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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
Federal-State Joint Board on)
Universal Service) CC. Docket No. 96-45
)

REPLY COMMENTS OF AMERITECH
ON JOINT BOARD RECOMMENDATION

JAN 16 1997

I. INTRODUCTION.

Ameritech submits this reply to comments on the recommended decision of the Federal-State Joint Board regarding universal service.¹

In this reply, Ameritech will focus its comments on the portions of the Recommended Decision dealing with the treatment of the carrier common line ("CCL") charge and with support for schools and libraries and rural health care providers. Obviously, all of the issues addressed in the Recommended Decision are important ones; however, Ameritech believes that its positions on those other issues have been adequately supported by other parties in their comments. For example, Sprint, ALTS, Teleport, and NCTA agree with Ameritech that no universal service support for single-line business service is appropriate.² Cincinnati Bell and GTE agree that all recipients of universal service support should be subject to the same regulatory obligations, including carrier of last resort ("COLR") obligations.³ Both GSA and GTE oppose the use of proxy cost models as a general principle.⁴ Finally, CompTel, Pacific Telesis, USTA, AT&T, and others support a specific mandatory customer surcharge to recoup universal service costs as consistent with the law's requirement that subsidies be explicit and with

¹ In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Recommended Decision, FCC 96J-3 (released November 8, 1996) ("Recommended Decision").

² Sprint at 14-15; ALTS at 5; Teleport at 3-4; NCTA at 5.

³ Cincinnati Bell at 7-10, 18; GTE at 47-50.

⁴ GSA at 5; GTE at 25-32, 56-58.

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principles of fairness in permitting customers to know just how much they are paying to support universal service policies.⁵

II. THE CCL CHARGE.

Because of the importance of the issue, Ameritech must reiterate its opposition to the Joint Board's proposal to reduce the CCL charge by only half of the amount of long-term support ("LTS") cost recovery that moves to the universal service fund. Obviously, the effect of the Joint Board's proposal is to increase the subsidy provided by the CCL charge to the recovery non-traffic sensitive loop costs that are caused by the provision of local exchange service to the end-user subscriber. This increases the implicit subsidy contrary to the spirit and the letter of § 254.

In addition, Ameritech reiterates its opposition to the Joint Board's recommendation that the remaining CCL charge be restructured to a flat, per-line charge assessed from incumbent local exchange carriers ("ILECs") to interexchange carriers ("IXCs"). Such a rate structure would not be competitively neutral since the assessment of the subsidy to IXCs would constitute an additional incentive for them to move their end-user customers to competitive local exchange carriers ("CLECs") who do not assess that charge. Instead, the subsidy should be recovered from IXCs in a competitively neutral manner based on relative retail revenues. Alternatively, the amount of non-traffic sensitive interstate loop costs not recovered via the subscriber line charge ("SLC") should be considered a universal service cost and recovered with other interstate costs included in the universal service fund.

These changes proposed by Ameritech are consistent with the Joint Board's suggested principle of competitive neutrality.

III. SUPPORT FOR SCHOOLS AND LIBRARIES.

A. Internal Connections and Internet Access Should Not Be Considered Services Eligible for Support.

Ameritech must also reiterate its position that the Joint Board's proposal to include internal connections and Internet access as services eligible for support is not only unwise, but also beyond the scope of § 254.

⁵ CompTel at 14-17; Pacific Telesis at 20-23; USTA at 22-23; AT&T at 8-9.

The New York State Education Department ("NYSED") correctly points out that including internal connections (inside wire) as a supported "service" could result in a disproportionate drain of funds that could jeopardize the availability of the subsidy for telecommunications services for those institutions that are most in need.⁶

In addition, inclusion of internal connections would disadvantage those states that have already funded the wiring of school buildings. As the Delaware Public Service Commission ("DelPSC") noted:

If the moneys in the capped school and library fund are credited or distributed on a "first-come, first-served basis" schools in other states -- which have not made the previous efforts to wire their classrooms -- will, most likely, quickly exhaust the first \$2 billion of the fund with their high invoices reflecting the greater expenditures for inside wiring..⁷

Therefore, Delaware is rightly concerned that, because the state has already undertaken the responsibility to wire its classrooms, its citizens, as consumers of telecommunications services, will end up paying substantially more to support these subsidies than the benefits they will reap from the fund.

