

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
Pacific Bell's Petition for Expedited	)	
Waiver of the Stacking Order on	)	
Discounts to Schools and Libraries.	)	
_____	)	

**REPLY BY CALIFORNIA TO COMMENTS  
ON PACIFIC'S PETITION FOR WAIVER OF  
FEDERAL SEQUENCING REQUIREMENTS FOR  
APPLYING DISCOUNTS TO SCHOOLS AND LIBRARIES**

The People of the State of California and the Public Utilities Commission of the State of California ("CPUC") hereby reply to comments filed by GTE Service Corporation ("GTE") that supported in part the Petition for Expedited Waiver filed by Pacific Bell ("Pacific Bell") in the above-referenced docket.

The CPUC has filed in opposition to Pacific's petition, indicating, among other things, that Pacific's proposal would unfairly penalize California which has implemented support programs for schools and libraries by reducing the level of federal support to such entities. Indeed, the Federal Communications Commission ("FCC") itself recognized the inequity of a sequencing proposal like that proposed by Pacific in its petition. Fourth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 5318, ¶ 196 (1997). The CPUC also pointed out that Pacific had been on notice as early as 1997, when the FCC issued its Fourth Order on Reconsideration, that Pacific would need to coordinate the

implementation of federal discount programs with state discount programs for schools and libraries. In February, 1998, the CPUC made clear that, consistent with federal orders, “in cases where both state and federal discounts apply, the federal discounts should be applied first, then the state discounts.” CPUC Resolution T-16118 at 3 (appended to CPUC Opposition). The CPUC also expressly told Pacific to “begin the process of developing mechanized systems for handling the combined programs.” CPUC Resolution No. T-16118 at 12.

In its comments, GTE agrees with the CPUC that in the long-run carriers should comply with federally-prescribed sequencing rules for applying federal and state discounts for schools and libraries. GTE, however, believes that in the short-run carriers merit a waiver of sequencing rules to ensure that schools and libraries receive both the federal and state discounts, to prevent possible administrative burdens on schools and libraries, and to avoid the implementation costs claimed by Pacific absent the waiver.<sup>1</sup>

At the time the CPUC filed its opposition to Pacific’s petition, the process for federal reimbursement of discounted amounts had not yet been established. The FCC thereafter adopted a process in mid-October. Specifically, the FCC adopted two forms -- Form 472, the Billed Entity Applicant Reimbursement (“BEAR”) Form, and FCC Form 474, the Service Provider Invoice Form (“SPIF”). These forms articulate a process whereby the application of the state discount after the federal discount, as prescribed by

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<sup>1</sup> GTE complains that the CPUC should have intervened to adjust or temporarily discontinue the state funding mechanism until such time as the federal program was initiated. However, no service provider ever petitioned the CPUC for such relief

FCC order and CPUC resolution, will be problematic in the short run. This is because both of these forms indicate that schools and libraries will only be eligible to receive reimbursement based on the amount that has been billed and paid by such entities.<sup>2</sup> Neither Form 472 nor Form 474 specifically provide for information indicating that the billed amount already reflects state discounts. In the case of California schools and libraries that participate in the state discount program (i.e., California Teleconnect Fund), their bills should already reflect the state discount. Basing federal reimbursement amounts on bills paid will make it difficult to impose federal and state discounts in the manner prescribed by the Fourth Order on Reconsideration. Thus, if California schools and libraries properly complete the BEAR form, this form will not indicate whether the amount reported includes a state discount.

The CPUC of course in no way intends to jeopardize the ability of eligible California schools and libraries to receive both federal and state discounts. However, contrary to GTE's claim, such a result does not necessarily occur absent a waiver of the FCC's sequencing rules. For example, one possible way to reconcile the state and federal discount programs in a manner which is consistent with the FCC's Fourth Order on Reconsideration would be to have California carriers report on Form 474 (the SPIF) the total amount billed such entities, absent the state discount. The federal administrator could then reimburse service providers based on the SPIF. Eligible schools and libraries would continue to report on FCC Form 472 (the BEAR) the amount they paid carriers, which

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<sup>2</sup> The BEAR form indicates that discount amounts will be based on amounts that "were already billed by the service provider and paid by the Billed Entity Applicant on behalf of eligible schools, libraries and

would reflect the state discount in California. This would remove the link between the BEAR form and the SPIF, and would remove the link between the amount that carriers receive and the amount schools and libraries are reimbursed. Under this approach, carriers would reimburse billed entities the difference between the combined federal/state discounted amount and the state discounted amount. Carriers would then reduce their claim to the state universal service fund (California Teleconnect Fund) by the remaining amount of their federal reimbursement.<sup>3</sup> Importantly, billed entities (i.e., the schools and libraries) would receive the same total amount of combined federal and state discounts, and would assume no additional administrative burden.<sup>4</sup> At the same time, California's ratepayers would assume no greater funding burden which would otherwise result under Pacific's proposal – a proposal that reduces the amount of federal support and increases the amount of state support for eligible schools and libraries.<sup>5</sup> California acknowledges,

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consortia of those entities.” FCC Form 472, p.3.

<sup>3</sup> For example, suppose the federal discount is 60 percent, and the state discount is 50 percent. Suppose further that the eligible school's total bill was \$100. Applying the state discount first, the billed amount would be \$50. The eligible school would report \$50 on Form 472. The carrier, however, would report \$100 on Form 474. Applying the federal discount first, the carrier would be reimbursed \$60 from the federal fund. However, the eligible school would receive \$30 (the difference between the combined state and federal discounts less the state discount, or \$80-\$50) from the carrier. The carrier in turn would reimburse the state fund the remaining \$30 (i.e., the difference between the state discount paid (\$50) and the state discount owed (\$20)) had the state discount been applied after the federal discount.

<sup>4</sup> GTE is wrong to suggest hypothetically that schools and libraries would be required to reimburse the state fund absent a waiver. To the contrary, inasmuch as such entities correctly paid their bills under the state program, and otherwise abided by the terms of the state program, there would be no basis to require such reimbursement. In addition, such reimbursement would be inconsistent with the FCC's Fourth Order on Reconsideration.

<sup>5</sup> GTE does not dispute that California ratepayers will be forced to assume additional costs under Pacific's proposal. These costs could be as high as \$4.8 million, based on a statewide average of a 60 percent federal discount, a 50 percent overlap between the state and federal discount programs, and a program cost of \$16 million for 1998.

however, that this approach would add complexity to required audits conducted by federal and state administrators.

At bottom, any problems raised by basing the federal discounts on reimbursement on paid bills are temporary, and should be eliminated when federal discounts begin to be reflected as reduced bills paid by schools and libraries. Accordingly, if the FCC believes that a waiver is merited, then the waiver should be interim, and extend no later than July 1, 1999, when the second funding cycle for the federal program will begin.

Respectfully submitted,

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By: /s/ ELLEN S. LEVINE

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November 5, 1998

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day caused the foregoing document to be served upon all known parties of record by mailing by first-class mail, postage prepaid, a copy thereof properly addressed to Pacific Bell and GTE.

Dated at San Francisco, California, this 5th day of November, 1998.

/s/ NELLY G. SARMIENTO

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NELLY G. SARMIENTO