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

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

CC Docket No. 96-45

PETITION FOR RECONSIDERATION AND CLARIFICATION

MCI TELECOMMUNICATIONS CORPORATION

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SUMMARY

Although the Commission's decision is a step in the right direction toward reforming the nation's outdated universal service system, certain aspects of the Order do not meet the requirements of the Act and will cause the federal fund to be greater than necessary. MCI proposes the following modifications to the Commission's Order to address these flaws in a way that both advances universal service and competition.

Federal support should be determined by the federal model and state commissions should not be allowed to submit studies to be used to set federal universal service support. In addition to making federal support "unpredictable," allowing states to submit their own cost model will be burdensome and it will allow states to "game" the process to maximize federal support. If the Commission, nevertheless, allows states to submit their own cost models, it must impose requirements and parameters that overcome the incentive to choose a high cost model.

The Commission must make clear in the Universal Service Order that ILECs must reduce interstate access charges by an amount equal to federal universal service support.

The Commission must establish a definite time frame for determining universal service support for rural carriers based on forward-looking economic cost. Specifically, this mechanism should be implemented for rural carriers beginning on January 1, 2001, phased-in over three years.

The Commission must clarify that states cannot include carriers' interstate and international revenues in determining assessments for state funds.

The Commission should change its rules so that SLCs are allowed to rise, subject to their existing caps, to reflect the LECs' universal service assessments. Allowing the CCL and PICC to rise to recover the LECs' universal service assessment would not be cost-causative; it would be inconsistent with the treatment of services in the trunking basket; and it would be a new, implicit universal service subsidy, contrary to the universal service principles in the Act.

The Commission should require all consumers in all states to meet the same eligibility requirements for Lifeline and Linkup service and consumers should be required to certify their eligibility to receive federal support. No certification or the self-certification adopted by the Commission for consumers in states without programs will lead to fraud and unnecessary funding for Lifeline and Linkup, which will increase rates for all consumers.

The Commission should reconsider its decision to prohibit eligible telecommunications carriers receiving universal service support from disconnecting Lifeline service for non-payment of toll charges. If, however, the Commission refuses to reconsider the denial of DNP, then LECs should be required to inform IXCs of the identity of Lifeline customers so that appropriate deposit and fraud parameters could be implemented.

MCI requests that the Commission clarify its language concerning the use of the word "surcharge" on bills by carriers to ensure that the Commission's Order is not a violation of carriers' first amendment rights.

Finally, MCI asks the Commission to reconsider its decision concerning the use of loops with load coils in light of the record evidence which demonstrates that loops with load coils are able to support modems.

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PETITION FOR RECONSIDERATION AND CLARIFICATION

MCI Telecommunications Corporation (MCI) hereby requests that the Commission reconsider those aspects of its universal service Order¹ specified herein.

I. INTRODUCTION

Although the Commission's decision is a step in the right direction toward reforming our nation's outdated universal service system as required by the Telecommunications Act of 1996 (the Act), more needs to be done. The Commission's Order fails to create a new, explicit, competitively-neutral universal service subsidy outside the control of incumbent local monopolies and it allows the continuation of unnecessary subsidies now buried in access revenues. In addition, certain aspects of the Order do not meet the requirements of the Act and will cause the federal fund to be greater than necessary. MCI herein addresses the flaws in the Commission's Order and proposes modifications that will advance both universal service and competition.

¹ Federal State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, FCC 97-157 (rel. May 8, 1997) (Order).

II. FEDERAL SUPPORT SHOULD BE DETERMINED BY THE FEDERAL MODEL

The Commission has allowed state commissions to submit forward-looking economic cost studies to be used to set federal universal service support. Once the Commission approves a state's model, the federal universal service fund will pay 25 percent of the cost above the benchmark identified by the state model. As a condition to using the state model to determine the federal support, any state universal service fund also must be sized using the same model. The Commission also urges the states to use the same model to set rates for unbundled network elements (UNEs).

MCI urges the Commission to reconsider its decision and select one cost model that will be used to set federal support for all states. In addition to making federal support "unpredictable," allowing states to submit their own cost model to determine federal universal service support will be burdensome; will allow states to "game" the process to maximize federal support; and could cause state support to be greater than necessary.

The Act requires the Commission to base policies for universal service on a number of principles, including the principle that there should be "specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service."² In its Order, the Commission finds that a nationwide benchmark should be set because it "will make the support levels more uniform and predictable than a benchmark set at a regional, state, or sub-state level...". For the same reasons, cost should be determined on a nationwide basis through the use of a federal model.

² 47 USC Section 254(b)(5).

