

RECEIVED

JAN 25 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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
)

REPLY COMMENTS

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

A single conclusion emerges from the disparate and wide-ranging comments that have been submitted on the *FNPRM*—there is no one approach that would be appropriate and reasonable to impose upon all wireless carriers to determine interstate revenues. Whatever merit there may be to providing wireless carriers with certainty regarding the determination of the portion of their revenues to be used to calculate their universal service contribution, such certainty cannot come by the establishment of an arbitrary, one-size-fits all solution.

Some parties suggest that the only way the Commission can insure competitive neutrality or fairness with regard to universal service contributions is require that all wireless carriers use the same percentage of revenues to establish interstate revenues.² These same parties are then

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*").

² See Omnipoint at 2-5; Comcast at 24-29.

No. of Copies rec'd 0+9
List ABCDE

quick to urge the adoption of a 15 percent factor—notwithstanding that this factor has absolutely no nexus to wireless traffic characteristics.

The weight of the comments, however, demonstrate the inappropriateness of imposing a single factor on all wireless carriers, let alone one that has no relationship to wireless operations. As AirTouch correctly points out, those who argue that good faith estimates result in competitive inequities because of potential over- or under-reporting of revenues ignore the fact that the same inequities are associated with a fixed percentage system that also results in some carriers over-reporting and some carriers under-reporting revenues.³ It is crystal clear that there is no substantiation to the claim that a fixed percentage methodology is more competitively neutral or is less inequitable than a system based on good faith estimates.

Even among those parties that would support some use of a fixed percentage safe harbor, the majority express the view that any such percentage should be based on actual wireless data.⁴ Only wireless data can provide a meaningful proxy for wireless carriers. No valid reason has been presented to dismiss the use of wireless in favor of wireline data. Further, even if the Commission were to continue forward with the selection of a proxy, which it should not, such proxy should be nothing more than an option for carriers to use in lieu of developing good faith estimates. Overwhelmingly, the comments urge the Commission to always permit wireless carriers to use their own data to estimate interstate revenue percentages. No credible basis exists

³ AirTouch at 3.

⁴ See *e.g.*, AirTouch at 4; Bell Atlantic at 3-4; and GTE at 7-8.

to relegate actual data to a secondary position behind a proxy which purports to be representative of such data.

Nor is the problem somehow resolved by permitting carriers to obtain a waiver to use actual data to estimate revenues. It is bizarre to contemplate a rule that would require a carrier to obtain a waiver to use its own data in lieu of a proxy factor. The validity of the proxy is premised on the absence of actual data. If a carrier has actual data upon which to estimate its interstate percentage, then it is irrational to impose a waiver requirement that is tantamount to requiring a carrier to ask permission to use its own data instead of using a surrogate for such data. Thus, it should come as no surprise that most parties take the position that irrespective of what the Commission may do with regard to a proxy factor, carriers must be permitted to develop estimates of their interstate percentages using their own data.⁵

At this juncture, however, the real question before the Commission is whether it is appropriate to take any measures. As BellSouth and others have pointed out, the Commission now has before it a Joint Board recommendation that contributions to the high cost universal service fund be based on total intrastate and interstate retail revenues.⁶ If the Commission adopted this recommendation, as BellSouth has urged, then there would be no need for the Commission to establish any guidelines at this time regarding the determination of interstate revenues for wireless carriers.

⁵ See e.g., CTIA at 3-4; AirTouch at 2-5; SBC at 2; and PCIA at 7-9.

⁶ See BellSouth at 2-4; GTE at 2; and AT&T at 1-2.

Moreover, the comments in this proceeding make the case for the use of combined intrastate and interstate retail revenues for determining universal service contributions even more compelling. Not only does the diversity among wireless carriers preclude the Commission from mandating a single method for determining interstate revenues, but also this same diversity counsels against the adoption of simplifying assumptions. Many commenters point out that such simplifying assumptions would be unworkable because of the significant differences in operations among wireless carriers.⁷

With the uncertainty that currently surrounds the high cost universal service fund and the record established in this proceeding, the Commission must avoid acting in haste. The comments clearly dispel any idea that a fixed allocation of wireless revenues is superior to or more equitable than revenue allocations based on a carrier's own estimates. Accordingly, the Commission should refrain from adopting any proxy for reporting interstate revenue at this time.

The Commission should also move cautiously with respect to defining the amount of usage that an eligible telecommunications carrier ("ETC") should provide as part of a basic service package. While the comments establish, conceptually, that the Commission should require an ETC to offer a distinct basic service package that includes some level of usage, BellSouth continues to believe that it is premature for the Commission to determine the specific parameters related to a basic service package. The boundaries of the universal service fund are too fluid at this time for a complete assessment to be made regarding the parameters of a basic

⁷ See e.g., Nextel at 8-10.

service package.⁸ Nevertheless, if the Commission were to decide to go forward here and establish a minimum usage level for a basic service package, BellSouth's recommendation would be that such usage level should, at a minimum, fall within a range 100 to 200 minutes of use per month. In BellSouth's view, such a usage level would represent a cautious step that reflects the uncertainty of the current situation and the diversity of operations among wireless carriers.

