of the most competitive segments of the telecommunications industry. Moreover, the highly competitive nature of the industry has led to more choices for consumers at much lower prices. Mandated fees – such as those brought about by universal service fund assessments – impose a cost on the "bottom line" of a customer's bill.

With the consumer in mind, U.S. Cellular and Sprint Nextel believe the following modifications should be made to the draft rules prior to the assessment of wireless providers:

1. The prohibition on surcharge of contributions to the universal service fund must be removed as it relates to wireless providers based on federal law;

2. The assessment of wireless providers for contributions to the universal service fund should be limited to programs in which they can participate and from which they can draw;

3. The requirements for eligible telecommunications carrier status must be modified to facilitate application to wireless providers; and

4. Changes to the universal service fund programs should be made, to among other things, avoid duplication with federal programs and ensure consistency with federal requirements.

These modifications to the universal service fund rules will help to ensure that the universal service programs which telecommunications consumers ultimately support operate as efficiently and effectively as possible.

I. THE PROHIBITION ON SURCHARGE OF UNIVERSAL SERVICE FUND CONTRIBUTIONS AS APPLIED TO WIRELESS PROVIDERS CONSTITUTES IMPERMISSIBLE RATE REGULATION AND VIOLATES FEDERAL LAW.

The Wisconsin universal service statute, § 196.218(3)(e), Stats., and the similar Commission regulation, § PSC 160.15, Wis. Admin. Code, if applied to

wireless providers, would contravene federal law by forbidding wireless providers from passing through universal service contributions to their customers. If wireless providers must make universal service contributions, a state cannot regulate a wireless provider's rates by forbidding wireless providers from passing such contributions through to their customers. Moreover, requiring state universal service contributions from wireless providers without permitting them to pass those contributions to their customers is not in the interest of Wisconsin consumers or the development of a competitive and viable wireless industry in Wisconsin. Consequently, before the assessment of wireless providers can commence, § 196.218(3), Stats., and § PSC 160.15, Wis. Admin. Code, must be amended.

Section 196.218 of the Wisconsin universal service statute and § PSC 160.15 of the Commission's regulations would preclude wireless providers from placing a surcharge on customer bills for the contributions paid into the state universal service fund. Section 196.218(3)(e), Stats., provides, in pertinent part:

> ...a telecommunications provider or other person may not establish a surcharge on customers' bills to collect from customers contributions required under this subsection.

Section PSC 160.15, Wis. Admin. Code, provides:

> Telecommunications providers may not establish a surcharge on customer bills for contributing to or recovering any portion of the providers' payment of universal service fund obligations.

However, state and local governments are prohibited from regulating the entry of or the rates charged by wireless providers. A state's prohibition of a

wireless provider's imposition of a specific charge on its customers' bills violates 47 U.S.C. § 332(c)(3)(A)'s prohibition on rate regulation. 47 U.S.C. § 332(c)(3)(A) of the Telecommunications Act of 1996, in pertinent part, states:

> (3) State preemption. (A) Notwithstanding sections 152(b) and 221(b) [47 U.S.C. §§ 152(b) and 221(b)], no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services....

Section 196.218(3)(e), Stats., and § PSC 160.15, Wis. Admin. Code, are the type of state regulation of wireless industry practices which have a direct and significant effect on rates. These provisions explicitly forbid wireless providers from imposing certain surcharges on their customers' bills and address what may be placed on the customer's invoice. The obvious intention of these provisions is to govern what wireless providers can and cannot charge to customers, which is clear rate regulation.

The FCC has specifically determined that state regulations prohibiting the use of line items violate federal law because they constitute rate regulation under section 332(c)(3)(A) and because they interfere with the federal scheme of regulating wireless providers. The FCC recognized that wireless providers offer national pricing plans which would be adversely affected by a patchwork quilt of different rules regarding line item charges in the various states. In *In the Matter of Truth-in-Billing and Billing Format National Association of State Utility*

Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing, FCC 05-55, Rel. March 18, 2005, the FCC determined:

> We find that state regulations requiring or prohibiting the use of line items – defined here to mean a discrete charge identified separately on an end user's bill – constitute rate regulation and, as such, are preempted under section 332(c)(3)(A) of the Act.... The Commission, however, consistently has interpreted the rate regulation provision of the statute to be broad in scope. The Commission has interpreted this provision to "prohibit states from prescribing, setting or fixing rates" of wireless service providers. The Commission also has made clear that the proscription of state rate regulation extends to regulation of "rate levels" and "rate structures" for CMRS. Along these lines, the Commission has found that section 332(c)(3)(A) not only prohibits states from prescribing "how much may be charged" for CMRS, but also prohibits states from prescribing "the rate elements for CMRS" or "specify[ing] which among the CMRS services provided can be subject to charges by CMRS providers." We also note that our interpretation here is consistent with prior Commission statements equating "line items" with "rate elements." Recognizing the Commission's broad prior interpretation of rate regulation and statements about line items, we find that state regulations requiring or prohibiting line items similarly fall within the statute's zone of proscribed state regulatory activity.
>
> * * *
>
> Even setting aside the preemptive effect of section 332(c)(3), we note that the type of state regulations described above also may be subject to preemption because they conflict with established federal policies. It is recognized widely that federal law preempts state law where, as here, the state law would "stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," or of federal regulations. The pro-competitive, deregulatory framework for CMRS prescribed by Congress and implemented by the Commission has enabled wireless competition to flourish, with substantial benefits to consumers. In this environment, Congress has directed that the rate relationship between CMRS providers and their customers be governed "by the mechanisms of a competitive marketplace," in which prospective rates are established by the CMRS carrier and customer in service

> contracts, rather than dictated by federal or state regulators. To succeed in this marketplace, CMRS carriers typically operate without regard to state borders and, in contrast to wireline carriers, generally have come to structure their offerings on a national or regional basis. Efforts by individual states to regulate CMRS carriers' rates through line item requirements thus would be inconsistent with the federal policy of a uniform, national and deregulatory framework for CMRS. Moreover, there is the significant possibility that state regulation would lead to a patchwork of inconsistent rules requiring or precluding different types of line items, which would undermine the benefits derived from allowing CMRS carriers the flexibility to design national or regional rate plans.

(*See* ¶¶ 30, 35, *footnotes omitted*). The Wisconsin rule prohibiting surcharges is contrary to section 332(c)(3) and the pro-competitive deregulatory framework implemented by the FCC as prescribed by Congress that has allowed wireless providers to grow and innovate for the benefit of consumers.

Moreover, the recent changes to § 196.218(3)(e) and (f) to allow telecommunications utilities to adjust local exchange service rates to recover the contribution to the universal service fund and to identify the amount of the adjustment attributable to the contribution to the universal service fund on the customer's bill, create disparate treatment with wireless providers. While Wisconsin has no authority over wireless providers' rates and could not require the universal service fund contribution to be included in a rate adjustment for wireless providers, as telecommunications utilities are required to do, the different treatment of wireless providers under § 196.218(3)(e) and (f) with respect to surcharge or identification of a line item on a bill, certainly would raise equal protection problems, even in the absence of the dispositive federal preemption

issues. *See GTE Sprint v. Wisconsin Bell*, 155 Wis. 2d 184, 454 N.W.2d 797 (1990) (sales tax on telecommunications access services imposed on interexchange carriers but not on local exchange carriers or resellers was unconstitutional as a violation of the equal protection clauses of the United States Constitution and Wisconsin Constitution.)

Wisconsin has no authority to regulate wireless rates as § 196.218(3)(e), Stats., and § PSC 160.15, Wis. Admin. Code, would purport to do. Moreover, wireless providers should not be required to risk enforcement of a statute and rule which are preempted by federal law. Furthermore, lifting the prohibition on line items will accomplish two important consumer goals: (1) allow for transparent consumer billing by letting customers know what they are paying for; and (2) prevent ancillary fees from negatively affecting competitive base rates. Accordingly, wireless providers properly can be assessed universal service fund contributions in Wisconsin only if § 196.218(3)(e), Stats., and § PSC 160.15, Wis. Admin. Code, are amended so that wireless providers are not prohibited from passing through their universal service fund contributions to customers.

II. FAIRNESS REQUIRES THAT THE ASSESSMENT OF WIRELESS PROVIDERS BE LIMITED TO PROGRAMS IN WHICH THEY CAN PARTICIPATE AND FROM WHICH THEY CAN DRAW.

