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

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms	)	CC Docket No. 98-171
	)	
Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990	)	CC Docket No. 90-571
	)	
Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size	)	CC Docket No. 92-237 NSD File No. L-00-72
	)	
Number Resource Optimization	)	CC Docket No. 99-200
	)	
Telephone Number Portability	)	CC Docket No. 95-116

REPLY COMMENTS OF SBC COMMUNICATIONS INC.

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declining revenues must collect more than the prescribed contribution percentage from end-user customers in order to be made whole.

Third, to the extent a carrier seeks to recover its universal contributions, the prescribed contribution percentage should be flowed through as a line-item charge without any need for a complex calculation or mark-up above the contribution percentage. This addresses consumer concerns about current IXC billing practices and possible shifting of a disproportionate share of universal service contributions to certain classes of customers.

Commenters have not proposed a viable alternative to a uniform revenue-based approach to universal service contribution and recovery. The IXCs propose per-line methods that would entirely eliminate their universal service obligation, even though they are the largest source of interstate end-user telecommunications revenues. These per-line proposals are plainly inconsistent with Section 254(d), and they also would be regressive for low volume users. Further, as SBC demonstrated in its initial comments, a per-line method would be extremely difficult to implement and would provide ample opportunities for regulatory arbitrage.

Proposals to ban line-item charges are premised on the false assumption that universal service contributions are just another cost of doing business that can be absorbed by carriers in a competitive market. These proposals also run afoul of Section 254 by effectively forcing carriers to maintain implicit subsidies for universal service. Moreover, they would exacerbate the consumer issues that the Commission is attempting to eliminate in this proceeding.

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REPLY COMMENTS OF SBC COMMUNICATIONS INC.

SBC Communications Inc. (SBC) hereby submits its Reply Comments in response to the Commission's Notice of Proposed Rulemaking in this proceeding.[1] Once again, SBC is participating in this proceeding as an incumbent local exchange carrier (ILEC), as an interexchange carrier (IXC) and as a competitive local exchange carrier (CLEC). Although commenters raise a number of concerns about the current universal service contribution and

[1] *Federal-State Joint Board on Universal Service et al.*, CC Docket Nos. 96-45 et al., Notice of Proposed Rulemaking, FCC 01-145 (rel., May 8, 2001) (*NPRM*).

recovery mechanism, most of them do not propose solutions that will improve the *status quo* for carriers or end-user customers. SBC continues to believe that its uniform revenue-based approach to universal service contribution and recovery is the best way to address customer confusion, arbitrage and stability problems caused by the current system.

I. Introduction

In its *NPRM*, the Commission solicited input on how to reform the current system of assessing carrier universal service contributions and allowing carriers to recover contribution costs from their end-user customers. The Commission expressed concerned about (i) customer confusion and competitive issues caused by the lack of a uniform universal service contribution and recovery mechanism, and (ii) the difficulty of maintaining a stable universal service fund in light of a rapidly evolving telecommunications marketplace.[2] Both issues are symptomatic of a much larger problem facing the universal service fund – the amount of universal service funding that is being collected from carriers and ultimately passed through to end-user customers.

SBC believes that concern about the current and future size of the universal service fund – which has the potential to grow from its current level of $5.5 billion to $8 billion in a few years[3] – is driving much of the self-interested advocacy in this proceeding. IXCs are proposing per-line mechanisms that minimize or *eliminate entirely* their own universal service contributions.[4] Consumer groups are proposing to ban line-item charges in a futile attempt to avoid end-user customers bearing the ultimate for universal service fund contributions.[5]

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[2] *Id.* at ¶ 6.

[3] Ad Hoc Comments at 5 (citing federal budget projections).

[4] AT&T Comments at 11-12; WorldCom Comments at 3-5.

[5] Comments of the Texas Office of Public Utility Counsel, Consumer Federation of America and Consumers Union (Joint Comments) at 4-5; NASUCA Comments at 8-9.

Wireless carriers and international carriers are proposing to maintain or enlarge safe harbors that limit their universal service contributions.[6]

As the size of the universal service fund continues to grow, it will be increasingly difficult for the Commission to maintain a consumer friendly and competitively neutral universal service contribution and recovery mechanism. SBC's reform proposals are a step in the right direction. By calculating an individual carrier's universal service contributions as a percentage of the carrier's current collected end-user telecommunications revenues, rather than as a percentage of historical billed end user revenues, the Commission will eliminate concerns about uncollectibles and the time lag in determining contribution amounts based on historical revenues. Moreover, by requiring carriers that choose to recover their universal service contributions to do so through a uniform line-item charge that corresponds to the prescribed contribution percentage, the Commission will eliminate concerns about customer confusion and the shifting of a disproportionate share of the recovery burden to certain classes of customers.

