

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

IN THE MATTER OF)

Federal-State Joint Board on Universal)
Service Seeks Comment on Review of the)
Definition of Universal Service)

CC Docket No. 96-45

Comments of SBC Communications Inc.

JEFFRY A. BRUEGGEMAN
GARY L. PHILLIPS
PAUL K. MANCINI

SBC COMMUNICATIONS INC.
1401 Eye Street, NW
Suite 400
Washington, D.C. 20005
(202) 326-8911 – phone
(202) 408-8745 – facsimile

Its Attorneys

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SBC Communications Inc. (SBC) hereby submits its comments in response to the Public Notice issued by the Federal-State Joint Board on Universal Service (Joint Board) seeking comment on the list of “core” services supported by federal universal service mechanisms.¹ SBC contributes to the universal service fund as an incumbent local exchange carrier (ILEC), as an interexchange carrier (IXC) and as a competitive local exchange carrier (CLEC).

I. Introduction and Summary

The Joint Board’s review of the list of core services eligible for federal universal service support must be conducted in a manner that is consistent with the statutory framework of Section 254(c) of the Act. Congress recognized that, given the evolving nature of telecommunications services and technologies, the Commission and the Joint Board should review the services covered by the universal service program from time to time.² That does not mean the standard of review used to assess core services should change or evolve over time. The criteria set forth in Section 254(c) reflect the fact that universal service support is intended to serve as a safety net

¹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Public Notice, FCC 01-J-1 (rel., August 21, 2001) (*Public Notice*).

² 47 U.S.C. § 254(c).

function, providing support to the extent necessary to ensure ubiquitous access to essential services. Thus, the addition of any service to the list of core services should occur only as a last resort when a service is truly deemed essential and the cost of deploying the service in a given area makes it unaffordable.

The Commission and the Joint Board also must consider the effect that any decision to expand the list of core services will have on the market. In a recent speech, Chairman Powell articulated a number of broad objectives for the Commission that are relevant to this proceeding.³ First, the Chairman stated that the nation should commit to achieving universal *availability* of broadband in a way that lets the market develop and preserves consumer choice.⁴ Therefore, adoption rates should not necessarily drive government responses. Second, the Chairman stated that broadband should exist in a minimally regulated space that encourages investment and innovation.⁵ Third, the Chairman stated that universal service objectives should be promoted in economically sound ways.⁶ The universal service goals of ubiquity and affordability should be advanced in a manner that does not “dampen competitive opportunity.”

SBC supports Chairman Powell’s goal of encouraging ubiquitous and affordable broadband services in a way that minimizes regulation and allows the market to develop. As discussed further below, adding new services to the list of core services supported by federal universal service mechanisms at this time would not be consistent with this market-based approach. Specifically, changing the definition of “voice grade” service for universal service

³ Michael K. Powell, Chairman, FCC, “Digital Broadband Migration” Part II (rel. Oct. 23, 2001).

⁴ *Id.* at 2.

⁵ *Id.*

⁶ *Id.*

purposes would not guarantee faster Internet access speeds for dial-up connections and would be prohibitively expensive for carriers to implement. In addition, advanced services (*e.g.*, high-speed Internet access) should not be added to the list of core services. There is no evidence that advanced services are essential or that universal service support is needed to spur investment in such services. Moreover, before the Commission risks distorting the market by including advanced services in federal universal service mechanisms, it should eliminate burdensome regulations that stifle ILEC investment and innovation in advanced services. The Commission and the Joint Board also should not add “soft dial tone” and “warm line” functionalities to the list of core services at this time.

II. The Statutory Criteria for Defining Core Services

Section 254(c) of the Act sets forth a number of guiding principles and four specific criteria by which the services supported by federal universal service mechanisms should be defined. Congress intends for universal service to be “an evolving level of telecommunications services” that reflects “advances in telecommunications and information technologies and services.”⁷ As such, Section 254(c) requires the Commission and the Joint Board, in establishing and maintaining a list of core services, to consider the extent to which the services in question are:

- Essential to education, public health, or public safety (the “essential” requirement);
- Subscribed to by a substantial majority of residential customers (the “ubiquity” requirement);
- Deployed in public telecommunications networks by telecommunications carriers (the “availability” requirement); and

⁷ 47 U.S.C. § 254(c)(1).