According to the Joint Legislative Audit Committee *Audit of the Universal Service Fund* dated May 2006, telecommunications providers are assessed approximately $30 million to support 13 programs operated by four agencies or

institutions under the state universal service fund mechanism. The agencies, programs, and funding involved include the following:

Program Name	Agency	Amount FY 2005-06
High Rate Assistance Credit	Public Service Commission	$290,000
Telecommunications Equipment Purchase	Public Service Commission	$1,900,000
Lifeline	Public Service Commission	$1,700,000
Link-Up America	Public Service Commission	$1,000,000
Rate Shock Mitigation	Public Service Commission	0
Access Program or Project by Nonprofit Groups	Public Service Commission	$307,000
Medical Telecommunications Equipment	Public Service Commission	$307,000
Public Interest Pay Telephone	Public Service Commission	$212,000
Two-Line Voice Carryover	Public Service Commission	$2,000
Educational Telecommunications Access	Department of Administration	$17,267,900
Newsline	Department of Public Instruction	0
BadgerLink	Department of Public Instruction	$1,992,500
Supplemental Aid to Public Library Systems	Department of Public Instruction	$4,223,800
UW System BadgerNet Access	UW System	$1,054,800
Total All Programs		***$30,257,000***

Given the nature of these programs and the contractual relationships already committed to several of them, wireless providers have few opportunities to participate in and draw money from the universal service fund programs. For example, the Educational Telecommunications Access Program administered by the Department of Administration is the most expensive program, accounting for nearly 60% of all universal service contributions. This program is subject to a

contract that began in January 2006 and is to operate for the next 5 years. This program as well as most others are geared toward the provision of landline service. Even the nine programs operated by the Commission provide few opportunities for wireless participation. This problem is evident in the draft rules where further Commission action is contemplated to permit wireless providers to participate in certain programs, such as the High Cost Fund. (*See e.g.* Proposed Rules, Section 86, PSC 160.09(3)(b)). This additional requirement would delay wireless participation in the program beyond the effective date of the universal service fund rules.

Consequently, wireless providers should be required to contribute only to the three or four Commission administered universal service fund programs from which wireless providers have a practical opportunity to draw funds. Furthermore, wireless providers' ability to draw universal service funds should not be delayed beyond the effective date of the rules. Fairness requires that rule changes be made to match the potential contribution responsibilities of wireless providers with the opportunity to participate in the programs and draw from the universal service fund.

III. THE ELIGIBLE TELECOMMUNICATIONS CARRIER REQUIREMENTS UNDER THE COMMISSION RULES MUST BE MODIFIED TO FACILITATE WIRELESS USAGE OF THE FUND.

The Commission requirements concerning eligible telecommunications carrier status are found in § PSC 160.13, Wis. Admin. Code. That rule expands the requirements for eligible telecommunications carrier status beyond federal law

by incorporating certain additional portions of essential telecommunications services as defined in § PSC 160.03. To be certified as an eligible telecommunications carrier under federal law, a provider must meet two basic criteria in 47 U.S.C. § 214(e)(1): the provider must offer and must advertise the services supported by the federal universal service mechanisms throughout the designated service area.

The Telecommunications Act requires the Federal-State Joint Board on Universal Service to recommend, and the FCC to establish, the services that should be supported by federal universal service support mechanisms. 47 U.S.C. § 254(c)(1). Those services are set forth in 47 C.F.R. § 54.101(a):

> (1) Voice grade access to the public switched network.
> (2) Local usage.
> (3) Dual tone multi-frequency signaling or its functional equivalent.
> (4) Single-party service or its functional equivalent.
> (5) Access to emergency services.
> (6) Access to operator services.
> (7) Access to interexchange services.
> (8) Access to directory assistance.
> (9) Toll limitation for qualifying low-income consumers.

(47 C.F.R. § 54.101(a)(1)-(9)). The FCC determined that these core universal services promote competitive neutrality because they are technologically neutral. (*Federal-State Joint Board on Universal Service*, 12 F.C.C.R. 8776, 8809, ¶ 61 (1997) ("*Universal Service Order*")).

Certain of the requirements in § PSC 160.03 go beyond the federal eligible telecommunications carrier requirements and are not applicable in the wireless

industry. These additional state eligible telecommunications carrier requirements include:

(1) A directory listing with the option for non-listed and non-published service. (§ PSC 160.03(2)(a)15., Wis. Admin. Code);
(2) Annual distribution of a local telephone directory in accordance with § PSC 165.055, Wis. Admin. Code. (§ PSC 160.03(2)(b), Wis. Admin. Code); and,
(3) Public interest pay telephone service pursuant to s. 160.073, pay telephones specified by s. PSC 165.088, and pay telephone interconnection services subject to FCC orders, Commission orders and ch. PSC 169. (§ PSC 160.13(1)(d), Wis. Admin. Code).

As part of the process for the revision of the state universal service rules, modifications should be made to the eligible telecommunications carrier requirements of the rules by deleting requirements related to the distribution of a telephone directory, issuance of a directory listing, and the provision of pay telephone service for wireless providers. Consideration also should be given to limiting the eligible telecommunications carrier requirements to those imposed under 47 U.S.C. § 214(e) without the build-out requirement, to obtain eligibility under both the federal and state universal service funds.

IV. MODIFICATIONS TO UNIVERSAL SERVICE FUND PROGRAMS SHOULD BE IMPLEMENTED.

The universal service fund programs have expanded significantly in scope and funding since their inception in 1997. The number of programs, the number of agencies or institutions involved in overseeing portions of programs, and the funding level have increased. The increases in the size of the programs have been accompanied by significant amounts of administrative costs as well. Moreover,

many of the state programs stray beyond the federal universal service fund programs or duplicate the federal universal service fund programs in some manner. Since the opportunity to revise these rules is infrequent, a real effort should be undertaken to identify the reforms needed to the universal service fund programs to meet the following principles:

(a) avoid duplication with federal programs;

(b) maintain reasonable consistency with the federal standards;

(c) avoid assumption that each program must continue indefinitely into the future without modification; and

(d) determine whether certain programs should be subject to sunset.

A detailed review of the programs in light of these principles would ensure that funds are directed to the most significant programs and that telecommunications consumers who are ultimately footing the bill for the universal service fund can be assured that their dollars are spent in the most efficient manner possible.

V. THE PUBLIC INTEREST SUPPORTS THE CONTINUED EXEMPTION OF WIRELESS PROVIDERS FROM UNIVERSAL SERVICE FUND CONTRIBUTION REQUIREMENTS UNTIL THE MODIFICATIONS SOUGHT ARE IMPLEMENTED.

Section 196.218(3)(b), Stats., provides that the Commission may "exempt a telecommunications provider or other person from part or all of the [universal service fund contribution requirement] if the commission determines that requiring the contribution would not be in the public interest." The imposition of universal service fund assessments on wireless providers in Wisconsin before the

modifications identified are implemented would be detrimental to the public interest for several reasons.

First, such an assessment will artificially decrease wireless usage. The wireless marketplace currently is one of the most robustly competitive segments of the telecommunications industry. Indeed, the highly competitive nature of the wireless market in recent years has led to lower prices and more choices for American consumers, including the residents of Wisconsin. Although wireless competition is vigorous and subscriber growth is accelerating rapidly, wireless providers are extremely vulnerable to price increases of any kind. Simply put, price increases such as those brought about by universal service assessments artificially suppress demand for wireless services. Even though a universal service assessment is wholly unrelated to the costs of providing a wireless call, it imposes a cost increase on the "bottom line" of a wireless consumer's bill. Since customers ultimately pay for the universal service fund assessments in some manner, they are the persons harmed by the mistaken perception that the wireless industry is an appropriate financier for numerous social programs.

Such cost increases, whatever their source, are most acutely felt in emerging telecommunications markets. Since competition results in lower prices and better services for customers, the public interest is not served if wireless growth is stymied.

Second, wireless carriers are already indirectly funding universal service, because they pay above-cost special access charges for "last-mile" connection to

their cell towers. Because these cell towers are widely dispersed geographically, and because competitive alternatives are unavailable at most of these locations, the wireless carriers are heavily dependent on the incumbent local exchange carriers (ILECs) for these special access connections.

Special access services are purchased almost exclusively through interstate tariffs. The ILECs regulated under price caps at the federal level, such as AT&T and Verizon, have been granted greater pricing flexibility since 2001, and have taken advantage of that pricing flexibility to keep their prices at high levels, despite the fact that their costs have continued to decline significantly. The result of this has been ever increasing rates of return for Special Access services.

Wireless carriers are not the only purchasers of Special Access, of course, but even if wireless carriers are buying only one sixth of the total Special Access sold by these two companies they are overpaying by $15 million, which is one half of the entire state universal service fund. It is unfair for wireless carriers to be burdened with these above cost rates, and then expect them to subsidize their wireline competitors through a universal service fund as well.

Thus, any attempt to impose universal service fund assessments upon wireless providers, before the identified modifications are implemented, undermines the public interest in wireless providers offering genuine competition for customers. Furthermore, the negative impact on wireless growth supports keeping any assessment on wireless providers as low as possible, such as by

limiting the assessment to only those programs in which wireless providers can participate and from which they are able to draw funds.

SUGGESTED MODIFICATIONS TO UNIVERSAL SERVICE FUND RULES

Without waiving any argument that assessment of wireless providers should not occur, U.S. Cellular and Sprint Nextel provide the following suggested red-lined modifications to the proposed universal service fund rules.