In addition, under the Commission's Order, state commissions, and the LECs, will have an incentive to submit cost models with inflated costs to increase the amount of federal support for universal service, which will lead to a larger than necessary federal fund. The only countervailing incentive is that the state commissions must use the same model for any state fund. However, the states are not required to have a state fund and, therefore, this safeguard may be ineffective. In addition, state commissions may accept larger state funds or they may simply try to pass the cost of the fund onto interstate users, to secure greater federal support.

Not only could this lead to greater than necessary federal and state universal service funds, if a state uses a cost model with inflated costs to set UNE rates, the prices for these elements also will be greater than necessary. This would affect the ability of competitors to enter the market and delay competition.

If the Commission, nevertheless, allows the states to submit their own cost models, it must impose requirements and parameters that overcome the incentive to choose a high cost model. For example, the Commission's Order lists ten criteria that all cost models must meet including a requirement that a reasonable allocation of joint and common costs must be assigned to supported services, and that the model must allow modification of such factors as fill factors, input costs, overhead adjustments, retail costs, structure sharing percentages, fiber-copper crossover points, and terrain factors. The Commission must specify reasonable ranges for each of these factors to be used by the states. This will ensure that the cost models developed by the states will be reasonable and it will reduce the ability of the LECs and the states to develop models that will hinder the development of competition or result in an excessive universal service fund. In addition, the Commission should require that the cost of any state universal

service programs supported through carrier assessments must be recovered through intrastate rates only.

III. ILECS MUST REDUCE ACCESS CHARGES

In the Access Charge Order, the Commission directs incumbent LECs (ILECs) "to use any universal service support received from the new universal service mechanisms to reduce or satisfy the interstate revenue requirement otherwise collected through interstate access charges."³ Not only was the Commission right to make this decision, it was required to because current interstate access charges include implicit subsidies for universal service. Therefore, once these implicit subsidies are made explicit, they must be removed from interstate access charges. However, it is not sufficient for this requirement to be in the Access Charge Order only, particularly since that order is being challenge in the United States Court of Appeals. Accordingly, MCI requests that the Commission also make clear in the Universal Service Order that ILECs must reduce interstate access charges by an amount equal to federal universal service support.

IV. TIMETABLE FOR RURAL CARRIERS

Section 254(a)(2) of the Act requires the Commission to initiate a single proceeding to implement the Joint Board Recommendations on universal service and to complete such proceeding by May 8, 1997, in which the Commission is required to define the services

³ Access Charge Reform, CC Docket No. 96-262, First Report and Order, FCC 97-158 (rel. May 16, 1997) at para. 381.

supported by federal universal service and adopt a specific timetable for implementation.⁴ In the Order, the Commission finds that federal support should be based on forward-looking economic cost beginning January 1, 1999, for non-rural carriers. The Commission, however, does not adopt a specific timetable for implementing the use of forward-looking economic cost for rural carriers. The Commission only states that "rural carriers will gradually shift to a support system based on forward-looking economic cost at a date the Commission will set after further review, but in no event starting sooner than January 1, 2001."⁵

Thus, with respect to rural carriers, the Commission has not complied with the Act's requirements. To bring its Order into compliance, the Commission must establish a definite time frame for determining universal service support for rural carriers based on forward-looking economic cost. Specifically, the Commission should order the use of forward-looking economic cost for rural carriers beginning on January 1, 2001, phased-in over three years. This timetable would give the Commission time to develop a cost model appropriate for any unique circumstances in rural areas to ensure that such areas are not harmed by the implementation of the universal service fund and it would ensure that progress is made on implementing a cost model for rural areas, without anti-competitive delay. In addition, it would provide some degree of certainty to competitive carriers that seek to enter rural markets concerning the potential universal service funding that will be required of, and made available to, them.

⁴ 47 USC Section 254(a)(2).

⁵ Order at para. 204.

V. CONTRIBUTIONS TO UNIVERSAL SERVICE MECHANISMS

In the Order, the Commission finds that a carrier's share of support to the federal high cost and low-income funds will be based on interstate and international end-user revenues. The Commission, however declines to include intrastate end-user revenues of interstate carriers in determining each carrier's share of the federal fund.