- Consistent with the public interest, convenience, and necessity.⁸

Some have argued that the Commission is required to make a factual determination that a service satisfies all four criteria as a threshold condition for being added to the list of core services. The Commission has chosen to adopt the interpretation by the Joint Board that all factors must be considered, though not necessarily met prior to the addition of any service to the core services list. However, the Commission cannot “flatly ignore or contravene” the statutory criteria in determining the list of core services.⁹ Thus, the Commission must consider all four of the criteria and reach a reasonable balance of all the interests involved.

As a practical matter, it is difficult to envision circumstances whereby a service that fails to satisfy one of the criteria would not fail at least one of the other three. After all, if a service is deemed “essential,” but less than a substantial majority have access to the service, it begs the question as to how essential the service actually is. Similarly, if a service were ubiquitous but non-essential, there would be no compelling justification for the uneconomic shifting of costs associated with the service to subscribers of basic telecommunications services. Certainly, it is reasonable to conclude that any service that fails the “availability” criterion would clearly fail the ubiquity criterion. It also would not make sense to conclude that a service satisfies the public interest criterion if it does not satisfy the other three statutory criteria.

The Commission previously declined to include certain services on the list of core services based on the failure of the service to meet one of the four criteria. For example, the Commission declined to include services on the following grounds: (i) that providing the service

⁸ 47 U.S.C. § 254(c)(1)(A)-(D).

⁹ *Texas Office of Pub. Util. Counsel et al. v. FCC*, No. 00-60434, 2001 U.S. App. LEXIS 19974, at *17 (5th Cir. Sept. 10, 2001) (holding that the Commission cannot “flatly ignore or contravene” the goal of affordability set forth in Section 254(i)).

would be extremely expensive (access exceeding voice-grade and high-speed data transmission); (ii) that the service was not a telecommunications service as defined by the Act (white pages and the information services component of Internet access); and (iii) that inclusion of the service would limit consumer choice in direct contravention of the Act (equal access to interexchange service and dialing parity). SBC concurs with this stringent level of review. The Joint Board's and ultimately the Commission's application of the statutory criteria should result in a conservatively defined list of core services that can accomplish the public policy goals of the Act and minimize the cost to ratepayers. Universal service support should be provided only as a safety net for essential telecommunications services.

III. The Commission and the Joint Board Should Not Change the List of Core Services at This Time

As indicated above, the appropriate method for establishing a definition of core services must begin with the statutory language. The Joint Board conducted an extensive review of the criteria set forth in Section 254(c) to develop its original list of nine core services, which was fully adopted by the Commission.¹⁰ SBC does not support removing any of these core services at this time. Absent new evidence to the contrary and a complete factual record, there is no reason to believe that these services no longer satisfy the statutory criteria.

SBC also does not support expanding the list of core services at this time. As discussed below, none of the specific services identified in the Public Notice satisfies the statutory criteria of Section 254(c). The Commission and the Joint Board must consider the practical effects of supporting new services such as advanced services with universal service mechanisms. In addition to the potential for market distortions, expanding the list of core services to include non-essential services will place an additional financial strain on a universal service system that

¹⁰ 47 C.F.R. § 54.101(a)(1)-(9).

already is overburdened. Ultimately, the burden of paying universal service support for these services will fall to consumers of basic telephone services. Therefore, the Public Notice correctly asks commenters to provide an estimate of the annual costs of any proposed additions to the list of core services.

A. The Commission and the Joint Board Should Not Change the Definition of Voice-Grade Access

The Commission's current list of core services includes "voice-grade access to the public switched network," which is defined as access at a minimum bandwidth of 300 to 3,000 Hz.¹¹ There is nothing on the record to indicate that this frequency range is insufficient for the provision of voice service over the public switched telephone network. To the extent the Commission and the Joint Board refresh the record with respect to voice-grade access, it must be for the limited purpose of determining whether the existing definition is sufficient to provide acceptable voice service according to quantifiable metrics (*e.g.*, signal-to-noise ratio, delay). By definition, "voice grade" access must be defined as access for the purpose of placing voice calls over the telephone network. The Commission and the Joint Board cannot bypass the statutory criteria of Section 254(c) under the guise of updating the record on the definition of voice grade access. Any modification of the current definition of "voice grade access" for the purpose of improving dial-up modem performance would constitute a fundamental *change* of the definition. In order to provide universal service support for the "network transmission component of Internet access," therefore, the Commission and the Joint Board would first have to make a determination that dial-up Internet access service should be added to the list of core services.

