

interstate/intrastate jurisdictional boundaries into one subsection and then, in the very next one, create a mechanism for ignoring that division. The Commission would make the clear jurisdictional limitation on its authority under (h)(1)(B) a dead letter with its interpretation of (h)(2)(A).

Indeed, this interpretation renders Section 254(h)(1) superfluous in all respects. All the directives, authority, and administrative requirements set forth with over three hundred words in Section 254(h)(1) are redundant with the authority the Commission purports to find in two words in Section 254(h)(2)(A). Again, the Commission has failed reasonably to interpret Section 254 in an harmonious manner.²⁰

Finally, the Commission also failed to arrive at a lawful, competitively neutral solution. The Commission will unlawfully allow non-telecommunications providers, such as independent inside wire providers, LAN, hub, router and server manufacturers, and Internet access providers to receive universal service funding even though they will pay nothing into the fund. The entire burden of these construction projects has been placed on telecommunications carriers -- which support as much as anyone this laudable goal. However, it is not competitively neutral for carriers to be the sole source of this funding on one hand, and on the other compete for the business with non-carriers not so burdened. Moreover, stretching Section 254(h)(2)(A) in this way will not "preserve and advance universal service;" it can only harm as the incumbent LECs' already subsidy-laden rates are increased to recover

²⁰ Notably, however, notwithstanding the directive that the Commission "shall establish" rules to "enhance access" to "all," the Commission has failed to do so. The Commission either violated Section 254 by failing to adopt such regulations, or it apparently does not truly believe in the reasonableness of its own interpretation.

this new subsidy that is not competitively neutral, and are thus made even greater targets from competitors to undercut.

3. The Commission's Interpretation and Implementation Render Section 254(h) Unconstitutional

Beyond the statutory instructions that limit universal service funding to telecommunications carriers providing telecommunications services to qualified institutions, the Commission is also required to interpret Sections 254(c)(3) and (h) “narrowly to avoid constitutional problems.” National Cable Television Ass'n. v. United States, 415 U.S. 336, 342 (1974). By reading Sections 254(c)(3) and (h) to support funding for non-rural health care providers, non-carriers, and non-telecommunications services, the Commission has instead pushed an already constitutionally suspect statute over the line, and recast Section 254(h) into an unconstitutional delegation of authority, and an unconstitutional tax.

With the Commission's interpretations, Section 254(h) is rendered unconstitutional. Given that the interpretations of Section 254(c)(3), (h)(1)(B), and (h)(2)(A) effectively place no limitation on the scope and amount of funding that the Commission can require as explained earlier, Section 254(h) is rendered an overly broad and vague unconstitutional delegation of authority from Congress. In delegating to an administrative agency, Congress must provide “an administrative agency with standards guiding its actions such that a court could ‘ascertain whether the will of Congress has been obeyed.’” Skinner v. Mid-America Pipeline, 490 U.S. 212, 218 (1989). As the Commission has itself noted, “Congress imposed no limits whatsoever on the telecommunications service which eligible schools and libraries could arrange to receive discounts.” Order, ¶ 432 n.1117. Indeed, the reason that such “standardless” delegations are unconstitutional is amply demonstrated by the Universal Service

Order -- the Commission has determined that \$2.65 billion annually will be provided to fund discounts for “any commercially available telecommunications service” (§ 54.502), an information service (§ 54.503), “internal connections” (§ 54.503, which is defined by § 54.500(a)(2) to include inside wire, computers, and software), and toll-free calling to Internet providers for non-rural health care providers. § 54.621(a). By so interpreting Section 254, the FCC has treated it as an overly broad and vague delegation of authority.