SECTION ___. PSC 160.02(7) is amended to read:

(7) "Local exchange service provider" means ~~any commercial mobile radio service provider that has been designated as an eligible telecommunications carriers under s. PSC 160.13, or~~ a telecommunications utility or any other telecommunications provider of basic local exchange service or standard business lines and usage, that has been designated as an eligible telecommunications provider by the Commission. A local exchange service provider does not include a wireless provider.

SECTION ___. PSC 160.02(14) is created to read:

(14) "Wireless provider" means a commercial mobile radio service provider as defined in s. 196.01(2g), Stats., that has been designated as an eligible telecommunications carrier by the Commission.

Explanation:* *Individual definitions of "local exchange service provider" and "wireless provider" are provided. The multiple uses of the term "local exchange service provider" in the draft rules are inconsistent and unworkable. Separate definitions will increase clarity and accuracy. Also, it is not evident why the draft rules and/or existing rules seem to permit payment from the fund to "local exchange service providers" that are not eligible telecommunications carriers in some instances. Some review and explanation of this issue is required especially if the draft rules would require all wireless providers to be eligible telecommunications carriers to obtain payments from the fund. (See e.g. Proposed Rules, Section 43, PSC 160.062(4)).**

SECTION 19. PSC 160.035(1)(a) to (c), and (2) are amended to read:

* * *

(2) In the absence of alternative providers and in the presence of sufficient demand, or to promote economic development and infrastructure development, a local exchange service provider shall, by the date set by the commission, make available to any customer on request, in a timely manner, at affordable prices, any advanced service capabilities. If the provider is a

~~commercial mobile radio service~~ wireless provider, it shall make available advanced service capabilities that are technologically and economically feasible for the wireless provider, as determined by the ~~commission~~ wireless provider.

SECTION 20. PSC 160.035(3)(c) is created to read:

PSC 160.035(3)(c) If, after an investigation, the commission determines that it is not reasonable to require the local exchange service provider or the wireless provider to offer a given advanced service capability, it may investigate and authorize use of universal service fund support to enable the provider to use other sources to provide an equivalent to the advanced service. "Other sources" includes a small diameter satellite dish system companies.

SECTION 29. PSC 160.06(1)(intro.) is renumbered PSC 160.06(1)(a)(intro.) and amended to read:

PSC 160.06(1)(a)(intro.) Local exchange service providers and wireless providers shall verify an applicant's eligibility for low-income assistance programs by making timely queries of the applicable databases of the Wisconsin department of workforce development, the Wisconsin department of revenue, or other ~~state~~ government agencies. Applicant eligibility shall be verified by finding the applicant to be any of the following:

SECTION 33. PSC 160.061(title), (1), and (4)(a) and (b) are amended to read:

PSC 160.061(title) **Link-Up ~~America~~ program.** (1) All local exchange service providers and wireless providers shall waive all applicable non-recurring charges when initiating or moving essential telecommunications services, as defined in s. PSC 160.03(2), for low-income, ~~single-line~~ customers. All federal, state, county and local taxes applicable to the waived charges shall also be waived. If such a customer has more than one residential line, the waivers shall only be applied to that customer's primary line and not to any secondary or additional lines.

SECTION 36. PSC 160.061(6) is renumbered 160.061(7) and amended to read:

PSC 160.061(7) Local exchange service providers and wireless providers that ~~are eligible telecommunications carriers under s. PSC 160.13~~ meet the requirements under sub. (7) may receive reimbursement from the universal service fund for ~~50%~~ 100% of that portion of the waived nonrecurring charges that are in excess of the amount of the link-up charges which are eligible for reimbursement from federal link-up program funds. ~~Local exchange service providers that are not eligible~~

~~telecommunications carriers may receive reimbursement from the universal service fund for 100% of the waived nonrecurring charges.~~

SECTION 37. PSC 160.061(6) and (8) are created to read:

* * *

(8) A local exchange service provider and a wireless provider shall file its reimbursement request with the fund administrator before April 1 of the year following the year during which the customer would have been assessed the charge. A provider may obtain an extension from commission staff for good cause.

SECTION 38. PSC ss. 160.062(1) is amended to read:

PSC 160.062(1) All local exchange service providers and wireless providers shall offer to all low-income customers a lifeline ~~monthly rate to all qualified low-income customers~~ adjustment to any rate for local service. ~~If a customer has more than one residential line, t~~The lifeline adjustment shall only be offered on one wireline residential line and on one wireless line.

SECTION 41. PSC 160.062(3) is created to read:

PSC 160.062(3) The lifeline adjustment shall be calculated under sub. (5) or (6) based on the local exchange service provider's or wireless provider's lifeline base rate under sub. (4).

SECTION 43. PSC 160.062(4) is created to read:

* * *

(c) If the provider is a ~~commercial mobile radio service~~ wireless provider, the lifeline base rate determined by the commission when it designates the provider as an eligible telecommunications carrier.

SECTION 44. PSC 160.062(5) is renumbered 160.062(10) and amended to read:

PSC 160.062(10) Local exchange service providers and wireless providers that meet the requirements under sub. (11) may receive reimbursement from the universal service fund for 100% of that portion of the ~~standard authorized rate for service which~~ lifeline adjustment that is ~~in excess of~~ more than the amount ~~of the lifeline monthly rate which~~ that is eligible for reimbursement from federal lifeline program funds.

SECTION 48. PSC 160.062(8)(intro.), (9) and (11) are created to read:

* * *

(11) A local exchange service provider and a wireless provider shall file its reimbursement request with the fund administrator before April 1 of the year following the year during which the customer was charged the lifeline monthly rate for which reimbursement is sought. A provider may obtain an extension from commission staff for good cause.

SECTION 51. PSC 160.07(2) is amended to read:

PSC 160.07(2) When a local exchange service provider, a wireless provider, ~~or~~ the fund administrator or its designee, a vendor, or the commission has sound reason to question the self-certification of a customer under sub. (1), additional verification of disability, such as an appropriate ~~doctor's~~ medical professional's written medical diagnosis and description of physical limitations and special needs resulting from that diagnosis, may be required for certification of special telecommunications needs.

SECTION 80. PSC 160.08 is amended to read:

PSC 160.08 **Telecommunications customer assistance program.** The commission may authorize ~~individual telecommunications~~ local exchange service providers and wireless providers to establish telecommunications customer assistance programs that meet authorized goals and objectives for increasing or stabilizing subscription levels for non-optional, essential telephone service within its service territory or to address avoidance of disconnection or limitation of service to low-income households with payment problems. ~~Such~~ The customer assistance programs may allow a provider to not make available certain essential services, as defined in s. PSC 160.03(2), in order to ~~preserve~~ keep at least minimal telephone service to certain low-income households with payment problems. The commission shall determine on a case-by-case basis whether or not a telecommunications customer assistance program may receive universal service fund monies.

SECTION 86. PSC 160.09(3)(b) is created to read:

PSC 160.09(3)(b) If a ~~local exchange service~~ provider is a ~~commercial mobile radio service~~ wireless provider, the commission shall determine, by order and after opportunity for hearing, the method of calculating the credits.

SECTION 111. PSC 160.13(1)(intro.), (a), (b)(intro.) to 2., (c) and (d) are amended to read:

PSC 160.13(1)(intro.) The commission may designate a telecommunications provider, including a ~~commercial mobile radio service~~ wireless provider, as an eligible telecommunications carrier. ~~Such a provider~~ An eligible telecommunications carrier is eligible to receive universal service funding under both applicable federal and state universal service programs for an area, if it meets all of the following requirements:

* * *

(d) Offers, at a minimum, all portions of essential telecommunications service, as defined in s. PSC 160.03, except that PSC 160.03(2)(a)15. and 2(b) shall not apply to wireless providers. ~~For purposes of this subsection "essential services" includes public interest pay telephone service pursuant to s. PSC 160.073, pay telephones specified by s. PSC 165.088, and pay telephone interconnection service subject to federal communications commission orders, commission orders and ch. PSC 169.~~

SECTION 112. PSC 160.13(1)(e) is created to read:

PSC 160.13(1)(e) Ensures that there is at least one public pay telephone in each exchange, incorporated municipality and where public convenience requires it. The public pay telephone shall be available to the public on a 24-hour basis and shall provide service at an affordable rate. If more than one eligible telecommunication carrier provides service in the exchange or municipality, then two or more of the eligible telecommunications carriers may jointly provide the pay telephone. This subsection does not apply to wireless providers.

SECTION 114. PSC 160.15 is renumbered PSC 160.15(1) and amended to read:

PSC 160.15(1) **Identification of charges caused by universal service funding liability.** Telecommunications providers may not establish a surcharge on customer bills for contributing to or recovering any portion of the providers' payment of universal service fund obligations. This subsection does not apply to wireless providers.

SECTION ___. PSC 160.17(3) is amended to read:

PSC 160.17(3) Based on the need for funds under subs. (1) and (2) and s. 196.218(5)(a)6., Stats., and subject to the appropriation amounts in ch. 20, Stats., the commission shall determine the assessment rates to apply to providers. The commission may modify the assessment rates at any time based on changes in

funding needs or provider revenues subject to assessment. Notwithstanding the foregoing, wireless providers shall be assessed only for the commission programs portion of the universal service fund programs.