¹¹ 47 C.F.R. § 54.101(a)(1).

The Commission previously rejected a similar recommendation to mandate higher transmission speeds for voice grade access to accommodate applications such as video on demand, medical imaging, two-way interactive distance learning and high-definition television that require greater bandwidth. The Commission concluded for several reasons that the frequency range of 300 to 3,000 Hz is the appropriate bandwidth for voice grade access because it is sufficient to transmit voice over the network, which is the appropriate goal of universal service policies. First, the Commission determined that “supporting an overly expansive definition of core services could adversely affect all consumers by increasing the expense of the universal service program, thus increasing the basic cost of telecommunications services for all.”¹² SBC believes the costs of upgrading the nationwide network to enable ubiquitous dial-up Internet access at data transmission speeds of even 28.8 kbps are still prohibitively high, and it is in the process of gathering data regarding the extent of these costs. Second, the Commission noted that higher bandwidth services were not subscribed to by a substantial majority of residential customers.¹³ The Commission’s reasoning is just as applicable today as it was in 1997.

Moreover, though it may theoretically be possible to define an appropriate transmission speed or bit rate, there are variables that would preclude carriers from being able to guarantee a transmission speed for Internet access. The inability of a LEC to guarantee a minimum speed is rooted entirely in the fact that data can and will travel through network elements and components that are completely outside the carrier’s control. These variables include the following: (i) customer premises equipment (*e.g.*, personal computer) and deregulated inside wiring at the

¹² *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, ¶ 64 (1997) (*First Report and Order*).

¹³ *Id.*

customer's location; (ii) location of the customer's ISP; (iii) facilities and equipment of CLECs, IXCs or other LECs involved in the transmission; and (iv) ISP modem equipment and deregulated inside wiring at the ISP's location. The only network components that are totally within the LEC's control are the regulated wiring and the LEC's switch. As a practical matter, therefore, ratepayers will end up bearing the costs of achieving and maintaining network standards without any guaranteed benefits, which is an inefficient use of finite universal service resources.

B. The Commission and the Joint Board Should Not Add Advanced Services to the List of Core Services

SBC fully supports the goal of ubiquitous and affordable advanced services, but it does not support achieving that goal by adding advanced services to the list of core services. Advanced services are not essential, and adding them to the list of core services would impose enormous costs on ratepayers and negatively affect the highly competitive advanced services market. There is no evidence that universal service support is needed to spur the deployment of advanced services. To the contrary, the Commission's recent report on advanced services deployment indicates that subscribership to high-speed services (*i.e.*, speeds in excess of 200 kbps) increased by 158% last year.¹⁴ At the end of 2000, there were 2 million DSL lines in service and 3.6 million cable modem service lines in service.¹⁵ Moreover, a recent study estimates that high-speed services will be available to 75% of U.S. households by the end of this

¹⁴ See FCC Report, *High-Speed Services for Internet Access: Subscribership as of December 31, 2000*, Industry Analysis Division, Common Carrier Bureau, August 2001.

¹⁵ *Id.*

year, compared to just 60% of households at the end of 2000.¹⁶ Thus, there has been steady growth in both the deployment of advanced services and the number of subscribers to such services.

Before the Commission risks distorting the market by including advanced services in federal universal service mechanisms, it should do everything possible to eliminate burdensome regulations that stifle ILEC innovation and investment in such services. In Section 706 of the 1996 Act, Congress directed the Commission to encourage the deployment of advanced services through regulatory forbearance and other measures that “remove barriers to infrastructure investment.”¹⁷ SBC has repeatedly called for quick and decisive Commission action to establish a comprehensive national policy for *all* advanced services providers that eliminates regulation and barriers to investment. In addition, SBC recently filed a petition asking the Commission to confirm that it is non-dominant in the provision of advanced services and to forbear from applying dominant carrier regulation to SBC’s provision of advanced services. There is no justification for continuing to impose disparate regulations on ILEC advanced services that discourage investment and penalize otherwise efficient technologies. Consistent with congressional intent, the universal service goals of ubiquity and affordability should be achieved by reducing regulation and allowing the market to drive the deployment of advanced services.