SBC's uniform contribution and recovery mechanism also will ensure that customers do not make decisions about their choice of telecommunications service provider based on the amount of the carrier's universal service recovery charge. Some commenters make the point that the universal service assessment is essentially a tax. SBC agrees that the universal service contribution resembles a tax in that it funds public policy programs established by Congress, as opposed to the cost of the telecommunications services being purchased by the consumer. Contrary to the position of some commenters, universal service contributions are *not* simply a cost of doing business that can be competed away or reduced by operating more efficiently.[7]

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[6] CTIA Comments at 6; Lockheed Comments at 8; BT North America Comments at 2-4.

[7] Joint Comments at 3-4.

Therefore, traditional market principles designed to maximize efficiencies have no application to the universal service system.[8] Rather, the universal service contribution and recovery mechanism should be designed to provide end-user customers (who inevitably are the ultimate contributors) with a clearly identified line-item charge that represents their fair contribution to the universal service fund.

In the longer term, however, reform of the universal service contribution and recovery mechanism must be accompanied by reform of the universal service fund itself. Even with a fair and uniform recovery methodology, consumers will continue to be confused by the nature of the universal service program and the benefits it provides. The solution is not to attempt to hide the cost of the universal service program, as some have suggested, but to give consumers *more information* about the cost of the services they are receiving and the programs they are supporting. It also is critical that the Commission reevaluate the size and scope of the universal service fund. Instead of continuing to add to the funding obligation, the Commission should conduct an affordability analysis that will target universal service support to end user customers living in areas that actually need help and allow residential service prices to increase in other areas. SBC plans to raise these broader issues in the context of the *Intercarrier Compensation* rulemaking proceeding later this summer.

II. SBC's Proposal for a Uniform Contribution and Recovery Mechanism Based On a Percentage of Collected Revenues Addresses Many of the Concerns Raised by Commenters

In its initial comments, SBC discussed its proposal for a uniform universal service contribution and recovery mechanism based on a percentage of collected revenues. Under SBC's proposal, the universal service contribution percentage would be calculated annually

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[8] *See* Ad Hoc Comments at 7.

based on carriers' collected interstate end-user telecommunications revenues, rather than quarterly based on their gross-billed revenues. An individual carrier's contribution then would be determined by applying the contribution percentage to the carrier's collected interstate end-user telecommunications revenues for a given month, rather than by assessing a pre-determined contribution amount based on the carrier's historical revenues. Carriers that choose to recover their universal service contributions would be required to do so through a uniform line-item charge that corresponds to the prescribed contribution percentage. SBC's proposal eliminates many of the problems that commenters have identified with the current universal service system.

First, AT&T and other commenters agree with SBC that universal service contributions should be based on collected, as opposed to gross-billed, revenues.[9] This change would obviate the need for carriers to bear the risk of non-recovery or mark up their recovery of universal service contributions to account for uncollectibles. Although some commenters raise the concern that basing contributions on collected revenues could benefit carriers with poor collection practices,[10] SBC does not believe any carrier will be incented to forego revenue collection as a result of the universal service program. This is particularly true because a carrier will be required to remit the prescribed contribution percentage for *all* of the interstate end user telecommunications revenues generated by a particular customer each month, even if the carrier does not recover the cost of the universal service contribution from that customer. Thus, in order to avoid making a contribution to the fund, a carrier would have to completely forgo the collection of the end-user customer's payment for telecommunications services, which would not be a sound (or sustainable) business practice.

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[9] AT&T Comments at 3.

[10] NECA Comments at 6.

Second, AT&T and other commenters agree with SBC that the Commission should determine a carrier's contribution by applying the contribution percentage to the carrier's current collected interstate end-user telecommunications revenues.[11] When carriers enter a market, they will immediately begin contributing to the universal service fund. By eliminating the time lag built into the current system, this proposal addresses the concern that carriers with declining revenues must collect more than the prescribed contribution percentage from end-user customers in order to be made whole.[12] Several IXCs claim that the BOCs benefit from the current universal service system because they are new entrants in the long distance market, but they conveniently ignore the fact that the BOCs are faced with declining access lines (and associated interstate revenues) in the local market as a result of widespread competition. Unlike IXCs, however, BOCs do not have the flexibility to raise their rates in order to make up for the under-recovery of universal service contributions.

SBC's proposal also eliminates the need for USAC to generate a pre-determined bill each month. A carrier will simply apply the prescribed contribution percentage to its collected interstate end-user telecommunications revenues for a given month and remit that amount to USAC. There is no time lag and no need for a revenue forecast, as there would be if USAC attempted to bill carriers based on their current or projected revenues.[13] In addition, this revenue-based contribution method will provide stability to the universal service fund and should produce surplus universal service contributions during a given year, because industry revenues

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[11] AT&T Comments at 10.