Moreover, contributions made by carriers to fund non-telecommunication services and to support non-carriers cannot be said to constitute “assessments” or “fees” to ensure the availability of “just, reasonable, and affordable” telecommunications services.²¹ Instead, carriers will be required to contribute to a fund that would be used to pay non-carriers for non-telecommunications services in order to achieve educational goals wholly unrelated to the regulation of telecommunications.²² In other words, interstate carriers will be required to fund, up to the tune of \$2.25 billion annually, a new entitlement program to achieve a general welfare goal of funding the upgrade of school and library facilities. As such, that funding obligation constitutes a tax²³ enacted in violation of Article I, Section 7 of the United States Constitution, which requires that “[a]ll Bills for raising Revenues [must] originate in the

²¹ See Rural Telephone Coalition v. FCC, 838 F.2d 1307 (D.C.Cir. 1988).

²² See United States v. Munoz, 495 U.S. 385, 400 n.7 (1990).

²³ See South Carolina v. Block, 717 F.2d 874, 887 (4th Cir. 1983) (the distinction between a “fee” and a “tax” is whether “regulation is the primary purpose” of the statute; a tax involves raising revenue for “general welfare”), cert. denied, 465 U.S. 1080 (1984).

House of Representatives.” Section 254 originated in the Senate²⁴ and is thus invalid.

4. The Commission Has Exceeded Its Jurisdictional Authority by Creating a Single Fund To Support Both Interstate and Intrastate Services For Schools, Libraries, and Health Care Providers

The language of Section 254 evidences a clear intent by Congress that the contemplated universal support mechanisms are to exist on a jurisdictionally separate basis.

Subsection (d) provides:

Every telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service. (emphasis added)

Subsection (f), on the other hand, provides that:

[a] State may adopt regulations not inconsistent with the Commission’s rules to preserve and advance universal service. Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State. (emphasis added)

The Commission perhaps had this in mind when it decided on a high-cost fund that is jurisdictionally interstate in both the costs supported and the basis on which contributions are assessed. Order, ¶ 268. However, the jurisdictional separation contemplated by 254(d) and (f) is not restricted to high-cost support. Rather, the language of Section 254(h) dealing with support for rural health care providers and schools and libraries signals Congress’ intent to maintain that separation in those support vehicles as well.

²⁴ S. B. 652, from which Section 254 was taken in large part, including the taxing provisions, was introduced in the Senate on March 30, 1995, and passed the Senate, as amended, on July 15, 1995. H. R. 1555 was not introduced until May 3, 1995, and passed the House on August 4, 1995.

Section 254(h)(1)(A), addressing support for rural health care providers, states:

A telecommunications carrier providing service under this paragraph shall be entitled to have an amount equal to the difference [between the rural and urban rates] treated . . . as part of its obligation to participate in the mechanisms to preserve and advance universal service. (emphasis added)

Section 254(h)(1)(B), addressing schools and libraries, similarly provides:

A telecommunications carrier providing service under this paragraph shall --

- (i) have an amount equal to the amount of discount treated as an offset to its obligation to contribute to the mechanisms to preserve and advance universal service, or
- (ii) notwithstanding the provisions of subsection (e) of this section, receive reimbursement utilizing the support mechanisms to preserve and advance universal service. (emphasis added)

The use of the plural “mechanisms” reflects Congress’s intent to continue the jurisdictional separation contemplated by 47 U.S.C. § 152(b) and that separate mechanisms should be maintained for the support of interstate costs/services, on one hand, and intrastate costs/services, on the other, and that correspondingly separate contribution formula be maintained as well.

Congress’ requirement of separate mechanisms makes sense. It provides States with control and responsibility for funding intrastate supported services and costs. Instead, the Commission has created a single mechanism, funded by contributions based on combined intrastate/interstate revenues to support discounts on both intrastate and interstate services, which denies States both the control and the responsibility that Congress intended.

Under the Commission’s plan, a State does not have a choice to “opt out” of the Federal plan in a way that provides carriers doing business in its State with a proportionate reduction in their obligation to contribute to the Commission’s fund. Consider the case of a

State that already has an intrastate mechanism for support of schools and libraries. Under the Commission's plan, the State has basically three choices, none of which are particularly equitable. If it continues its current plan but elects not to participate in the Federal fund because that would result in more support to schools and libraries than is needed, carriers in its jurisdiction would pay twice -- once to the existing State fund and a second time to the combined Federal fund that will support schools and libraries in other States -- but the State's schools and libraries would only benefit once. Alternatively, the State may elect to keep its existing plan and participate in the Federal plan as well. In that case, schools may well get more support than is appropriate or necessary, and carriers doing business in the State are still "double taxed." Finally, the State could simply abandon its existing mechanism and adopt the combined Federal approach. This, however, might result in the abandonment of a more efficient way of supporting schools in that State.