A particularly peculiar comment in this proceeding is that of Western Wireless' request that the Commission permit wireless carriers be permitted to file tariffs for access charges to IXCs. Essentially, the request would re-regulate wireless carriers to the extent that such carriers are permitted to file interstate access tariffs. Western Wireless' purported purpose for such a step is that it should be entitled to establish implicit subsidies for universal service through access charges. While Western Wireless concedes that the Commission cannot in this proceeding act on its request, it is ironic, nonetheless, that in a universal service proceeding any carrier would solicit the Commission's assistance in establishing new implicit subsidies. The universal service provisions of the Telecommunications Act mandate that the Commission establish a fund that makes implicit subsidies explicit. Nothing could be more contrary to both the intent and express language of the statute than the Commission taking regulatory steps to establish new, implicit universal service subsidies. The remedy for Western Wireless' concerns regarding existing implicit subsidies is for the Commission to remove such subsidies from

⁸ In addition to the parameters of the basic service package, there are other questions, that also have to be addressed, such as how is a wireless customer identified, *i.e.*, home address or billing address. *See e.g.*, SBC at 8.

interstate access charges and to have them recovered through an explicit federal universal service fund.

For the reasons discussed above, the Commission should move forward cautiously. It must be cognizant of the pending decisions that will be made regarding the Joint Board's recommended decisions. The Commission should do nothing in this proceeding that would foreclose a wireless carrier from making good faith estimates of its interstate revenues.

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: January 25, 1999

CERTIFICATE OF SERVICE

I do hereby certify that I have this 25th day of January 1999 served the following parties to this action with a copy of the foregoing REPLY COMMENTS 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 on the attached service list.



Juanita H. Lee

SERVICE LIST CC DOCKET NO. 96-45

John A. Prendergast
Gerard J. Duffy
Susan J. Bahr
Business Service Center, Inc., Mobile Phone
Texas, Inc., 3 Rivers PCS, Inc.
Blooston, Mordkofsky, Jackson & Dickens
2120 L Street, NW, Suite 300
Washington, DC 20037

Kenneth E. Hardman
Advanced Paging, Capitol Paging, Dan Comm
Paging, Northeast Paging, Progressive Paging
Moir & Hardman
2000 L Street, N. W., Suite 512
Washington, DC 20036-4907

Pamela J. Riley
AirTouch Communications
1818 N Street, Suite 800
Washington, DC 20036

Douglas D. Leeds
AirTouch Communications
One California Street, 29th Floor
San Francisco, CA 94111

Michael S. Pabian
Ameritech
Room 4H82
2000 West Ameritech Center Drive
Hoffman Estates, IL 60196-1025

Howard J. Symons
Sara F. Seidman
Elizabeth A. Dees
AT&T Corporation
Mintz, Levin, Cohn, Ferris, Glovsky
And Popeo, P. C.
701 Pennsylvania Avenue, N. W., Suite 900
Washington, DC 20004

Mark C. Rosenblum
Judy Sello
AT&T Corporation
Room 324511
295 North Maple Avenue
Basking Ridge, NJ 07920

Douglas I. Brandon
AT&T Wireless Services, Inc.
1150 Connecticut Avenue, NW
Washington, DC 20036

Joseph DiBella
Lawrence W. Katz
Bell Atlantic Companies
1320 North Court House Road
Eighth Floor
Arlington, VA 22201

Karyl D. Stanley
Centennial Cellular Corporation
Cole, Raywid & Braverman, LLP
1919 Pennsylvania Avenue, NW
Suite 200
Washington, DC 20006

Michael F. Altschul
Randall S. Coleman
Cellular Telecommunications Industry
1250 Connecticut Avenue, N. W.
Suite 800
Washington, DC 20036

Jeffrey E. Smith
ComCast Cellular Communications
480 E. Swedesford Road
Wayne, PA 19087

Laura H. Phillips
Victoria A. Schlesinger
Comcast Cellular Communications, Inc.
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, NW
Washington, DC 20036

John F. Raposa
GTE Service Corporation
600 Hidden Ridge, HQE03J27
P. O. Box 152092
Irving, TX 75015-2092

Gail L. Polivy
GTE Service Corporation
1850 M Street, N. W., Suite 1200
Washington, DC 20036

Paul J. Berman
Alane C. Weixel
MACtel, Inc.
Covington & Burling
1201 Pennsylvania Avenue, NW
P. O. Box 7566
Washington, DC 20044

