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

In the Matter of	)	
	)	
American Communications Services, Inc.	)	
MCI Telecommunications Corp.	)	CC Docket No. 97-100
Petitions for Expedited Declaratory Ruling	)	
Preempting Arkansas Telecommunications	)	
Regulatory Reform Act of 1997 Pursuant to	)	
Sections 251, 252, and 253 of the	)	
Communications Act of 1934, As Amended	)	

COMMENTS OF SOUTHWESTERN BELL TELEPHONE COMPANY

Southwestern Bell Telephone Company (Southwestern Bell) contends that the universal service provisions of the Arkansas Telecommunications Regulatory Reform Act of 1997[1] (Arkansas Act) do not conflict with federal universal service law and policy and that preemption is unwarranted.[2] The Telecommunications Act of 1996 (Act) envisions a separate granting of authority to state and federal regulatory commissions in advancement of universal service on an interstate and intrastate basis. Section 254(f) clearly prescribes that a state may adopt its own universal service regulations provided such rules are not "inconsistent" with those of the Commission. Specifically, the Act provides " . . . A State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within the State only to the extent

[1] Ark. Code Ann. § 23-17-404 and 23-17-405.

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that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal support mechanisms." The Arkansas Act meets this standard.

The Arkansas Act expressly eliminates any potential conflict by referencing the Commission's authority as controlling. For example, Section 5(b) of the Arkansas Act provides that when a non-rural incumbent local exchange carrier receives support from the Arkansas Universal Service Fund (Arkansas Fund), the Arkansas PSC may designate other telecommunications providers to be eligible for high cost support under certain conditions "consistent with Section 214(e)(2) of the Federal Act." In addition, Section 5(c) states that where an eligible carrier seeks to relinquish its eligibility designation, the Arkansas PSC is authorized to grant the request upon a finding that at least one eligible carrier will continue to serve the area "consistent with Section 214(e)(4) of the Federal Act."

It is acknowledged that the eligibility conditions for receiving support from the Arkansas Fund differ in certain respects from those which apply to the federal fund. However, as the recent Fifth Circuit decision[3] has clarified, state commissions may impose additional eligibility criteria on carriers seeking federal funding. In light of this ruling, a state commission is also clearly authorized to set criteria with regard to carriers' eligibility to receive *state* funding.

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[2] These Comments are being submitted in response to Public Notice, DA 00-50, released by the Commission on January 14, 2000 in the above-captioned proceeding.
[3] *Texas Office of Public Utility Counsel, et al.v.. FCC,* 183 F. 3d 393 (5th Cir. 1999).

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CONCLUSION

Since the inception of this proceeding, the Commission has adopted and released numerous orders defining its federal universal service policy. Yet while the Commission has honed its fund mechanism in support of federal universal service, it has not adopted any precept with which the Arkansas Act conflicts. Both laws must be read in concert as advancing related, but not identical, goals. For this reason, Southwestern Bell encourages the Commission to reject arguments to the effect that Sections 4 and 5 of the Arkansas Act are inconsistent with federal universal service policy.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

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CERTIFICATE OF SERVICE

On this 11th day of February 2000, I, Mary Ann Morris, hereby certify that the Comments of Southwestern Bell Telephone Company in CC Docket No. 97-100 have been served upon the parties listed in the Service List attached to the Comments of Southwestern Bell Telephone Company.

/s/ Mary Ann Morris

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