

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Federal-State Joint Board on)
Universal Service)

Network Operator Services, Inc. Petition)
for Waiver of Universal Service Contribution)
or Reconsideration)

CC Docket No. 96-45

DA 98-1871

OPPOSITION

BellSouth Corporation, on behalf of itself and BellSouth Telecommunications, Inc. ("BellSouth"), hereby files these comments in opposition to the Petition for Waiver, or in the Alternative, for Reconsideration ("Petition")¹ filed by Network Operator Services, Inc. ("NOS") requesting relief from the Commission's rules regarding Universal Service contribution requirements.²

NOS' Petition echoes other requests that seek to exclude or reduce a carrier's universal service contribution. BellSouth has opposed similar requests for waiver³ and continues to believe that the Commission should not grant this or any other waiver request seeking exclusion

¹ The Petition for Reconsideration part of NOS' filing should not be considered by the Commission because it is an untimely filing. The filing requirements for petitions for reconsideration are statutory requirements established in the Commission's rules under 47 C.F.R. §1.106. Specifically, 47 C.F.R. §1.106(f) states that petitions for reconsideration "shall be filed within 30 days from the date of public notice..."

² Federal-State Joint Board on Universal Service, CC Docket 96-45, *Network Operator Services, Inc.'s Petition for Waiver of Universal Service Contribution or Reconsideration, Pleading Cycle Established*, DA 98-1871 (rel. September 18, 1998). The Commission's rules regarding contribution requirements are codified at 47 C.F.R. §§ 54.703, 54.709 and 54.711.

³ See e.g., BellSouth's Opposition to Affinity Corporation's Petition for Partial Waiver, dated July 27, 1998 and BellSouth's Opposition to Oncor Communications, Inc. d/b/a Oncor Communications, Inc.'s Emergency Petition for Partial Waiver, dated July 29, 1998.

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or reduction of a carrier's contribution level because doing so will undermine the approach the Commission has crafted to fund Universal Service. Granting such waivers would create a situation where the exceptions swallow the rule.

The Telecommunications Act of 1996 was a catalyst for extensive changes in the telecommunications industry and a driving force for developing competition among telecommunication providers. Competition forces every provider of telecommunications services to face changing market conditions which may cause a decline or rise in revenue as compared to previous periods. The contribution mechanism for universal service never contemplated a stagnant industry. Given that revenue variation is an inherent part of the competitive environment in the telecommunications industry, changes in a company's revenue base cannot be a basis for a waiver of the Commission's rules. Such changes simply cannot be equated to an unanticipated change in circumstances. To permit such waivers would essentially eviscerate the rule.

As BellSouth has previously stated, if the Commission believes that its rules are not explicit enough or do not operate appropriately, then the Commission needs to issue a further notice of proposed rulemaking to address these concerns. A rulemaking proceeding is the only appropriate mechanism to alter the Commission's rules. The Commission should not permit its rules to be dismantled piecemeal through the waiver process. At the same time, BellSouth encourages the Commission to take action against these petitions so that the Commission is not burdened unnecessarily by other waiver requests.

Accordingly, the Commission should deny NOS' waiver.

Respectfully submitted,

BELLSOUTH CORPORATION

By:



M. Robert Sutherland
Richard M. Sbaratta

Its Attorneys

Suite 1700
1155 Peachtree Street, N. E.
Atlanta, Georgia 30309-3610
(404) 249-3386

Date: October 2, 1998

CERTIFICATE OF SERVICE

I do certify that I have this 2nd day of October 1998 served the following parties to this action with a copy of the foregoing OPPOSITION by hand delivery or by placing a true and correct copy of the same in the United States mail, postage prepaid, addressed to the parties listed below.

Dana Frix
Tamar E. Finn
Network Operator Services, Inc.
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W.
Washington, D.C. 20007-5116

*Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
1919 M Street, N. W.
Room 222
Washington, D. C. 20554

*Sheryl Todd
Federal Communications Commission
Common Carrier Bureau
2100 M. Street, N. W., 8th Floor
Washington, D. C. 20554

*ITS
1231 20th Street, N. W.
Washington, D. C. 20036


Juanita H. Lee

* VIA HAND DELIVERY