Daniel L. Brenner
Neal M. Goldberg
David L. Nicoll
National Cable Television Association
1724 Massachusetts Avenue, NW
Washington, DC 20036

Leonard J. Kennedy
Kimberly L. Cook
Nextel Communications, Inc.
Dow, Lohnes & Albertson PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, DC 20036

Robert S. Foosaner
Lawrence R. Krevor
Laura L. Holloway
Nextel Communications, Inc.
1450 G Street, N. W.
Washington, DC 20005

L. Marie Guillory
National Telephone Cooperative Association
2626 Pennsylvania Avenue, N.W.
Washington, DC 20037

David Cosson
Of Counsel National Telephone Cooperative
Kraskin, Lesse & Cosson, LLP
2120 L Street, NW, Suite 520
Washington, DC 20037

David C. Bergmann
Robert S. Tongren
Ohio Consumers' Counsel
77 South High Street, 15th Floor
Columbus, Ohio 43266-0550

Mark J. O'Connor
Teresa S. Werner
Omnipoint Communications, Inc.
Piper & Marbury LLP
1200 19th Street, NW, Suite 700
Washington, DC 20036

Angela E. Giancarlo, Esq.
Government Relations
The Personal Communications Industry Association
500 Montgomery Street, Suite 700
Alexandria, VA 22314-1561

Robert M. Lynch
Roger Toppins
Michael J. Zpevak
Hope Thurrott
SBC Communications, Inc.
One Bell Plaza, Room 3004
P. O. Box 655521
Dallas, TX 75265-5521

Carol L. Tacker
SBC Communications, Inc.
17330 Preston Road, 100A
Dallas, Texas 75252

Bruce E. Beard
SBC Communications, Inc.
13075 Manchester Road
St. Louis, Missouri 63131

Jonathan M. Chambers
Roger C. Sherman
Sprint PCS
1801 K Street, N. W.
Suite M112
Washington, D. C. 20006

Caressa D Bennet
Gregory W. Whiteaker
Kenneth C. Johnson
Cellular Mobile Systems of St. Cloud
Leaco Rural Telephone Cooperative, Inc.
Bennet & Bennet, PLLC
1019 Nineteenth Street, N. W., Suite 500
Washington, DC 20036

Peter M. Connolly
United States Cellular Corporation
Koteen & Naftalin, LLP
1150 Connecticut Avenue, NW
Washington, DC 20036

Robert B. McKenna
John L. Tray
US West Communications, Inc., US West
Wireless, Inc.
1020 19th Street, NW, Suite 700
Washington, DC 20036

Michele C. Farquhar
David L. Sieradzki
Ronnie London
Western Wireless Corporation
Hogan & Hartson, LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004-1109

Sharon Kohn
Rand McNally & Company
8255 North Central Park
Skokie, IL 60076

Margot Smiley Humphrey
TDS Telecommunications Corporation
Koteen & Naftalin, LLP
1150 Connecticut Avenue, NW
Suite 1000
Washington, DC 20036-4104

Lawrence E. Sarjeant
Linda L. Kent
Keith Townsend
John W. Hunter
United States Telephone Association
1401 H Street, NW
Suite 600
Washington, DC 20005

Gene DeJordy
Western Wireless Corporation
3650 131st Avenue, S.E.
Suite 400
Bellevue, WA 98006

Lee E. Bailey
Robert Haga
Universal Service Administrative Co.
1250 24th Street, N.W.
Suite 300
Washington, DC 20037

Jonathan L. Wiener
Rand McNally & Company
Goldberg, Godles, Wiener & Wright
1229 Nineteenth Street, NW
Washington, DC 20036

Timothy R. Graham
Joseph M. Sandri, Jr.
Barry J. Ohlson
Winstar Communications, Inc.
1146 19th Street, N. W.
Suite 200
Washington, DC 20036

Jeffry H. Smith
GVNW Consulting, Inc.
8050 S.W. Warm Springs Street
Suite 200
Tualatin, Oregon 97062

Jay C. Keithley
H. Richard Juhnke
Sprint Corporation
1850 M Street, N.W.
11th Floor
Washington, DC 20036-5807

Sandra K. Williams
Sprint Corporation
4220 Shawnee Mission Parkway
Suite 303A
Westwood, KS 66205

Jonathan Chambers
Sprint PCS
1801 K Street, N. W., Suite M112
Washington, DC 20006

*Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W., TW-A325
Washington, DC 20554

*Sheryl Todd
Accounting Policy Division
Federal Communications Commission
2100 M Street, N. W.
8th Floor
Washington, DC 20554

*International Transcription Services
1231 20th Street, NW
Washington, DC 20554

*** VIA HAND DELIVERY**