The language contained in Section 254(h)(1)(B) dealing with schools and libraries specifically provides:

The discount shall be an amount the Commission, with respect to interstate services, and the states with respect to intrastate services, determine is appropriate and necessary to ensure affordable access to and use of such services by such entities. (emphasis added).

The Commission's plan denies States the right to make their own determination of the appropriateness of the discounts and makes compliance with the interstate discount a condition of receiving any Federal funding. Order, ¶ 551. The fact that the Commission found this authority to foreclose participation in the Federal fund reinforces Congress' decision to require separate funds based on the longstanding § 2(b) jurisdictional separation. In this light, the only reasonable conclusion is that the Commission's decision to create a single combined

State/Federal fund for the support of schools, libraries and rural health care providers is beyond the Commission's authority and contrary to Congress' intent.

B. Petitioners Will Suffer Irreparable Harm Without a Stay

Petitioners will continue to suffer the irreparable harm already resulting from the Commission's continued reliance on implicit support generated by incumbent LECs in an inequitable and discriminatory manner to fund universal service. Competitors, who are not so burdened, will continue to be able to target customers that purchase Petitioners' telecommunications services that are priced to generate that implicit support, thereby resulting in customer and implicit support losses. The Universal Service Order will only exacerbate those losses and increase the existing irreparable harm.

Other irreparable harms are also likely without a stay. The Commission will shortly begin implementing the Order, including letting out for bid the various requests submitted to the Commission for funding. Given the breadth of "all commercially available telecommunications services" and the generous discount schedule established by the Commission, the Order will undoubtedly result (as it is intended to) in orders from qualified institutions that are larger than otherwise would be expected. As incumbent LECs, Petitioners expect to have to fill a substantial number of those orders, whether directly or indirectly through wholesale telecommunications services or unbundled network elements, and expend considerable capital and other resources to do so.

Attached to this Petition is the "Declaration of Gary L. Dolle," Area Manager - Network Regulatory Support Planning for Southwestern Bell Telephone Company ("SWBT") regarding a study that calculated between 1.5 and 2 miles of incremental fiber deployment

would have been needed to reach schools in SWBT's service areas in the State of Missouri. Using the result of that study as representative within Petitioners' service areas²⁵ and using the lower average investment in fiber optic cable of \$31,200 per sheath mile,²⁶ the investment needed simply to deploy fiber to schools is estimated to fall within the range of \$46,000 and \$62,000. Assuming 2000 schools and libraries in Petitioners' service area order fiber-based services in reliance on Federal support (which is estimated to be less than 10% of the total) and the average non-recurring deployment cost is only \$50,000, Petitioners would need to expend \$100 million to meet that demand. That \$100 million number may be a conservative estimate in light of the fact that the Commission has estimated that 32% of schools will receive 80-90% discounts, and perhaps even a larger number of schools will receive larger discounts for intrastate services. A large number of schools and libraries can be expected (as the Commission intends) to take advantage of fiber-based services for distance learning networks and applications, Local Area Networks, and high bandwidth services to

²⁵ With an average of 74.3 people per square mile, Missouri is the second most densely populated of the seven States in which Petitioners operate (Arkansas, 45.1; California, 190.8; Kansas, 30.3; Missouri, 74.3; Nevada, 10.9; Oklahoma, 45.8; Texas, 64.9). Widely acknowledged experience is that a high positive correlation exists between population density and loop length. See "www.census.gov."

