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Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Federal-State Joint Board on)
Universal Service)
)
)

CC Docket No. 96-45

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REPLY COMMENTS

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SUMMARY

While numerous details remain to be developed, there is broad consensus on several issues. The comments demonstrate overwhelming support for adopting competitive neutrality as a principle to be considered in the formulation of a universal service plan. In keeping with the competitive neutrality principle, the comments evidence that an end-user surcharge is the appropriate means for recovering universal service fund contributions. Likewise, an interstate carrier's contributions should be based on interstate and intrastate retail revenues.

The comments also urge the Commission to keep the universal service fund within the parameters established by Section 254. Thus, the universal service fund cannot be used to provide internal connections or internet access because neither are telecommunications services.

Similarly, while Section 254 contemplates a support mechanism for telecommunications services provided to rural health care providers, such support mechanism is not unlimited.

Section 254 expressly limits support to those services found to be necessary for the provision of health care service in a state.

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REPLY COMMENTS

BellSouth Corporation and BellSouth Telecommunications, Inc. ("BellSouth") hereby submit their reply comments to the comments filed in response to the Public Notice, DA 96-1891, released on November 18, 1996.

I. INTRODUCTION

Generally, parties are encouraged by the Commission's efforts to implement Section 254 of the Telecommunications Act of 1996 (the "Act"). There is general agreement that an explicit universal service fund ("USF") would be superior to the implicit support mechanisms that exist today. Nevertheless, the challenge before the Joint Board and the Commission is to establish a plan that fulfills the statutory mandate. The Recommended Decision¹ leaves many of the essential details undefined. The absence of such details creates an environment of uncertainty and confusion--much of which is evidenced in the comments.

There remains a substantial amount of work to be done to develop a universal service plan. In this regard, BellSouth, as well as most other parties, have urged the Commission to keep the public involved and to actively solicit their comments as it formulates the components to the

¹ In the Matter of Federal-State Joint Board on Universal Service, Recommended Decision, CC Docket No. 96-45, adopted November 7, 1996, Released November 8, 1996.

universal service funding mechanism. While these future endeavors are crucial, this particular round of comments can help the Commission focus its efforts and avoid missteps that could jeopardize the lawfulness of the USF.

II. COMPETITIVE NEUTRALITY SHOULD BE ADOPTED AS AN ADDITIONAL UNIVERSAL SERVICE PRINCIPLE

There is a broad consensus among commenting parties that endorses the adoption of competitive neutrality as an additional principle to be considered in formulating universal service policies. As BellSouth explained in its comments, in the context of universal service, competitive neutrality can be viewed as having three dimensions: (1) competitive neutrality in the opportunity to recover support obligations; (2) competitive neutrality in the obligation to contribute to the fund; and (3) consistency between the universal service plan and other regulations.² All of them must be explicitly considered and addressed if the principle is to be satisfied.

A. Universal Service Contributions Should Be Recovered Through The Application of A Competitively Neutral End-User Surcharge

With regard to recovery of universal service obligations, many commenters press for the adoption of an end-user surcharge mechanism.³ As framed by AT&T, the fact confronted by the Commission is that one way or another, consumers of telecommunications services will bear the cost of universal service.⁴ Indeed, to deny or preclude recovery of contributions would be

² See BellSouth, p. 9. With regard to the consistency between the universal service plan and other regulation, of critical importance is access charge reform. On December 24, 1996, the Commission released a Notice of Proposed Rulemaking instituting a proceeding on the matter of reforming its access charge rules.

³ See, e.g., Ameritech, pp. 30-32; LCI, pp. 13-14; Sprint, pp. 9-10; Worldcom, pp. 40-42.

⁴ AT&T, p. 8.

unlawful.⁵ Accordingly, the Commission should adopt a recovery mechanism that is consistent with the requirements of Section 254.

Commenter after commenter stressed that the statute's requirement that universal service support be explicit can only be squared with a recovery mechanism that is based on a mandatory end-user surcharge.⁶ Absent such a surcharge, universal service support obligations would have to be recouped through raising rates on telecommunications services. In other words, the very types of implicit support mechanisms that the new, explicit USF is supposed to replace would, in actuality, be perpetuated.

Not only is it beyond dispute that a surcharge is the only recovery mechanism that is consistent with the statutory command for making universal service support explicit, but, also, the surcharge best conforms to the principle of competitive neutrality. A mandatory end-user surcharge assures that universal service contributions are recouped in an equitable manner without causing significant distortions in telecommunications service prices. It would prevent carriers from strategically allocating their universal service contributions among their various services to the disadvantage of consumers and competitors.⁷ More to the point, competitive neutrality is maintained by a surcharge because the contributions of all carriers would be recovered in precisely the same manner, with no carrier being advantaged or disadvantaged because of its obligation to contribute, or in the way such contributions are recovered.⁸

⁵ See Ameritech, p. 31, n. 57.