Similarly, the North Dakota Public Service Commission ("NDPSC") has also refused to support the Joint Board's recommendation that internal connections be included as a supported service. It points out that it made the decision many years ago that internal connections are the responsibility of the property owner.⁸ Therefore, it would be unfair to effectively ask the residents of the state of North Dakota, as purchasers of telecommunications services, to fund other states' classroom wiring projects. The NDPSC alternatively suggests that states be permitted to decide whether to support internal connections as part of their own state universal service support mechanisms.⁹

⁶ NYSED at 7.

⁷ DelPSC at 6.

⁸ NDPSC at 3.

⁹ Id.

The NYSED is in agreement and concludes:

[W]e think the best public policy is to have all costs associated with inside wiring be absorbed as a component of capital budgets and therefore be the ultimate responsibility of the states and localities.¹⁰

In addition, inclusion of internal connections and Internet access services would violate the principle of competitive neutrality because the providers of these products and services could draw from the fund without the corresponding obligation to contribute to the fund.

Finally, as the California Department of Consumer Affairs ("CalDCA") points out, and as Ameritech stated in its comments, there is no statutory support for including either internal connections or Internet access in a federal universal support mechanism.¹¹ Neither internal connections nor Internet services are "telecommunications services" intended to be covered by §254(c).¹² In addition, the "access to...information services" referred to in §254(h)(2)(A) is most logically interpreted as applying to the network transmission components necessary for access to information services.¹³

As a result, the Commission should conclude that it would be inappropriate to include either internal connections or Internet access as products and services eligible for support.

B. The Fund Cap Needs to Be Better Justified and Split into Two Components.

The size of the proposed schools and libraries fund -- \$2.25 billion per year (with unused amounts rolling over into succeeding years) is huge. By itself, it would constitute one of the larger public works projects of all time. Nevertheless, it is not at all clear how the Joint Board justified the assumptions it made in estimating the appropriate size of the fund.¹⁴ It is clear, however, that, if the

¹⁰ NYSED at 7. It should be noted that thousands of classrooms across the country have already been wired as a result of volunteer efforts in "Netday" programs last October and many states are sponsoring follow-up activities this spring to further the cause.

¹¹ CalDCA at 23-34, Ameritech at 20-22.

¹² CalDCA at 23-24.

¹³ *Id.* at 32-34.

¹⁴ The Citizens for a Sound Economy Foundation ("CSE") (at 11-12) notes that, because the proposal includes support of schools and libraries are not in need of assistance, the proposed cap is too high and should be lowered.

Commission appropriately concludes that internal connections and Internet access services should not be subsidized by the federal fund, then the cap must be lowered accordingly.

Moreover, even if the Commission decides otherwise, the current cap should be split into two components -- one amount for telecommunications services, and a separate cap for internal connections and Internet access (non-telecommunications products and services). This will guarantee that the subsidization of the usage of non-telecommunications products and services for certain schools will not unfairly deprive other schools of the ability to receive an appropriate subsidy for their use of telecommunications services. In addition, because the demand for internal connections will peak initially and then decline over time, the cap applicable to non-telecommunications products and services should be reduced over time as well.

These modifications will ensure that only those amounts that are reasonably necessary to support eligible services will be required to be paid by telecommunications carriers' contributions to the fund and, therefore, that their customers will not have to pay rates that are unnecessarily high to support the fund.

C. The Pre-Discount "Lowest Corresponding Price" Must Be Reasonably Defined.

Ameritech does not object to providing qualifying schools and libraries with discounts off of an appropriate pre-discount "lowest corresponding price" ("LCP"). The Joint Board has proposed that the LCP be defined as the lowest price charged to similarly situated non-residential customers for similar services. In its comments, Ameritech urged the Commission to clarify that the LCP refer only to a price that is currently charged pursuant to an arrangement that has been entered into within twelve months prior to the school's or library's request for proposal.¹⁵ As Ameritech noted, it would be inappropriate to require the rate charged late in a long-term contract arrangement to be utilized as an LCP since such a rate is not truly a "current" rate.

