contributors utilize explicit and predictable mechanisms in a competitively-neutral, nondiscriminatory way. The Act does state, however, that the universal service provisions are not to affect "the collection, distribution, or administration" of the Lifeline program.[57] Thus, LDDS WorldCom supports retaining the fundamental structures of both programs, while at the same time extending the funding obligation to all telecommunications providers in the form of explicit, provider-neutral surcharges. As in the case of low-income universal service support, these surcharges should be based on a provider's gross interstate revenues, net of payments made to other carriers.

F. A Truly Neutral Third Party Should Be Selected To Administer The New Universal Service Plan

The Notice seeks comment on "the best approach to administer the universal service mechanisms fairly, consistently, and efficiently."[58] Suggestions include utilizing a non-governmental fund administrator, or the state public utility commissions.[59]

LDDS WorldCom strongly supports the use of a neutral third party administrator to determine the amount of retail surcharges, collect receipts, distribute subsidy payments, and enforce eligibility criteria. The National Exchange Carrier Association ("NECA") currently administers a number of federal payment programs, including USF, Lifeline, Link Up, and the Telecommunications Relay Service ("TRS") Fund. However, as the name itself implies, NECA is not a truly neutral third-party administrator, but rather an organization with close ties to the

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[57] 1996 Act, Section 254(j).

[58] Notice at para. 127.

[59] Notice at paras. 128. 130.

incumbent LEC community. While LDDS WorldCom does not wish here to cast aspersions on the impartiality of NECA's present-day role, it is obvious that the newly-competitive environment engendered by the 1996 Act will require appointing a fund administrator which is completely even-handed, in both appearance and reality. The Commission should take care to select an entity with absolutely no pecuniary or institutional interest in the universal service monies that it will collect and disburse, nor any special ties to one group/type of contributors or recipients.

III. ALL EXISTING UNIVERSAL SERVICE SUBSIDIES AND OTHER NON-COST-BASED "EXPENSES" MUST BE REMOVED FROM INTERSTATE ACCESS CHARGES AND REPLACED WITH A SET OF EXPLICIT, NONDISCRIMINATORY, AND EQUITABLE FUNDING MECHANISMS

In the Notice, the Commission observes the obvious: the current interstate access charge system, which is rife with universal service subsidies and above-cost expenses, is not compatible with the new pro-competitive environment that is dictated by the 1996 Act. The Commission acknowledges, for example, that "the current CCL charge appears to be inconsistent with the directives of the 1996 Act."[60] These directives include a provision that universal service support flows must be "explicit" and be recovered on a "nondiscriminatory basis" from "all" telecommunications carriers providing interstate telecommunications service.[61] The Notice asks whether the CCL charge should be eliminated completely, or reduced, to "permit LECs to recover these costs from end users."[62] For the same reasons, the Commission also

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[60] Notice at para. 113.

[61] 1996 Act, Section 254(d), (e).

[62] Notice at para. 114.

proposes to "eliminate the recovery of LTS revenues through incumbent LECs' interstate CCL charges," and restructure the program in an explicit and nondiscriminatory manner.[63]

LDDS WorldCom welcomes the Commission's solicitation of views on the all-important issue of removing subsidies from interstate access charges. LDDS WorldCom has long advocated that the portions of the interstate access charge scheme that cannot be attributed to the actual cost of providing access to the LECs' local networks -- including universal service funding -- be eliminated completely from the access charge regime. Moreover, LDDS WorldCom has supported further reform that would require that universal service funds be recovered from all service providers on an equitable, competitively-neutral, and nondiscriminatory basis.[64] The Commission's tentative position that CCL charges and LTS charges must be eliminated or dramatically refashioned -- while not sufficient to completely reform the entire access charge regime -- certainly takes a major step toward meeting the specific universal service requirements of the 1996 Act.

The basic problem facing the Commission is that the current universal service support mechanisms are flatly inconsistent with the 1996 Act because they are embedded in a subsidy-ridden access charge scheme. Among other flaws, those access charges are not based on cost (as required by Sections 251(c)(2) and 251(c)(3) of the Act), are inequitable and discriminatory (in violation of Section 254(b)(4)), and are often not explicit (in violation of Section 254(e)). In addition, since the Act requires that telecommunications service providers

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[63] Notice at para. 115.

