

and other "players" which provide services ubiquitously, and a higher interconnection rate for IXCs and other "payers."<sup>95</sup> As in the case of Bell Atlantic's proposed "play or pay" scheme, the Commission has authority under Section 253(d) to expressly prohibit New York and other states from adopting any implicit, discriminatory funding mechanism that, like the "pay or play" scheme, would violate the 1996 Act.<sup>96</sup> While state flexibility in dealing with intrastate universal service programs is fine, that flexibility cannot be exercised in discriminatory ways.

**F. Parties Favor Selection Of A Truly Neutral Third Party To Administer The New Universal Service Plan**

Almost all parties agree that a neutral third party administrator should be selected to administer the new universal service system. In addition, commenters stress that it is crucial that the administrator not be associated or affiliated with any industry segment or provider.<sup>97</sup> One party suggests that the administrator should be subject to complete FCC oversight, as well as independent audits.<sup>98</sup> LDDS WorldCom agrees with all these views.

Some parties stress that the new administrator should be a non-governmental entity,<sup>99</sup> while other parties favor giving the states the exclusive administrative role.<sup>100</sup> LDDS WorldCom would prefer that the FCC select a non-governmental entity using a

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<sup>95</sup> NYNEX Comments at 15-16.

<sup>96</sup> 1996 Act, Section 253(d).

<sup>97</sup> AT&T Comments at 22; LCI Comments at 6; Ameritech Comments at 24.

<sup>98</sup> Illinois CC Comments at 10-11.

<sup>99</sup> Sprint Comments at 18; TRA Comments at 14; Ameritech Comments at 24; ICA Comments at 5; Winstar Comments at 11; ITAA/EMA Comments at 20-21.

<sup>100</sup> Bell Atlantic Comments at 10; California PUC Comments at 21; New York DPS Comment at 10-11; Time Warner Comments at 23.

competitive bidding process.<sup>101</sup> While some parties claim that NECA should be considered for the new administrator position,<sup>102</sup> however, LDDS WorldCom strongly agrees with those parties who believe that NECA is unacceptable because it has traditionally represented only the interests of local exchange carriers.<sup>103</sup> Interestingly, NECA filed comments in this proceeding nominating itself for the job.<sup>104</sup> Those same NECA comments recommend various policy proposals, including maintaining existing universal service programs and using a revenue-based payment methodology. The fact that NECA saw fit to participate actively in this policymaking proceeding is reason enough to call into serious question its neutrality and independence.

### **III. IN THE INTERIM, COMMENTERS GENERALLY SUPPORT REMOVING ALL EXISTING UNIVERSAL SERVICE SUBSIDIES AND OTHER NON-COST-BASED "EXPENSES" FROM INTERSTATE ACCESS CHARGES**

Most commenters agree that the current universal service scheme, which is largely embedded in the LEC access charge regime, is contrary to the dictates of the 1996 Act and must be replaced. The key is to divorce or "de-link" all universal service subsidies from existing access charges that are based on the LECs' existing revenue requirements.<sup>105</sup> In place of the

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<sup>101</sup> Frontier Comments at 10; TRA Comments at 14-15; Wisconsin PSC Comments at 19; ALTS Comments at 18-19; Teleport Comments at 17.

<sup>102</sup> SBC Comments at 20 n.33; Penn. PUC Comments at 25; Indiana URC Comments at 5-6; Idaho PUC Comments at 6-7; Wyoming PSC Comments at 5; South Carolina PSC Comments at 2; Rural Telephone Coalition Comments at 19.

<sup>103</sup> Sprint Comments at 23-24; ICA Comments at 5; Winstar Comments at 11; MFS Comments at 24; ALTS Comments at 18.

<sup>104</sup> NECA Comments at 19-23.

