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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JAN 11 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
Federal-State Joint Board on Universal Service)
)
)

CC Docket No. 96-45

COMMENTS

BellSouth Corporation, on behalf of itself and its subsidiaries ("BellSouth"), hereby submits the following comments on the *Further Notice of Proposed Rulemaking* released by the Commission on October 26, 1998, in the above referenced docket.¹

I. INTRODUCTION

In the *FNPRM*, the Commission seeks comment on the establishment of permanent guidelines for the purpose of allocating revenues between the interstate and intrastate jurisdictions that would be applicable to carriers that cannot readily derive such jurisdictional information from their books of account. In addition, the Commission solicits comments on means to encourage the provision of universal service by carriers that have historically not provided such services and the definition of a basic service package that must be offered in order to be eligible for universal service support.

Universal service continues to be a work-in-progress. The broad boundaries of the plan continue to be revised. The Commission currently has before it the *Second Recommended*

¹ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, FCC 98-278, released October 26, 1998 ("*FNPRM*").

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Decision of the Joint Board that makes substantial adjustment to the direction of the new universal service program.² The ongoing evolution of the high cost universal service program mandates a cautious approach. Until the boundaries of the high cost universal service fund are settled, the Commission is not in a position to act on most of the matters presented in the *FNPRM*. The public interest would not be served by a series of Commission actions in this proceeding that only have to be undone or modified because such actions are rendered incompatible or unnecessary as a result of the determinations regarding the high cost fund that will be made in connection with the Joint Board's *Second Recommended Decision*.

II. COMMISSION DOES NOT NEED TO ADOPT GUIDELINES AT THIS TIME

The wireless industry is diverse, not only with respect to the many different segments that fall under the wireless umbrella, but also to the differences among companies providing wireless services within each segment. To establish rigid, inflexible guidelines that do not accommodate the diversity that exists or that do not take into account the continuous change being experienced within the industry would be more troubling than the absence of Commission's guidance. Equally disturbing is the timing of the present *FNPRM*. The parameters that will define the high cost universal service fund have yet to be decided. Indeed, the Joint Board has recently issued its *Second Recommended Decision* that proposes some new directions for the high cost fund. While the public debate on the Joint Board's proposals continue, it is important for the Commission to

² *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Second Recommended Decision*, FCC 98J-7, released November 25, 1998 ("*Second Recommended Decision*").

recognize here that its action on the *Second Recommended Decision* could obviate the need for the Commission to take any action regarding the establishment of contribution guidelines.

For example, the Joint Board also recommended that the Commission adopt the use of interstate and intrastate end user revenues for the purposes of determining contributions to the high cost universal service fund. BellSouth has consistently supported the use of interstate and intrastate revenues for the purpose of determining universal service contributions. If the Commission adopted such a contribution factor, a carrier would not need to be able to distinguish its revenues on a jurisdictional basis. Accordingly, there would be absolutely no need for the Commission to act at all in this proceeding.

Given that the predicate for the Commission to provide guidance could soon evaporate, it is patently clear that the Commission's resources are misspent in this proceeding. The Commission's energies should be focused on finalizing the dimensions of the universal service fund. These determinations must be made before the Commission can legitimately ascertain what, if any, guidance it needs to provide.

Likewise, carriers too have limited resources. In order to properly assess and recommend a particular course of action, it is essential that the framework for the universal service fund be established. With the universal service landscape in transition, it is unwise, if not impossible, to advocate "the" solution to a problem without definite shape or scope. Nor does it make sense to commit substantial amounts of time and effort to divine such a solution. The fact of the matter is that actions the Commission takes regarding the parameters of the universal service fund directly affect the need for or the type of an approach that should be taken. For example, the Commission has suggested that a non-revenue based contribution mechanism should be

considered.³ The relative merits of such a mechanism can only be discerned after the Commission finalizes the dimensions of the universal service fund.⁴

At this point in time, the Commission should refrain from adopting, either on a mandatory or optional basis, any proxy for reporting interstate revenue. The universal service fund is too indeterminate for the Commission to make a well reasoned determination regarding a revenue proxy. Furthermore, there is no information that is available that can support a proxy.

