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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

CC Docket No. 96-45

**OPPOSITION OF BELL ATLANTIC
TO PETITIONS FOR RECONSIDERATION**

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To: The Commission

OPPOSITION OF BELL ATLANTIC¹ TO PETITIONS FOR RECONSIDERATION

I. Introduction and Summary

In its Universal Service order,² The Commission properly found that the interstate high-cost fund should support only the interstate portion (i.e., 25%) of local service costs. Under the Commission's formula, the overall interstate support amount will actually increase above current levels, but the entire non-rural interstate fund would go to reducing interstate access charges rather than intrastate charges. In order to reduce pressure for local rate increases caused by this change, the Commission should first use the interstate high-cost fund to retain each state's existing level of high-cost support, indexed for inflation, and apply the remainder to reduce interstate access charges.

¹ The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; and New England Telephone and Telegraph Company.

² *Report and Order*, FCC 97-157 at ¶ 269 (rel. May 8, 1997) ("Order").

Similarly, the Commission should reject calls for a single consolidated interstate/intrastate fund. Section 254 of the Act specifies separate funds and gives states the right to supplement the interstate support, as needed, through contributions from intrastate service providers.

The Commission should deny requests to reconsider its decision to retain only the pre-sale amount of high-cost support for exchanges that are sold. Allowing assistance to increase would have the perverse effect of encouraging the sale of high-cost exchanges, at a premium, in order to reduce the seller's average per-line cost, while forcing other carriers' ratepayers to pay the increased subsidies that the new owners would receive.

The indexed cap on universal service funding during the transition to the revised system should also be retained. There has been no showing that retention of the cap has caused or would create a hardship for any customer.

A variety of telecommunications service providers ask to be exempted from contributing to the fund. The Commission should deny such special-interest exemptions, and, instead continue to require all competing entities to contribute their fair share to support universal service.

Finally, the Commission has the right to impose end-user surcharges to fund universal service. However, contrary to claims of several parties, it is not obligated by the Act to do so.

Several reconsideration requests should be granted. First, the recent *Iowa Utilities Board* decision deprives the Commission of authority to attempt to influence the states' decision on whether to use the same proxy cost methodology for pricing unbundled network

elements as those states use for universal service. Second, the Commission should require a local exchange carrier to provide only toll blocking (where technically available), not toll control services, to its Lifeline customers. Third, resellers of local services should not be Eligible Telecommunications Carriers for purposes of receiving high-cost support.

Finally, the Commission should recognize that some states may have established rates for school and libraries in anticipation of receiving universal service fund support. That support should not be jeopardized by characterizing those rates as “pre-discount.”

II. The 25% Interstate Allocation To Universal Service Should Be Retained, But A Portion of Interstate High-Cost Support Should Flow to Local Rates.

The Commission should deny the requests of several state commissions and other parties to increase the interstate payment into the federal high-cost universal service fund from the present 25% of the difference between benchmark rates and costs to some higher amount.³ Although petitioners claim that the 25% limitation will force states to increase local rates, any such increases are not the result of the 25% interstate universal service funding but are caused by the requirement that interstate funding be used solely to reduce interstate access charges.⁴ As a result, interstate support that is now used to reduce high-cost carriers’ local revenue requirements will be unavailable for that purpose. If the Commission were instead to allocate a portion of the

³ *See, e.g.*, Petition for Reconsideration by the Public Utility Commission of Texas at 2-3 (“Texas”), Petition for Reconsideration of GVNW Inc./Management at 6-8 (“GVNW”), Petition for Reconsideration and Clarification of the Rural Telephone Coalition at 1-6 (“RTC”).

⁴ Order at ¶¶268-69, 750-71.

federal high-cost fund to support local rates, there would be no need to increase the 25% allocation to reduce upward pressure on local rates.