Moreover, the 1.5 to 2 mile estimate is less than Petitioners' average fiber loop length (SWBT, 2.7 miles; Pacific Telesis, 3.0 miles). See Kraushaar, J.M., Fiber Deployment Update, End of Year 1995, Federal Communications Commission, Common Carrier Bureau, Industry Analysis Division, "Table 8: Data on Fiber to the Pedestal of Local Operating Companies -- 1995."

²⁶ This figure represents SWBT's average investment. Pacific Bell and Nevada Bell have an average investment of \$37,500 per sheath mile. Note that this investment represents fiber deployment only, and does not include any electronic or optoelectronic equipment. See Fiber Deployment Update, End of Year 1995, Tables 5 and 9, which used definition of "investment of fiber facilities" so as to exclude such equipment.

reach the Internet. *See also* attached “Declaration of Ricky D. Moss,” which sets forth some of the computer systems that will need to be modified. There will be no assurance of recovery or reimbursement by Petitioners from any party of those costs if the appeal of the Order is successful with respect to Section 254(h). *See* attached “Declaration of James L. Jones, Jr.” Moreover, the damage to Petitioners will be difficult if not impossible to calculate.

In a similar vein, using the figures relied upon by the Commission in establishing the \$2.25 billion annual fund, approximately \$746 million apparently represents funding for discounts to schools for internal connections.²⁷ This estimate is undoubtedly low since libraries are not included. Petitioners provide unregulated internal connections. Accordingly, as with fiber optic deployment, Petitioners may install internal connections which schools and libraries cannot afford to pay for if, as expected, an appeal of this issue is successful.

Further, implementing Section 254(h) will likely result in the loss of customers and customer goodwill. Petitioners’ respective contributions to the \$2.65 billion annual fund will increase access prices above where they otherwise would be, further exacerbating the price differences between those prices and UNE prices. As with every other carrier, Petitioners’ contributions to that fund will be based on their interstate and intrastate end-user revenues.

§ 54.703(b). However, as with every other incumbent LEC, Petitioners are limited to

²⁷ Although the basis for the \$2.25 billion is difficult, if not impossible, to determine, Petitioners have derived \$746 million by trying to follow the process outlined by the Joint Board, and noted by the Commission in the Order. Thus, the \$6.1 billion McKinsey estimate was adjusted for a 30% discount to reflect supposed volume discounts and the effect of volunteers, decreased for the 13% difference assumed by the Joint Board and the Commission for internal connections installed since the McKinsey study was prepared, and then adjusted to include private schools. The result was then spread over the four years used by the Commission.

recovering their contributions by increasing only interstate access rates. Moreover, as a price cap LEC, that recovery must be accomplished through an exogenous change to their price cap indices (“PCIs”). Access Charge Order, ¶ 379.

Inasmuch as incumbent LECs have greater intrastate end user revenues than interstate end user revenues, limiting increases to interstate rates overloads and mismatches the funding recovery from the funding base, creating a greater disparate competitive impact. Petitioners’ competitors, including access competitors, are not required to limit recovery from interstate customers, much less recover their contributions under an interstate access price structure dictated by the Commission. Universal Service Order, ¶ 829. This competitive disadvantage only adds to the implicit funding for universal service that already exists in Petitioners’ access rates, which the Commission expressly declined to do anything about. With the implementation of Section 254(h) and in light of the inability to charge interstate access on unbundled network elements, Petitioners’ competitors are greatly advantaged. *See* “Declaration of James L. Jones, Jr.”

The Commission’s bidding structure also will result in loss of customers. Contrary to Section 254 and any notion of competitive neutrality, the Commission is requiring a bidding process notwithstanding the recurrent inability of incumbent LECs to offer any price but one that is publicly tariffed. The limited relief provided by the Commission only for interstate telecommunications services and only for certain customers will not place incumbent LECs on equal footing for bidding purposes (Order, ¶ 483), and can be expected to result in customer loss with no assurance that Petitioners will have any opportunity to regain such customers after a successful appeal.