⁶ See, e.g., Ameritech, p. 31; Paging Network, Inc., pp. 15-17; AT&T, p. 8; MFS, p. 13.

⁷ See AT&T, p. 9.

⁸ See BellSouth, pp. 15-16.

As compelling as meeting the statute's requirement for an explicit fund and the consistency with the principle of competitive neutrality may be, not to be overlooked are other salutary benefits that are attendant with a surcharge mechanism. The surcharge would be simple to calculate⁹ and easy to administer.¹⁰ These additional benefits will not only make the USF more workable, but will also reduce the overall cost of the USF.

B. A Carrier's Contribution To The USF Should Be Based On Interstate And Intrastate Retail Revenues

Another dimension of competitive neutrality concerns the obligation to contribute. Competitive neutrality requires that no contributing carrier or class of carriers should be advantaged or disadvantaged by the contribution mechanism established by the Commission. As is clear from the comments, there are two key aspects to the contribution mechanism to be determined: the revenue measure (e.g., retail revenues, gross revenues) and the revenue base (e.g., interstate revenues, interstate and intrastate revenues).

A few commenters support the Joint Board's recommendation of a revenue measure based on gross revenues less payments to other carriers.¹¹ None of these commenters provide a reasoned analysis explaining the way in which this revenue measure advances the principles upon which the USF is to be based, in particular, competitive neutrality.

⁹ BellSouth, p. 16.

¹⁰ AT&T, p. 9; BellSouth, p. 16.

¹¹ See, e.g., Competition Policy Institute, pp. 7-8; MFS, p. 40.

In contrast, numerous parties urge the Commission to adopt retail revenues as the revenue measure.¹² Indeed, support for retail revenues crosses the spectrum of potential contributors from local exchange carriers to interexchange carriers. More importantly, these comments demonstrate that retail revenues constitute the revenue measure that is most consistent with competitive neutrality.¹³ The Joint Board's recommended measure--gross revenues net of payments to other carriers--if implemented, would distort the retail market. Those carriers that provide services using their own networks would be penalized vis-à-vis a carrier that provides the same services, in whole or in part, using facilities leased from another carrier. In both instances, the cost of the facilities constitutes a cost of providing service. Yet, under the Joint Board's approach, the carrier that leases facilities can deduct its lease payments prior to determining its contribution to the USF whereas the facilities-based carrier has no comparable offset for its cost of providing service. This result can hardly be considered competitively neutral, equitable or fair. It confers an artificial cost advantage upon carriers that lease facilities from other carriers and discourages facilities-based local competition.

In contrast, retail revenues do not involve such negative competitive consequences. Instead, this approach affords the Commission a contribution mechanism that is equitable and nondiscriminatory. Retail revenues do not distort the competitive conditions within the telecommunications market. Hence, retail revenues satisfy the statutory mandate that the

¹² See, e.g., BellSouth, pp. 12-13; NYNEX, p. 18; Bell Atlantic, p. 8; USTA, p. 16; US West, pp. 44-45; AT&T, p. 9. Sprint, once an advocate of using gross revenues net of payments to other carriers, now recommends the use of retail revenues (pp. 9-10).

¹³ In addition, Vermont PSB (p. 11) points to the simplicity of assessing retail revenues.

contribution mechanism be equitable and nondiscriminatory but, more importantly, it satisfies the principle of competitive neutrality unlike any other measure of revenue.

The revenue base for determining an interstate carrier's contribution to the USF has engendered considerable discussion in the comments and much confusion. BellSouth has advocated that the contribution mechanism should be based on interstate and intrastate retail revenues because such a mechanism is consistent with the principle of competitive neutrality and the requirements of the Section 254.

Some parties contend that use of interstate and intrastate revenues would exceed the Commission's authority and jurisdiction under Section 254.¹⁴ It is apparent that these parties misperceive the operation of the contribution mechanism.

The starting point for any jurisdictional analysis of the contribution mechanism must be Section 254(d) which sets forth the Commission's authority regarding carriers' contributions to the federal USF. The statute provides, in pertinent part, that "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis," to a fund to preserve and advance universal service.¹⁵ Hence, regardless of the revenue base used in the contribution mechanism, before a carrier can be required to contribute to the federal USF, it must be a provider of interstate telecommunications services. If the Commission adopted a revenue base that included both interstate and intrastate revenues, only revenues of interstate carriers would be considered. A carrier that only provides intrastate services would be excluded from contributing to the federal fund.