SECTION 125. PSC 160.19(1) and (2) are amended to read:

* * *

(2) The universal service fund council shall consist of telecommunications providers and of consumers of telecommunications services. The commission shall appoint a diverse membership to the universal service fund council including representatives of the local exchange telecommunications industry; the interexchange telecommunications industry, including facilities-based carriers and resellers; the cable television industry; the wireless industry; other telecommunications providers and consumers of telecommunications services including residential, business, governmental, ~~institutional,~~ and public special interest group users of telecommunications services.

CONCLUSION

For the reasons stated, U.S. Cellular and Sprint Nextel request that the positions and modifications provided in these comments be incorporated into the universal service fund rules.

Dated July 28, 2006.

United States Cellular Corporation and
Sprint Nextel Corporation

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July 28, 2006

VIA PSC ELECTRONIC REGULATORY FILING SYSTEM

Ms. Sandra Paske, Secretary to the Commission
Public Service Commission of Wisconsin
P.O. Box 7854
Madison, WI 53707-7854

Re: Biennial Review of Universal Service Fund Rules } 1-AC-198

Dear Ms. Paske:

Attached for filing, pursuant to the Notice of Hearing issued June 2, 2006 in the above-captioned proceeding, please find "Verizon's Comments on Proposed USF Rule Changes." The comments are submitted on behalf of Verizon North Inc., MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services and MCI Communications Services, Inc. d/b/a Verizon Business Services (collectively, "Verizon").

We appreciate the Commission's consideration of this matter.

Sincerely,

/s/ Deborah Kuhn

Deborah Kuhn
Counsel for Verizon

BEFORE THE

PUBLIC SERVICE COMMISSION OF WISCONSIN

Biennial Review of Universal Service Fund Rules **1-AC-198**

VERIZON'S COMMENTS ON PROPOSED USF RULE CHANGES

Verizon North Inc., MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services and MCI Communications Services, Inc. d/b/a Verizon Business Services (collectively, "Verizon"), hereby submit their comments on the proposed changes to the Commission's Universal Service Fund ("USF") rules pursuant to the Public Service Commission of Wisconsin's ("PSCW" or "Commission") June 2, 2006 "Notice of Hearing" in the above-referenced proceeding ("Notice").

I. INTRODUCTION

Verizon appreciates the opportunity to comment on the proposed changes to the Commission's USF rules. When considering such changes, it is important for the Commission to solicit and consider input from carriers that can draw upon their experiences with USF practices in other states and at the federal level in order to provide the Commission with the most useful feedback possible.

Verizon's comments are divided into two parts. Verizon first addresses the specific proposed rule changes set forth in the Notice. Verizon then provides general comments responsive to the broad questions identified at page 2 of the Notice, for which the Commission has proposed no specific rule changes at this time. It should go without saying that any rules that the Commission might ultimately propose to adopt as a result of

the parties' comments on these general issues must first be the subject of a formal rulemaking proceeding in which interested carriers could offer detailed input on the specific language proposals under consideration.

II. COMMENTS ON SPECIFIC PROPOSED RULE REVISIONS

PSC 160.01(2)(b) This rule allows imposition of requirements upon specific carriers that are more strict than the requirements set forth in the USF rules.

The Commission should eliminate any requirements that are asymmetrical. It would be unlawful to impose on select carriers more stringent requirements than those set forth in the Commission's rules. Such a result would be discriminatory and unfair, and impose a competitive disadvantage on providers singled out for such treatment.

Waivers or relaxation of statutory requirements and/or administrative rules for good cause shown are certainly appropriate in specific instances, but it is improper to codify the authority to impose on a particular provider requirements *more* stringent than those set forth in the applicable statutes and/or Commission rules. Providers implement their compliance programs with the applicable law in mind, not with an eye towards the potential for imposition of more stringent rules on an individualized basis. It is improper to confer upon the Commission authority to discriminate among carriers at its election by imposing heavier burdens on individual providers.

To rectify this flaw, the Commission should revise proposed PSC 160.01(2)(b) as follows: [1]

> (b) Nothing in this chapter shall preclude special and individual consideration being given to exceptional or unusual situations and,

[1] Throughout these comments, ~~**double strike-through**~~ and **double underline** denote Verizon's proposed deletions and insertions, respectively.

upon due investigation of the facts and circumstances involved, the adoption of requirements as to individual providers or ~~services~~ programs that may be lesser~~, greater, other or different~~ than those provided in this chapter.

PSC 160.031(1) and (2) These rules would require changes in the data transmission speed requirements to mandate 9600 bits per second ("bps") on all lines regardless of their length.

Verizon opposes these revisions, which have the effect of expanding the scope of essential telecommunications service in Wisconsin. Such changes should be of concern to all providers, whether or not they are ETCs. Although carriers qualified as ETCs are required to offer "essential telecommunications service" as defined in PSC 160.03 and as expanded by PSC 160.031 (*see* PSC 160.13(1)(d)), the obligations of PSC 160.03 are not limited to ETCs. Rather, PSC 160.03 states that "*[e]ach local exchange service provider* shall make available to all its customers at affordable prices all essential telecommunications services." (Emphasis added). In other words, while these changes will impact ETCs (because they affect the ETC eligibility requirements), they are not limited to the USF context, and affect carriers that do not receive USF reimbursement. This USF rulemaking is not an appropriate place to propose changes to the requirements applicable to all local exchange carriers, regardless of their ETC status.

Moreover, the proposed revisions to PSC 160.031 would have no measurable benefit. Assuming that the intention is to promote access to the Internet,[2] there is no indication that consumers would select modem use over voice grade lines from among

[2] Of course, the Commission has no authority to regulate interstate services. *See* 47 U.S.C. §§ 151, 152; *see also Illinois Bell Telephone Co., Inc. v. Globalcom, Inc., et al.*, 2003 U.S. Dist. LEXIS 7620 (N.D. Ill. May 6, 2003) ("the state commission cannot regulate interstate communications outside its authority, including federal tariffs, that have an ancillary effect on intrastate communications").

the wealth of advanced services offerings available on the market. Indeed, all indications are that consumers vastly prefer other, faster technologies. Mandating a 9600 bps transmission requirement on all lines, regardless of length, would not promote the availability of high-speed Internet access throughout the state. With no customer demand or public interest support for mandated 9600 bps, such a requirement would simply be arbitrary and unlawful. Moreover, mandating this transmission speed on all lines without regard to their length could require providers to increase local service rates without any demonstrable benefit, since there is no indication that customers would be willing to pay the increased rates associated with making this transmission speed available on longer lines. Indeed, to the extent customers could not afford such rate increases, using USF funds to assist them could divert such funds away from other worthy programs.

Verizon expands its discussion of the data transmission speed issue below, in addressing the Commission's request for general input on revising PSC 160.031 and 160.035 to "update" the data transmission capability requirement from the current 9600 bits per second. In sum, there is no demonstrated need for such revisions, they would be unlawful, and Verizon therefore urges the Commission to eliminate them from the revised rules.

PSC 160.06(2) and (4) These revisions would amend the annual Lifeline customer eligibility reconfirmation requirements.

The proposed revisions to these sections of PSC 160.06 do not resolve the primary concerns with the Commission's current annual Lifeline eligibility reconfirmation requirement, which is both onerous and costly. Conservatively, the

existing annual reconfirmation process can consume several weeks of full-time employee effort each year. The database queries required on an annual basis for the reconfirmation of Lifeline customers must be performed individually for every such customer, and the passwords required to make these queries of the relevant state databases are costly and non-transferable, meaning that the effort involved cannot be spread among employees as their respective workloads permit.

Verizon proposes that the Commission instead move to a process that mirrors the FCC's Lifeline verification process, in which providers are required to verify continued eligibility for only a statistically valid sample of customers each year (based on the FCC's requirements for sample size). *See* "Report and Order and Further Notice of Proposed Rulemaking," *In the Matter of Lifeline and Link-Up*, FCC 04-87/WCC Docket No. 03-109 (rel. April 29, 2004) at ¶ 35. This will serve the goals of this Commission's annual Lifeline eligibility reconfirmation process without undue burden and administrative costs for providers (which expenses are not reimbursed from the state USF).

If the Commission declines to consider a process modeled on the FCC's statistical sampling approach, Verizon offers four other alternatives for its consideration:

(1) **State Reconfirmation of Lifeline Eligibility:** Implementation of a process through which providers could submit a list of existing Lifeline customers to the state annually. The state would cross-check the list against its client databases and identify to providers those customers who are no longer eligible. Providers would then follow the process set forth in new rule PSC 160.062(9) before a customer is removed from Lifeline.

(2) **State Implementation of Third Party Reconfirmation of Lifeline Eligibility:** Implementation of a process by which the state would contract directly with an external and independent third party (such as SOLEX) to administer the Lifeline eligibility reconfirmation process for

all providers, the costs of which third party's administrative services would be reimbursed from the USF.