Section 254 of the 1996 Act requires that federal high-cost universal service support be used to help ensure that those local telecommunications services that the Commission has designated as universal services⁵ are “available at just, reasonable, and affordable rates.”⁶ That requirement can be fulfilled by remitting to the Universal Service Fund Administrator an amount that will ensure that each state receives from the interstate universal service fund the current (1997) amount of local service support, indexed for inflation. Only after the present level of support is paid to each state should the remainder of the interstate high-cost fund be used to reduce interstate access charges.

The interstate fund under the mechanism that becomes effective in 1999 should be more than sufficient to provide each state the same interstate funding level as it is now receiving. In the unlikely event that this is not the case, the Commission should increase the interstate fund to ensure that each state receives the aggregate universal service payment that local carriers in that state receive in 1997, indexed for inflation.⁷

⁵ *Id.* at ¶¶ 61-82.

⁶ 47 U.S.C. § 254(b)(1).

⁷ It appears unlikely that such an increase would be needed. Of the present interstate universal service fund of about \$1.56 billion, approximately \$1.235 billion is provided to rural companies in the form of interstate high-cost assistance, Long Term Support (“LTS”) and DEM weighting, leaving about \$325 million for non-rural company support. Under the revised plan, the current rural support amounts are retained, at least for a number of years. All of the methodologies proposed by any of the parties (including use of actual costs) would produce an interstate non-rural fund that far exceeds the current \$325 million level. If that amount, indexed for inflation, were remitted to states to support local rates, there would still be a substantial fund remaining to reduce interstate access rates.

Nor is the 25% allocation unrelated to the actual allocation of costs between interstate and intrastate jurisdictions, as some parties claim. If anything, the interstate allocation is too high. The Dial Equipment Minutes (“DEM”) factor, that allocates local switching revenue requirements between interstate and intrastate jurisdictions, is about 15%.⁸ The interstate allocation of the local loop is established at 25% under the Commission’s Separations Rules.⁹ A composite of the two would be less than 25%. A 25% factor, even if somewhat high, is easily administered and would not be subject to annual variation as the DEM interstate allocation changes. Therefore, contrary to the parties’ claims, use of a 25% interstate factor for funding universal service is reasonable, more than accommodates the existing support, and should be retained.

III. A Combined Interstate/Intrastate High-Cost Fund Would Deny States Their Statutory Authority To Create Their Own High-Cost Funds.

Contrary to the arguments of several petitioners,¹⁰ nothing in Section 254 gives the Commission authority to establish a combined interstate-intrastate high-cost fund. Congress explicitly provided that there should be separate “federal and state mechanisms to preserve and advance universal service.”¹¹ Under Section 254(d), the Commission may assess revenues from

⁸ Monitoring Report, CC Docket No. 87-339 at 555, Table 4.20 (May 1997).

⁹ The Commission should expeditiously initiate a rulemaking to reform the jurisdictional separations rules.

¹⁰ *E.g.*, Sprint Corporation Petition for Reconsideration at 2-3 (“Sprint”), Wyoming Public Service Commission Petition for Reconsideration at 4-5, Petition for Reconsideration and Clarification of US WEST, Inc. at 2-9 (“USW”).

¹¹ 47 U.S.C. § 254(b)(5).

carriers that provide interstate telecommunications services to fund interstate high-cost support mechanisms.¹² In this way, interstate carrier contributions are to be used to maintain universal service as between various states nationwide. Congress also provided that individual states may assess intrastate service revenues to support high-cost areas within the state if they find such support needed.¹³ With a combined fund, the Commission would have to determine whether intrastate universal service funding is required and at what level. That would impermissibly exceed the Commission's jurisdiction, because Congress explicitly gave that authority to the states.¹⁴

IV. High-Cost Support Should Not Change When an Exchange Is Sold.

The Commission properly found that when a telephone exchange is sold, the per-line amount of high-cost support could not increase solely because of the sale.¹⁵ Several parties ask that, instead, the support be based upon the cost characteristics of the new owner.¹⁶ There is no public interest justification for using high-cost universal service funds to help finance the sale

¹² 47 U.S.C. § 254(d).

¹³ 47 U.S.C. § 254(f).

