

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Defining Primary Lines) CC Docket No. 97-181
)

APR 12 1999
FCC

COMMENTS OF SBC COMMUNICATIONS INC.

SBC Communications Inc. (SBC), on behalf of Southwestern Bell Telephone Company (SWBT), Pacific Bell (Pacific), Nevada Bell (Nevada), and Southern New England Telephone Company (SNET) (collectively, the SBC Companies), and pursuant to the Report and Order & Further Notice of Proposed Rulemaking released March 10, 1999¹ by the Federal Communications Commission (Commission), hereby submits its Comments in the above styled matter.

I. ONLY THE SECOND OF THE FNPRM'S OPTIONS SHOULD BE CONSIDERED.

The FNPRM tentatively asserts that when one or more members of a residence have hearing or speech disabilities, the members of the residence often subscribe to one line dedicated for a traditional telephone and one line for a text telephone (TTY). Due to this belief, the FNPRM tentatively concludes that in residences where one family member has a hearing or speech disability, two lines may be necessary for all the residents to have access to telephone service.

Given the FNPRM's further tentative conclusion that individuals with speech or hearing disabilities served by price cap LEC lines should have access to the telecommunications network

¹ Defining Primary Lines, Report and Order & Further Notice of Proposed Rulemaking, CC Docket No. 97-181, (FCC 99-28) (rel. March 10, 1999) (FNPRM).

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at primary line rates, the FNPRM seeks particular comment on whether to either: 1) treat as primary one residential line per location that is used by such individuals in conjunction with a TTY, regardless of whether another line at the location is also treated as primary for residents without such disabilities; or 2) to subsidize more explicitly the difference in charges that would apply when the TTY-dedicated line is deemed non-primary as opposed to primary, including whether the subsidies for such an approach should come from the TRS Fund or the more general Universal Service Fund.

SBC is committed to seeing that individuals with disabilities can enjoy the benefits of telecommunications services and products and SBC will continue this commitment. In addressing the concerns raised in this FNPRM, however, a key issue is how the goal of the FNPRM can be implemented fairly and in the most cost effective manner possible.

SBC notes at the outset that this issue would not arise if, as discussed in the dissenting statement of Commissioner Furchtgott-Roth, the Commission would merely eliminate the distinction between primary and non-primary lines. The artificial differentiation of “primary” and “non-primary” residential classes of service has already created numerous problems with billing systems, methods and procedures, accompanied by increased customer confusion and complaints. These complaints have significantly increased the volume and duration of calls to the business offices. The SBC Companies have also received complaints from State Commissions regarding the application of the primary versus nonprimary distinctions. Given these problems in implementing the initial primary/non-primary designations, there will certainly be new implementation costs to either approach listed in the FNPRM, including those from the billing changes and the additional training and methods that would be required.

Nevertheless, SBC has reviewed its records since the issuance of the FNPRM. In many of the SBC Company states, the SBC Companies allow for customers to obtain certification if they are hearing or speech impaired. The certification also indicates whether the customer uses a TTY device.² Certification usually allows for a discount on intraLATA toll charges for those lines certified to be used for TTY equipment, on the theory that calls using such equipment may take longer than other calls. SBC's research on the number of these certifications, admittedly limited at this point, appears to at least show, as the FNPRM apparently predicted, that there is a "relatively small universe of customers to which either the definitional or funding approaches would apply."³

Should the Commission decide that one of its proposals for funding must be adopted, only the second of the two should be considered. Any funding for the reduced PICC and SLC for additional lines for the speech or hearing impaired should be provided through the Universal Service Fund (USF) and any subsidy must be explicit. Making a permanent subsidy for these lines come from other users through an implicit mechanism would violate Section 254(e) of the Communications Act.

As SBC has consistently argued, the primary/non-primary distinction amounts to an implicit subsidy in violation of the Act. While the Commission's power to implement the primary/non-primary subsidy was allowed by the 8th Circuit's decision in the appeal of the Access Charge Reform Order,⁴ the court noted that the Commission's decision was acceptable as a "temporary, transitional arrangement" that balanced an "implicit tension" between the goals of

² Other than through this certification process, the SBC Companies have no reasonable and consistent way of knowing if a customer uses a TTY. Further, it is not possible to precisely determine at this time how many primary and secondary lines are being primarily used for TTY equipment in multi-line households in the manner presumed by the FNPRM.

³ FNPRM at para. 45.

⁴ Southwestern Bell Tel. Co. v. FCC, 153 F.3d 523, 537-38 (8th Cir. 1998).

cost-based rates and protecting universal service. Expanding the primary line subsidies through the first option would indicate that the primary line subsidies are more than "temporary and transitional." Thus, the first option would conflict with the Commission's prior explanations for the subsidy.

The FNPRM also seeks comment on the implications of section 225(d)(1)(D), which "require[s] that users of telecommunications relay services pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from point of origination to point of termination."⁵

Providing PICC and SLC price supports for the speech and hearing impaired does not appear to be required by section 225(d)(1)(D) nor does it appear that the section would prohibit providing such a discount and funding the discount from the USF. Section 225(d)(1)(D) does not reference any factors that apply to SLC or PICC charges, in that SLC and PICC charges are not usage, time of day or distance sensitive. Additionally, the "functional" equivalency restriction of this section is being met since there is no difference in the functionality of a line provided for the speech and/or hearing impaired, whether primary or non-primary, and any other primary or non-primary line.⁶

II. QUALIFICATIONS FOR TREATMENT

To determine which lines might qualify for the proposed primary line treatment, the FNPRM asks whether carrier records indicate the presence at a location of certain CPE such as

⁵47 U.S.C. § 225(d)(1)(D).

⁶ Most state of the art telecommunications relay devices used in the home do not require the use of a dedicated access line. Generally speaking, the relay devices can be attached to and detached from a line much like an answering machine or a personal computer. Therefore, a household with both hearing/speech impaired and unimpaired family members could use one

TTYs. The FNPRM also seeks comment on whether self-certification would be an appropriate means for carriers to identify the lines that would receive the special treatment.

As noted above, SBC's records do not necessarily show the presence of certain CPE on a line. Any requirement to implement either of the proposed approaches must not add any additional complexity to the process of ordering service. The current processes for acquiring the intraLATA toll discounts described above should be used to determine eligibility.

III. CONCLUSION

For the foregoing reasons, SBC respectfully requests that the Commission only consider the second of the proposals to extend primary line treatment.

Respectfully submitted.

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primary line for all of its communications in the same manner as the general market.

Certificate of Service

I, Mary Ann Morris, hereby certify that the foregoing "Comments of SBC Communications, Inc." in CC Docket 97-181 has been served on April 9, 1999 to the Parties of Record.

_____/s/ Mary Ann Morris_____
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