(3) **Written Reconfirmation:** Permitting annual reconfirmation of all Lifeline customers through a notice and response process modeled on that set forth in the proposed new section PSC 160.062(9), which governs the notice process for termination of Lifeline assistance. Under this approach, providers would annually transmit to customers a written notice (separately from the customer's regular monthly bill) requesting demonstration of continued Lifeline eligibility within 60 days. Failure to demonstrate continued eligibility within this time period would result in termination of Lifeline assistance, although customers could reapply thereafter.

(4) **Recovery of Administrative Costs from USF:** Retaining the process set forth in PSC 160.06, but allowing providers to recover their administrative costs from the USF.

In any event, the Commission should take this opportunity to modify the current rule, since it imposes too great an administrative burden on providers without compensation for the associated administrative costs.

PSC 160.062(1), (4) and (5) These rules would require providers to offer Lifeline discounts on *all* bundled products, and modify the process for calculation of the applicable Lifeline monthly rate.

The proposed revisions to PSC 160.062 constitute a significant concern. As the Commission has stated in the past, the purpose of the Lifeline program is "to make available to eligible low-income consumers a discount off of a bundle of essential local telecommunications services." *See* "Final Decision," *Determination Regarding Compliance with Wis. Admin. Code § PSC 160.062(1) in the Provision of Lifeline Benefits to Low-Income Customers*, PSCW Docket 3775-TI-101 (October 24, 2003) at 3

(reversing DWCCA determination that MCI was obligated to offer a Lifeline discount on *all* bundled packages offered in Wisconsin).

The key is that the "bundle" of services intended to be covered by Lifeline must be both *essential* and *local*. As defined in current PSC 160.062(2)(b),[3] the required "bundle" of services consists of "single-party residential service, touch-tone service, any 9-1-1 charges billed on the telephone bill, the federal subscriber line charge and 120 local calls, excluding community calling calls." This definition is in keeping with the purpose of Lifeline programs generally – to provide low-income customers with access to essential local telecommunications services at an affordable rate. Lifeline's purpose is not to provide such customers with discounted rates on non-essential, non-local telecommunications services, as the proposed revisions would require. As explained below, the proposed revisions to PSC 160.062 would not only improperly expand the fundamental purpose of Wisconsin's Lifeline program, they would drain the state USF.

Purpose of Lifeline

Lifeline is one of the universal service programs intended to help keep eligible low-income customers connected to the public telephone network. It has been a long-standing federal and state policy to ensure that every person have access to a basic level of essential services at an affordable rate, so that they can be connected to the public switched network. As defined in Newton's Telecom Dictionary (16th Ed., July 2000), Lifeline is "[a] minimal telephone service designed for the poor and elderly to assure they can be reached by phone and have a 'Lifeline' to the world in case of emergency.

[3] Current PSC 160.062(2) would be repealed as part of the USF rule changes under consideration in this docket, although would be reconstituted in proposed PSC 160.062(4)(a)(1).

Typically, Lifeline Service entitles you to a phone line, a listing in the directory and a minimal number of outgoing local calls, e.g. 10."

Lifeline's purpose is thus to connect low-income consumers to the public switched access network, allowing them access to local services at an affordable price, and enabling them to summon help in case of emergencies. Lifeline's purpose is not to provide discounted access to premium telecommunications services such as unlimited local and/or long distance service, vertical features such as Caller ID, call waiting and voice mail, or other products that are bundled with local phone service (such as DSL, wireless and video services). *See, e.g.*, Transcript of Hearing in PSCW Docket No. 3775-TI-101 (July 9, 2003) ("*Lifeline Tr.*") at 38-39; 48-51. Such "extras" have nothing to do with keeping low-income customers connected to the public switched network. Including such services and products within providers' Lifeline obligations would be an improper expansion of the Commission's authority.[4] Such services may be desirable conveniences, but they certainly cannot be deemed *essential*.

Ch. 196.218(4), Wis. Stats., which confers upon the Commission the authority to promulgate USF rules, provides only for such rules that "define a basic set of essential telecommunications services that shall be available to all customers at affordable prices and that are a necessary component of universal service." "Essential telecommunications services" are defined in PSC 160.03(2) and do not include unlimited local and/or long distance usage, vertical features or other products bundled with local service.

[4] Various federal aid programs include limitations. For example, Section 8 rental assistance sets a maximum rental amount adequate to cover the cost of decent, safe rental housing, explicitly requiring "modest (non-luxury)" status. Similarly, neither the federal food stamp program nor the Women, Infants and Children nutritional program covers luxury or convenience items. *See Lifeline Tr.* at 61-62.

Thus, not only are the proposed revisions to PSC 160.062 contrary to the fundamental purposes of the Lifeline program, they exceed the defined scope of the rulemaking authority conferred upon the Commission by Ch. 196.218(4), Wis. Stats. Moreover, they would have the effect of regulating the prices, terms and conditions on which interstate long distance services are offered, as well as those of unregulated offerings such as Caller ID and voice mail. This Commission has no authority to regulate such services. *See* 47 U.S.C. §§ 151, 152; *see also Globalcom, supra.*

Impact of Proposed Revisions to PSC 160.062 on the Wisconsin USF

In addition to the jurisdictional prohibitions against the proposed rule revisions, adoption of the proposed changes to PSC 160.062 will drain the Wisconsin USF. This is due to the flawed methodology set forth in PSC 160.062 for determination of the "lifeline base rate" and adjustments thereto. The overarching Lifeline rate cap set forth at PSC 160.062(5)(c) – which provides that "in no case shall the lifeline monthly rate[5] be less than $3 or more than $15"[6] – means that providers will be forced to sell their bundled packages to Lifeline customers for no more than $15/month. Given the opportunity, Wisconsin Lifeline customers will elect to subscribe to the most expensive, service- and feature-rich bundled packages available, since they would be available for $15/month.

When coupled with the reimbursement provisions of proposed PSC 160.062(10), the Lifeline monthly rate cap set forth at PSC 160.062(5)(c) will require tapping the Wisconsin USF to reimburse providers for the difference between the $15 monthly cap and the rates normally charged for their high-end bundled offerings. In the case of a

[5] "Lifeline monthly rate" is defined in the proposed revised PSC 160.062(2) as "the lifeline base rate under sub. (4) minus the lifeline adjustment under subs. (5) and (6)."

[6] This applies unless the customer qualifies for federal USF support for eligible residents of tribal lands under 47 C.F.R. 54.400 *et seq.*, in which case PSC 160.062(6) sets forth specific calculation requirements for determining the monthly Lifeline rate.

typical unlimited local/long-distance/feature-rich package, the undiscounted rate for such an offering is approximately $50/month before taxes and fees (which can amount to an additional $15-20). The rates for bundled offerings that include DSL, wireless and video services in addition to basic local exchange service will be even higher.

Thus, regardless of any drafters' intention to limit the Lifeline discount on such bundled packages to $10 off the regular bundled package rate, in practice, revised PSC 160.062 will force providers to sell their high-end bundled package offerings to Lifeline recipients for $15/month, and require the Wisconsin USF to make up the difference between the full bundled package rate and the amount reimbursed by the federal USF. Such a result will drain the state USF in a short period of time, preventing deserving Lifeline customers from obtaining essential services, as well as reducing available funding for other outreach programs supported by the state USF. Any change to the Lifeline reimbursement rules should eliminate the Lifeline monthly rate cap in PSC 160.062(5)(c) and instead implement a maximum monthly Lifeline discount off regular rates.[7]

The proposed rule changes that would require providers to offer all bundled packages at a special Lifeline rate are not only contrary to the policy behind Lifeline service, they would exceed the Commission's limited jurisdiction and drain the state USF. The Commission should not include bundled products within the scope of Lifeline.

[7] Under the terminology of PSC 160.062(5) and (6), this would be the monthly "Lifeline adjustment."

PSC 160.062(9) **This rule would implement a deadline for the termination of Lifeline assistance upon a determination of non-eligibility.**

Although Lifeline assistance can typically be terminated within 30 days of a determination that the customer's Lifeline eligibility has ceased, this is not always the case. Implementation of such changes can sometimes take longer, and adherence to a 30-day termination requirement could remove an eligible customer from Lifeline. For example, sometimes a customer may no longer meet the eligibility requirement under which he initially qualified for the program, but indicates that he now satisfies other eligibility criteria, requiring further investigation by the service provider. Verizon consequently suggests the following revision, which would require Lifeline assistance termination within a *reasonable* time period, rather than a 30-day time frame:

> (9) If a provider has a reasonable basis to believe that a customer no longer meets the lifeline eligibility requirements, the provider shall furnish the customer a written notice of impending termination of lifeline assistance at least 60 days and no more than 90 days before the termination date. The notice shall be sent separately from the customer's regular monthly bill. shall state the termination date and shall provide information on how to demonstrate continued eligibility. The customer shall be given at least 60 days after the date of the notice of impending termination to demonstrate continued eligibility. Lifeline assistance may not be terminated during that time. Lifeline assistance shall be terminated no less than 60 days ~~and no more than 90 days~~ after the date of the notice if the customer does not demonstrate continued eligibility during that time, and within a reasonable time frame after the 60 day period has elapsed.