While widespread deployment of advanced services is a national priority, residential access to advanced services is not essential for education, public health, or public safety. *No essential functionality or resource is available exclusively via advanced services.* To the extent

¹⁶ Dick Kelsey, *75% of U.S. Will Have Access to Broadband at Home by Year-End*, Newsbytes (Nov. 1, 2001).

¹⁷ See § 706, Pub.L. 104-104, Title VII, Feb. 8, 1996, 110 Stat. 153, reproduced in notes under 47 U.S.C. § 157.

it can even be argued that access to advanced services is essential for educational purposes, the Act already has accounted for the special needs of schools and libraries in the “Schools and Libraries” (E-Rate) fund. Thus, the Commission’s prior determination that residential access to advanced services is not essential remains valid today.¹⁸

The non-essential nature of advanced services is borne out by the low level of penetration of such services in the residential consumer market. If residential consumers perceived that residential access to advanced services was essential to their own health and safety, the subscription level to such services would be higher than 12%.¹⁹ Again, the Commission’s prior determination that advanced services should not be supported because they are not subscribed to by a substantial majority of residential customers.²⁰

The Commission and the Joint Board also must consider the fact that there are many reasons other than the cost of telecommunications service that affect subscribership levels for advanced services. Unlike the established market for basic telephone service, the market for advanced services is extremely volatile and affected by many factors. For example, whereas the price of telephones is relatively low, the cost of computers is not. Further, whereas telephones require no technical knowledge or ability, computers require some degree of technical sophistication that may be intimidating to many residential customers. In fact, recent Census Bureau data that indicates that just over half of American households (51%) own a computer.²¹

¹⁸ *First Report and Order* at ¶ 83.

¹⁹ Chairman Michael K. Powell, *Remarks at the National Summit on Broadband Deployment* (Oct. 23, 2001).

²⁰ *First Report and Order* at ¶ 83.

²¹ *Home Computers and Internet Use in the United States*: U.S. Census Bureau Special Study, at p. 1, (released September 2001). Available at: <http://www.census.gov/prod/2001pubs/p23-207.pdf>

Therefore, many residential customers do not even have the capability of utilizing high-speed Internet access services from their homes.²²

Even if advanced services were to evolve to the point where they become core services, it would be a mistake to apply the traditional model of universal service support. The advanced services market is highly competitive and characterized by rapid technological change. In such an environment, it would be extremely disruptive to favor one type of provider or technology by subsidizing it with universal service support. There also is a real danger that, in establishing universal service standards, the Commission and the Joint Board could drive the market to an inferior or outdated technology. To avoid harmful market impacts, the Commission and the Joint Board would have to develop new market-based mechanisms for providing universal service support.

C. The Commission and the Joint Board Should Not Add Soft Dial Tone or Warm Line Service to the List of Core Services

The Public Notice refers to “soft dial tone” and “warm line” functionalities (collectively referred to as SDTWL functionalities) as the capability of an otherwise disconnected phone line to dial and access emergency services. SDTWL functionalities would be utilized in cases where service is never established (*e.g.*, recently built residential developments), voluntarily discontinued (*e.g.*, a tenant vacating an apartment at the end of a lease), or involuntarily discontinued (*e.g.*, a customer having phone service cut-off due to outstanding debt). SBC opposes the addition of SDTWL services for several reasons.

²² SBC notes that the Census Bureau Data indicates that there is a much higher incidence of computer ownership in higher-income households. *Id.* at 2 (indicating that 88% of households with incomes of \$75,000/year have computers, while only 28% of households with incomes under \$25,000 have computers.) Providing universal service support for residential access to advanced services would have the effect of requiring basic telephone customers to subsidize a service that is used mostly by customers with fairly high incomes.

First, SDTWL functionalities are not covered by Section 254(c) of the Act, which applies only to telecommunications services. A “telecommunications service” is defined by Section 54.5 of the rules as “the offering of telecommunications services for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.” The very nature of SDTWL functionalities is that there is no established relationship between the local exchange carrier and an end-user customer. Thus, there is no realistic possibility of charging a fee.

