

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

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COMMENTS OF
SBC COMMUNICATIONS INC.

Now comes SBC Communications Inc. (SBC) on behalf of its landline and wireless subsidiaries and files these comments in response to the Commission's Further Notice of Proposed Rulemaking released October 26, 1998.¹ SBC supports the Commission's efforts to provide some guidance and certainty to the reporting of wireless interstate telecommunications revenues. SBC supports the interim "safe harbor" approach adopted in the FNPRM and believes that a similar approach should be adopted in establishing permanent guidelines.

SBC likewise supports the Commission's efforts to define what "basic service package" must be offered in order for a carrier to be eligible to receive universal service support. In defining the basic service package the Commission needs to keep in mind that universal service by its very nature represents a subsidy—a subsidy that should be kept to the minimum amount necessary to achieve the statutory goals of universal service. Thus, the goals for universal service must be kept firmly in mind in developing the parameters for eligibility to receive universal service support. As the Commission notes, Section 254(b) "establishes the principle that 'consumers in all regions of the Nation . . . should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those provided in urban areas'.² The

¹ In the Matter of Federal-State Joint Board on Universal Service, CC Docket 96-45, *Memorandum Opinion Order and Notice of Proposed Rulemaking*, Released October 26, 1998. ("FNPRM").

² In the Matter of Federal-State Joint Board on Universal Service, CC Docket 96-45, *Report and Order*, para. 59 (Released May 8, 1997). ("Universal Service Order")

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key point being that it is consumers who should benefit from universal service—universal service is a methodology which attempts to assure that all consumers pay a reasonable rate and have access to basic telecommunications service. In developing parameters for the “basic service package” required for universal service support the impact and benefit to consumers is the key principle to keep in mind—both the consumer in the high cost area and consumers in general who support the universal service fund.

A. Proposed Rules for Separating Interstate and Intrastate Wireless Revenues

In the FNPRM, the Commission established 15% as an interim “safe harbor” for wireless carriers interstate revenues meaning that the Commission would not seek additional supporting data from carriers reporting at least 15% of their revenue attributable to interstate.³ The Commission wisely determined that the “safe harbor” percentages should not be mandatory or “proscriptive in nature” --any carrier electing to report a percentage less than the “safe harbor” is free to submit a lower percentage under the interim rules.⁴ Those reporting below the “safe harbor” percentages must document the method used to calculate the percentage and make such information available to the Commission or universal service Administrator upon request.⁵

SBC supports these interim guidelines and believes that they can form the basis for the permanent guidelines. SBC generally agrees with the Commission’s tentative conclusion that a fixed percentage of interstate end-user revenues that a wireless carrier must report should be established⁶—provided, however, that a carrier still has the option of reporting a lower percentage. The Commission seeks comment on whether carriers should be given the option of “using data-collection procedures to demonstrate . . . the percentage of their wireless

³ FNPRM, para. 13.

⁴ FNPRM, para. 11.

⁵ Id.

⁶ FNPRM, para. 18.

telecommunications revenues derived from interstate calls”.⁷ A carrier should be allowed to report a lower percentage if its traffic studies or other documentation support such a lower percentage. In establishing the final guidelines, the Commission should adopt a rationally based fixed percentage “safe harbor”, with the requirement that carriers reporting a lower percentage demonstrate, upon request, its methodology and documentation supporting such lower allocation.⁸ A “safe harbor” percentage, based on experience under the interim rules, with the ability to demonstrate an allocation below such rate would help assure that no carrier is gaining a competitive advantage via interpretation of the rules. The 15% factor should not be chosen merely because it is the landline factor.⁹ Rather, the Commission should review the record in this proceeding and the allocations reported by the carriers under the new interim rules to see if the 15% needs to be adjusted in setting the final rules.¹⁰ Experience with the interim 15% factor should demonstrate whether the 15% factor should be adjusted. Likewise, allowing carriers to demonstrate a lesser percentage is applicable will be a check on the reliability of the percentage and whether it needs to be adjusted. Further, the record developed in this matter should assist the Commission in providing further guidance to the carriers as to what type of traffic studies or other methodology is acceptable.