[64] See, e.g., LDDS Comments, CC Docket No. 80-286, filed October 28, 1994, at 12-13.

pay only cost-based rates to interconnect with the LECs' networks (leaving other carriers without Section 251(c)(3) interconnection agreements to pay above-cost rates to accomplish the very same function), the current access charge regime would constitute an unjust and unreasonable practice, and create an unlawfully discriminatory classification for "like service" in violation of Sections 201(b) and 202(a) of the Communications Act of 1934, as amended.[65]

It is obvious, then, that universal service support should no longer be linked to the incumbent LECs' access revenue streams. All subsidies, including universal service support, must be eliminated immediately from the interstate access charge system. In particular, implicit subsidies, such as intrastate common line costs contained in the CCL charge, are directly contrary to the requirement of "explicit" charges in Section 254 of the Act.[66] Moreover, Section 254(k), which is contained in the universal service portion of the statute, also prohibits carriers from using services not subject to competition to subsidize services that are subject to competition.[67] Because LEC access charges are plainly not competitive, and many of the implicit subsidies in access charges can be used by the LECs to subsidize their competitive ventures (including long distance service), the implicit subsidies in access charges must be removed at once. The Commission should order immediate cost studies which identify and quantify implicit subsidies now in the LECs' interstate access charge regime. Those subsidies then should be removed from access charges and placed in a separate funding pool. In addition, the explicit subsidies now included in the Universal Service Fund, DEM weighting, the Long

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[65] 47 U.S.C. §§ 201(b), 202(a).

[66] 1996 Act, Section 254(e). See also Notice at para. 112.

[67] 1996 Act, Section 254(k).

Term Support portion of the CCL charge, and Lifeline and Link Up programs, also must be terminated and replaced with a funding mechanism that is competitively neutral both in collection and distribution.

In the interim, until final action has been taken in this proceeding by May 1997, the key is for the Commission and the Joint Board to act now to completely eliminate the blatantly discriminatory linkage between interstate access charge rates (now paid by a select few telecommunications service providers) and universal service obligations (which must be paid by all telecommunications service providers).[68] This can be accomplished most quickly and easily by reducing all interstate access charges to cost immediately. Other alternatives are available, however, and LDDS WorldCom suggests below just one possibility that, in a few interlocking steps, would sever the inequitable linkage between interstate access and universal service:

First, the LECs should be required to quantify, either directly or via a reasonable proxy: (a) the Total Service Long Run Incremental Cost (TSLRIC) of providing access (i.e., interconnection) to the LECs' local networks, including a reasonable profit to the LECs; (b) all federal universal service obligations; and (c) the remaining amounts in access charges, which are comprised of non-cost-based LEC "expenses."

Second, all non-cost-based LEC "expenses" must be removed completely from the interstate access charge system. The LECs would be free to either absorb these "expenses"

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[68] In his prepared oral presentation to the Federal-State Joint Board at its April 12 open meeting, Ron Binz of the Competitive Policy Institute also stressed this same need for both interim and permanent universal service plans. See Oral Presentation of Ron Binz, Competitive Policy Institute, before an Open Meeting of the Federal-State Joint Board on Universal Service, Federal Communications Commission, Washington, D.C., April 12, 1996.

internally, or else pass them along to consumers in their retail rates.

Third, all federal universal service obligations should be assigned to a separate funding pool. This pool would remain fully funded in the form of explicit retail surcharges to be paid equally by all telecommunications service providers.

Fourth, LEC interconnection agreements negotiated pursuant to Section 251 of the Act must specify only actual interconnection cost (based on TSLRIC), including a reasonable LEC profit. On a going-forward basis, all interconnectors must also pay the interim retail surcharge into the new funding pool to cover their interim universal service obligations.

Fifth, the Regional Bell Operating Companies cannot enter the in-region long distance services market until (a) interstate access charges have been set at cost, and (b) the final universal service funding mechanism has been adopted and implemented by the Joint Board.

This illustrative interim system, one of many possibilities, is consistent with the dictates of the Act, and would not unduly harm consumers or the incumbent LECs. In fact, consumers' overall rates for telecommunications services actually should decline under this approach. First, rural and high-cost residents and low-income consumers would be completely unaffected because they would continue to receive the present level of universal service benefits. Current universal service obligations would remain fully funded through the interim period, with the pool of contributors broadened in keeping with the dictates of the Act. Second, once competition begins to take hold eventually in the local exchange market, rates for local service should begin to decline. Third, as universal service and access charge rates are reduced, long distance companies such as LDDS WorldCom will be able to flow through those cost reductions to their customers. Fourth, the LECs will become more efficient and competitive providers of access by eliminating all non-cost-based "expenses" in their present access charge rates. Only if the LECs tried to recover those "expenses" through increased retail charges, and state regulators permitted such recovery, would the consumer actually experience any increase in telephone rates. Thus, universal service would be protected, local, access, and long distance rates should decline, and the LECs would be fully compensated with a reasonable profit.

Urgent action is needed now. In lieu of the Commission implementing a Joint Board decision by May 1997, LDDS WorldCom strongly urges the immediate adoption of an interim universal service reform plan that comports with all the requirements of the 1996 Act.

IV. CONCLUSION

The Commission and Joint Board should act in accordance with the recommendations proposed above.

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April 12, 1996

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