For example, the *FNPRM* solicits comments on whether employing the average amount of interstate traffic for wireline carriers, which is approximately 15 percent, is reasonable for wireless carriers.⁵ The *FNPRM* points out that certain members of the wireless industry suggested that 15 percent represents a reasonable approximation of the percentage of cellular and PCS traffic that is interstate.⁶ The references cited in the *FNPRM* do not support the proposition that there are similarities in the amount of interstate traffic between wireline and wireless carriers.⁷ Indeed, there is no evidence whatsoever to suggest that such similarities exist.

³ *FNPRM*, ¶ 26.

⁴ For example, if the Commission were to determine to base contributions on interstate and intrastate retail revenues, it is not worth the time and effort to investigate and resolve all of the issues that attach to a non-revenue based contribution method. On the other hand, if the Commission did not adopt a contribution factor based on interstate and intrastate revenues, then a non-revenue based contribution factor might be superior than trying to arrive at a single means for allocating revenues to the interstate and intrastate jurisdictions.

⁵ *FNPRM*, ¶ 20.

⁶ *Id.*

⁷ The *FNPRM* cites an *ex parte* presentation made by Omnipoint Communications on August 27, 1997. The presentation merely recounts a conversation with FCC staff members wherein the staff clarified the filing obligation with regard to the Universal Service Worksheet and stated that the worksheet must include a good faith estimate of interstate revenues and that based on current DEM statistics, 15 percent is the nationwide average of interstate traffic minutes. Nowhere does this communication suggest that the DEM statistic is representative of
(Footnote Continued)

Accordingly, it would be nothing less than arbitrary to adopt a percentage based on the wireline traffic statistics.

Selecting an arbitrary percentage could create the very kind of inequities that the Commission may believe a proxy could avoid. In the *FNPRM*, the Commission appears to believe that whatever the proxy, it would apply on a market by market basis and, thus, all competitors in a given market would be treated the same. The *FNPRM* overlooks the fact that the filing entities for universal service purposes may operate in multiple markets. As a result, the characteristics associated with the areas in which services are provided by a given entity, *i.e.*, size of market, urban or rural, multi or single state etc. vary considerably. These characteristics affect the amount of interstate traffic and the diversity within the industry with respect to these characteristics call into question the ability of the Commission to select a single proxy that could be supported as fair, equitable and nondiscriminatory.

The Commission should also avoid pursuing an approach that could require huge expenditures to implement. The *FNPRM* remarks on AirTouch's jurisdictional tracking system as a possible mechanism for wireless carriers to capture the information necessary for reporting interstate revenues. Notwithstanding the ability of AirTouch's system to track jurisdictional data, the fact of the matter is that such a system would require substantial amounts of capital and

wireless carriers' interstate traffic. Likewise Comcast's letter of September 25, 1998, also cited in the *FNPRM*, does not establish a nexus between the traffic characteristics of wireless and wireline carriers. Instead, the letter suggests that the Commission could establish an interim percentage at 15% which would correspond to the wireline percentage and would be reasonable because at least one wireless carrier adopted such percentage and references the Omnipoint *ex parte*. In both instances, all that is established is that the wireline percentage of interstate traffic is 15%. Neither Omnipoint nor Comcast submitted information regarding wireless traffic.

ongoing expense for wireless carriers such as BellSouth to implement. As a matter of principle, the Commission should not require carriers to expend huge sums of money in order to file regulatory reports relating to universal service contributions. To do so would stand in stark contradiction to the deregulatory purposes of the Telecommunications Act of 1996. Moreover, such a requirement would be unreasonable. There are far more efficient and less costly mechanisms for estimating interstate revenues that would meet the reporting requirements of the Commission.