Otherwise, providers could be liable for technical violations of the rule even though they are acting as expeditiously as circumstances allow.

PSC 160.073(4)(a) This change would require the provision of public interest pay telephones as a condition of ETC certification.

For the reasons explained below in conjunction with PSC 160.13(1)(e), the last sentence of this section should be deleted as follows:

> (a) Shall fulfill a public policy objective in health, safety or public welfare. For pay telephones in certain locations, where the telephone does not otherwise exceed the revenue limitations set forth in sub. ~~(4)~~ (5)(a), designation shall be presumed to fulfill ~~such~~ a public policy objective. ~~These locations are: public schools (K-12), public libraries, town halls, public parks, public pools, public museums, public boat landings, public waysides and locations provided under s. PSC 165.088~~ ~~160.13(1)(e).~~

PSC 160.073(6)(a) This rule would authorize the Commission to regulate the costs and charges of public interest pay telephone providers.

On September 20, 1996, the FCC detariffed and deregulated payphone service.[8] While the Commission still has jurisdiction over the price that local exchange carriers charge payphone providers for access lines, intraLATA toll calls and operator assistance rates, the rates that payphone providers (including providers of public interest pay telephones) charge for their own services are competitive, deregulated and not subject to state commission approval. (*See Payphone Dereg Order* at ¶¶ 2, 142; *Payphone Reconsideration Order* at ¶ 147). Therefore, as currently drafted, the final sentence of this section violates the law and must be deleted:

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[8] "Report and Order," *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 et al.*, FCC 96-388/CC Docket Nos. 96-128/91-35 (rel. September 20, 1996) at ¶¶ 2-4; 142 ("*Payphone Dereg Order*"); see also "Order on Reconsideration," *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 et al.*, FCC 96-439/CC Docket Nos. 91-35/96-128 (rel. November 8, 1996) at ¶ 143 ("*Payphone Reconsideration Order*").

(6)(a) The pay telephone service provider ~~shall~~ may be reimbursed the reasonable costs and charges for equipment, provision of basic service, maintenance and servicing, and administrative operations such as collection and accounting for a public interest pay telephone. The state universal service fund shall only cover the reasonable costs and charges not covered by a federal universal service program and revenues from the pay telephone. ~~The Commission may issue guidelines concerning what costs and charges are reasonable.~~

PSC 160.13(1)(e) This new rule would require ETCs to provide public interest pay telephones in specified locations.

This proposed rule would require ETCs to ensure that there is "at least one public pay telephone in each exchange, incorporated municipality and where the public convenience requires it" in order to be eligible to receive USF funds under applicable federal and state universal service programs for an area. However, § 276 of the Federal Telecommunications Act of 1996 ("TA 96") prohibited local exchange providers from subsidizing their payphone operations and established a competitive market for public telephone service. Moreover, the FCC's *Payphone Reconsideration Order* discussed the removal of barriers to market entry and exit, and stated that "a state may not ... require that a PSP [Payphone Service Provider] place a payphone at a particular location. Such a requirement would neither be competitively neutral, nor ensure fair compensation to the PSP as required by the 1996 Act."[9]

This proposed section is inconsistent with the FCC's payphone orders, and should be deleted in its entirety, as should the related final sentence of PSC 160.073(4)(a).

[9] *Payphone Reconsideration Order* at ¶ 141.

PSC 160.15(1) **This rule prohibits line item surcharges for recovery of USF contributions, and requires local rate adjustments for the recovery of contributions to the USF to be made within four months.**

This provision, retained from the 2000 version of PSC 160.15, is inconsistent with the changes in law associated with 2005 Wisconsin Act 25, which authorized the inclusion of an explicit charge on customer bills to recover portions of providers' contributions to the USF. As a result of 2005 Wisconsin Act 25, Ch. 196.218(3)(f), Wis. Stats. now reads as follows:

> (f) Notwithstanding ss. 196.196 (1) and (5) (d) 2., 196.20 (2m), (5) and (6), 196.213 and 196.215, a telecommunications utility that provides local exchange service may make adjustments to local exchange service rates for the purpose of recovering the portion of its contributions to the universal service fund that is determined by the commission under par. (a) 4. A telecommunications utility that adjusts local exchange service rates for the purpose of recovering all or any amount of that portion shall identify on customer bills a single amount that is the total amount of the adjustment. The public service commission shall provide telecommunications utilities the information necessary to identify such amounts on customer bills.

Language from Ch. 196.218(3)(f) is echoed in proposed PSC 160.15(2)(a). In light of the 2005 change in Wisconsin law, PSC 160.15(1) should be deleted in its entirety as inconsistent with superseding authority, and PSC 160.15(2)(a) and (b) should be renumbered PSC 160.15(1) and (2).

In addition, the four months provided in proposed PSC 160.15(1)(b) is too short a time period within which to implement adjustments to local exchange service rates for purposes of recovering contributions to the USF. It normally requires a longer time frame to calculate and implement a new rate after receiving a new assessment amount. For example, ATCP 123.04(1) requires notice of not less than 25 days and not more than

90 days in order to initiate any price increase or subscription change. Verizon believes a time period of 180 days is more appropriate, consistent with its comments on proposed PSC 160.18(10) below. Although the proposed rule would permit requests for the extension of the deadline for good cause, Verizon believes that extending the time frame to 180 days will significantly reduce the number of such requests providers would have to file, and the Commission would have to rule upon.

Verizon therefore suggests that the Commission revise this proposed rule as follows:

> ~~(1) Telecommunications providers may not establish a surcharge on customer bills for contributing to or recovering any portion of the providers' payment of universal service fund obligations.~~
> ~~(2)(a)~~ (1) Telecommunications providers that adjust local exchange service rates for the purpose of recovering any or all of the contributions to the universal service fund determined by the commission under s. 196.218(3)(a)4., Stats., shall identify on customer bills a single amount that is the total amount of the adjustment.
> ~~(b)~~ (2) An adjustment to local exchange service rates that occurs more than ~~4 months~~ 180 days after the date on which a commission ordered new assessment rate goes into effect will not be considered to be for the purpose of recovering contributions to the universal service fund unless the telecommunications provider files a request with the commission, before the deadline has passed, for an extension of the deadline based on good cause, and the request is granted.

PSC 160.18(10) This rule would require adjustments of local exchange rates due to over-collection or under-collection of amounts charged for the recovery of USF assessments to be made within 60 days.

While Verizon does not oppose the concept of placing some time limit on the calculation of necessary adjustments following changes in USF assessment levels, the 60

day period mandated in this proposed rule is insufficient. As noted above in Verizon's discussion of proposed PSC 160.15(1), it normally requires significantly longer to implement a new rate, particularly given that ATCP 123.04(1) requires notice of not less than 25 days and not more than 90 days in order to initiate any price increase or subscription change.

The new rule also leaves unclear whether "calculated" means literally "calculated," versus "filed" or "effective." Similarly, "prior year" is undefined, but could mean "prior assessment period," "prior 12 months" or "prior calendar year." If retained in the final rule, the Commission should define these terms in the rule to avoid confusion. For example, assessment periods have typically run from October to October, but last year, this "annual" period shifted to December to December. As an alternative to crafting such definitions, the Commission could simply adopt Verizon's rule revisions, which would clarify the rule without use of these terms (or need to define them).

In any event, in order to complete the necessary analysis and calculations and provide proper customer notice after a new assessment level is established, a period of 180 days is more appropriate for any required adjustments to local exchange rates. Verizon therefore proposes to revise this section as follows:

> (10) Adjustments of local exchange rates to correct over-collection or under-collection of amounts charged for the purpose of recovering contributions to the universal service fund are limited to adjustments for the ~~prior year~~ assessment period or for the period beginning with the effective date of the commission's last assessment determination, and shall be ~~calculated~~ filed within ~~60~~ 180 days after the date on which a new assessment rate amount goes into effect.

III. COMMENTS ON GENERAL TOPICS IDENTIFIED IN THE NOTICE

In addition to presenting specific rule changes, the Notice solicited comment on whether rule changes concerning ETC status are necessary or desirable; whether USF assessment of wireless providers should resume; and whether additional changes to PSC 160.031 and 160.035 are appropriate. (Notice at 2).

As noted above, while Verizon offers feedback on these subjects, due process requires that any rules that the Commission might consider adopting in response to the parties' comments on these topics be the subject of a formal rulemaking in which interested carriers would have the opportunity to provide detailed input on the specific language proposals under consideration.

ETC Changes

Verizon opposes Commission consideration of any future rule changes that would increase the regulatory burdens placed on ETCs, such as adoption of the FCC's ETC certification requirements in Wisconsin.

