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**Before the**
**Federal Communications Commission**
**Washington, D.C. 20554**

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| In the Matter of | ) | |
| | ) | |
| Federal-State Board on Universal Service | ) | CC Docket No. 96-45 |
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**FEDERAL-STATE JOINT BOARD REVIEW OF THE DEFINITION OF UNIVERSAL SERVICE**

**REPLY COMMENTS OF**

**THE UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, ALLIANCE FOR COMMUNITY MEDIA, APPLACHIAN PEOPLE'S ACTION COALITION, CENTER FOR DIGITAL DEMOCRACY, CONSUMER ACTION, THE COMMUNITY TECHNOLOGY INSTITUTE, CONSUMER FEDERATION OF AMERICA, EDGEMONT NEIGHBORHOOD COALITION, MIGRANT LEGAL ACTION PROGRAM, THE NATIONAL COALITION FOR THE HOMELESS, THE NATIONAL COMMUNITY VOICE MAIL FEDERATION, AND DR. MARSHA ZASHIN, EDUCATION CONSULTANT TO THE CLEVELAND PUBLIC SCHOOLS AND PROJECT ACT**

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## SUMMARY

In its initial comments, USCCB, *et al.* urged the Joint Board to recommend that the Commission to expand the list of services supported by the USF to include soft dial tone, extended area service ("EAS") and functional substitutes for residential wireline service, such as prepaid wireless service and a combination of prepaid local usage and voice mail. In these reply comments, USCCB, *et al.* address certain issues raised by other commenters regarding USF support for soft dial tone and expanded area service.

As a preliminary matter, the Joint Board should reject the contentions of certain commenters suggesting that soft dial tone is not a "telecommunications service." Soft dial tone provides the functional equivalent of access to emergency services, which has already been recognized by the Commission as a core service. The fact that soft dial tone would be supported by USF funds, rather billed directly to an end user, does not remove soft dial tone from the definition of a telecommunications service.

The Joint Board should also reject the contentions of commenters who raise technical issues regarding soft dial tone, or who state that the matter should be left to the markets. The whole purpose of the USF is to ensure that all Americans receive at least some minimal level of telecommunications service. It is hard to imagine a better use of a minimal amount of USF funds than to ensure that who lose local phone service retain access to potentially life-saving public safety services. Furthermore, since the vast majority of those receiving soft dial tone will likely be just temporarily disconnected, there likely will be little, if any, contribution to number exhaustion.

Finally, USF support of EAS within current EAS boundaries should not raise any state concerns regarding the establishment of EAS boundaries. In addition, EAS support will undeniably help increase connectivity in isolated communities.

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**FEDERAL-STATE JOINT BOARD REVIEW OF THE DEFINITION OF UNIVERSAL SERVICE**

**REPLY COMMENTS OF UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, *ET AL.***

The United States Conference of Catholic Bishops ("USCCB"), Alliance for Community Media, Appalachian People's Action Coalition, Center for Digital Democracy, the Community Technology Institute, Consumer Action, Consumer Federation of America, Edgemont Neighborhood Coalition, the Migrant Legal Action Program, the National Coalition for the Homeless, the National Community Voice Mail Federation and Dr. Marcia Zashin, Education Consultant to the Cleveland Public Schools and Project ACT ("USCCB, *et al.*"),[1] through undersigned counsel, hereby submit the following reply comments in response to the Federal-State Joint Board on Universal Service's ("Joint Board") request for comments in connection with its review of the definition of federal universal service.[2]

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[1] USCCB, *et al.* are religious and non-profit organizations that advocate for the interests of low-income individuals and their families.

[2] *See Federal-State Joint Board on Universal Service Seeks Comment on Review of the Definition of Universal Service*, CC Docket 96-45, FCC 01-J-1 (rel. Aug. 21, 2001) (hereinafter "August 21, 2001 Public Notice").

In its initial comments, USCCB, *et al.* urged the Joint Board to recommend that the Federal Communications Commission ("Commission") expand the list of services supported by the Universal Service Fund ("USF") to include soft dial tone service, expanded area service ("EAS"), and functional substitutes for residential wireline service, such as prepaid wireless service and a combination of prepaid local usage and voice mail.

In these reply comments, USCCB, *et al.* address issues raised by other commenters concerning proposed USF support for soft dial tone service and EAS. First, USCCB, *et al.* respond to parties who claim that soft dial tone service should not be supported by the universal service fund. Second, USCCB, *et al.* respond to commenters who claim that the Commission does not have the jurisdiction to support EAS.