¹⁴ *Id.* (“Every telecommunications carrier that provides intrastate telecommunications services shall contribute, ... in a manner determined by the State to the preservation and advancement of universal service in that State.” (emphasis added)). *See Iowa Utilities Board v. FCC*, Nos. 96-3321 et al., 1997 WL 403401 (8th Cir. July 18, 1997) (“*Iowa Utilities*”).

¹⁵ Order at ¶ 308.

¹⁶ *E.g.*, Petition for Reconsideration of the Rural Telephone Companies at 21, United States Telephone Association Petition for Reconsideration and/or Clarification at 7-9 (“USTA”), GVNW at 20-21.

of exchanges. Many of these sales occur because large local exchange companies that do not qualify for high-cost support choose to shed high-cost exchanges to reduce their per-line cost, while the purchaser's high-cost support increases. The operating costs of these exchanges have not changed as a result of the sale, yet ratepayers across the country must increase their universal service assessment to defray loop costs assumed by the new parent company. The expected increase in high-cost support to the new owner inflates the purchase price of the exchange. As a result, the high-cost fund really reimburses the buyer for the higher price it paid the seller for the exchange. The Commission properly decided that it should not permit that result.

V. The Indexed High-Cost Cap Should Remain In Place.

During the transition period until all carriers receive high-cost support based upon forward-looking economic costs, the Commission properly retained the existing indexed cap on high-cost contributions.¹⁷ Several parties want this cap removed, claiming that the fund may not fully recover increases in loop costs or in interstate calling.¹⁸ However, this indexed cap has been in place since January 1994, and no party has even attempted to show that any ratepayer has been harmed by it during the past three and one-half years. Instead, the petitioners posit hypothetical scenarios that they claim could cause costs to rise sharply. If unforeseen circumstances occur that warrant revisiting the cap for any carrier or set of carriers, the affected carriers should be permitted to seek appropriate relief. However, in the absence of a showing of

¹⁷ Order at ¶ 281.

¹⁸ *E.g.*, USTA at 16-17, Petition for Reconsideration and Request for Clarification of the Alaska Telephone Association at 3, RTC at 18-20.

need, there is no justification for removing the cap for all carriers. As the Commission found, “[c]ontinued use of this indexed cap will prevent excessive growth in the size of the fund during the period preceding the implementation of a forward-looking support mechanisms [sic]. We find that a cap will encourage carriers to operate more efficiently by limiting the amount of support they receive.”¹⁹ These public interest reasons justify retention of the indexed cap.

VI. Special Interest Exemption Requests Should Be Denied.

The petitions include a parade of telecommunications service providers that seek an exemption from the requirement to support universal service. This diverse group includes private carriers,²⁰ systems integrators,²¹ payphone service providers,²² private satellite carriers,²³ and paging companies.²⁴ Each of these groups attempts to show why it, uniquely, should be

¹⁹ Order at ¶ 282.

²⁰ Petition for Reconsideration of the Information Technology Association of America at 3-9.

²¹ Petition of the Ad Hoc Telecommunications Users Committee for Partial Reconsideration and Clarification of Report and Order at 11-18 (“Ad Hoc”).

²² *Id.* at 18-24, American Public Communications Council Petition for Partial Reconsideration. If the Commission were to exempt private payphone providers from contributing to universal service, which it should not, it should also exempt the payphone businesses of telecommunications carriers in order to maintain competitive neutrality.

²³ Columbia Communications Company Petition for Reconsideration and/or Clarification at 3-7, Petition for Reconsideration of GE American Communications, Inc.

²⁴ *E.g.*, Personal Communications Industry Association Petition for Partial Reconsideration and Clarification at 4-8, Ozark Telecom Inc. Petition for Reconsideration, ProNet Inc. Petition for Reconsideration at 2-9. Some of the paging companies request either an exemption or a reduced payment level.

exempted from contributing to the fund. The Commission, however, recognized that each member of these groups competes with common carriers that are obligated by statute to contribute. Therefore, under the express authority of Section 254(d),²⁵ it determined on the basis of competitive neutrality that all such entities that provide telecommunications to others for a fee should contribute.²⁶ Exempting any or all of the providers will skew the competitive marketplace. Such exemptions would allow “contribution obligations to shape business decisions” and could “discourage carriers from continuing to offer their common carrier services,” both results that the Commission sought to prevent.²⁷ Therefore, the Commission properly used its permissive authority by finding that the public interest requires universal service fund contributions from other telecommunications providers.