Since contributions to the federal fund will not be based on intrastate revenues, MCI requests that the Commission clarify that states cannot include carriers' interstate and international revenues in determining assessments for state funds. Otherwise, such state plans would be inconsistent with the Commission's Order in violation of Section 254(f) of the Act.⁶

VI. RECOVERY OF UNIVERSAL SERVICE PAYMENTS

MCI asks the Commission to reconsider the method it has adopted for LEC flow through of their universal service assessments to access customers. For price cap carriers, the Commission has allowed LECs to take exogenous adjustments in the baskets which have end user revenues-- the common line, trunking, and interexchange baskets. To prevent non-end user services in the trunking baskets from being raised to pay for universal service, the Commission prohibited LECs from increasing the Service Band Indexes (SBIs) for categories which have no end user revenues⁷.

⁶ 47 USC Section 254(f).

⁷ The Commission identifies these categories as tandem-switched transport, interconnection charge, and tandem switch signaling service.

MCI agrees with the Commission's decision to prevent recovery of LEC universal service assessments from non-end user services in the trunking basket. However, the Commission also must adopt a similar restriction in the common line basket, in which the only end user revenues are subscriber line charges (SLCs), and change the Part 69 rules to include payments to the universal service fund in the common line revenue requirement. Otherwise, the universal service assessment can be flowed through to the carrier common line (CCL) rates and, starting January 1, 1998, the pre-subscribed interexchange carrier charges (PICCs)-- and LECs will not need to raise their SLCs to reflect their assessment.

Allowing the CCL and PICC to rise to recover the LECs' universal service assessment would not be cost-causative; it would be inconsistent with the treatment of services in the trunking basket; and it would be a new, implicit universal service subsidy, contrary to the universal service principles in the Act. The Commission claims that this treatment is necessary to avoid rate increases to consumers through the SLC. However, this treatment is unlikely to protect end users from rate increases because it would result in higher PICC charges, thereby putting further pressure on interexchange carriers (IXCs) to impose end user charges. The real effect, therefore, of the Commission's treatment is that the LECs' universal service obligations will be imposed on IXCs by means of an implicit subsidy, which the IXCs must try to recover from end users.

The fact that the Commission's treatment is nothing more than an implicit subsidy is demonstrated by the change in the treatment of universal service assessments on LECs once there is no longer a per minute CCL rate. Under the Commission's decision in the Access Reform Order, the SLC will be set based on the Part 69 rules only so long as a per minute CCL charge is

assessed. Once the per minute CCL rate disappears, however, the SLC will be set based on the changes to the price cap index (PCI) in the common line basket and any change to the universal service assessment in the common line basket will result in a higher SLC.⁸ Thus, under the current rules, the SLC for price cap LECs will not increase to collect the LECs' universal service assessment until the CCL charge is no longer collected, after which the SLC will increase for any increases in the universal service assessment. There is no justification given by the Commission for this change in treatment. Moreover, the Commission's treatment will incent the LECs to maintain the CCL charge in order to avoid SLC increases.

Thus, the Commission should change its rules so that SLCs are allowed to rise, subject to their existing caps, to reflect the LECs' universal service assessments.

VII. LIFELINE

In states that do not provide state matching Lifeline support, the Commission has determined that eligibility for Lifeline and Linkup will be based on participation in Medicaid, food stamps, Supplementary Security Income (SSI), federal public housing assistance or the Low Income Home Energy Assistance Program. However, in states that provide matching support, the Commission found that a consumer must meet the criteria established by the state commission to qualify for federal support. Similarly, in states in which the federal default qualification criteria apply, carriers must obtain customers' signatures on a document certifying under penalty of perjury that the customer is receiving benefits from one of the programs

⁸ The new SLC computed in this manner will continue to be subject to the SLC caps set by the Commission. However, to the extent this new SLC is less than the relevant SLC cap, the SLC will increase.

included in the default standard, identifying the program or programs from which the customer receives benefits, and agreeing to notify the carrier if the customer ceases to participate in such program or programs. However, in states that provide matching support, the Commission will allow the state to determine whether to verify eligibility.

There is no justification for different eligibility and certification standards for different states. In the past, allowing the states to establish eligibility criteria may have been appropriate because federal funding for Lifeline was contingent upon state funding and, therefore, the Commission did not adopt eligibility criteria. However, now that the Commission has adopted eligibility criteria, it should apply to all consumers in all states.

In addition, all consumers should be required to “certify” their eligibility to receive federal Lifeline and Linkup assistance in all states; the method of certification should be specified by the Commission; and it should be something more than the “self certification” adopted by the Commission for consumers in states without matching support. "No certification" or "self certification" will lead to fraud and unnecessary funding for Lifeline and Linkup, which will, ultimately, increase rates for all consumers. In addition, as with eligibility requirements, there is no longer any justification for different treatment in the application of a federal benefit to consumers based solely on the state in which the consumer resides. The Commission has imposed certification requirements in states where there is no state matching and has provided no meaningful justification as to why, at a minimum, the same certification requirements should not apply to consumers in all states.