## I. Soft Dial Tone Service Would Provide Essential Public Health and Safety Benefits to Those Who Cannot Afford Subsidized Basic Phone Service

USCCB, *et al.* strongly advocate USF support for soft dial tone for emergency access to potentially life-saving emergency services. Soft dial tone would provide a lifeline to emergency services for those who lack the means to afford subsidized basic phone service. Accordingly, USCCB, *et al.* reiterate that soft dial tone is a critical, basic telecommunications service that should be supported by the USF.

### A. Soft Dial Tone Is a "Telecommunications Service" as Defined Under the 1996 Act

The argument by SBC Communications Inc. ("SBC"), the United States Telecom Association ("USTA") and Verizon [3] that soft dial tone cannot be supported because the USF can only support "offering telecommunications for a fee directly to the public" distorts Congress' intended interpretation of the term "telecommunications service."

[3] *See, e.g.*, Comments of SBC at 12-14; Comments of USTA at 5; Comments of Verizon at 8.

Section 153(46), added by the Telecommunications Act of 1996 ("1996 Act"), states that "[t]he term 'telecommunications service' means the offering of telecommunications 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."[4]

Congress did not intend for the adopted language to exclude common carrier service offerings, such as soft dial tone, that are offered directly to the public and generate revenue for carriers. The fact that carriers providing soft dial tone service would receive USF support for provision of the service, rather than receive compensation directly from the end user, does not alter the fact that a fee is being charged for the service. Indeed, section 153(46) does not specify which party, if any, must pay the "fee" for a service to fall within the definition of a "telecommunications service."

Furthermore, the legislative history for section 153(46) indicates that the phrase "for a fee directly to the public" was included to distinguish between services supplied by common carriers versus services provided by private carriers, rather than to provide any sort of mandate that actual end users pay for telecommunications offerings in order for it to be considered a "telecommunications service."[5] This concept is clearly detailed in the 1996 Act's Conference Report, which states that the House Amendment defined "telecommunications services" as "those services and facilities offered on a 'common carrier' basis, recognizing the distinction between common carrier offerings that are provided to the public . . . and private services."[6] Although the House ultimately adopted the Senate's definition,[7] the legislative history for the Senate bill shows that the Senate's

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[4] 47 U.S.C. § 153(46) (Supp. 2001).
[5] *Id.*
[6] S. Conf. Rep. No 104-230, at 115 (1996).
[7] *Id.* at 116.

definition of "telecommunications services" was "intended to include . . . alternative local exchange services to the extent that they are offered to the public or such classes of users as to be effectively available to the public," and was not intended as a mandate that an actual end user pay for telecommunications in order for such offering to be considered a "telecommunication service."[8] Accordingly, the Commission should reject SBC, USTA, and Verizon's stilted interpretation of the term "telecommunications service."

### B. Soft Dial Tone Service Is Analogous to the Existing Emergency Access Component of Local Telephone Service

BellSouth's position that soft dial tone is "not so widespread and subscribed to by the majority of residential customers"[9] does not accurately characterize soft dial tone. Soft dial tone provides an alternate way to access "emergency services." Such access to emergency services is already provided to the public and supported by the USF as a component of basic local telephone service. In fact, soft dial tone provides an almost identical functional equivalent to the "access to emergency services" component of basic local phone service. This component is deployed to nearly all residential subscribers and already has been determined by the Commission as meeting the section 254(c)(1) definitional criteria.[10] Therefore, the Joint Board should reject the arguments of BellSouth, SBC, USTA and Verizon and recommend that the Commission include soft dial tone in the list of services supported by the USF.

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[8] *Id.* at 114.

[9] Comments of BellSouth Corporation at 7.

[10] Access to emergency services via soft dial tone, unbundled from basic service, likewise meets the section 254(c)(1) criteria and is "essential" to public health and safety because, as the Iowa Utilities Board points out, "some customers cannot afford basic service, even with the assistance of Lifeline and Link-Up. Comments of Iowa Utilities Board at 7.