¹⁴ See, e.g., New York State Department of Public Service, pp. 3-8; Bell Atlantic, p. 5; NYNEX, pp. 13-16.

¹⁵ 47 U.S.C. Sec. 254(d).

The use of interstate and intrastate revenues as an allocation mechanism among contributing interstate carriers is within the authority granted to the Commission by Section 254. The limitation established by the statute is that the contribution mechanism be equitable and nondiscriminatory. There is sufficient record support for the use of interstate and intrastate revenues to find that such a mechanism satisfies the statutory criteria.

While interstate and intrastate revenues can be used to allocate contributions among interstate carriers, there are two key points of which the Commission must remain mindful. Contrary to the apparent belief of some commenters, the size of the fund does not vary with the revenue base.¹⁶ The sole purpose of the revenue base is to allocate the fund among contributing interstate carriers. Changing the revenue base only has the effect of redistributing the allocations among carriers.

Equally important is the fact that using an interstate and intrastate revenue base does not mean, as apparently some commenters believe, that intrastate revenues will be used to pay for the federal USF. The fund is an interstate fund and the contributions to the fund will constitute interstate contributions to be recovered through interstate charges. As discussed above, the appropriate recovery mechanism is an end-user surcharge. For the federal fund, the surcharge would be an interstate charge and the revenues derived therefrom would be interstate revenues. It is these interstate revenues that would be used by carriers to recoup and/or make their contributions to the interstate fund.

Nothing in the use of a revenue base for the federal fund that includes intrastate retail revenues interferes with the state commissions' authority to establish intrastate universal service

¹⁶ See, e.g., Bell Atlantic, pp. 4-7.

funds. The statute, however, does require that state universal service programs be not inconsistent with the Commission's rules regarding universal service.¹⁷ One such rule would be competitive neutrality. Certainly, if the Commission finds that the use of interstate and intrastate revenues constitutes the revenue base that is most consistent with competitive neutrality, then state commissions would likewise be bound by such a determination in establishing a state USF.¹⁸

III. THE HIGH COST FUND MUST BE SUFFICIENT TO PRESERVE UNIVERSAL SERVICE

The Joint Board's proposal for sizing the high cost fund has two primary components: (1) a proxy cost model and (2) a revenue benchmark. Neither of these key elements are defined nor specified in the Recommended Decision. Instead, the Recommended Decision outlines the role these two elements play in determining the size of the federal fund. The proxy cost model is supposed to approximate the cost of providing universal service. The revenue benchmark is supposed to operate as the delineation of federal responsibility for universal service. The size of the federal USF is to be determined by the difference between the proxy cost and the revenue benchmark.

With the key elements of the high cost fund undefined, it is not surprising that some commenters used the instant comment cycle to make suggestions, that, if adopted by the Commission, would serve to minimize the size of the federal USF. For example, some commenters promote the use of a theoretical cost standard with the full understanding that such a

¹⁷ 47 U.S.C. Sec. 254(f).

¹⁸ See BellSouth, pp. 13-14.

standard will minimize the result of the proxy cost model.¹⁹ These commenters, however, overlook the fundamental mandate of the statute.

Section 254 directs the Commission to establish a federal fund that is sufficient to preserve and advance universal service and to make the support for universal service explicit. In fulfilling this mandate, the Commission cannot overlook the fact that universal service is provided today, and that interstate access services continue to be used to support universal service implicitly. To satisfy the statute's requirements, the Commission will have to address these existing implicit subsidies.²⁰ For this reason, the Commission must consider the actual costs of providing universal service.²¹ The costs that local exchange carriers have incurred to provide universal service are legitimate and reasonable. The incumbent local exchange carrier has a constitutional right to an opportunity to recover these costs. Further, to the extent universal service costs have been recovered implicitly in interstate rates, the Commission has an obligation to make such implicit support explicit by having these costs recovered through the federal USF.

Some parties also attempt to arbitrarily reduce the USF by suggesting the revenue benchmark be calculated using revenues from all services that have contributed to preserving universal service.²² Apart from the obvious effect on the size of the USF, a revenue benchmark that also includes revenues from services that provide implicit universal service support would be

¹⁹ See, e.g., AT&T, pp. 13-14; MCI, pp. 4-6.