Like all ILECs in Wisconsin, Verizon has been designated as an ETC. However, Verizon is not now receiving – and does not expect to receive in the foreseeable future – any federal or state high-cost support for its Wisconsin operations. Providers in this situation should not be required to comply with the increased reporting requirements and other regulatory burdens that would be imposed by the adoption of the FCC's ETC certification rules regulating those providers that do receive such funds. For example, the FCC's ETC certification rules require:

1) Providing a five-year plan that demonstrates how high-cost universal service support will be used to improve coverage, service quality, or capacity in every wire center for which a provider seeks designation and expects to receive universal service support;

2) Demonstrating the provider's ability to remain functional in emergency situations;

3) Demonstrating that the provider will satisfy consumer protection and service quality standards;

4) Offering local usage plans comparable to those offered by the incumbent local exchange carrier in areas for which the provider seeks designation; and

5) Acknowledging that the provider may be required to provide equal access if all other ETCs in the designated service area relinquish their designation pursuant to 47 USC 214(e)(4).[10]

Burdening ETCs that do not receive high cost support with these requirements is particularly inappropriate. For example, as a price-regulated local exchange carrier, Verizon is already subject to extensive consumer service quality rules and numerous operational and financial reporting requirements, including annual reports, responses to annual Commission surveys relating to its service offerings and infrastructure investment, and regular price plan filings. Those rules and filing requirements already address the array of issues covered by the federal ETC requirements.

Verizon is thus in a very different situation from a wireless carrier or ETC receiving federal universal service support but not otherwise submitting such data to the Commission because it is not subject to these sorts of mandatory reporting requirements. Verizon is also differently situated from small Wisconsin ETCs that receive federal support but which are statutorily exempted from Commission regulation or other legal requirements in many areas. To the extent the Commission finds that increasing ETC certification requirements is appropriate for certain classes of Wisconsin ETCs, it should do so in a manner carefully tailored to satisfy its information-gathering needs without

[10] *See* Report and Order, *In the Matter of Federal-State Joint Board on Universal Service*; CC Docket No. 96-45; FCC 05-46 (rel. March 17, 2005) ("*ETC Order*") at 2.

imposing unnecessary costs on other providers for whom there is no need to require additional, redundant submissions of data.

The Commission is already well-informed as to how regulated ILECs use their resources to offer universal service. Increasing their reporting burdens by mirroring the federal ETC requirements would increase these ILECs' costs and regulatory burden without any regulatory benefit, particularly for those who are not receiving federal or state high cost support. The Commission should refrain from imposing new, more burdensome ETC requirements upon Wisconsin ILEC ETCs.

Assessment of Wireless Providers

Verizon Wireless will be submitting its own comments on this topic, and Verizon supports Verizon Wireless' position that wireless providers should neither be required to contribute to the state USF, nor entitled to draw funds from it.

The historic basis for the state USF has been to assure the availability of essential wireline telecommunications services. Wireless providers have been exempt from assessments for contributions to the state USF since November 2000,[11] pending Commission promulgation of rules pursuant to Ch. 196.202, Wis. Stats. that would set forth the terms under which wireless providers would be deemed eligible for both state and federal USF funds. While the Commission is considering promulgating such rules in this docket, Verizon does not believe that it would serve the public interest to expand wireless providers' participation in the state USF, either as contributors to or recipients of USF subsidies.

Given the historical goals of the state USF, the Commission has traditionally (and correctly) focused on assessing only wireline providers, as well as on limiting USF

[11] *See* Orders dated November 8, 2000 and December 21, 2001, PSCW Docket No. 05-GF-104.

contributions to those levels strictly necessary to ensure the availability of universal service. This is in recognition of the fact that USF assessments make services more expensive for consumers. Requiring wireless providers to contribute to the USF will add to the already considerable array of regulatory assessments applicable to their services, ultimately increasing the bills of their end-user customers. Absent a significant, demonstrable need to expand the state USF and its contribution base, assessing wireless providers would be wholly inappropriate.

Wireless providers' receipt of state USF funds is a closely related issue. Any amendment of PSC 160.13 to enable wireless providers to be designated as ETCs for state USF purposes would increase the financial demands on the state USF, which operates under a budget cap. If wireless providers are designated ETCs and draw from the fund, existing recipients of USF funds are likely to demand an expansion of the fund to preserve their current subsidy levels. The result will be increased assessments for all customers, wireless and wireline, even though there is no evidence that wireless carriers need state USF contributions in addition to the federal USF funding they receive. Moreover, such changes could result in competitive disadvantage to wireless providers who are not ETCs, since they would not receive the same subsidies that their competitors who are ETCs obtain.

Verizon urges the Commission to refrain from implementing rules that would require wireless providers to contribute to the state USF, or to draw funds from it. There is no demonstrable need for such changes, and they are contrary to good public policy and the intent of the fund.

Changes to Requirements for Data Transmission Capability

Verizon is greatly concerned about the Commission's apparent consideration of the imposition of new data transmission capability requirements. As explained below, such rule revisions would be contrary to public policy, substantially increase the costs and regulation of providers, and exceed the Commission's jurisdictional authority, particularly if the purpose of such revisions is to promote broadband availability and Internet use (which is interstate in nature). Unnecessary regulation hinders the expansion of services and competition by increasing providers' costs to operate and by stifling the market forces that should be the basis to determine customers' needs. If the Commission truly wants to promote broadband penetration in areas perceived to be "underserved," it should do so through incentives. Regulatory micro-management of the kind contemplated by the Commission should be studiously avoided.

As a general matter, the Commission is not empowered to make business decisions for telecommunications providers.[12] Although the Commission does have limited statutory authority to develop rules to implement universal service programs, it is not authorized to decide for providers whether they will or will not offer a particular service – these are business decisions left to the providers themselves. Implementation of an all-lines data transmission speed requirement greater than that actually necessary to satisfy providers' universal service obligations would constitute Commission imposition of a legally-unsustainable mandate as to how and where providers must offer service.

While promoting the availability of broadband service is a well-intentioned goal (and likely the Commission's real purpose in considering an increased data transmission requirement), achieving this goal by means of a heavy regulatory hand is directly

[12] *See, e.g., Union Carbide Corp., et al. v. Mich. Pub. Serv. Comm'n*, 428 N.W.2d 322 (1988).

contrary to recent FCC policy, which "encourages the ubiquitous availability of broadband to all Americans by, among other things, removing outdated regulations" and moving towards "a lighter regulatory touch." *See* "Report and Order and Notice of Proposed Rulemaking," *In the Matters of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities et al.*, FCC 05-150 (rel. September 23, 2005) at ¶¶ 1, 3 ("*Broadband Order*").

In the *Broadband Order*, the FCC held that facilities-based wireline broadband providers may elect to offer the transmission component of wireline broadband Internet access services to Internet Service Providers ("ISPs") and others on a non-common carrier basis, relieving them of tariffing such offerings. (*Broadband Order* at ¶ 86). The FCC also found that providers electing to offer such services under private carriage agreements are no longer required to contribute to the federal USF. (*Broadband Order* at ¶ 113). In light of these federal developments, any Wisconsin rule change that would seek to *require* the provision of such services under state USF rulemaking authority would be contrary to federal policy relating to the regulation of such services specific to the universal service context.

The contemplated rule revisions also ignore the fact that the data speeds a customer may achieve are dependent on the type of service to which the customer subscribes and the equipment required for that service, both in the service provider's network and at the customer premises. If the intent of such revisions is to enable customers subscribing to voice grade service to achieve a data rate of 56 kbps or higher with a standard V.90 modem,[13] it is not physically achievable, at least without cost-

[13] ITU-T Recommendation V.90 standard was approved in September 1998 by the Telecommunication Standardization Sector of the International Telecommunication Union. The V.90 standard is entitled "A

prohibitive investment that will ultimately become stranded. As the FCC stated in rejecting a proposal to increase its existing definition of voice grade access to the public switched telephone network from a minimum bandwidth of 300 to 3000 Hz to 300 to 3500 Hz, "[w]e are persuaded ... that carriers should not be required to invest additional funds in mature narrowband technologies, particularly when such access would not be [sic] necessarily result in improved dial-up connection speeds."[14] Verizon discusses this topic in more detail below. However, Internet access through a dial-up modem does not require speeds of 56 kbps or higher – the current voice grade network already allows for this, and rule changes are therefore unnecessary for this objective.

Rule changes of this sort would also exceed the Commission's jurisdiction over "basic local exchange service," defined in Ch. 196.01(1g) as "the provision to residential customers of an access facility, whether by wire, cable, fiber optics or radio, and essential usage within a local calling area *for the transmission of high-quality 2-way interactive switched voice or data communications.*" (Emphasis added). The advanced speeds contemplated by the Commission's inquiry would exceed the statutory scope of "basic local exchange service."

In interpreting a virtually identical definition of "basic local exchange service,"[15] the Michigan Court of Appeals rejected the Michigan Commission's view that it could interpret the term as "an evolving one," in a manner that would "encourage the development of a modern, high-quality telecommunications infrastructure and to ensure

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digital modem and analogue modem pair for use on the PSTN at data signaling rates of up to 56000 bits/s downstream and up to 33600 bits/s upstream."