### C. Soft Dial Tone Should Be Supported Because It Is the Only Way Those Who Cannot Afford Subsidized Basic Phone Service Can Reach Essential Emergency Services

USCCB, *et al.* also disagree with Sprint Corporation's ("Sprint") position that soft dial tone should not be addressed in the instant proceeding, and should instead be addressed in the Joint Board's concurrent Lifeline eligibility proceeding.[11] USCCB, *et al.* generally agree with Sprint that soft dial tone represents a potential service offering that may be covered under the Lifeline program.[12] However, the Joint Board's recent request for comments concerning its review of the Lifeline and Link-Up programs does not solicit comments concerning additional services or functionalities that could be covered by the programs.[13] Rather, that proceeding addresses procedural issues, such as eligibility, enrollment and outreach, that are distinct from the telecommunications service covered by Lifeline. Accordingly, the instant proceeding, concerning the services and network elements supported by the USF, is the appropriate proceeding in which to address this issue.

With regard to the actual provision of soft dial tone, the Commission should reject claims that a soft dial tone option is unnecessary due to competitive markets. In its comments, Verizon claims that soft dial tone "is not needed, and may be counterproductive in a competitive market" because "there are other alternatives to ILECs' services, such as CLECs, cable telephony and wireless services."[14] This

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[11] *See Federal-State Joint Board on Universal Service Seeks Comment on Review of Lifeline and Link-Up Service for All Low-Income Consumers*, CC Docket No. 96-45, FCC 01-J-2 (rel. Oct. 12, 2001) (hereinafter "Lifeline Notice").

[12] Comments of Sprint Corporation at 9.

[13] *See* Lifeline Notice at 3 (focusing the proceeding on the "effectiveness of the Commission's existing Lifeline/Link-Up rules" rather than on core services supported by the USF).

[14] Verizon comments at 8.

argument ignores the reason that USF was established in the first place. Low-income individuals who cannot afford subsidized basic telephone service likewise cannot afford to turn to the market for a non-subsidized substitute. If market forces could bring affordable telecommunications services to low-income individuals, then Congress and the Commission would not have had to establish the universal service fund. USF support for soft dial tone is necessary precisely because market forces do not address the needs of low-income individuals and those in rural and high cost areas who have limited calling options.

Due to the unique public safety issues involved with soft dial tone, USCCB, *et al.* also urge the Commission to reject the arguments of certain parties urging that the issue of soft dial tone be left to the states. The Texas 9-1-1 Agencies and National Emergency Number Association, for instance, argue that federal USF support for soft dial tone service could "create confusion" due to potentially different 911 operational standards for lines that provide basic local telephone service and those that just provide soft dial tone service.[15]

This argument, however, ignores the fact that almost all local telephone service packages currently provide direct access to emergency services. As discussed in USCCB, *et al.*'s initial comments, the vast majority of soft dial tone users would likely consist of customers whose local telephone service has been temporarily disconnected.[16] Accordingly, it is highly likely that the disconnected line would still have a telephone number associated with it that can provide automatic location and callback information.

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[15] *See* Comments of Texas 9-1-1 Agencies and NENA at 3.

[16] *See* Comments of USCCB, *et al.* at 9-10 (noting that the most common reason for disconnection by Lifeline subscribers is a temporary inability to pay their local telephone bill).

Furthermore, even to the extent that some carriers may provide soft dial tone service with a "temporary" number that does not allow all 911 features, it would still allow a customer to make critical outgoing calls to public safety officials.

Without soft dial tone, the inability of some low-income Americans to call 911 in a life-threatening emergency could lead to catastrophic results that are much more serious than purported administrative confusion. Because soft dial tone provides a critical lifeline to emergency services, USF support should not be dependent solely on the existence of a state commission soft dial tone requirement. Accordingly, USCCB, *et al.* urge the Joint Board to recommend that the Commission, at a minimum, approve support for soft dial tone for low-income customers.

### D. Requiring Carriers to Provide Soft Dial Tone Would Not Hasten Number Depletion

Although SBC alleges that support of soft dial tone would cause "hundreds of thousands (if not millions) of numbers to be tied up instead of being available in the number inventory,"[17] it is important to note that very few residential lines remain disconnected for extended periods of time. Therefore, only a modest amount of phone numbers would be needed to implement soft dial tone.

At least one incumbent local exchange carrier currently provides soft dial tone service for disconnected and uninitiated lines, and thus utilizes numbers, to provide potential customers with a convenient means to initiate phone service with no reported negative effect on number availability.[18] In areas where soft dial tone is in place, there

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[17] *See* Comments of SBC at 12-13.