VII. The Commission May, But Is Not Obligated To, Assess Universal Service Fund Contributions Through End User Surcharges.

Contrary to the claims of AT&T, US WEST, and MCI, the Commission is not required to impose end user surcharges to fund universal service.²⁸ Assessments on carriers based upon retail revenues are explicit and predictable -- carriers will know that they must pay

²⁵ 47 U.S.C. § 254(d) provides, in part, that “[a]ny other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires.”

²⁶ Order at ¶¶ 795-96.

²⁷ *Id.* at ¶ 795.

²⁸ AT&T at 5-6, MCI Telecommunications Corporation Petition for Reconsideration and Clarification at 6-8, USW at 9-10.

the Administrator a specified percentage of their end user revenues. The Act requires that interstate contributions are to be paid by telecommunications carriers and other providers that the Commission designates.²⁹ So long as the contributions are explicit and predictable as to those entities, the statutory requirement is met, even if they recover those contributions from their ratepayers in a variety of ways. The Commission has the right to impose end user surcharges, so long as such surcharges are assessed equally on all end users and the carriers collect and pay those charges into the fund. However, end user surcharges are not the only permissible means of assessing universal service contributions under the statute, as the three parties claim.

VIII. The Commission Should Allow States To Determine Whether Or Not To Use the Same Models For Universal Service and Pricing of Interconnection Elements.

The Commission urges states to use a similar cost methodology for the pricing of unbundled network elements and for universal service.³⁰ The Texas commission asserts that use of the same methodology for both purposes may not always be appropriate.³¹ Under Section 252(d), and recently affirmed by the U.S. Court of Appeals,³² states have sole authority to determine prices for unbundled network elements, and the Commission should not attempt to influence that determination by suggesting what cost methodology or model to use. Therefore,

²⁹ 47 U.S.C. § 254(d).

³⁰ Order at ¶ 251.

³¹ Texas at 4-6.

³² *Iowa Utilities*, 1997 WL 40301 at *8 (“subsections 252(c)(2) and 252(d) clearly assign jurisdiction over the rates for the local competition provisions of the Act to the state commissions.”).

the Commission should vacate its recommendation and leave states with the discretion to adopt the cost methodology for unbundled network elements that they find appropriate, consistent with the requirements of the Act, whether they choose to use the same or a different methodology as they use for universal service.

IX. Toll Control Services Should Not Be Required For Lifeline Customers.

The only toll limitation service that exchange carriers should be required to offer their Lifeline customers (where technically feasible) should be toll blocking, and the Commission should grant petitions asking the Commission to eliminate toll control³³ as a Lifeline service.³⁴ RTC asserts that, “[t]here is no known switch modification which will provide a LEC with the capability to determine, in real time, the accumulated toll billings of any subscriber, even where the LEC provides billing and collection for some of the IXC’s serving its subscribers.”³⁵ Even if some switch modifications become available that allow carriers to track dollar amounts of calls that a customer places with a presubscribed carrier, the record here does not show that such a service would be very effective to prevent a customer from incurring higher toll charges. For example, customers could use dial-around or 800 services to exceed the pre-set dollar limit or change call options from their pre-subscribed interexchange carrier without

³³ Toll control is a service “that allows consumers to specify a certain amount of toll usage that may be incurred on their telecommunications channel per month or per billing cycle.” 47 C.F.R. § 54.400(a)(3).

³⁴ RTC at 24, USTA at 4-7, GVNW at 20, USW at 20-22.

