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

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	

OPPOSITION

BellSouth Corporation, on behalf of itself and its subsidiaries, ("BellSouth") hereby submits its opposition to AT&T Corporation's ("AT&T") and the Personal Communications Industry Association's ("PCIA") Petitions for Reconsideration of the Commission's *Ninth Report and Order and Eighteenth Order On Reconsideration* in the above referenced proceeding.[1]

1. AT&T seeks reconsideration of certain aspects of the Commission's *Order* that pertain to the distribution and receipt of federal high cost universal service support. AT&T contends that the Commission must reconsider its determination that when a competitive eligible telecommunications carrier ("ETC") is providing service to a high-cost line exclusively through unbundled network elements ("UNEs"), such carrier will receive support up to the cost of the UNEs and any support in excess of the UNE cost would go to the incumbent.[2] According to

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[1] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Ninth Report and Order and Eighteenth Order On Reconsideration*, FCC 99-306 (rel. Nov. 2, 1999) ("*Order*").

[2] AT&T Petition at 2.

AT&T, circumstances have sufficiently changed so as to warrant providing competitive ETCs that only use UNEs with the "full measure" of high cost support. AT&T is incorrect.

2. As AT&T recognizes, the Commission's decision to limit an ETC's support to the cost of the UNEs was predicated on the arbitrage opportunities that might exist. Contrary to AT&T's belief, these arbitrage opportunities have not been eliminated by the facts that the Commission has adopted a forward-looking cost methodology for universal service support and that the Commission has lifted its stay requiring the deaveraging of UNE prices to at least three zones.

3. As long as there is a disparity in the level of disaggregation between UNE areas on the one hand and the target areas for high cost support on the other, the potential for arbitrage exists. High cost support is calculated at and targeted to the wire center level. UNE prices, however, only have to be disaggregated to three pricing zones. In such situations, if a competitive ETC were to receive the full amount of high cost support, it could selectively choose to serve only wire centers whose support levels exceeded the UNE price (which reflects an average of higher cost and lower cost wire centers). It is this type of arbitrage with which the Commission has been concerned and which continues to justify limiting a competitive ETC's universal service support to the cost of the UNEs.

4. Even AT&T in its petition implicitly acknowledges that a disparity in the levels of disaggregation between UNE prices and high cost support can lead to arbitrage.[3] Thus, AT&T also requests that the Commission modify its *Order* and make mandatory the current rule that

[3] *See e.g.*, AT&T Petition at 5.

permits a state commission to seek a waiver to have universal support payments targeted to UNE zone areas rather than wire centers. Indeed, AT&T points out the undesirable effects (*i.e.*, arbitrage) of disparate levels of disaggregation to support its request.[4] The current split of universal service support between competitive ETCs providing service through UNEs and incumbent LECs is a preventative measure that ameliorates the undesirable effects of arbitrage. The curative measure is to remove the disparity in disaggregation levels. Hence, having universal service support targeted to UNE areas is a condition precedent to eliminating the cap on universal service support received by competitive ETCs providing service solely through UNEs.

5. Whether universal service support should be targeted to UNE zone areas is a matter of policy. The Commission may not wish to modify its policies and adopt an approach that would constrain the states without first consulting their representatives. In this circumstance, the Commission should deny AT&T's petition.

6. PCIA seeks reconsideration of the requirement that carriers receiving universal service support seek state certification verifying that the support the carrier is receiving is being applied in a manner consistent with Section 254 of the Act.[5] In PCIA's view such state certification is unwarranted and unworkable because the state commissions lack jurisdiction over wireless rates and because wireless serving areas cross state boundaries, subjecting wireless carriers to multiple state reviews. PCIA argues that in lieu of the state certification process,

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[4] AT&T Petition at 6.

[5] PCIA Petition at 2-3.

wireless carriers should be permitted to self-certify compliance with Section 254 with the Commission.

7. Establishing a special process for wireless carriers would be inappropriate. As an initial matter, the arguments presented by PCIA are not compelling. Certification by a state commission that a carrier is spending the universal service support in a manner consistent with the Act does not require the state commission to have the authority to set rates. Indeed, the lack of ratemaking authority is not limited to situations involving wireless carriers. The Commission recognized the fact that in some states, state commissions do not have ratemaking authority over wireline carriers. The state certification process established by the Commission does not purport to confer ratemaking authority on state commissions where it does not exist. It merely authorizes the state commission to determine whether a carrier's proposed use of universal service support is consistent with Section 254. If a state commission determines that a carrier's proposed use is inconsistent with Section 254, the carrier is free to amend voluntarily its proposed use of the support to bring it within the parameters of Section 254 or to decline receiving universal service support. In no event would a state's denial of universal service certification constitute setting rates because the state commission could not compel such rate adjustments.

8. Likewise, there is no merit to PCIA's lament that wireless carriers would have to suffer multiple state reviews because wireless serving areas cross state boundaries. Universal service support is calculated for each state at a wire center level. To the extent a wireless carrier seeks universal service support for a particular customer, it need only seek certification from the state commission of the state in which the customer resides.

9. A key component of the Commission's universal service plan is competitive neutrality. To achieve its objective the Commission has sought to insure that no technology or class of carrier is either favored nor disfavored by the universal service rules. Hence, there must be parity with regard to the requirements imposed on wireless and wireline carriers. Requests for special treatment, as suggested in PCIA's petition, must be soundly rejected.

10. For the reasons discussed above, the Commission should deny AT&T's and PCIA's petitions.

Respectfully submitted,

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Date: February 7, 2000

CERTIFICATE OF SERVICE

I do hereby certify that I have this 7th day of February 2000 served the following parties to this action with a copy of the foregoing **OPPOSITION** 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 list.

s/s Juania H. Lee
Juanita H. Lee

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