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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Federal-State Joint Board on)
Universal Service)

CC Docket No. 96-45 /
FCC 01-8

REPLY COMMENTS OF SBC COMMUNICATIONS, INC

SBC Communications, Inc. ("SBC") hereby submits its Reply Comments responding to the Commission's Further Notice of Proposed Rulemaking on the Recommended Decision of the Federal-State Joint Board on Universal Service (Joint Board).¹ The Joint Board's Recommended Decision, in turn, incorporates the universal service reforms recommended by the Rural Task Force (RTF).²

SBC is filing these reply comments not only to underscore several observations made by other parties, but also to relate those observations back to the fundamental purpose of universal service, which is to ensure that quality services are available at just, reasonable, and affordable rates.³ Before the Commission implements additional modifications to an already complicated system of universal service support mechanisms, SBC urges the Commission to revisit its earlier cursory disposition of this statutory

¹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Further Notice of Proposed Rulemaking, FCC 01-8 (rel. Jan. 12, 2001).

² *Federal-State Joint Board on Universal Service*, CC Docket 96-45, RTF Recommendation to the Federal-State Joint Board on Universal Service, FCC 00J-3 (rel. Sept. 29, 2000) (RTF Recommendation) at 3.

³ 47 U.S.C. § 254(b)(1).

at 4

requirement and address the issue of affordability.⁴ Conducting an affordability analysis and judging all reform measures according to their ability to ensure that support is available to maintain affordable prices will help the Commission ensure that the finite resources of the universal service fund are directed to those communities and customers who need it most. Moreover, addressing affordability issues through implementation of an effective universal service support mechanism and a rational rate re-balancing plan will have the added benefit of promoting competition and the deployment of quality services in rural areas.

In addition, SBC is concerned that the FCC's approach in dealing with universal service high cost support has had the effect of narrowing the focus of reform efforts on rural carriers, rather than on the customers that they serve.⁵ If the RTF's reform proposals are limited to modifying how universal service support is allocated among a beneficiary class of carriers, SBC believes these reforms actually may serve to exacerbate and perpetuate existing problems with the current universal service system for both rural and non-rural carriers.

SBC also shares a number of other concerns raised by various parties in their comments. Specifically, SBC urges the Commission not to adopt RTF's proposal to re-base the cap for the High Cost Loop (HCL) fund until such a time that an affordability study has been conducted.⁶ Further, SBC also believes it is premature to expand the

⁴ See Comments of SBC Communications, Inc. in CC Docket No. 96-45, (filed 7/23/99) at pgs. 2-3.

⁵ See Comments of the Maine Public Utilities Commission, Vermont Department of Public Service, and Vermont Public Service Board (VTPSB) in CC Docket No. 96-45, FCC 01-8, (filed February 26, 2001), at pg. 4.

⁶ RTF Recommendation at 24.

definition of supported services to include advanced services given the limited deployment of such services.⁷

I. The RTF Recommendation Fails Adequately To Address The Critical Issue Of Affordability

While the RTF recommendation attempts to achieve its stated public policy goal of providing access for rural areas at rates that are *numerically* comparable to that of urban areas, the recommendation fails (as does the Commission's Cost-Proxy Model) to consider a *functional* dimension of rate comparability.⁸ The ultimate goal for any high-cost support mechanism should be to ensure that quality services are available at affordable prices.⁹ Contrary to the RTF recommendation and the Commission's Cost-Proxy Model, affordability is not purely a function of whether or not local loop costs in a particular area exceed a national average cost benchmark. Rather, affordability is a function of the ability of a given group of consumers to bear the cost of a good or service that they consume.

As such, SBC believes that universal service fund support should focus on assisting customers who otherwise would pay unaffordable rates, rather than providing assistance based on the size or historical classification of the carrier serving those customers. Establishing a standard for affordability as a starting point will help determine the appropriate level of universal service support and provide the basis for price re-balancing, which is necessary to make serve residential customers profitable.

⁷ *Id.* at 22.

⁸ See footnote 4, *infra.*

⁹ 47 U.S.C. § 254(b)(1)

Pricing re-balancing, in turn, will help foster a competitive marketplace for residential customers and eliminate the arbitrage distortions that occur as competitors pursue the economically rational course of targeting profitable business customers, rather than serving residential customers who pay rates that are set below marginal costs. The arbitrage opportunity exists because business services provide implicit support for residential customers, just as customers in low-cost areas provide implicit support for customers in high-cost areas. The Commission and the various state commissions should work together to establish a meaningful affordability standard above which prices would be considered unaffordable, and at which point universal service support would be made available. In addition, the Commission's affordability threshold should be based on a meaningful indicator targeted to specific geographic areas, regardless of which carrier serves those areas.

II. The RTF Recommendation Maintains A Dual Systems Of High-Cost Support Program for Carriers Serving Rural Areas

The RTF recommends that the portion of the high-cost loop fund for rural carriers be separated from the non-rural carriers' portion of the high-cost loop fund.¹⁰ While traditionally, there may have been differences between rural carriers and non-rural carriers, maintaining a dual system of regulation is not economically rational in the competitive environment that the Commission currently seeks to encourage in rural areas. If the universal service reforms proposed by the RTF are intended to benefit rural customers, universal service support shouldn't differentiate by the carrier providing the service.