<sup>105</sup> AT&T Comments at 4-5; MCI Comments at 3; Netscape Comments at 10.

current system, a new universal service fund must be created, one that is based on explicit and nondiscriminatory subsidy mechanisms.<sup>106</sup>

As the comments of LDDS WorldCom and others explain, all subsidies must be removed immediately from access charges and an interim funding mechanism established.<sup>107</sup> A broad spectrum of parties join the Commission in recognizing that the carrier common line ("CCL") charge is an implicit, non-cost-based, and discriminatory subsidy that is contrary to the Act and must be eliminated now.<sup>108</sup> LDDS WorldCom agrees that other implicit subsidies in LEC rates, such as USF, LTS, and DEM, should be eliminated as well.<sup>109</sup> Even those parties opposing immediate elimination of the CCL argue that, at minimum, it should be reduced to cost.<sup>110</sup> Alone among all commenters, Bell Atlantic claims that the CCL is not an implicit subsidy at all, and therefore does not violate the Act.<sup>111</sup> Bell Atlantic should carefully reread Section 254 of the statute.

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<sup>106</sup> AT&T Comments at 5; LCI Comments at 5; Winstar Comments at 12.

<sup>107</sup> LDDS WorldCom Comments at 22; AT&T Comments at 10 n.13; Frontier Comments at 8.

<sup>108</sup> Notice at para. 113. CompTel Comments at 15; Sprint Comments at 20; TRA Comments at 13-14; Ameritech Comments at 21; BellSouth Comments at 8, 13; SBC Comments at 4; PacTel Comments at 13-14; GTE Comments at 14-15; California PUC Comments at 20; Ohio CC Comments at 17-18; Ad Hoc Comments at 22-24; MFS Comments at 22; ALTS Comments at 5-9; Time Warner Comments at 20-21; ITAA/EMA Comments at 12; ISA Comments at 17-18; ITIC Comments at 12; CompuServe Comments at 6-7.

<sup>109</sup> Sprint Comments at 20; Bell Atlantic Comments at 13; PacTel Comments at 14; GTE Comments at 14-15; BellSouth Comments at 8; Wisconsin PSC Comments at 9.

<sup>110</sup> MCI Comments at 3; CSE Comments at 14-15; Reed Smith Comments at 9.

<sup>111</sup> Bell Atlantic Comments at 11.

Some parties advocate eliminating the CCL and other subsidies only after a significant transition period of from two to five years.<sup>112</sup> Given the nearly universal recognition that the CCL is completely contrary to the Act, however, a lengthy transition plan is simply unacceptable. Instead, all LEC access charges must be moved to economic cost immediately, and comprehensive reform implemented.<sup>113</sup>

Many parties indicate that the subscriber line charge should be "rebalanced," so that it fully recovers the loop portion of common line costs.<sup>114</sup> Some parties point out that a SLC increase may not be necessary,<sup>115</sup> however, while others believe that the SLC and CCL both can be decreased.<sup>116</sup> Still other parties argue that the SLC should not be increased at all.<sup>117</sup> In its initial comments, LDDS WorldCom suggests one possible transitional approach to universal service reform that would not entail any increase in the SLC. This illustrative proposal involves: (1) moving all current universal service obligations into a separate fund to be supported by all telecommunications service providers; (2) setting all LEC access charges at

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<sup>112</sup> USTA Comments at 18; Florida PSC Comments at 12-13; Oregon PUC Comments at 6-7; Missouri Comments at 8.

<sup>113</sup> Sprint Comments at 20; LCI Comments at 5; Frontier Comments at 10-11.

<sup>114</sup> AT&T Comments at 16; MCI Comments at 3; Sprint Comments at 3; USTA Comments at 18; Ameritech Comments at 21; Bell Atlantic Comments at 11-12; BellSouth Comments at 10; SBC Comments at 4; CSE Comments at 14-15; Reed Smith Comments at 9; MFS Comments at 22; Time Warner Comments at 20-21.

<sup>115</sup> TRA Comments at 13-14.

<sup>116</sup> MCI Comments at 3; AARP/CFA/CA Comments at 17.