The Eighth Circuit recognized the loss of customers, customer goodwill, and unrecoverable economic losses as a clear irreparable injury in granting a partial stay in the appeal of the Interconnection Order:

The threat of unrecoverable economic loss . . . does qualify as irreparable harm. . . In this case, the incumbent LECs would not be able to bring a lawsuit to recover their undue economic losses if the FCC's rules are eventually overturned, and we believe that the incumbent LECs would be unable to fully recover such losses merely through their participation in the market. Moreover, the petitioners' potential loss of consumer goodwill qualifies as irreparable harm.²⁸

The threat of loss of customers, revenues and goodwill to Petitioners clearly establishes irreparable harm. In order to avoid the customer losses resulting from Section 254 funding obligations, a stay is appropriate.

C. The Grant of a Stay Will Not Harm Others

By ordering a stay, schools, libraries, and health care providers will not be harmed and, in fact, may benefit by not beginning down a path and making commitments based on a Federal program that is likely to be substantially altered and limited as a result of an appeal. Schools and libraries could be left with purchase commitments made in reliance upon receiving discounts of up to 90% (and even possibly 100% on intrastate services). For example, they will be required to compensate -- at full price -- providers that incurred real costs in wiring schools and libraries, furnishing routers, hubs, servers, LANs and software, and providing Internet access. Under the Commission's calculation, this would result in an additional \$746 million liability in 1998 to schools alone. Given that a premise of the Commission's decision to include the Internet and internal connections is that schools and

²⁸ Iowa Utilities Board v. FCC, 109 F.3d 418, 426 (8th Cir. 1996) (citations omitted).

libraries cannot afford to pay the full price for those items, a stay is clearly warranted to avoid a situation where schools and libraries would be responsible for otherwise unaffordable charges.

These difficulties are enhanced by the Commission's structure of the fund. Given its largely "first come, first serve" nature, schools and libraries are already beginning to feel the need to get their programs and plans in place, and to submit their funding requests as soon as possible. Schools and libraries that are fiscally prudent and wait for the outcome of the appeal could conceivably be foreclosed from receiving funding in the unlikely event that Petitioners' appeal fails.

Freezing the *status quo* pending this challenge will, in the long run, benefit schools and libraries and place them on equal footing. While it is understandable that they will desire discounts sooner rather than later, it is also in their interests -- and fiscally prudent -- to purchase these items only after the legal issues are finally resolved. As the Eighth Circuit noted in an analogous situation,

[w]e think that it would be easier for the parties to conform any variations in their agreements to the uniform requirements of the FCC's rules if the rules were later upheld than it would be for the parties to rework agreements adopted under the FCC's rules if the rules were later struck down. Consequently, we conclude that any harm that other parties may endure as a consequence of imposing a stay is outweighed by the irreparable injury that the petitioners would sustain absent a stay.

Iowa Utilities Board, 109 F.3d at 426.

D. The Public Interest Would Be Served by a Stay

The public would be served by a stay that would permit Section 254 to be implemented as envisioned by Congress. By first identifying the current implicit support and

then establishing “specific, predictable, and sufficient” explicit mechanisms funded on an “equitable and nondiscriminatory basis,” the public would be assured that universal service would be preserved and advanced. By effectively increasing the existing implicit subsidies with its decisions pertaining to Section 254(h), the continued viability of the implicit subsidies supporting universal service is further jeopardized.

Moreover, there is no deadline for implementing Section 254(h). In contrast to many of the other provisions of Section 254, Congress made the designation of additional telecommunications services under Section 254(c)(3) discretionary (“the Commission may designate additional services”). Given the lack of any deadline, the public interest clearly lies in avoiding the wasted and unrecoverable efforts of the States, State commissions, schools, libraries, health care providers, carriers, and non-carriers that will result if Petitioners are successful on any of these issues on appeal. Without a stay, the limited resources of each (but especially State commissions, schools, and libraries) will have been wasted in efforts to implement provisions that are likely to be modified, perhaps substantially, as a result of an appeal. At the same time, interstate carriers will be required to contribute to a fund that may disappear, but only after their contributions have been dispersed with no assurance of recovery. Again, the public interest lies in ensuring that universal service funding not be unlawfully collected, misdirected or squandered, and that these legal issues be resolved prior to embarking on the massive support and infrastructure upgrade program for schools, libraries, and health care providers that the Commission has created.