In regards to varying percentages for different types of carriers¹¹ the Commission needs to look not merely at the technology and spectrum used for the service, but also whether the service is competing with another type of wireless service. For example, Nextel has positioned and portrayed itself as a direct competitor to cellular and PCS. To impose a different percentage on Nextel than that imposed on cellular and PCS would create a competitive imbalance. Nextel should be treated the same as any cellular or PCS carrier. If Nextel has a rate lower than the

⁷ FNPRM, para. 25.

⁸ FNPRM, para. 18.

⁹ FNPRM, para. 20.

“safe harbor” fixed rate then it can demonstrate such through the appropriate studies just as any other wireless carrier should have the right to demonstrate.

In setting the final guidelines, the Commission should provide guidance as to what types of methodology are acceptable to support a lower percentage. As the Commission notes, one mechanism that wireless carriers can use to determine the percentage of interstate telecommunications revenue is traffic studies.¹² As the Commission concludes, it is reasonably simple for most carriers to conduct such studies and extrapolate the data to arrive at representative allocations between interstate and intrastate. Basically, the traffic study compares the location of the cell site first receiving the call to the dialed digits, on a representative number of calls, to determine interstate versus intrastate. That ratio can then be applied to the total telecommunications revenues for the proper allocation. Such studies would include roaming traffic--that is customers from other markets placing calls while in the market conducting the study. Thus, since the roaming traffic would be part of the study and the revenue could be included in determining the allocation, there is no need to break out roaming revenue as discussed in paragraph 33 of the FNPRM. In other words, the visited carrier which actually carries the wireless call for the roaming customer could include the revenue received from the call, albeit received from the other carrier, in its total telecommunications revenues and such calls would be part of the traffic study like any other call. The Commission should endorse the use of traffic studies as a means of demonstrating actual allocations.

1. Simplifying Assumptions

The Commission seeks comment on various assumptions to include in the guidelines that would simplify and standardize the allocation methodology. SBC agrees with the

¹⁰ See, FNPRM, para. 20.

¹¹ See, FNPRM, paras. 20-22.

¹² FNPRM, para. 24.

CTIA suggestion that the originating point of the call should be the location of the antenna that first receives the call.¹³ Since the customer is mobile it is impossible to determine the exact location, especially if the cell site covers a state border. As the Commission notes, in the *Local Competition Order* the location of the initial cell site was chosen as the location of the mobile caller for “administrative convenience”.¹⁴ Using the location of the first antenna receiving the call as the origination point of the call is a simple, easy and reliable determination. Likewise, using the dialed digits to where the call is placed is a simple, easy and reliable means to determine the terminating point of the call.¹⁵

The Commission also requests comments on whether MTA boundaries should be used for determining what constitutes interstate traffic. Simply using MTA boundaries would discriminate against those carriers whose licenses overlap MTAs. As the Commission is well aware, cellular MSA and RSA licenses do not coincide with MTA boundaries and overlap MTA boundaries. Thus, a single RSA may be located within two MTAs. Using individual license areas does not alleviate the concern because many cellular carriers have combined MSA and RSA licenses into single systems in an attempt to compete with the larger MTA boundaries. In addition, attempting to redefine interstate and intrastate on the federal level without a corresponding redefinition by the states would cause additional confusion. The Commission should not attempt to change the definition of interstate.

Likewise, the Commission should not require reporting on a market by market basis or an MTA by MTA type basis.¹⁶ Again, MTA boundaries do not follow RSA or MSA boundaries. Requiring such reporting on a market by market basis would impose administrative hardships, especially on the cellular and PCS BTA license holders who would be forced to fill out

¹³ FNPRM, para. 29.

¹⁴ FNPRM, para. 30.

¹⁵ FNPRM, para. 31.

numerous reports because of the smaller licensed service areas. Such reporting is especially an exercise in futility if the carrier is reporting using a fixed percentage safe harbor. Further, breaking the reporting to such a finite detail would result in extremely competitive information about individual markets being reported if carriers chose to demonstrate a lower percentage, the only time such reporting would even arguably be applicable. If confidential treatment were not granted to such information it could have a detrimental competitive impact. Market by Market reporting should not be required.