<sup>117</sup> NARUC Comments at 14; New York DPS Comments at 4; Florida PSC Comments at 21; Penn. PUC Comments at 23; Texas PUC Comments at 18; Missouri PSC Comments at 20; AARP/CFA/CA Comments at 16; UCC *et al* Comments at 4.

cost, and requiring the LECs -- for the short interval preceding the final order in this docket -- to absorb the non-cost-based expense component of access charges; and (3) requiring Section 251 interconnectors to pay into the separate universal service pool via an interim surcharge based on their retail revenues.<sup>118</sup> This interim approach would not involve any increase in the SLC, and instead would protect universal service, allow rates for local, access, and long distance to decline, and fully compensate the LECs for use of their facilities for interconnection.

As expected, several RBOCs make self-serving pitches to keep universal service mired in the current interstate access charge system. For example, Bell Atlantic claims that interstate access charges support LECs, and that "universal service objectives will be jeopardized" should these charges be set at cost.<sup>119</sup> NYNEX argues that all non-universal service joint and common costs should remain in access and be dealt with in access charge reform,<sup>120</sup> so that the CCL is not affected by the universal service proceeding.<sup>121</sup> Again, these commenters miss the key point that the current method of funding universal service through above-cost, IXC-only access charges violates the new Act in a multitude of ways and has become untenable. It is no longer a question of whether or not to fix the universal service system, but rather how.

Finally, in its comments LDDS WorldCom warns the Commission that some LECs might try to argue, contrary to the Act, that any changes to the existing universal service

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<sup>118</sup> LDDS WorldCom Comments at 23-24.

<sup>119</sup> Bell Atlantic Comments at 4-5.

<sup>120</sup> NYNEX Comments at 3-4.

<sup>121</sup> NYNEX Comments at 7-8.

and access charge regimes must make them whole for revenues "lost" in the competitive process.<sup>122</sup> True to form, SBC claims that the RBOCs will need "capital recovery" because they can no longer rely on their "regulatory contract" with government; as a result, an explicit RBOC funding mechanism should be established, to be paid by all telecommunications companies.<sup>123</sup> Western Alliance makes a similar claim that a transition plan should recover all the LECs' prior network investments, without which any universal service plan would constitute an unjust taking under the Fifth Amendment of the Constitution.<sup>124</sup> Cincinnati Bell also argues that incumbent LECs should be able to recover "stranded" investment, even where a new entrant has taken away an existing customer.<sup>125</sup>

Several commenters join LDDS WorldCom in firmly refuting these LECs' unique economic theory of competition, which would require that the LECs be fully compensated by everybody else for future lost revenues and past network expenditures. The Ad Hoc Telecommunications Users Committee counters that the new statutorily-required universal service program certainly does not include compensating the LECs for either "revenue erosion" from emerging competition, or for so-called "stranded" investment.<sup>126</sup> MFS agrees that universal service should not be used as a means of guaranteeing the incumbent LECs their current revenue

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<sup>122</sup> LDDS WorldCom Comments at 2-3.

<sup>123</sup> SBC Comments at 23-25.

<sup>124</sup> Western Alliance Comments at 12.

<sup>125</sup> Cincinnati Bell Comments at 11.

<sup>126</sup> Ad Hoc Comments at 5-11.

streams,<sup>127</sup> while Winstar observes that the Commission should not be in the business of compensating the incumbent LECs for their inflated costs, or making them revenue neutral when they begin to lose customers.<sup>128</sup> As LDDS WorldCom put it in its comments, what these LECs seek is "fundamentally incompatible with the explicit requirements of the Act, and with the fully competitive environment that the Act embraces."<sup>129</sup>

#### IV. CONCLUSION

The Commission and Joint Board should act in accordance with the recommendations proposed above and in LDDS WorldCom's initial comments.

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May 7, 1996

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<sup>127</sup> MFS Comments at 7-8.

<sup>128</sup> Winstar Comments at 4.

<sup>129</sup> LDDS WorldCom Comments at 3.

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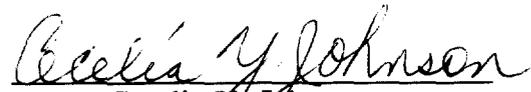
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