[12] *Id.* at 9.

[13] USAC Comments at 11-14.

are generally increasing from year to year. Thus, SBC's proposal should provide a stable source of funding and reduce the administrative costs associated with the universal service fund.[14]

Third, SBC proposes that, to the extent a carrier seeks to recover its universal contributions, the prescribed contribution percentage should be flowed through as a line-item charge without any need for a complex calculation or mark-up above the contribution percentage.[15] This addresses consumer concerns about current IXC billing practices and possible shifting of a disproportionate share of the recovery to certain classes of customers. It also addresses carrier concerns about the complexity of the current system, with its distinct formulas for universal service contribution and recovery. Recognizing that the new recovery mechanism will require billing and systems changes, SBC proposes a transition period of up to 12 months to implement the changes to the recovery mechanism.[16]

Some commenters raise the concern that a revenue-based methodology for assessing universal service contributions may be difficult to apply to a bundled package of services. As AT&T acknowledges, the Commission already has addressed this issue and provided two safe harbor options for calculating interstate revenues associated with a bundled package of services. In particular, the Commission held that (i) if the telecommunications service is available separately, the carrier may use the non-discounted price of the telecommunications service or (ii)

[14] Additional administrative and billing cost savings will be realized by changing the contribution percentage only once a year, as opposed to once a quarter.

[15] A number of consumer groups support a revenue-based recovery approach to the extent carriers continue to use line-item charges. Joint Comments at 6.

[16] Of course, this transition period is necessary only for carriers that do not currently recover their contributions through a percentage-based line-item charge.

the carrier may use the total price of the bundled package.[17] In the case of bundled packages of interstate and intrastate services, the Commission could establish a safe harbor where the interstate allocation is equal to the undiscounted rate for the interstate transmission service. As discussed further below, the process of calculating interstate revenues associated with a bundled package of services is straightforward compared to the complexities of attempting to apply a consistent definition of a "line" in a per-line methodology.

III. Commenters Have Not Proposed Any Viable Alternatives to a Revenue-Based Recovery Mechanism

Commenters raise a number of concerns about the Commission's current system of assessing universal service contributions and allowing carriers to recover contribution costs from end-user customers, but most of them do not propose a viable alternative to a uniform revenue-based approach. As SBC demonstrated in its initial comments, the per-line mechanism proposed by some commenters would be extremely difficult to implement and would provide ample opportunities for regulatory arbitrage. Other commenters argue in favor of a ban on line-item charges as the solution to customer confusion and arbitrage concerns, but that proposal would cause more problems than it solves. The Commission would be better served maintaining the *status quo* than adopting a proposal that actually makes the situation worse.

A. The IXCs' Proposed Per-Line Method is an Unlawful Attempt to Avoid Their Universal Service Obligation

If there were any doubt that the proposed per-line method of calculating universal service contributions is merely a device to shift the universal service funding obligation to intrastate ratepayers, the comments in this proceeding provide concrete proof. SBC and others expected the IXCs to propose a per-line assessment method that would shift the bulk of universal service

[17] *Policy and Rules Concerning the Interstate, Interexchange Marketplace et al.*, CC Docket No. 96-81 et al., Report and Order, FCC 01-98 (rel. Mar. 30, 2001).

contributions to local exchange ratepayers. However, the IXCs have gone even further and proposed per-line methods that would *entirely eliminate their own universal service obligation.* WorldCom, for example, argues that universal service contributions should be assessed entirely on carriers that provide end-user customers with connections to the public switched network or the public Internet, or that otherwise originate or terminate interstate traffic.[18] At the same time, WorldCom argues that the assessment should not be shared by multiple carriers, which means that IXCs conveniently would no longer have to contribute to the universal service fund.[19] Sprint takes a slightly different tack and proposes that LECs and wireless carriers be solely responsible for collecting universal service contributions from end-user customers, which again would mean that IXCs would no longer have to contribute to the fund.[20] The Commission should be extremely skeptical of comments of these self-serving proposals that would shift the entire universal service obligation to other parties.

These per-line proposals are plainly inconsistent with Section 254(d), which requires that *every* provider of interstate end-user telecommunications must contribute to the federal universal service fund on an equitable and non-discriminatory basis.[21] In effect, the proposals would exempt IXCs – the largest source of interstate end-user telecommunications revenues – from contributing to the universal service fund. Moreover, Verizon points out that even a more balanced per-line method where IXCs continue to contribute to the fund would produce a distribution that is substantially similar to the combined interstate/intrastate revenue method

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[18] WorldCom Comments at 22.

[19] *Id.* At 24-25.

[20] Sprint Comments at 14-16.