B. Competitive Neutrality

The principle of competitive neutrality adopted in the Universal Service Order is defined as meaning that “universal support mechanisms and rules neither unfairly advantage or disadvantage one provider over another, and neither unfairly favor or disfavor one technology over another”.¹⁷ As the Commission recognized, “given the complexities and diversity of the telecommunications marketplace it would be extremely difficult to achieve strict competitive neutrality”.¹⁸ The Commission notes that its decisions regarding universal service are “intended to minimize departures from competitive neutrality, so as to facilitate a market-based process whereby each end user comes to be served by the most efficient technology and carrier.”

Thus, in analyzing decisions and rules regarding universal service “competitive neutrality” is not a litmus test it but is one of several principles that must be weighed together. As the Joint Board and Commission recognize the concept of “technological neutrality does not guarantee the success of any technology supported through universal service support

¹⁶ FNPRM, para. 24.

¹⁷ Universal Service Order, para. 47.

¹⁸ Id., para. 48.

mechanisms, but merely provides that universal service should not be biased toward any particular technologies”.¹⁹

The Commission seeks comment as to whether its universal service decisions to date comply with its goals for competitive neutrality. The rules and decisions to date have not, in SBC’s opinion, resulted in wireless telecommunications providers, cable operators and others who have historically not supplied universal service being treated other than in accordance with the Commission’s goals.

C. Definition of Basic Service Package—Local Usage

In the Universal Service Order the Commission determined that the basic service package should provide a minimum level of local usage”.²⁰ The Commission seeks comment on the amount of local airtime usage that should be included in the “basic service” package and related issues.²¹ SBC believes that the Commission should set a minimum level of usage for the basic service package that is the same for all eligible telecommunications carriers. The Commission recognizes that setting unreasonably high or low levels of usage can significantly affect competition among different technologies.²² SBC agrees but also notes that the interests of the consumer must also be considered in setting the amount of local usage to be included.

Again, all the goals of universal service must be weighed, not merely competitive neutrality. The Commission should develop a basic service package with a reasonable amount of local usage based on the way customers use their phones today and thus average usage rates should be used as suggested by the Commission.²³ Usage minimums should be based both on minutes and number of calls—thus creating an option for customers depending on their needs. However, carriers should not be required to offer both because some billing systems might not

¹⁹ Universal Service Order, para. 49.

²⁰ Universal Service Order, para. 67.

²¹ FNPRM, paras. 50-52.

accommodate both. Obviously, carriers would be allowed to offer more than the minimum if they desire.

Support should only be drawn for those subscribing to the basic service package. This would alleviate the Commission's concerns that carriers might overprice the "basic package" so that it would be unattractive to customers. Further, it helps eliminate subsidies for customers who are subscribing to regular wireless rate plans available throughout the licensed service area. Further, there must be some methodology adopted for identifying customers who give rise to universal service support given the mobile nature of wireless phones. Unlike landline there is not a wire terminating someone in the high cost area. In other words, how is the wireless customer to be identified as being in a high cost area? Home address? Billing address? Location of agent activating phone? Windfalls should not be gained under the guise of universal service and competitive neutrality. As the Commission noted in deferring on the single connection/multiple connection issue "overly expansive universal service support mechanisms could potentially harm all consumers by increasing the expense of telecommunications services for all".²⁴

SBC does not see a need for the Commission to attempt to address differences in size of local calling areas in determining what constitutes local usage. While wireless and landline normally have different boundaries for when a call is determined to be local, the boundaries for landline are set by the states and normally the wireless calling areas are larger encompassing the landline calling area. Attempting to vary the amount of local usage requirements based on the size of local calling scopes seemingly is would be an administrative nightmare for the Commission staff producing little if any real benefit.

²² FNPRM, para. 49.

²³ FNPRM, para. 52.

²⁴ Universal Service Order, para.95.

CONCLUSION

For the reasons stated herein the Commission should adopt a fixed percentage safe harbor for allocation of interstate telecommunications revenues and allow carriers to report below such percentages if the carrier is able to demonstrate, if requested, the basis for such allocation based on traffic studies or other documentation. The Commission should also adopt a reasonable amount of local usage for the basic service package that is applicable to all eligible carriers. Universal service support should only be provided for those customers subscribing to such basic service package.

Respectfully Submitted,

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Certificate of Service

I, Mary Ann Morris, hereby certify that the foregoing "Comments of SBC Communications, Inc.," in CC Docket 96-45 has been served on January 11, 1999 to the Parties of Record.



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