[18] *See* Jeff Manning, "Fueling Their Pain," The Oregonian Online, Mar. 12, 2000, *available at* http://www.oregonlive. com/business/00/03/bz031201.html (describing how USWest offered a soft dial tone to its central offices, through remote service initiation and "pre-provisioning" of newly-constructed residential lines, to avoid costly service

have been no reported number exhaustion problems. In addition, it is important to note that almost all concerns about number exhaustion have arisen as a result of the proliferation of services that are ancillary to the primary residential line, including additional lines for voice, fax machines and computer modems. Allocation of numbers for a small number of soft dial tone or primary residential lines will not exacerbate any perceived number exhaustion problem.

The Commission is addressing the number depletion in other proceedings. The impetus behind recent numbering conservation efforts has been the need to address inefficient number allocation by local exchange carriers.[19] The numbering resource optimization plan provides for reclamation of unused numbers and other measures to conserve numbering resources and, thus, it is the more appropriate proceeding in which to address this issue.[20]

Furthermore, the vast majority of customers do not have any incentive to remain on soft dial tone service. Soft dial tone is intended to perform an interim service of providing a lifeline to emergency services when customers cannot afford the subsidized, basic local service or otherwise do not have local dial tone. Because basic local phone service is subsidized by the USF, it is affordable for a majority of low-income individuals. Moreover, customers need basic local service to carry out routine interactions with governmental and community services, employers, family, friends and

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trips in the wake of a significant increase in gasoline prices).

[19] *See Numbering Resource Optimization, Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 7574, 7626 (¶ 124) (2000) ("Our [thousand-block number pooling] efforts here seek to ensure fair and impartial access by all telecommunications carriers to numbering resources . . . we are obligated to alleviate the burdens placed on consumers b the inefficient use of numbering resources").

[20] *See id.* at 7680 (¶ 237) ("Reclamation and reuse of unused NXX blocks . . . may be one of the quickest and easiest measures to implement").

others via the network. Soft dial tone alone does not meet consumers' calling needs, and thus it likely would serve only as a last resort for those who cannot afford even basic local service, or a temporary measure for those whose local service has been disconnected.

There are adequate numbering resources available for the relatively few soft dial tone consumers, and little danger that support of soft dial tone would lead to number exhaustion. However, even to the extent that soft dial tone might minimally contribute to number exhaustion, the provision of access to vital emergency services should take precedence over number allocation for ancillary services.

### E. Support of Soft Dial Tone For Qualifying Low-Income Consumers Would Have Minimal Financial Impact on the USF as Compared to Subsidies for Basic Service

SBC notes that support of soft dial tone potentially would impose a "great deal of costs" on local exchange carriers.[21] However, SBC does not provide any indication how the costs might be calculated or even substantiated. The California Public Utilities Commission ("CPUC"), on the other hand, points out the additional cost to require warm line services is *de minimus.*"[22] The CPUC attributes the low cost "in part to existing technology" and the fact that the CPUC rules permit a carrier to forego providing soft dial to a line if it would preclude service to a paying, residential subscriber.[23] To the extent that there are any issues concerning how to allocate the costs of providing soft dial tone provided by CLEC resellers, these can be resolved by treating soft dial tone like any other unbundled network element.

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[21] Comments of SBC at 13-14. Such costs include "devoting extensive resources" to performing "extensive modifications to databases" and "developing new methods and procedures." *Id.*

[22] Comments of CPUC at 4.

Soft dial tone service is not significantly different from the basic local service currently subsidized by the USF, except that carriers need not provide access to interexchange services or operator services as part of the soft dial tone offering. Thus, if an eligible customer switches from basic service to soft dial tone service, the carrier and the USF should not have to pay any more for providing service to the soft dial tone subscriber than the basic service subscriber.[24] Accordingly, the Joint Board should reject SBC's allegations of "significant costs" for supporting soft dial tone as speculative and require SBC and other carriers to substantiate these claims before giving them any substantial weight in the is proceeding.[25]

## II. Expanded Area Service Should Be Supported Because It Would Allow Low-Income Consumers to Contact Their Communities of Interest As Part of Their Local Calling Plans at Relatively Low Cost to the USF

USCCB, *et al.* advocate USF support for EAS for two primary reasons. First, EAS allows customers to make calls to their communities of interest without incurring expensive toll charges, and thus makes the cost of calling one's community of interest comparable to that in more urbanized areas. Since USCCB, *et al.* recommend support of EAS only where the calling areas are defined by state mechanisms, states would continue

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[23] *Id.*

[24] In fact, any associated costs of reprogramming the network for these few lines should be offset, at least in part, by the fact that carriers need not provide the full panoply of Lifeline components such as interexchange access and operator services to soft dial tone customers.