[21] 47 U.S.C. § 254(d).

struck down by the Fifth Circuit.[22] Thus, Section 254 clearly precludes these per-line methods that would allow IXCs to avoid their obligation to contribute to the universal service fund.

In addition, these per-line proposals are inherently regressive and would shift much more of the burden of the universal service assessment to low-volume users.[23] Consumer groups present data showing that there may be a correlation between long distance usage and income, and they argue that a per-line or per-account method would have an inequitable impact on low income households.[24] This appears to bear out the Commission's concern that a per-line or per-account methodology would be regressive for lower volume users.[25] Such a result cannot be squared with the statutory requirement that universal service contributions be assessed in a fair and equitable manner.

Moreover, proponents of a per-line method have not addressed the issue of how complex and unwieldy it would be in practice. The Federal-State Joint Board on Universal Service and the Commission previously recognized that it would be difficult to apply a per-line method and, as a result, such a method would not be competitively neutral. Nothing has changed to warrant a different conclusion. In fact, WorldCom proposes an even more complex version of a per-line method that would have four different categories of end-user customers and three categories of bandwidth capacity.[26] This proposal already has been rendered obsolete by carriers that are

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[22] Verizon Comments at 3 (citing *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999)).

[23] Joint Comments at 7.

[24] *Id.* at 9-10.

[25] *NPRM* at ¶ 29.

[26] WorldCom Comments at 5.

offering variable bandwidth services to customers. WorldCom's proposal demonstrates that per-line methods will not be able to keep pace with technological and marketplace changes.

B. Banning Universal Service Line-Item Charges Would Not Address Consumer Confusion and Arbitrage Concerns

Some groups representing consumers and state regulators advocate in favor of banning universal service line-item charges as the solution to customer confusion and arbitrage concerns.[27] These proposals are premised on the false assumption that universal service contributions are just another cost of doing business that should be absorbed by a carrier in a competitive market. The reality is that, unlike costs associated with providing service, carriers have no control over universal service funding costs and no ability to eliminate them by increasing the efficiency of their operations. Therefore, the only way that a carrier can obtain a competitive advantage from the universal service charge is to offer a service that avoids triggering a universal service contribution (*e.g.*, voice over the Internet) or to shift the burden of recovering universal service contributions to the least desirable customers (*e.g.*, low volume users).

The proposals to ban universal service line-item charges effectively would mandate a universal service recovery mechanism that relies exclusively on implicit support in violation of Section 254(e). The Fifth Circuit recently reaffirmed that "the plain language of Section 254(e) does not permit the Commission to maintain any implicit subsidies."[28] Indeed, the court held that the Commission could not even *allow* carriers to recover universal service contributions through access charges (which the court concluded would be an implicit subsidy), let alone

[27] Joint Comments at 4-5; NASUCA Comments at 7-8.

[28] *COMSAT Corp. v. FCC*, No. 00-60044 (5th Cir. 2001).

require carriers to maintain implicit subsidies.[29] Further, a universal service system that relies on inflated service prices to generate implicit support would be inconsistent with Section 254(b)(5), which mandates that universal service support must be specific, predictable and sufficient. Universal service support that is generated by service prices that will undoubtedly decrease in response to competition will be at risk. Clearly, banning line-item charges and forcing carriers to recover their universal service contributions from the general rate base would be inconsistent with the requirements of Section 254.

Moreover, banning line-item charges would only exacerbate the consumer problems that the Commission is seeking to eliminate in this proceeding. If there were no universal service line-item charge, customers would have absolutely no idea how much universal service support they are paying as part of their monthly bills. As a result, the Commission's prohibition on carriers shifting a disproportionate amount of universal service contributions to a class of customers would be meaningless. An IXC could shift all recovery of its universal service contributions to the least desirable residential customers and there would be no way for the Commission to oversee its recovery method. Although commenters may have the best interest of consumers in mind, they cannot avoid the fact that the Commission would never be able to eliminate all of the complicated rate structures and charges that carriers employ in a competitive environment. The best way to combat unfair practices is to mandate an explicit, uniform line-item charge that identifies the amount of the universal service contribution for the end-user customer and fairly distributes universal service recovery among all customer groups.

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[29] *Id.*

IV. Conclusion

To the extent there is any consensus in this proceeding, it is that there are a number of problems created by the Commission's current system of universal service contribution and recovery. SBC's proposal to implement a uniform universal service contribution and recovery mechanism that is based on a percentage of collected revenues solves many of the customer confusion, arbitrage and administrative issues raised by commenters. In contrast, proposals to implement a per-line methodology or to ban line item charges would create more problems than they solve.

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CERTIFICATE OF SERVICE

I, Lacretia Hill, do hereby certify that on this 9th day of July a copy of the foregoing "Reply Comments" was served by U.S. first class mail, postage paid to the parties on the attached sheets.

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