However, other commenters have gone too far in requesting that the Commission qualify the term LCP to ensure that the school or library gets the lowest price. For example, the Education and

¹⁵ Ameritech at 23.

Library Networks Coalition (“EDLINC”) proposes that a national benchmark be used as the prediscount price -- “based on rates in competitive markets.”¹⁶ As EDLINC notes, this would ensure that the LCPs were the lowest possible rates. However, EDLINC’s proposal would maintain implicit subsidies -- contrary to the provisions of § 254. While it is true that carriers would receive explicit support for the discount off the national benchmark, they would receive no explicit support for the difference between their own true LCPs and the national benchmark. This difference would be maintained as an implicit subsidy and is clearly inappropriate. Moreover, in cases in which the national benchmark rate is not compensatory for the particular carrier, there would be unlawful confiscation.

Further, EDLINC amazingly suggests that, in the alternative, only volume usage differences between customers should be recognized in determining that a nonresidential customer is not “similarly situated.”¹⁷ Specifically, EDLINC asks the Commission to “presume that geographic factors such as proximity to certain facilities are not relevant.”¹⁸ However, distance is a primary factor in determining differences in nontraffic sensitive costs in many cases. Therefore, a requirement to ignore distance factors would be completely inappropriate. In addition, it is manifestly absurd for EDLINC to suggest that “if a service provider is willing to offer a rate to any customer, then that rate is profitable [in all circumstances].”¹⁹ Instead, permitting a reasonable interpretation of “similarly situated nonresidential customer” will ensure that no discrimination against schools and libraries take place simply because they have discounts available to them -- while at the same time ensuring that no new implicit subsidies are created.

¹⁶ EDLINC at 6.

¹⁷ Id. at 8-9.

¹⁸ Id.

¹⁹ Id. at 8.

D. The Fund Administrator Should Be Completely Neutral.

Several parties have wrongly suggested any fund administrator should have representation of universal service beneficiaries. The American Library Association ("ALA") suggests that the administrator be comprised of at least one-third representation from consumers, libraries, schools, and rural health care providers.²⁰ EDLINC states that they "believe that schools and libraries be fairly represented in the membership of any body that is appointed as the administrator."²¹ Ameritech maintains that it would be inappropriate to have any industry or beneficiary membership on the board or body administering the fund. The administrator should be completely neutral and, ideally, should have no connection or interest whatsoever in any party that has any economic interest in the fund. It would be appropriate, therefore, that the administrator be an outside third party with no ties to the industry or to any potential beneficiary group.

E. The Commission Should Not Prohibit Application of Discounts to Existing Contracts.

Both Cox Communications Inc.²² and Teleport Communications Group²³ ask the Commission to prohibit the application of schools and libraries discounts to existing service arrangements. They argue that new entrants will be foreclosed from the market if schools and libraries are permitted to apply the discounts to existing arrangements.

While Ameritech does believe that a bidding process will provide the most efficient way to provide subsidized services to schools and libraries (and thus, ultimately, to minimize the amount of subsidy provided), nonetheless the administrative strains -- not only on LEC service center operations, but also on schools and libraries, and on the fund administrator itself -- of requiring the reopening of all existing service arrangements to bidding would be monumental. If schools and libraries are permitted to apply discounts to current arrangements, they will still have an incentive ultimately to submit their

²⁰ ALA at 15.

²¹ EDLINC at 19.

²² At 12.

²³ At 8.

service requirements for bid to determine whether or not they can obtain a better price. Yet, they will be able to do it in a reasoned fashion that permits them to consider reconfiguring their services and to develop a plan for using those services. This will result in spreading out the demands on the system and making the entire process more manageable for both the schools and libraries and the fund administrator on the one hand and for the service providers on the other.

III. RURAL HEALTH CARE.

A. Distance Neutral Pricing and Toll Free Internet Access Are Not Supported by the Act.

Many commenters representing the health care community have argued that distance-neutral pricing and toll free access to the Internet are required by the Act. For example, the American Telemedicine Association (“ATA”) argues that access to the Internet by rural health care providers should be a national priority and that the Commission should ensure that all rural health providers have toll-free access to the Internet.²⁴ (ATA did not restrict this request to public and nonprofit rural health care providers as required by the Act.) Further, ATA argues that distance-based charges are the primary difference between end cost of service between urban and rural customers. Therefore, ATA asks the Commission eliminate the “distance penalty” paid by rural health care providers.²⁵

The position of ATA and the other rural health care commenting parties is flawed and lacks any foundation in §254 of the Act. Section 254 evidences Congress’ clear intention that rural customers should pay rates comparable to those paid by their urban counterparts. The word “rates” is an important one. It is used at least twice in §254 in connection with rural customers.