³⁵ RTC at 24.

notifying the local exchange service provider. Therefore, it is not clear from the record that any toll control service will be very effective in preventing customers from exceeding their limit. As a result, exchange carriers should not be required to offer toll control to Lifeline customers, even when a switch upgrade would permit the offering of some form of that service.³⁶

Toll blocking will effectively prevent customers from incurring excessive toll bills. If they wish to make toll calls, customers need only purchase pre-paid calling cards. By paying in advance, consumers can ensure that they will not exceed their budgets for toll calls. As a result, the consumers implement their own toll control by limiting the amount of their card purchases.

X. Resellers Should Not Be Eligible Telecommunications Carriers.

Two petitions ask the Commission to reconsider its finding³⁷ that a carrier may be declared an Eligible Telecommunications Carrier (“ETC”) if it offers only a *de minimis* amount of service, such as operator services, through its own facilities and provides the bulk of its universal services through resale.³⁸ As those parties correctly point out, resellers already receive services from underlying carriers at a discount, and they are not incurring the economic cost of building or maintaining the line. The Commission has found, however, that high-cost support is

³⁶ See Order at ¶ 388.

³⁷ *Id.* at ¶¶ 169-71.

³⁸ Time Warner Communications Holdings, Inc. Petition for Reconsideration, Sprint at 3-4.

to be used “for the provision, maintenance and upgrading of facilities and services.”³⁹ Where nearly all of the services that a carrier offers are being purchased from another carrier at a wholesale discount, any high-cost support the reseller receives would not be used for these purposes. Allowing an ETC simply to provide operator services through its own facilities and resell all other services would discourage facilities-based competition and increase the public’s reliance on the facilities of a single carrier in a given area. The Commission should grant the petitions and deny ETC designation to resellers.

XI. Rates Currently Offered To Schools and Libraries May Not Necessarily Qualify As “Pre-Discount” Rates.

NASTD asks whether current rates charged to schools and libraries qualify as pre-discount rates against which universal service discounts apply.⁴⁰ If the rates charged are standard rates that apply to the general public, the answer to NASTD’s question is yes. However, some states may have established special universal service rates for schools and libraries in anticipation of the Commission’s Order, under the assumption that the support provided in Section 254(h)(1)(B) would apply to the difference between generally-available rates and the special school and library rates. In those cases, there is no justification for classifying those rates as the “pre-discount” rates, thereby jeopardizing the carrier’s ability to recover support from the universal service fund. Each such situation must be examined on a case-by-case basis to

³⁹ Order at ¶ 286.

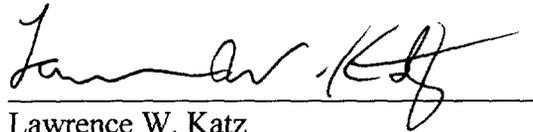
⁴⁰ National Association of State Telecommunications Directors, Request for Partial Reconsideration and Clarification at 2 (“NASTD”).

determine whether the rate should be considered a pre-discount rate for the purposes of universal service.

XII. Conclusion

Accordingly, the Commission should address the reconsideration petitions as discussed above.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Lawrence W. Katz", written over a horizontal line.

Lawrence W. Katz

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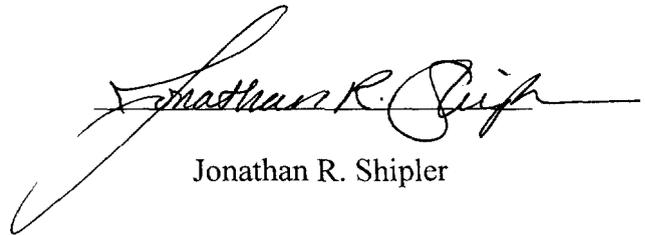
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August 18, 1997

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of August, 1997, a copy of the foregoing
“Opposition of Bell Atlantic to Petitions for Reconsideration” was served by first class U.S. mail
to the parties on the attached list.

A handwritten signature in black ink, appearing to read "Jonathan R. Shipler", written over a horizontal line. The signature is fluid and cursive, with a long, sweeping underline that extends to the left and then curves back under the name.

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