Moreover, it simply cannot be in the public interest to leave schools, libraries, and rural health care providers with commitments that they otherwise would not have made but

for the promise of federal funding. It is in the interest of the entire public that schools and libraries not be left with obligations they cannot afford, or with projects left partially finished.

A stay will avoid all of these potential adverse consequences.

The public interest may, of course, have many faces -- favoring at once both the rapid expansion of utilities and the prevention of wasteful and repetitive proceedings at the taxpayers' or consumers' expense; both fostering competition and preserving the economic viability of existing public services; both expediting administrative or judicial action and preserving orderly procedure. We must determine, these many facets considered, how the court's action serves the public best.²⁹

The balance must weigh in favor of prudence. It will be next to impossible to "unring the bell" unless a stay is granted.

IV. THE IMPOSITION OF "NO DISCONNECT"/DEPOSIT RULES IS IN EXCESS OF THE COMMISSION'S JURISDICTION, INCONSISTENT WITH OTHER PORTIONS OF THE ORDER, AND OTHERWISE UNLAWFUL

The Commission has adopted a rule that requires eligible carriers to provide discounted universal service to customers falling within certain income criteria under a program known as "Lifeline." The amount of the discount will be reimbursed from explicit Federal universal service funding. At the same time, the Commission has prohibited eligible carriers from disconnecting a Lifeline customer due to his or her failure to pay the valid, non-disputed charges associated with toll services used by that customer, whether interstate or intrastate. The Commission's prohibition is contrary to the Commission's own interpretation of the Act, violates the interstate/intrastate jurisdictional split of 47 U.S.C. § 152(b), and is an abuse of discretion and otherwise unlawful.

²⁹ Virginia Petroleum Jobbers Ass'n v. FPC, 259 F.2d 921, 926-27 (D.C. Cir. 1958).

A. Petitioners Are Likely To Be Successful on the Merits

The imposition of these requirements on unpaid intrastate charges violates Section 2(b). Assuming *arguendo* that the Commission has the authority to prohibit disconnection for non-payment of interstate charges, Section 2(b) clearly leaves the States with jurisdiction over issues involving disconnection of an intrastate service for non-payment of intrastate charges. Currently, each of the Petitioners is able to disconnect or require deposits from Lifeline participants due to non-payment of toll charges. See attached Declarations of James F. Riley, Paul L. Turner, and Richard T. Wilson. There is nothing in Section 254 that authorizes the Commission to so intrude into State jurisdiction. This does not involve “comity” (Order, ¶ 392); rather it involves a clear restriction on the Commission’s authority.

Moreover, the Commission has directly contradicted itself by adopting additional requirements for being designated as an “eligible telecommunications carrier” under Section 214(e) -- namely, that the carrier participate in Lifeline (§54.405), not disconnect any Lifeline customer due to unpaid toll charges (§54.401(b)), and not require a service deposit from a Lifeline customer if, at the time service is initiated, that customer voluntarily elects to receive toll blocking. §54.401(c). The imposition of these additional requirements is in direct contradiction to the Commission’s earlier conclusion that prerequisites beyond those set forth in Section 214(e) could not be imposed on an eligible carrier. Order, ¶¶ 134-147.

The “no disconnect”/deposit rule is also unreasonable and an abuse of discretion. The Commission’s ruling and its reliance on voluntary acquiesce by Lifeline participants to toll limitations will result in increased uncollectibles, fraud, and administrative costs and expenses. See attached Declarations of James F. Riley, Paul L. Turner, and Richard T. Wilson. None of

these costs and expenses will be compensated by the Federal fund even though caused by the Commission's requirements.