²⁰ If the Commission fails to establish a fund that accounts for existing implicit support, then incumbent LECs, as current providers of universal service, alone would have to bear the responsibility for such remaining implicit support. Such a result would be contrary to Section 254(b)(4) which calls for equitable and nondiscriminatory contributions by all providers of telecommunication services.

²¹ See, e.g., Bell Atlantic, p. 13; GTE, p. 27; SBC, p. 24.

²² See, e.g., Time Warner, pp. 14-18; AT&T, pp. 28-29.

contrary to the statutory mandate to make universal service support explicit. Such a revenue benchmark would merely perpetuate the implicit subsidy mechanisms that Section 254 is intended to eliminate.

BellSouth and other parties have pointed out the infirmities with a revenue benchmark.²³ As an alternative to the revenue benchmark, an affordability benchmark has been proposed. An affordability benchmark would not be subject to the same types of manipulation as the revenue benchmark, nor would it perpetuate a system of implicit subsidies. Furthermore, an affordability benchmark would advance the universal service principles enumerated in Section 254. Section 254 calls for universal service policies that make quality services available at affordable rates.²⁴ An affordability benchmark is consonant with this principle. In contrast, a revenue benchmark is unrelated to any of the universal service principles. It amounts to little more than an arbitrary point for differentiating between federal and state responsibility for universal service support.

IV. THE LIFELINE PROGRAM DOES NOT REQUIRE MODIFICATION

Several parties expressed concern with increasing the baseline federal Lifeline support.²⁵ The Commission, itself, identified a substantial issue associated with increasing the baseline amount-- increasing the interstate cost of the Lifeline program. Other commenters, such as the New York State Department of Public Service, question whether there is an adequate factual basis for the Commission to conclude that such expansion of the federal program is warranted.²⁶ Further, as BellSouth pointed out, there is no apparent interstate offset to which an increased

²³ See, e.g., BellSouth, pp. 5-6; US West, pp. 28-29.

²⁴ 47 U.S.C. Sec. 254(b)(1).

²⁵ See, e.g., AT&T, pp. 15-16; SBC, p. 7.

²⁶ New York State Department of Public Service, pp. 14-15.

federal Lifeline amount would be applied.²⁷ For all of these reasons, the Commission should not modify the baseline Lifeline amount at this time. Instead, the Commission should review the Lifeline program after it promulgates its universal service rules at which time the Commission can assess the extent to which the Lifeline program should be modified.

Several parties urge the Commission to reject the Joint Board's recommendation to prohibit a local exchange carrier from denying service for nonpayment (DNP).²⁸ With access to toll restriction services, consumers can control toll charges. Prohibiting DNP would not serve any legitimate universal service purpose. To the contrary, it would increase incentives for toll fraud and increase a carrier's uncollectibles. The latter consequence can lead to other difficulties that could adversely impact a carrier's operations and its ability to provide quality services. There is simply no public policy basis that would justify the Commission embarking upon such a risky path.

V. USF SUPPORT FOR PUBLIC INSTITUTIONAL TELECOMMUNICATIONS USERS MUST BE CONFINED WITHIN THE LIMITATIONS ESTABLISHED UNDER SECTION 254

Many of the commenters, like BellSouth, commend the Joint Board for its recommendations regarding the provision of USF support for schools, libraries and rural health care providers, and yet recognize that many of the details still remain to be decided by the Commission. In making its determinations, it is of utmost importance that the Commission confine USF support to the parameters established under Section 254, as many commenters urge.

²⁷ BellSouth, pp. 17-18.

²⁸ See, e.g., Ameritech, p. 14; GTE, p. 85; MCI, p. 12.

A. USF Support May Not Be Provided for Internal Connections or Internet Services

Commenters have evidenced substantial opposition to the Joint Board's recommendation to include internal connections and Internet services in the Universal Service Fund ("USF") support program.²⁹ As Ameritech states, the 1996 Telecommunications Act provides for USF support for only "telecommunications service," and these items, *viz.* internal connections and Internet services, are not "telecommunications services."³⁰ Nor is inside wiring a "telecommunications service" within the meaning of the 1996 Telecommunications Act.³¹

Moreover, as GTE observes, the provision upon which the Joint Board has relied for including Internet services under the program, Section 254(h)(2), provides only for "access to advanced ... information services," not the information services themselves.³² As America Online, Inc. ("AOL") observes, the Joint Board's attempt to separate "content" from "non-content" Internet service would be a fruitless task as "the Internet, by its very nature, is content," and "basic conduit access" cannot be separated from the essence of the Internet itself."³³ Thus, as Pacific Telesis Group observes, the only service provided to schools and libraries in conjunction

²⁹ See, *e.g.*, Association for Local Telecommunications Services, pp. 16-18 (inside wire); Bell Atlantic, pp. 20-21; Pacific Telesis Group, pp. 37-53; ALLTEL Telephone Services Corp., p. 5; MFS, p. 30 (inside wire and items that are not telecommunications services); The Utility Reform Network (inside wire), pp. 9-10; NYNEX, p. 40; MCI, p. 18 (Internet service); SBC Communications, Inc., pp. 43-46; New York State Education Dept., p. 7 (inside wiring); USTA, pp. 34-35; Cincinnati Bell, p. 13 (inside wiring); North Dakota Public Service Commission, p. 3 (internal connections).