However, the Commission’s self-certification requirement is little better than no certification, and it will not be effective in preventing fraud and abuse. Therefore, the

Commission must reconsider and replace its certification requirement with an effective program that applies to all Lifeline and Linkup customers. This could be achieved by requiring consumers to provide to the LEC a copy of a food stamp coupon, for example, to prove eligibility, rather than simply sign a document. Not only would this ensure that only eligible consumers receive Lifeline and Linkup support, it would be no more burdensome for consumers to provide and for carriers to receive than the self-certification document now required by the Commission.

VIII. DISCONNECT FOR NONPAYMENT

The Commission should reconsider its decision to prohibit eligible telecommunications carriers receiving universal service support from disconnecting Lifeline service for non-payment of toll charges (DNP) because it is bad policy. Allowing low-income consumers to incur long-distance charges that they can refuse to pay without fear of any consequences will only lead to increased uncollectibles for interexchange carriers which will drive up the cost of long distance services for all consumers-- including financially responsible low-income consumers who pay their bills.

If, however, the Commission refuses to reconsider the denial of DNP, then LECs should be required to inform IXC of the identity of Lifeline customers so that appropriate deposit and fraud parameters could be implemented for these consumers. As demonstrated by MCI in this proceeding, DNP is a valuable tool in keeping uncollectibles and, thus, costs, low, which allows IXCs to keep rates low. If DNP is not available for Lifeline customers, IXCs will need to rely on other mechanisms, such as deposits, to protect themselves from increased uncollectibles and fraud.

IX. SURCHARGE

In the Order, the Commission states that carriers are permitted, but not required, to pass through their universal service contributions to their interstate access and interexchange customers and that carriers that decide to recover their contribution costs from their customers may not shift more than an equitable share of their contributions to any customer or group of customers. In addition, the Commission states that to the extent carriers seek to pass all or part of their contributions on to their customers in customer bills, it would be misleading for a carrier to characterize its contribution as a surcharge. According to the Commission, unlike the SLC, the universal service contribution is not a federally mandated direct end-user surcharge. Thus, the FCC states that "characterizing the mechanism as a surcharge would be misleading because carriers retain the flexibility to structure their recovery of the costs of universal service in many ways, including creating new pricing plans subject to monthly fees."⁹ The Commission also states "[i]f contributors... choose to pass through part of their contributions and to specify that fact on customers' bills, contributors must be careful to convey information in a manner that does not mislead by omitting important information that indicates that the contributor has chosen to pass through the contribution or part of the contribution to its customers and that accurately describes the nature of the charge."¹⁰

MCI requests that the Commission clarify that this language is merely intended to restrict any "misleading" statements and that the Commission did not intend to try to restrict the use of the word "surcharge" by carriers when structuring their rates or to prejudge whether any

⁹ Order at para. 855.

¹⁰ Order at para. 855.

particular language used by carriers in bills would be considered “misleading.” Any other meaning by the Commission would clearly be an unconstitutional restriction on carriers’ first amendment rights.

There is nothing inherently “misleading” about the word “surcharge.” Carriers are entitled to recover their costs, or certain of their costs, by imposing surcharges on customers. It is commonly done today, and has been done for years, in operator services tariff, for example, which have not been challenged by the Commission.

X. LOAD COILS

Universal service was defined by the Commission to be voice grade service¹¹ and the Commission explicitly declined to adopt a proposal to include higher bandwidth services in the definition.¹² However, the Commission also determined that the loop design incorporated into a forward-looking economic cost study should not impede the provision of advanced services. The Commission then found that load coils impede the provision of advanced service and, thus, could not be included in a forward looking cost model.

The only evidence in the record regarding loops with load coils is whether such loops can support modems. Presumably, therefore, the use of modems on voice grade loops is the type of advanced service the Commission did not want to impede. However, in its discussion of this issue, the Commission failed to address record evidence that loops with load coils can indeed

¹¹ Order at para. 63-64.

¹² Order at para. 64.

support modems. In an ex parte filed by AT&T¹³, the supporters of the Hatfield model demonstrated that loops which include load coils would be able to support the presence of modems. Thus, MCI asks the Commission to reconsider this decision and allow the use of loops with load coils if it is the low cost forward-looking technology for provision of modem capable voice grade loops.

XI. CONCLUSION

Based on the foregoing, MCI respectfully requests that the Commission modify and clarify its Order as specified herein.

Respectfully submitted,

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¹³ Letter from Richard N. Clarke dated April 8, 1997.