¹⁰ RTF Recommendation at 24.

The ultimate goal of universal service high-cost fund support should be to provide support for communities, and only those communities, where cost recovery would require that prices be set at unaffordable levels. As discussed above, the statute requires that universal service support be provided to communities where, but for the support of universal service funding, customers would otherwise not have quality service at affordable rates. The mere fact that a rural community is served by a non-rural carrier should not automatically eliminate that community's ability to receive the benefit of universal service support. Only through the establishment of a nationwide uniform affordability standard can it be ensured that the right communities and customers are targeted, regardless of the historical classification of the carrier that is providing service.¹¹

III. The RTF Recommendation Does Not Establish Sufficient Limitations On The Growth Of High Cost Loop Support

The RTF recommends that the current high-cost support system for non-rural carriers be re-based by removing the cap on the HCL fund and increasing it annually by a factor described as the "Rural Growth Factor" (RGF).¹² Under the RTF proposal, the HCL fund would increase by approximately \$118.5 million and would increase every year, regardless of whether actual costs increase.¹³ The California Public Utilities Commission commented that the RTF has not provided adequate justification for the

¹¹ VTPSB at page 6.

¹² RTF Recommendation at 25.

¹³ *Id.* This provision is especially curious in light of the RTF proposal to freeze the national average loop costs at \$240.00. *Id.* at 24.

various modifications to the HCL fund.¹⁴ Similarly, though SBC is not *per se* opposed to increases in the size of the HCL fund, SBC cannot support unnecessary and unsubstantiated increases in the size of the fund. If loop costs are static or shrinking, then the HCL fund should not be increased.

As such, the Commission should seek clarification from the RTF regarding what appears to be a proposal calling for unconditional growth of the HCL fund. The Commission should only remove the cap on growth of HCL fund when a factual record is established that an increase in the size of the fund is necessary to maintain affordable prices. Until such an analysis or development of a factual record to establish an affordability standard is conducted,, the Commission should maintain its current rules under Part 36.¹⁵

IV. It Is Premature To Adopt A “No-Barriers Approach” to Advanced Services

The RTF recommends that the Joint Board review the supported services definition and adopt a “no barriers to advanced services” policy.¹⁶ Such a policy would require that universal service funding be provided to support plant that can, when available, provide access to advanced services.¹⁷ SBC believes it is premature to engage in a discussion to revise the definition of supported services to include advanced services. The Communications Act of 1934, as amended (Act) provides clear instructions that a

¹⁴ See Comments of the People of the State of California and the California Public Utilities Commission (CPUC) in CC Docket No. 96-45, FCC 01-8, (filed February 26, 2001), at pg. 7.

¹⁵ 47 CFR § 36.601, *et. seq.*

¹⁶ RTF Recommendation at 22.

¹⁷ *Id.*

service must satisfy four different criteria before it can be added to the supported services definition, including the extent to which such the service has been subscribed to by a “substantial majority of residential customers.”¹⁸

The deployment of equipment to provide access to advanced services technology is ongoing and subscription to advanced services is increasing, but it can hardly be said that the extent of residential subscription to advanced services amounts to a “substantial majority.” A Commission report released in the October 2000 timeframe cites Department of Commerce data indicating that only 4.4% of the 105 million American households are accessing the Internet at speeds faster than conventional dial-up connections.¹⁹ As such, under the standards set out in § 254 of the Act, it is premature to consider expanding the definition of supported services to include advanced services. Accordingly, it is premature to consider making universal service support available to rural carriers to encourage investment in plant that enables advanced services.

Application of this 4-part standard is similarly consistent with the affordability analysis. As the *substantial* component of this “substantial majority” requirement is satisfied, it can reasonably be inferred that the price of the service may be a significant limiting factor for the remaining non-subscribers to this service. At this point, it is consistent to allow universal service funding support to be made available to customers who would otherwise be subscribers but for their inability to bear the costs of the service.

¹⁸ 47 U.S.C. § 254(c)(1)(B.)

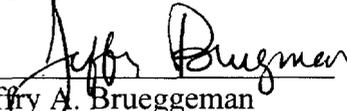
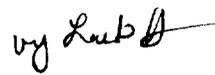
¹⁹ *High-Speed Services for Internet Access: Subscribership as of June 30, 2000*, FCC Report (rel. October 2000) at 2 n.6.

V. Conclusion

For these reasons, SBC requests that the Commission carefully review those aspects of the RTF recommendation that impose additional burdens on universal service resources which already are heavily taxed. The Commission should establish a meaningful affordability standard and adopt proposals that provide universal service support to rural customers who need it most, rather than proposals that benefit only one class of carriers. Moreover, the Commission should review the RTF proposals to increase the HCL fund regardless of whether actual costs increase and to adopt a “no barriers” approach to universal service support for advanced services.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Loretia Hill, do hereby certify that on this 12th day of March, a copy of the foregoing "Reply Comments" was served by hand delivery to the parties below and U.S. first class mail, postage paid, to the parties listed on the attached sheets.

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