³⁰ Ameritech, p. 18.

³¹ Pacific Telesis Group, p. 46.

³² GTE, pp. 89-93.

³³ AOL, p. 4.

with Internet service which would be eligible for USF support would be the transmission service provided by a telecommunications carrier to get to the Internet service provider.³⁴

Finally, as some Internet service providers observe, the provision of USF support to Internet service providers would be of seriously questionable legality given that, under the 1996 Act, they may not be required to contribute to the USF.³⁵ Moreover, there are significant policy concerns with including internal connections and Internet services in the USF program, as many commenters observe,³⁶ and there may be additional legal barriers.³⁷

B. Supported Telecommunications Services for Rural Health Care Providers Must Be Necessary, and No Infrastructure Build-out Should be Required

Several commenters observe, as has BellSouth, that in order for telecommunications services provided for rural health care providers to be eligible for USF support, those services must be “necessary for the provision of health care service in a State.”³⁸ Indeed, this is the very language of the statute.³⁹ The Commission must adopt some means by which it can be assured that USF support is provided only within these guidelines. Indeed, there is substantial support for the proposition that telecommunications services above a T1 level are not “necessary” within the meaning of the statute, at least at the present time.⁴⁰

³⁴ Pacific Telesis Group, pp. 39-40.

³⁵ See NetAction, et al, p. 7.

³⁶ See, e.g., GTE, pp. 93-97; MFS, pp. 30-32 (inside wire).

³⁷ SBC Communications, Inc., pp. 46-50.

³⁸ See, e.g., Pacific Telesis Group, p. 54; USTA, p. 39; SBC Communications, Inc., p. 10.

³⁹ Section 254(h)(1)(A).

⁴⁰ See, e.g., USTA, p. 39; SBC Communications, Inc., p. 4; MCI, p. 19; Kansas Hospital Asso., p. 2; Association of American Medical Colleges, pp. 1-2.

There is also agreement with BellSouth, among those commenters addressing the issue, that the USF program should not be utilized as a means by which to require and fund infrastructure upgrades.⁴¹ As AT&T states, the development of the telecommunications infrastructure in a given area should be left to market forces.⁴² As Ameritech observes, there is already a substantial amount of work underway in some areas in conjunction with state regulatory schemes, in some cases in return for regulatory flexibility, by which network infrastructure development and build-out is occurring.⁴³

VI. CONCLUSION

As is readily apparent from the comments that have been submitted, there are numerous details associated with the Federal USF that remain to be developed. As the Commission proceeds, it should be guided by the express requirements of Section 254. The Federal fund should make universal service support explicit and should be of a sufficient size to make quality

⁴¹ See, e.g., Bell Atlantic, pp. 19-20; Pacific Telesis Group, pp. 54, 58-60; National Cable Television Asso., Inc., pp. 23-24; SBC Communications, p. 11.

⁴² AT&T, pp. 25-26.

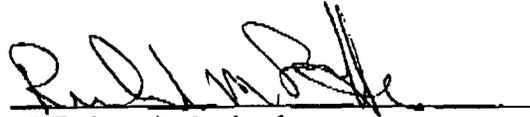
⁴³ Ameritech, pp. 27-28.

services available at affordable rates. Only if the Commission's rules satisfy these requirements will the Commission have met the statute's mandate.

Respectfully submitted,

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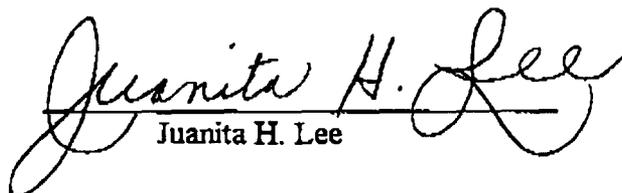
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I hereby certify that I have this 10th day of January, 1997 served the following parties to this action with a copy of the foregoing **REPLY COMMENTS** by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties on the attached service list.



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