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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

In the Matter of	)	
	)	
Administration of Federal Universal Support Mechanisms	)	CC Docket No. 97-21
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
USAC Plan of Reorganization	)	DA 98-1336

COMMENTS OF SBC COMMUNICATIONS INC.

SBC Communications Inc., on behalf of itself and its affiliates (collectively, "SBC"), files the following comments in response to the Public Notice on proposals for the administration of Federal universal service support mechanisms.[1]

In the Public Notice, the Bureau seeks comments on a number of issues related to the *Report and Proposed Plan of Reorganization* ("Plan") filed by Schools and Libraries Corporation ("SLC"), the Rural Health Care Corporation ("RHCC"), and the Universal Service Administrative Company ("USAC"), as well as on the *Separate Statement of the Rural Healthcare Corporation and Request for Three Changes in the Plan*. The Bureau also seeks comment on other issues related to the administration of the federal universal service support mechanism.

[1] Common Carrier Bureau Seeks Comment on Administration of Federal Universal Service Support Mechanisms, *Public Notice*, DA 98-1336, CC Docket Nos. 97-21 and 96-45, rel. July 15, 1998, ("Public Notice").

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I. THE AUTHORITY FOR THE FORMATION OF THE USAC CONTINUES TO BE QUESTIONABLE, AND MUST BE ADDRESSED

Perhaps the most fundamental issue underlying the reorganization plan is wholly ignored – does the Commission possess the statutory authority to create and continue to rely upon a corporation for the conduct of business specifically delegated to the Commission by Congress? To apparently address the legal conclusions rendered by the General Accounting Office that the SLC and the RHCC were the result of unauthorized actions taken by the FCC,[2] the Reorganization Plan proposes to merge those entities with the USAC and thereby eliminate any prospective effect of those GAO conclusions. The Plan thus seems to be premised on the belief that the creation of the USAC was lawful. That premise is incorrect.

In the *NECA Governance Order*,[3] the FCC also directed the creation of the corporation that became the USAC. Although the analysis contained in the GAO Letter was limited to the SLC and RHCC, that limitation was apparently due to the question posed by Senator Stevens (i.e., "Was the Commission authorized to establish the Schools and Libraries Corporation and the Rural Health Care Corporation?"). The GAO analysis and its conclusion are nevertheless equally applicable to the USAC – the FCC had no authority to establish the USAC because the specific authority required by the Government Corporation Control Act, 31 U.S.C. Section 9102, was not granted by Congress.

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[2] *See* February 10, 1998, letter to the Honorable Ted Stevens, United States Senate, from the United States General Accounting Office, attached hereto as Attachment A ("GAO Letter").

The Plan's attempt to somehow rely on Senate bill 1768 for the merger is unavailing. That bill proposed to have a single entity administer the universal service fund. Not passed, however, the bill conveys no legal authority for any action by the FCC (including those involving USAC). Before the Plan can be adopted, the FCC should articulate the authority that permitted the formation of USAC and its continued use.

Without prejudice to the foregoing, SBC fully supports any effort to minimize the expenses associated with the oversight and administration of universal service funds and believes that consolidation of that oversight should be performed by a single group of individuals to the maximum extent possible.

II. THE COMMISSION SHOULD ADOPT A PROCEDURE FOR ADDRESSING PREVIOUS DECISIONS MADE BY THE USAC, SLC, AND RHCC

Although the Public Notice proposes procedures for obtaining FCC review of decisions made by the administrator of the universal service funds, there is no proposal for addressing decisions previously made by the current administrators. As the Public Notice acknowledges, a process has not been in place and parties have been inquiring on what, if any, process was available. Regardless of the review process adopted as a result of the Public Notice, the FCC should make the same process available for prior administrator decisions. Without a means by which parties can obtain FCC review of those past decisions, an opportunity for review will have been precluded. Borrowing from the Public Notice, SBC suggests that parties be permitted sixty (60) days from the

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[3] *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Board on Universal Service*, Report and Order and Second Order on Reconsideration, CC Docket Nos. 97-21 and 96-45, 12 FCC Rcd 18400 (1997) ("*NECA Governance Order*").

Certificate of Service

I, Mary Ann Morris, hereby certify that the foregoing, "Comments of SBC Communications Inc." in CC Docket No. 96-45 and CC Docket No. 97-21 has been served on August 5, 1998, to the Parties of Record.

Mary Ann Morris

Mary Ann Morris

August 5, 1998

effectiveness of the order adopting a review process, to invoke that process for any previous decisions.

Respectfully submitted,

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