The current circumstances demand that the Commission take a sensible approach and permit carriers to base their Universal Service Worksheets on good faith estimates of their interstate revenues as they have been doing. In the *FNPRM*, the Commission tentatively concludes that reliance on good faith estimates for allocating revenues on a jurisdictional basis is insufficient to provide wireless carriers with certainty regarding the appropriate amount of their contributions to the universal service fund.⁸ Further, the Commission believes that without specific guidelines that inequities relating to the reporting of payment obligations may arise.

By affirmative permitting the use of good faith estimates, the Commission would be acknowledging that such estimates meet their reporting requirements. Such an acknowledgement brings certainty to the process because it removes the cloud of non-compliance. Thus, no other mechanism is necessary to bring certainty.

The Commission's belief that guidelines are necessary to prevent inequities in payment obligations is not well founded. This conclusion appears to be premised on the unsupported

⁸ *FNPRM* at ¶ 17.

speculation of some, that without guidelines, there would be the potential for systematic underreporting of interstate revenues.

No evidence has been presented to suggest that there have been any reporting abuses by wireless carriers, let alone systematic abuses. Moreover, such abuses, if they were to take place, implies bad faith on the part of the carrier engaged in such conduct. Thus, if the Commission were to establish a good faith requirement as part of its permanent guidelines, such requirement would prevent carriers from systematically misreporting revenues. Carriers would not knowingly engage in conduct that would expose themselves to liability for a willful violation of the Commission's rules.

The course the Commission follows here must take into account the unsettled nature of the universal service fund. It is simply premature for the Commission to try to select "the" solution when the extent to which, if any, a problem exists is unknown. Accordingly, the Commission should eschew establishing regulations that impose new and burdensome data collection requirements that serve no purpose other than to meet regulatory obligations. The need to obtain data for universal service reporting purposes must be tempered by the cost measured against the perceived benefit. A pragmatic approach by the Commission that permits the use of estimation techniques will fulfill the needs of wireless carriers at this time.

III. THE DEFINITION OF BASIC SERVICE PACKAGES TO BE PROVIDED BY ELIGIBLE TELECOMMUNICATIONS CARRIERS

In the *FNPRM*, the Commission is soliciting comment on the amount of local usage that it should require eligible telecommunications carriers ("ETC") to provide as part of a basic service package in order to be eligible for universal service support. As a general matter

BellSouth supports the concept of including some local usage within the scope of the definition of universal service. Further, BellSouth believes that a basic service package that meets the definitional requirements of universal service should be separately available in order for the carrier to be deemed an ETC and receive universal service support.

It is difficult at this time, however, to define specific parameters that should be related to the universal service basic service package. The boundaries of the federal high cost universal service program continue to be in a state of flux. For the foreseeable future, the high cost fund seems to be tied very closely to the high cost fund that pre-dated the Telecommunications Act of 1996. In these circumstances, local usage and other parameters of the basic universal service package do not necessarily impact the universal service fund.

Given the current status of the universal service fund, the Commission may wish to defer specifying the basic service package parameters. Instead, the states should certify ETCs pursuant to the requirements of Section 214(e) of the Communications Act. Based on these certifications, the Commission can gather information on the size of serving areas, the rates, terms and conditions of the universal service basic service packages and the comparability of the offerings of various carriers. This information could provide the predicate for determining what, if any, additional Commission rules are necessary in order to participate in federal universal service fund.

IV. CONCLUSION

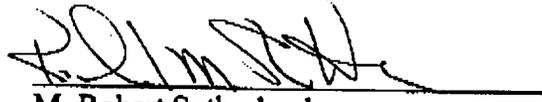
Based on the current development of the federal high cost fund, there may be limited additional actions the Commission should take to provide additional certainty to wireless carriers regarding the identification of interstate revenues. The Commission, however, should refrain, at

this time, from adopting new requirements that impose additional costs on carriers in order for them to comply with Commission rules. Further, the Commission must not take any steps in this proceeding that ultimately would conflict with its ongoing review of the pending Joint Board recommendations.

Respectfully submitted,

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Date: January 11, 1999

CERTIFICATE OF SERVICE

I do hereby certify that I have this 11th day of January 1999 served the following parties to this action with a copy of the foregoing COMMENTS by hand or by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties listed below.

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