[14] *See* "Order and Order on Reconsideration," *In the Matter of Federal-State Joint Board on Universal Service*, FCC 03-170, CC Docket No. 96-45 (rel. July 14, 2003) at ¶ 26.

[15] The Michigan statute (M.C.L. § 484.2102(b)) defined "basic local exchange service" as "the provision of an access line and usage within a local calling area for the transmission of high-quality 2-way interactive switched voice or data communication."

that essential telecommunications services remain available and affordable." *See In re Procedure and Format for Filing Tariffs under the Michigan Telecommunications Act*, 534 N.W.2d 194, 199 (Mich. App. 1995). The Michigan court thus found that the "definition of 'basic local exchange service' adopted by the PSC [was] far too expansive," in part because it contemplated "an expansive or highly sophisticated bundle of services." (*Id.* at 199; 200). As a result, the court held that that "basic local exchange service must be *basic*." (*Id.* at 200; Italics in original). Increasing the current data transmission speed requirement above the present 9600 bps would similarly exceed this Commission's statutory jurisdiction over basic local exchange service.

Requiring data transmission speeds any higher than 9600 bps would also exceed the Commission's jurisdictional authority under the Wisconsin USF statute. While Ch. 196.218, Wis. Stats. directs the Commission to implement rules defining a "basic set of essential telecommunications services" and "advanced service capabilities" that should be available to all customers at affordable prices in all areas of the state, this obligation does not permit the Commission to mandate that all local exchange providers offer data transmission capability at speeds in excess of those "essential" or "necessary" to allow data transmission over voice-grade lines. The current requirement of 9600 bps is sufficient for the transmission of data, and thus satisfies the "necessary component" standard of Ch. 196.218(4), Wis. Stats. This is all the Commission may require.

The Commission's authority is further constrained by the principles enumerated at Ch. 196.218(4), Wis. Stats., which require that the essential telecommunications services and advanced service capabilities defined by the Commission be based on "market, social, economic development and infrastructure development principles rather than on

specific technologies or providers." As explained below, there is no reasoned basis under any of these standards to increase the data speed transmission requirements in Wisconsin.

Market Principles

From a market perspective, there is little demand for data transmission speeds that would accommodate modem use over voice grade lines. As Staff's November 2, 2005 Memorandum to the Commission on "Universal Service, Data Transmission Speeds, and Broadband Availability" ("Staff Memo") stated, "[s]uch speeds are largely irrelevant today."[16] Staff further noted that "[i]ncreasing the data transmission speeds of voice grade lines perpetuates the use of modems, even though "[m]odems operating on voice grade lines are an outdated technology." (Staff Memo at 7). For such reasons, Staff observed that "[a]llowing companies to embrace other technologies is preferable, because no single technology is likely to meet all needs." (*Id.* at 8). In other words, the market does not demand, nor do consumers respond to, the availability of data transmission at such speeds over voice grade lines. As the Staff Memo advised, "[c]ustomers are embracing services such as Digital Subscriber Loop (DSL) and cable modems that are running orders-of-magnitude faster." (Staff Memo at 7). Requiring providers of local exchange service to make the infrastructure investment to increase data transmission speeds on all lines would be colossally wasteful, since it would result in a high degree of stranded investment.

On the flip side, as discussed below, the growth in the availability of other forms of advanced services offerings demonstrates that the market is already responding to the demand for faster data transmission services. To the extent such services are unavailable

[16] Staff Memo at 7. Staff's statement referred to speeds of "something like 28 kbps or 40 kbps – speeds obtainable by modems." (*Id.*). As Staff further noted, "[d]ial-up modems cannot exceed speeds of about 50 kbps in either direction. (*Id.* at 9).

in portions of the state, lack of profitability is to blame. Mandating that carriers offer data transmission speeds of 28 kbps or more on their voice grade lines will do nothing to change this, but it will chill facilities-based competition. No competitive provider would enter a local market and invest in facilities if it were required to offer data transmission at such levels when most customers would be unwilling to pay for it.

The market works best when providers have the opportunity to offer their own unique mix of services and can differentiate themselves from other providers. Any rule change of the sort being considered would run counter to this goal.

Social Principles

There is no measurable social benefit to requiring providers of local exchange service to provide data transmission speeds of 28 kbps or higher over voice grade lines when a plethora of other, much faster technologies exist today. Appendix A to the Staff Memo details a number of them: Integrated Services Digital Network (ISDN), Digital Subscriber Line (DSL), cable modems, two-way satellite services, T-1s/Symmetric DSL/DS-1s, wireless products and broadband over power lines (BPL). Simply put, increasing data transmission capacity to accommodate the comparatively glacial pace of dial-up modem use over voice-grade lines is not going to provide Wisconsin consumers with the high-speed Internet access that Governor Doyle seeks to promote with his "Grow Wisconsin Plan."

If the Commission's stated social goal is wider access to "high speed, interactive telecommunications services" throughout Wisconsin, the contemplated changes to PSC 160.031 and 160.035 will not achieve it. To the contrary, they would consume inordinate resources that would then be unavailable for efforts that would truly promote the

availability of faster, more innovative advanced services products. Commission implementation of increased data transmission speed requirements would have a social cost, not a social benefit.

Economic Development Principles

Artificial manipulation of the market through compulsory increases in data transmission speeds over voice-grade lines will do nothing to stimulate economic development in the state of Wisconsin. As noted above, such an approach will result in significant stranded investment, securing ubiquitous availability of an unneeded, unwanted and unused service at a huge cost to carriers. It would not provide Wisconsin businesses with sufficient transmission capacity to use streaming video or to transmit sizeable video/audio files quickly. It would merely give them the option of purchasing a service that plainly could not meet such needs.

The estimated cost of upgrading all of Verizon's lines to accommodate a data transmission speed of 56 kbps is cost-prohibitive – a conservative estimate of the cost of implementing 56 kbps availability throughout Verizon's territory is greater than *200 million dollars*. This massive expense would not only fail to spur economic development, it would retard it. Moreover, compulsory expenditures of this magnitude would also constitute an unconstitutional taking of providers' property, without any social benefit.

Finally, requiring increased data transmission speeds on voice-grade lines would affect only telecommunications companies, rather than all potential providers of advanced services, skewing the economics of the marketplace by imposing investment requirements on a single category of market participant.

Infrastructure Development Principles

The Commission has acknowledged that many providers are already increasing broadband availability throughout the state, and that "the telecommunications network is no longer a significant limiting factor for the improvement of distance learning, interconnection of libraries, access to health care and services to persons with disabilities."[17] It has also noted that in the areas of the state where broadband for these services is still limited, "the most significant limiting factors are the ability of customers to pay for services, the ability of advanced service providers to recover costs for providing service and the development of equipment that will allow individuals in the home to use the telecommunications infrastructure." (Legislative Reports at iii). Increasing data transmission capability on voice grade lines for modem use will not address these concerns.

The Commission has reported to the Wisconsin legislature that the "information filed by incumbent and competitive providers indicates that these providers continue to invest significantly in telecommunications infrastructure in Wisconsin." (Legislative Reports at vii). To the extent providers can profitably offer affordable advanced services in the state, they are already doing so. To the extent this is not possible, the Commission cannot require providers to do so at a loss. Moreover, if providers are forced to increase their rates to recover the costs of compliance with such a rule change, customers would inevitably drop off the network altogether (or move to a competitor not subject to the rule, such as a wireless provider or cable company), losing not only their ability to use

[17] *See* the Commission's Spring 2006 Reports to the Legislature on the Status of Investment in Advanced Telecommunications Infrastructure in Wisconsin and the Universal Service Fund (posted on the PSCW website) ("Legislative Reports") at iii.

dial-up service, but even basic voice communications. Mandatory investment in unwanted and unnecessary infrastructure upgrades benefits no one.

The Wisconsin legislature only very recently enacted 2005 Wisconsin Act 279, which offers tax incentives to stimulate broadband deployment in underserved areas of the state. Given that this new law only became effective in mid-June of 2006, the Commission should give it a chance to work. For example, the Michigan Commission rejected administrative rule changes that would have required providers to offer a data transmission speed of 56 kbps in light of broadband legislation passed in that state, which it found would "improve the data speed of the network without the need for a mandate."[18] The Michigan Commission also concluded that the "concerns raised by the comments of the providers" warranted deletion of the mandatory 56 kbps data transmission speed standard from the final rule. (*Id.*).

If this Commission wishes to promote the wider availability of broadband service throughout areas of the state where it is not already prevalent, it should allow the legislature's efforts time to bear results, and should work cooperatively with providers to develop innovative ways to promote such investment in the areas of the state that may require it.

[18] *See* "Opinion and Order," *In the matter, on the Commission's own motion, to promulgate rules governing the quality of telecommunications services*," MPSC Case No. U-13013 (August 20, 2002) at 20.

IV. CONCLUSION

For the reasons outlined herein, Verizon North Inc., MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services and MCI Communications Services, Inc. d/b/a Verizon Business Services urge the Commission to modify the proposed revisions to its USF rules as noted herein, and to refrain from further consideration of implementing rules relating to the broader topics set forth in the Notice.

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