[25] To create a balanced record, the Joint Board should at least require commenters who allege that soft dial tone involves significant costs to provide some data to support this position. To that end, USCCB, *et al.* support the position of the Ad Hoc Telecommunications Users Committee that the Joint Board should undertake a study to determine the cost-effectiveness of supporting soft dial tone with USF funds. *See* Comments of Ad Hoc Telecommunications Users Committee at 14.

to determine their local calling boundaries. In this regard, USCCB, *et al.*'s proposal should satisfy the commenters who believe that EAS issues should be left to the states.[26]

Second, USCCB, *et al.* agree with AARP that EAS can reduce the confusion that callers have in determining whether a call to a particular number will be charged as a local or toll call.[27] Consumers are accustomed to paying a flat monthly fee to make unlimited local calls, "believing that if they make the call in the same city, county or metropolitan area," they will be billed as local calls.[28] In fact, a number of states, including California,[29] Utah[30] and Tennessee,[31] require or have proposed state support of EAS to make calling affordable and reduce confusion concerning the demarcation lines for local and toll calls.

The State of Alaska advocates support of a capped amount of toll usage as an alternative to EAS.[32] USCCB, *et al.* do not disagree with the State of Alaska's proposal. However, USCCB, *et al.* believe that, in many cases, EAS would offer the same benefits of the State of Alaska's plan at less expense to the USF.[33]

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[26] *See generally,* Comments of CPUC at 6; Comments of Sprint Corporation at 9; Comments of State of Alaska at 33; Comments of Verizon at 8.

[27] *See* Comments of AARP at 7.

[28] *Id.*

[29] *See* CPUC, *Order Instituting Rulemaking on the Commission's Own Motion to Consider Modifications to the Universal Service Lifeline Telephone Service Program and General Order 153*, Decision No. 00-01-028, Rulemaking No. 98-09-005, Section 7.1.6.1 (Oct. 5, 2000) ("Within exchanges with EAS, ULTS [Universal Lifeline Telephone Service] customers shall pay 50 percent of the applicable EAS increment").

[30] Utah Admin. Code R746-341-5 (Westlaw 2001).

[31] *See* Tennessee Regulatory Authority, Notice of Rulemaking, Amendments to Chapter 1220-4-2, *Regulations for Telephone Service Providers* at 10, *available at* http://www.state.tn. us/tra/orders/2000/0000873.pdf (proposed chapter 1220-4-2-.21) (pending before the Directors of the Tennessee Regulatory Authority).

[32] Comments of State of Alaska at 33.

[33] For example, State of Alaska suggests support for a toll usage up to $18 per month. *See* Comments of State of Alaska at 36. However, USCCB, et al. suggest a figure in the range of $1.00 to $8.00 per month to cover the average nationwide cost of EAS. *See*

Although it may be true that local rates are somewhat higher for those who subscribe to EAS,[34] the very reason why customers select EAS is that they save proportionately more money by not having to pay toll charges to reach their communities of interest. Although local phone costs for EAS subscribers may be higher, their overall phone bills are lower because they incur fewer toll charges for their routine calls.

USCCB, *et al.* believe that support of a capped amount of EAS would further the Commission's goals of increasing subscribership while minimizing costs to the USF. Accordingly, the Joint Board should recommend that the Commission should add EAS to the list of services supported by the USF.

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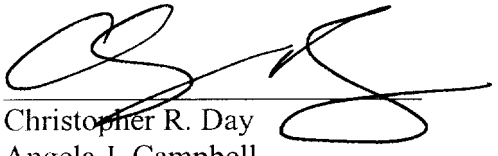
Comments of USCCB, *et al.* at n. 47.

[34] *See* Comments of State of Alaska at 35.

## III. Conclusion

For the foregoing reasons, and in the interest of promoting access among low-income individuals to essential services via the local telecommunications network, USCCB, *et al.* urge the Joint Board to advise the Commission to include soft dial tone and expanded area service within the list of core services supported by the federal USF. In addition, as discussed in its initial comments, USCCB, *et al* urge the Joint Board to advise the Commission to include prepaid wireless service, and a combination of prepaid local usage and voice mail as services that serve as functional substitutes for the core services supported by the USF.

Respectfully submitted,



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Dated: January 4, 2002

## CERTIFICATE OF SERVICE

I, Christopher R. Day, hereby certify that I have on this 4th day of January, 2002, sent via U.S. Mail, postage prepaid, copies of the "Reply Comments of United States Conference of Catholic Bishops, *et al.*" to the following:

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