The Commission's attempt to minimize these consequences by noting that the "toll provider" can disconnect its services is unavailing. Order, ¶ 394. For example, due to State regulatory constraints, Pacific Bell as an incumbent LEC is unable to block toll services absent customer consent. *See* "Declaration of Paul L. Turner." This is not simply a matter of "billing and collection" as positioned by the Commission (Order, ¶ 391), but a fundamental intrastate regulatory issue.

B. Petitioners Will Suffer Irreparable Harm Without a Stay

The Commission's "no disconnect"/deposit rule will result in irreparable harm to Petitioners. If the rule is allowed to go into effect, Petitioners will suffer a loss of customer goodwill as their disconnection and deposit rules change to conform to the Commission's rule, and then revert after a successful appeal. Affected Lifeline participants will undoubtedly be confused about the "flip flop," and may have changed their toll usage in response to the Commission's more lenient rule. Regardless of whether Lifeline participants understand that the Commission would be the source of the problem, Petitioners will suffer the loss of customer goodwill attendant with the reversal. Correspondingly, Petitioners will have to modify their operating practices for disconnection and deposit collection. Not only will Petitioners' expenses and loss of productivity caused by those changes be difficult if not impossible to ascertain, Petitioners will have no means by which to recover those amounts.

In similar fashion, Petitioners will experience increased uncollectibles and expenses (*e.g.*, costs of providing toll services; collection, administrative, and programming expenses)

associated with the inability to terminate service to Lifeline participants for unpaid toll charges. See attached Declarations of James F. Riley, Ricky D. Moss, Paul L. Turner, and Richard T. Wilson. These amounts are likely to be considerable, especially for Pacific Bell inasmuch as nearly 25% of its residential customers are Lifeline participants, amounting to over 50% of the Nationwide total. See attached "Declaration of Paul L. Turner." Given the Commission's conclusion that such customers do not have the means to pay those charges, Petitioners will be without the means of recovering their economic losses, which can only be expected to grow as a result of the Commission's "no disconnect"/deposit rules.³⁰

As the Eighth Circuit recognized,

The threat of unrecoverable economic loss . . . does qualify as irreparable harm. . . In this case, the incumbent LECs would not be able to bring a lawsuit to recover their undue economic losses if the FCC's rules are eventually overturned, and we believe that the incumbent LECs would be unable to fully recover such losses merely through their participation in the market. Moreover, the petitioners' potential loss of consumer goodwill qualifies as irreparable harm.³¹

C. Others Will Not Be Harmed by a Stay

There is no harm in continuing the current practices and maintaining the *status quo*.

The current disconnection and deposit practices and policies used by Petitioners are a matter within the jurisdictions of the Commission and various State commissions. One simply

³⁰ See also *Amendment of the Commission's Rules and Policies to Increase Subscribership and Usage of the Public Switched Network*, CC Docket No. 95-115, Comments of Bell Atlantic, pp. 2-6 (filed September 27, 1995) ("no disconnect" rule in Pennsylvania raised uncollectibles "nearly 400%" and "a sharp rise in administrative expenses" of "more than \$24 million per year"); GTE's Comments, pp. 35, 36 (filed September 27, 1995) ("ongoing cost of providing service in Pennsylvania have increased significantly" and "the level of uncollectible revenues . . . has increased threefold").

³¹ Iowa Utilities Board v. FCC, 109 F.3d 418, 426 (8th Cir. 1996) (citations omitted).

cannot conclude that the retention by States of jurisdiction of these intrastate matters is “harmful” without attacking the very basis of § 2(b).

D. A Stay Would Be in the Public Interest

The public interest lies in ensuring that the already overburdened system of implicit support is not further jeopardized by increasing reliance on that support to recover additional expenses imposed by the Commission. Those subsidies are already being eroded by competition, and the rate of erosion is only increasing under the Act. Subjecting that support to even more burdens by requiring incumbent LECs to take additional actions which increase the cost of providing universal service is not in the public interest. The public will thus benefit from a stay because the additional costs associated with the “no disconnect”/deposit rule and ultimately borne by implicit support will not materialize. A stay will also prevent the customer confusion, frustration, and harm that will occur as the rules in this area “flip flop” as a result of a successful appeal.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE
COMPANY

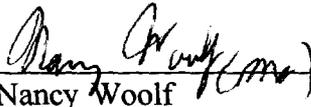
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Their Attorney

July 3, 1997

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

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

DECLARATION OF GARY L. DOLLE

I, Gary L. Dolle, declare the following:

1. I am Area Manager - Network Regulatory Support Planning for Southwestern Bell Telephone Company ("SWBT"). My current responsibilities encompass the management of network infrastructure projects associated with proposed and approved alternative State regulation plans and legislation.