Second, the addition of SDTWL functionalities to the core services list would pose significant problems for LECs in the areas of numbering resource optimization, local number portability, and the administration of 911 emergency services. Since each line equipped with the SDTWL functionality would require a telephone number while operating in 911-only mode, hundreds of thousands (if not millions) of numbers would be tied up instead of being available in the national number inventory. That would be inconsistent with the Commission’s policy of preserving scarce numbering resources. It also would make it more difficult for carriers to obtain new numbers under current number resource optimization rules, which require that SDTWL lines be treated as administrative numbers.²³ Requiring a large class of lines to be treated as administrative numbers would significantly and unjustifiably drive down a carrier’s utilization percentage under the calculations required by Section 52.15(g)(3)(ii) of the rules.²⁴ Thus, to the extent the Commission and the Joint Board consider adding SDTWL functionalities to the core

²³ *Numbering Resource Optimization*, CC Docket No. 99-200, First Report and Order, 15 FCC Rcd 7574, ¶ 33 (2000).

²⁴ 47 C.F.R. § 52.15(g)(3)(ii).

services, the Part 52 rules should be revised to classify lines equipped with SDTWL in a fashion that does not hamper the ability of a carrier to acquire new numbers.

Third, the local number portability rules currently do not provide any guidance on the process by which carriers would inform each other when phone service (and thus the phone number) is no longer needed. The Commission's rules would have to be modified to provide greater clarification on issues that arise when a number that was ported is then subsequently disconnected, including but not limited to:

- Does the previous provider pay for the number/line until reassigned?
- Does the previous provider send the number back to the original provider, who now becomes responsible for payment?
- If the new subscriber chooses a different carrier and different transport media, and SDTWL remains on the line indefinitely, who pays for it?
- How long does the number end up being utilized?

Fourth, requiring carriers to deploy SDTWL functionalities would impose significant costs on the administration of 911 emergency services. In particular, the creation and maintenance of SDTWL records in the 911 Automatic Location Information Database would impose additional costs of storage and processing for such databases. It also would require the development of new methods and procedures for 911 call centers.²⁵ Because the costs of administering 911 is funded by explicit surcharges imposed on "in-service lines," imposing widespread SDTWL deployment would increase the costs of 911 without increasing the 911 funding base. This funding shortfall would have to be covered by the universal service fund.

Finally, the addition of SDTWL functionalities would have a significant impact on the business and operations of ILECs, including their dealings with CLECs. Because additional

²⁵ SDTWL generally does not support incoming calls, which would prevent the 911 operator from returning a call in the event that it was disconnected.

dedicated inside and outside plant would be required to support SDTWL functionalities, the ILEC would need additional time for equipment installation intervals. The ILEC also would need to perform extensive modifications to existing databases and billing systems in order to preserve the association between a telephone number (which is temporary in nature) and the physical location of a line (which is inherently permanent). Moreover, the ILEC would have to devote extensive resources to developing new methods and procedures, as well as re-training network technicians, engineers, billing and collections representatives, and customer service representatives on the new processes. The addition of SDTWL functionalities also would raise significant ambiguities when CLECs and resold services are involved. Resolving issues of ownership, obligations and liabilities resulting from the maintenance and operation of SDTWL lines would be extremely complicated and impose a great deal of costs on all carriers, which would ultimately result in a disproportionate impact to smaller providers.

IV. Conclusion

Section 254(c) is designed to accommodate the evolution of universal service, but the standard of review used by the Commission and the Joint Board to determine the list of core services to be included in federal universal service mechanisms should be consistent. At this time, there is no basis for adding or removing any services from the list of core services. In considering whether to provide universal service support for advanced services and other new services, the Commission and the Joint Board must consider the potential that such support will distort the market. Consistent with Chairman Powell's policy objectives, a better solution is to eliminate burdensome regulations that are stifling innovation and investment in advanced services.

Respectfully Submitted,

/s/ Jeffrey A. Brueggeman

Jeffrey A. Brueggeman

Gary L. Phillips

Paul K. Mancini

SBC Communications Inc.

1401 I Street NW 11th Floor

Washington, D.C. 20005

Phone: 202-326-8911

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