In §254(g), the Commission is required to adopt rules requiring that rates for interexchange telecommunications services are no higher in rural and high cost areas than they are in urban areas. It is important to note that in §254(g) Congress did not require the elimination of toll charges for rural customers simply because there is a “distance penalty” associated with living in rural areas. The requirement is not that the total charge that a rural customer pays for a toll call be the same that an

²⁴ ATA at 5.

²⁵ Id. at 5.

urban caller would pay -- rather it is only that the rates paid by the rural customer be no higher than the rates paid by her urban counterpart for toll calls.

That approach is carried over into §254(h)(1)(A) dealing with rural health care providers. Again, the statutory provision requires only that public or nonprofit health care providers serving persons residing in rural areas pay rates that are reasonably comparable to rates charged for similar services in urban areas -- not that the total charges for a service be the same. There is nothing that even approaches an indication that Congress intended to eliminate distance-based charges. Rather, Congress' only intent was that rural health care provider pay rates for services that similar to those rates paid by urban counterparts.

Thus, both ATA's request for toll-free access to the Internet and its request for the elimination of distance-based charges should be dismissed as completely outside the scope of the Act.

B. Infrastructure Build-Out for Rural Telemedicine Is Not Properly Supported by the Fund.

ATA inappropriately suggests that the universal service fund be used to pay for the deployment of infrastructure to support advanced services for rural telemedicine.²⁶ As Ameritech noted in its comments, however, requiring that the fund play such a role would quickly expand it beyond all reasonable proportions.²⁷ Moreover, it could not be competitively neutral since it would permit a carrier to use the funds it would have used to upgrade its network in rural areas to instead support competitive services in other areas. Moreover, it is likely that services/customers not specifically intended to be supported from the fund will benefit from those upgrades as well. Therefore, the Commission should clarify that infrastructure development is not what was intended when Congress directed universal service support for rural health care providers.

²⁶ ATA at 3.

²⁷ Ameritech at 31.

IV. CONCLUSION.

The Commission's final order in this docket should be guided by principles of moderation and common sense. Universal service subsidies should be explicit and funded in a competitively neutral manner.

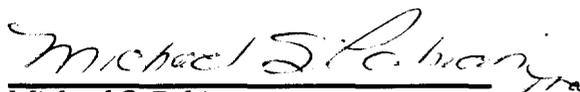
In that regard, the subsidy of non-traffic sensitive loop cost recovery should not be increased and it should be recovered in a competitively neutral manner -- not on a flat rate, per-line basis.

In addition, support for schools, libraries, and rural health care providers should be limited to the specific support for only those services contemplated by Congress.

It must be remembered that any support to further universal service policy goals will not come "free." Rather, the cost of that support will ultimately be borne by the consumers of telecommunications services.²⁸ As the CalDCA noted:

To achieve fairness to those customers who fund a subsidy, the burden of the subsidy should always be kept as low as possible, so as not to burden other customers needlessly (and, ipso facto, unfairly).²⁹ (Emphasis original.)

Respectfully submitted,



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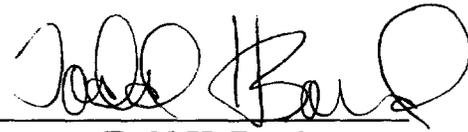
²⁸ See the separate statement of Commissioner Rachelle B. Chong, and comments of NYSED at 3 and CalDCA at 14.

²⁹ CalDCA at 14.

CERTIFICATE OF SERVICE

I, Todd H. Bond, do hereby certify that a copy of the foregoing Reply Comments of Ameritech on Joint Board Recommendation has been served on the parties on the attached service list, via first class mail, postage prepaid, on this 10th day of January 1997.

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A handwritten signature in black ink, appearing to read "Todd H. Bond", written over a horizontal line.

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