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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Federal-State Joint Board on Universal)
Service)
)
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CC Docket No. 96-45

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

REPLY COMMENTS IN SUPPORT OF PETITION FOR RECONSIDERATION

Operator Communications, Inc. d/b/a Oncor Communications, Inc. ("OCI"), by its attorneys, hereby submits its reply comments in support of the petition for reconsideration filed by AT&T Corp., and states as follows:

In its initial comments in this proceeding, OCI supported AT&T's request that the Commission reconsider its earlier decision to base carrier universal service contributions on previous year revenues. As AT&T noted in its petition and as OCI has asserted to the Commission on several prior occasions, the practice of basing universal service contributions on prior year revenues improperly penalizes those carriers who have suffered declines in revenues from year to year, and just as improperly rewards those carriers who enjoy revenue growth from one year to the next. The current funding mechanism is neither equitable nor nondiscriminatory as required by the Communications Act,¹ nor competitively neutral as required by the Commission.²

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¹ 47 U.S.C § 254(d).

² Federal-State Joint Board on Universal Service (Report and Order), 12 FCC Rcd 8776 (1997) at 8801.

In addition to OCI, the Telecommunications Resellers Association (TRA), a trade association comprised of more than 850 entities, many of which are telecommunications carriers, and Hertz Technologies filed comments supporting AT&T's petition and requesting the Commission to revisit its decision to have universal service funding based on previous year revenues.

Predictably and self-servingly, three of the potentially largest beneficiaries of the regulatory lag created by the present funding system opposed AT&T's petition. Those companies – Bell Atlantic, BellSouth and U S West – are all Bell Operating Companies (BOCs) poised to provide in-region long distance services as soon as they obtain Commission authority to do so pursuant to Section 271 of the Act.³ While those companies' motivation for opposing the change in universal service funding sought by AT&T is apparent, their stated bases for opposing the petition for reconsideration are procedural, technical, and largely irrelevant to the Commission's public interest obligation to decide matters fairly based upon the most complete and most current information available to the Commission, including market experience information.

Whether or not AT&T is prohibited from seeking reconsideration of a rule or order, the Commission is not barred from reconsidering rules and decisions where it has reason to conclude that some adjustment is appropriate. There is no question that the record before the Commission in 1997 in this docket contained virtually nothing on the adverse impact on carriers serving dwindling market segments of having universal service funding based on prior year revenues. Neither was the Commission in 1997 asked to consider the impact of that approach on the

³ 47 U.S.C. § 271. Bell Atlantic already enjoys the authority to earn long distance revenues free from universal service funding for one year in the State of New York.

interexchange market following Bell Operating Company in-region long distance entry. Unlike 1997, the record before the Commission today amply demonstrates that the present universal service funding methodology is unduly and unnecessarily disadvantaging certain carriers while awarding a windfall of substantial magnitude to Bell Atlantic and will do the same for the other BOCs following their in-region entry. In this regard, OCI notes that Bell Atlantic's performance in the long distance market in New York already is exceeding expectations. It has been reported that Bell Atlantic signed up 428,000 customers during its first quarter, far more than had been forecast, and is likely to exceed one million long distance customers by year-end.⁴ Given this rapid establishment of long distance market share by the incumbent local exchange carrier, to then afford that company the added benefit of avoiding universal service contribution on its first year revenues from in-region long distance service is unconscionable.

Even more incredibly, Bell Atlantic – the first BOC to reap the benefit of the first year free ride regarding universal service funding -- has the temerity to object to a modest change in the manner of universal service funding as creating a “bureaucratic nightmare.”⁵ The modification suggested by OCI and, more recently, by AT&T, would do no such thing. It would merely allow carriers to report their current revenues, and be assessed universal service funding based on their current revenues, subject to periodic true-ups – precisely in the manner that the federal income tax system has worked for years.⁶ OCI does not believe that there is any basis to conclude that this change would complicate the administration of the universal service fund at

⁴ See “Bell Atlantic Tops Long Distance Expectations,” Communications Daily, April 26, 2000, at p. 5.

⁵ Bell Atlantic comments at 3.

⁶ OCI comments at 5.

all. Any change to the universal service funding process occasioned by the proposed modification would be modest and easily manageable. Moreover, OCI urges the Commission to resist Bell Atlantic's attempt to divert attention from the statutory and regulatory criteria for universal service funding. Those criteria are that the funding mechanism be equitable, that it be nondiscriminatory, and that it be competitively neutral. Administrative convenience is conspicuously absent from that list.

Accordingly, OCI urges the Commission not to become unnecessarily embroiled in insignificant and incorrect procedural barriers sought to be erected by several commenters to rectifying an unfair situation based on current conditions, that it not abdicate its responsibility to ensure that universal service funding conform with the standards set forth in the Act as supplemented by the Commission itself, and that it not abandon those standards in the name of simplicity.

Respectfully submitted,

OPERATOR COMMUNICATIONS, INC.
d/b/a ONCOR COMMUNICATIONS, INC.

A handwritten signature in black ink, appearing to read 'M. F. Brecher', written over a horizontal line.

Mitchell F. Brecher

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May 1, 2000

CERTIFICATE OF SERVICE

I, Melodie Kate, a secretary in the law firm of Greenberg Traurig, certify that I have this 1st day of May 2000, caused to be sent by first-class mail, a copy of the foregoing Comments in Support of Petition for Reconsideration to the following:

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