2. I am familiar with SWBT's participation in previous and existing State telecommunications programs specifically aimed at benefitting educational institutions.

3. I have previously performed a network study, the purpose of which was to estimate the incremental capital investment associated with an educational telecommunications program that SWBT proposed for the State of Missouri. The SWBT proposal involved the provision of fiber-based services to K-12 schools in SWBT's service areas in Missouri.

4. Part of that study involved estimating the length of fiber optic loops to such schools. This calculation was performed by field network personnel, and was based upon the distance between the actual location of each such school and SWBT's serving wire center. From those measurements, SWBT concluded that approximately 1.5 to 2 miles of fiber would need to be deployed for each K-12 school.

5. The SWBT proposal and the results of that study were submitted in sworn testimony in an on-the-record hearing before the Missouri Public Service Commission, after having been subjected to regulatory discovery processes.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on June 25, 1997.



Gary L. Dolle

Subscribed and sworn to before me this 25th day of June, 1997.



Notary Public

Term Expires:

MARY ELLEN KALAPENSKI
NOTARY PUBLIC STATE OF MISSOURI
ST. LOUIS CITY
MY COMMISSION EXP. JULY 24, 1997

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

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

DECLARATION OF RICKY D. MOSS

I, Ricky D. Moss, declare the following:

1. I am Executive Director - Billing Development for Southwestern Bell Telephone Company ("SWBT"). My responsibilities encompass SWBT's business and residence billing systems, and in that capacity I am familiar with each of the systems listed in paragraph 3 below.

2. The implementation of the *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-157 (released May 8, 1997) ("Universal Service Order") has the potential to affect many of SWBT's computer systems due to the need to accommodate (i) service discounts for education providers, libraries, and health care providers, and (ii) different treatment of Lifeline customers. These computer systems are involved in the customer ordering, provisioning, billing, and treatment activities performed by SWBT.

3. Listed below are the systems that are expected to be impacted by the Universal Service Order:

(a) SORD ("Service Order Retrieval and Distribution System) and EASE (Easy Access Sales Environment) - These systems are used by SWBT sales representatives to order and provision services.

(b) BOSS ("Billing and Order Support System") - This support system is used by service

representatives to view and adjust non-access customer's bill.

(c) CRIS ("Customer Record Information System") - This system is used to produce bills for non-access services.

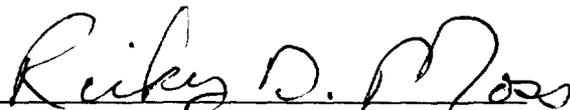
(d) MPS ("Message Processing System") and UPS ("Usage Processing System") - These are sub-systems within CRIS that generates toll and other usage-based charges.

(e) CABS ("Customer Access Billing System") - This system is used to produce bills for access services, including special access.

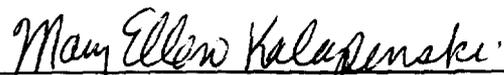
(f) TAXI ("Terminal Access Exchange Information System") - This support system is used by service representatives to view and adjust an access customer's bill.

3. This is a preliminary view of those SWBT computer systems that will be need to be modified to address the Universal Service Order. The final list of systems and the magnitude of the necessary changes resulting from the Universal Service Order are still being reviewed and analyzed. Based upon an initial read of the Order, the changes necessary are expected to be substantial and require significant resources to accomplish.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on June 30, 1997.


Ricky D. Moss

Subscribed and sworn to before me this 30th day of June, 1997.


Notary Public

My term expires:

