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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
	)	
Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge	)	CC Docket Nos. 96-262, 94-1, 91-213, 95-72

SECOND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: September 3, 1997 Released: September 4, 1997

By the Commission:

Comment Date: September 25, 1997

Reply Comment Date: October 9, 1997

I. INTRODUCTION

1. On May 7, 1997, the Commission adopted the *Universal Service Order*[1] that reformed the Commission's low-income programs - Lifeline Assistance (Lifeline) and Lifeline Connection Assistance (Link Up) - to make them consistent with section 254 of the Communications Act of 1934, as amended (the Act).[2] The Commission also agreed with the

[1] Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report and Order*, 62 F.R. 32862 (rel. May 8, 1997) (*Universal Service Order*).

[2] 47 U.S.C. § 254.

Joint Board's recommendation[3] to provide Lifeline customers with toll-limitation services at no charge, in addition to the other services that will be supported by the universal service rural, insular, and high cost program.[4] The Commission defined toll-limitation services as either voluntary toll blocking, which allows customers to block toll calls, or toll control, which allows customers to limit in advance their toll usage per month or billing cycle.[5] The Commission found that these services assist customers in avoiding involuntary termination of local telecommunications services for non-payment of long-distance charges.[6]

2. On May 7, the Commission also adopted the *Access Reform Order* which, among other things, created a new flat per-line charge assessed upon an end user's presubscribed interexchange carrier (IXC).[7] This flat, presubscribed interexchange carrier charge (PICC) will enable incumbent local exchange carriers (ILECs) to recover non-traffic sensitive (NTS) common line costs not recovered through subscriber line charges (SLCs). The PICC for primary residential lines will be capped at $0.53 per month for the first year, beginning January 1, 1998. Beginning January 1, 1999, the ceiling on the monthly PICC on primary residential lines will be adjusted for inflation and will increase by $0.50 per year until the sum of the SLC plus the flat-rated PICC is equal to the price cap LEC's permitted common line revenues per line. The sum of the single-line SLC and the PICC shall never exceed the sum of the maximum allowable multi-line SLC and multi-line PICC.[8] The Commission stated that ILECs may collect directly, from any customer who does not select a presubscribed IXC, the PICC that would otherwise be assessed against the presubscribed IXC at the beginning of each billing cycle.[9] The Commission instituted this policy to eliminate the incentive for customers to access long-distance services solely through "dial-around" carriers

[3] Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Recommended Decision*, 12 FCC Rcd 87, 285 (1996).

[4] *Universal Service Order* at para. 385.

[5] *Universal Service Order* at para. 385.

[6] *Universal Service Order* at para. 385.

[7] Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, *First Report and Order*, 62 F.R. 31040 (rel. May 16, 1997) at paras. 91-105 (*Access Reform Order*).

[8] *Access Reform Order* at para. 94.

[9] *Access Reform Order* at para. 92.

in order to avoid paying long-distance rates that reflect the PICC.[10] In this Further Notice, we seek comment on how ILECs should recover PICCs for Lifeline consumers who elect to receive toll-blocking services.

II. DISCUSSION

3. In the *Universal Service Order*, we noted that studies demonstrate that a primary reason subscribers lose access to telecommunications services is failure to pay long-distance bills.[11] Therefore, we found that, because voluntary toll blocking allows customers to block toll calls and toll-control service allows customers to limit amounts spent on toll calls, these services assist Lifeline customers in avoiding involuntary termination of their access to telecommunications services. We further found that, in order to increase the use of toll-blocking and toll-control services by low-income consumers, Lifeline customers should receive these services at no charge.[12] Although, after the new universal service program is implemented, eligible telecommunications carriers will be prohibited from disconnecting Lifeline customers for failure to pay toll bills, the charges for using toll blocking, which we propose to support here, the PICC for Lifeline customers who elect toll-blocking, will enable responsible Lifeline customers to avoid generating uncollectible toll bills that carriers will likely seek to recover from others.

4. Lifeline customers who choose toll-blocking service probably would not select a pre-subscribed IXC because the toll-blocking service would prevent such customers from completing long-distance calls by dialing 1 + an area code. In that event, however, the incumbent LEC would be able, pursuant to our *Access Reform Order*, to assess the PICC directly to the Lifeline customer. Thus, in these circumstances, the application of our access charge rules concerning the recovery of the PICC may be inconsistent with our universal service goals because it may deter, rather than encourage, low-income consumers to elect a toll-blocking service.

5. We tentatively conclude that, as part of our effort to make toll-blocking service easily available to low-income consumers, the Commission should waive the $0.53 PICC for Lifeline customers who elect toll blocking. We also tentatively find that because these waived charges are costs associated with the provision of Lifeline service, they should be supported by the low income program of the federal universal service support mechanisms and recovered in a competitively neutral manner through contributions from all

[10] *Access Reform Order* at paras. 92-93.

[11] *Universal Service Order* at para. 385.

[12] *Universal Service Order* at para. 385.

telecommunications carriers. We seek comment on this tentative conclusion. We also seek estimates of the amount of money necessary to support all of the waived PICC charges for Lifeline customers who elect toll blocking.

6. Additionally, we seek comment on other viable approaches to the recovery of the PICC associated with the access lines of Lifeline customers electing toll-blocking services, although we are not aware of any. We recognize that non-IXCs might suggest that ILECs recover waived PICCs from IXCs that have presubscribed lines via a pooling mechanism based on the percentage of the IXC's presubscribed lines. We are concerned, however, that this approach would burden only IXCs, as opposed to all interstate telecommunications carriers, with the obligation to support Lifeline customer local loop costs and, thus, may be inconsistent with section 254 and the principle of competitive neutrality.[13] We also seek comment on whether alternative approaches to the recovery of these PICCs would impose significant burdens on IXCs generally, or on small entities, including small telecommunications service providers.[14] We seek comment on how such burdens could be avoided.

III. PROCEDURAL MATTERS

A. Ex Parte Presentations

7. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission's rules.[15]

B. Initial Regulatory Flexibility Analysis

8. Pursuant to section 603 of the Regulatory Flexibility Act (RFA),[16] the Commission has prepared the following Initial Regulatory Flexibility Analysis (IRFA) of the expected impact of these proposed policies on small entities. Written public comments are

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[13] 47 U.S.C. § 254(d) (stating that all telecommunications carriers that provide interstate telecommunications services shall contribute to universal service).

[14] *See* 5 U.S.C. § 601 *et seq.* (requiring the Commission to consider the impact of its policies on small entities).

[15] *See generally* 47 C.F.R. §§ 1.1202, 1.1206, 1.1210-1216.

[16] *See* 5 U.S.C. § 601 *et seq.* The RFA was amended by the "Small Business Regulatory Enforcement Fairness Act of 1996" (SBREFA), Title II of the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA).

requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of this Further Notice, but they must have a separate and distinct heading designating them as responses to the IRFA. The Secretary shall cause a copy of this Further Notice, including the IRFA, to be sent to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with section 603(a) of the RFA. The Commission performed a Final Regulatory Flexibility Analysis (FRFA) on the impact of the new federal universal service support mechanisms in the *Universal Service Order*.[17]

9. Reason for Action. As a result of Commission access reform, Lifeline consumers electing toll-blocking services will be required to pay a $0.53 PICC. This Further Notice asks if such Lifeline customers should be required to pay the PICC, and, if not, who should be required to pay the PICC on behalf of such customers.

10. Objectives. Our objective is to propose rules that will resolve whether Lifeline consumers who elect toll blocking should be required to pay the PICC directly to ILECs. We also desire to adopt rules that will be easily interpreted and readily applicable and, whenever possible, minimize the regulatory burden on affected parties.

11. Legal Basis. Action as proposed for this rulemaking is contained in sections 1, 4(i) and (j), 201, 205, and 254 of the Communications Act as amended, 47 U.S.C. §§ 151, 154(i), 151(j), 201, 205, and 254.

12. Description, potential impact and number of small entities affected. Until we receive more data, we are unable to estimate the number of small telecommunications service providers that would be affected by any proposals discussed in this Further Notice. Small telecommunications service providers that are designated "eligible telecommunications carriers" under section 214(e) of the Act[18] and that serve Lifeline customers who elect toll blocking may be affected by proposals discussed in this Further Notice. Additionally, small telecommunications service providers that are presubscribed interexchange carriers may be affected by proposals discussed in this Further Notice. In the *Universal Service Order*, we estimated the number and types of small telecommunications service providers that will be affected by the new universal service support mechanisms.[19] We anticipate that some of the entities affected by the *Universal Service Order* will be affected by the proposals discussed in this Further Notice.

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[17] *Universal Service Order* at paras. 870-982.

[18] 47 U.S.C. §§ 214(e).

[19] *Universal Service Order* at paras. 890-922.

13. Reporting, record keeping and other compliance requirements. The proposals under consideration in this Further Notice do not include reporting and record keeping requirements.

14. Any significant alternatives minimizing impact on small entities and consistent with stated objectives. Wherever possible, this Further Notice proposes general rules, or alternative rules to reduce the administrative burden and cost of compliance for small telecommunications service providers. In addition, this Further Notice invites comment on measures to avoid significant burdens on small entities and small telecommunications service providers.

15. Federal rules which overlap, duplicate, or conflict with this rule. None.

C. Deadlines and Instructions for Filing Comments

16. Pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. sections 1.415 and 1.419, interested parties may file comments concerning low-income consumers electing toll blocking and the PICC on or before September 25, 1997, and parties should submit corresponding reply comments on or before October 9, 1997. We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. Irrespective of the length of their comments or reply comments, parties shall include a table of contents in their documents.[20]

17. Parties should send their comments or reply comments to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554. Parties filing on paper should also send copies of their comments to the individuals listed on the attached Service List (Appendix A). Parties filing in paper form should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, N.W. Washington, D.C. 20036. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C. 20554.

18. Commenters may also file informal comments or an exact copy of formal comments electronically via the Internet at <http://gullfoss.fcc.gov/cgi-bin/websql/cgi-bin/comment/comment.hts>. Only one copy of electronically-filed comments must be submitted. A commenter must note whether an electronic submission is an exact copy of formal comments on the subject line. A commenter

[20] *Cf.* 47 C.F.R. § 1.49(b).

also must include its full name and Postal Service mailing address its submission.

19. Parties are also asked to submit their comments and reply comments on diskette. Such diskette submissions are in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Sheryl Todd of the Common Carrier Bureau, 2100 M Street, N.W., Room 8611, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible form using WordPerfect 5.1 for Windows or compatible software. The diskette should be submitted in "read only" mode. The diskette should be clearly labelled with the party's name, proceeding, type of pleading (comment or reply comments) and date of submission. Each diskette should contain only one party's comments in a single electronic file. The diskette should be accompanied by a cover letter.

D. Ordering Clauses

20. IT IS ORDERED, pursuant to sections 1, 4(i) and (j), 201, 205, and 254 of the Communications Act as amended, 47 U.S.C. §§ 151, 154(i), 151(j), 201, 205, and 254, that the Further Notice of Proposed Rulemaking IS HEREBY ADOPTED and comments ARE REQUESTED as described above.

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William F. Caton
Acting Secretary

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