

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Schools and Libraries Universal Service) CC Docket No. 02-6
Support Mechanism)

**REPLY COMMENTS OF
QWEST COMMUNICATIONS INTERNATIONAL INC.**

Qwest Communications International Inc. (“Qwest”) hereby respectfully submits Reply Comments in response to the Federal Communications Commission’s (“Commission” or “FCC”) *Notice of Proposed Rulemaking*.¹

In the *Notice*, the Commission seeks comment on potential improvements to the operation and administration of the schools and libraries universal service support mechanism. Qwest is both an active participant in the schools and libraries program as a service provider and a substantial contributor to the universal service support fund. In these Reply Comments, Qwest urges streamlining of the post-commitment program administration and use of undistributed funds to reduce contributions in subsequent quarters.

I. **THE COMMISSION SHOULD STREAMLINE THE POST-COMMITMENT
PROCESS WITHOUT IMPOSING BURDENSOME REQUIREMENTS ON
SERVICE PROVIDERS**

The Commission suggests various alternatives for improving the delivery of discounts to schools and libraries in a timely manner. The easiest way to accomplish this goal is to revise the Billed Entity Applicant Reimbursement (“BEAR”) form process to provide direct reimbursement to schools and libraries, thereby expediting reimbursement to these applicants. In contrast, the

¹ *In the Matter of Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6 (rel. Jan. 25, 2002) (“*Notice*”).

proposal to allow applicants to choose their payment method, without regard to the costs that may be imposed on the service provider, should be rejected.

A. The Commission Should Allow Direct Payments to Schools and Libraries

In the *Notice*, the Commission seeks comment on how to improve its current procedures regarding the disbursement of funds from the support mechanism. A diverse group of commenters notes that the simplest way to improve the efficiency of this process is to allow direct payments to schools and libraries.² The current BEAR process places the service provider in the role of middleman, requiring it to maintain procedures for collecting, tracking, and distributing reimbursements to schools and libraries. This process both delays reimbursement to the applicant and imposes unnecessary administrative costs on the service provider. Direct reimbursement to schools and libraries would eliminate the provider's role as an intermediary, as well as obviate the need for the Commission and Administrator to undertake enforcement actions against service providers that repeatedly fail to remit reimbursements to applicants in a timely manner. Such a change could be accomplished with only minor changes to the BEAR process. Moreover, the Commission can protect against fraud, waste and abuse, by continuing to require that service providers certify on the BEAR forms that they had provided and received payment for the services subject to reimbursement.³

While the *Notice* implies that the statute requires reimbursement to service providers, rather than applicants, it provides no basis for that suggestion. To be sure, section 254 refers to service providers "receiv[ing] reimbursement utilizing the support mechanisms to preserve and

² See AT&T Wireless at 4; Colorado Department of Education at 7; Council of Chief State School Officers ("Council") at 39-43; Maine Public Utilities Commission at 6; Tel/Logic at 11-12; WiscNet at 3.

³ Council at 43.

advance universal service,”⁴ but it does not specify that such reimbursement must come directly from the Administrator. Moreover, even if the statute did require reimbursement to be made to service providers, the Commission could easily overcome that hurdle by requiring service providers to assign the reimbursement to the applicant by checking a box on one of the forms submitted to the Administrator.⁵ Thus, there is no legitimate justification for retaining the burdensome, inefficient practice of distributing reimbursements through service providers.

B. The Commission Should Retain Service Providers’ Flexibility to Offer Efficient Payment Options

In the *Notice*, the Commission asks whether it should amend its rules to require service providers to offer applicants the option of either paying the full cost of services and being reimbursed via the BEAR process, or paying only the discounted price for the services, after which the service provider would seek reimbursement from the Administrator for the difference. While this proposal sounds reasonable, it is unworkable in practice. For many large and small service providers, billing systems simply are not designed to account for retail rates that vary by individual customer, depending upon the applicable discount percentage.⁶

Today, Qwest works cooperatively with applicants to determine the best payment option under the circumstances. It is Qwest’s intent to allow applicants to choose either payment method whenever possible, but in some cases the BEAR process is the only practical option. For example, for new product offerings, it takes time to modify billing systems to handle discount rates for schools and libraries. In addition, for certain bundled offerings, the necessary billing modifications are so complex, that it will never be practical for schools and libraries to pay

⁴ 47 U.S.C. § 254(h)(1)(B)(ii).

⁵ Tel/Logic at 13.

⁶ Sprint at 10-11.

discounted rates, rather than getting reimbursed through the BEAR process. Moreover, like Sprint, even where applicants have a choice of billing options, Qwest has found that most prefer to use the BEAR process, rather than paying the discounted price for the services.⁷ While the Commission should encourage service providers to offer multiple payment options when practical, it should not make such options mandatory, in light of the substantial costs that this would impose on service providers.

The Commission also questions whether it should adopt additional rules to ensure that service providers remit reimbursements to applicants in a timely matter. Once again, the Commission could avoid this problem entirely by allowing direct reimbursement to schools and libraries. In any case, it is not clear that any additional rules in this area are necessary. Qwest and other service providers have made great efforts to streamline their internal procedures to ensure that BEAR payments are remitted to applicants within 10 days of receipt from the Administrator, as the Administrator's procedures require.⁸ If the Commission is going to formalize this requirement in a Commission rule, which ultimately could lead to forfeiture or other penalties, it should extend the 10-day period to 20 days, as proposed in the *Notice*. Moreover, the Commission should exercise enforcement authority only in circumstances when a service provider, due to its own actions or omissions, repeatedly fails to meet this requirement.

II. UNUSED FUNDS SHOULD BE USED TO REDUCE THE CONTRIBUTION FACTOR FOR SUBSEQUENT QUARTERS

Since the initiation of the schools and libraries program, the Commission has directed that funds that are unused in a particular funding year be applied to reduce the contribution factor in subsequent quarters. In the *Notice*, the Commission asks whether it should codify this

⁷ *Id.* at 10.

⁸ *See, e.g., id.* at 11.

treatment of unused funds, or, alternatively, should require the distribution of such funds in subsequent years, in excess of the annual cap of \$2.25 billion. Consistent with its past practice, the Commission should clarify in its rules that unused funds are to be applied in subsequent quarters to reduce the contribution factor.

As noted by BellSouth and SBC, using excess contributions to lower contribution requirements is the most prudent course of action.⁹ The contribution factor has been increasing over time, and further increases may be necessary to comply with the mandate of the Court of Appeals for the Tenth Circuit regarding the high cost support mechanism for non-rural carriers.¹⁰ It must be remembered that contributions ultimately come from end-user customers in the form of line item charges or increases in rates for services. End users, rather than carriers, therefore are the primary beneficiaries of reductions, or smaller increases, in the contribution factor.

Relying on Commissioner Copps' dissent, a number of schools and libraries suggest that section 54.507(a) of the Commission's rules already specifies that unused funds will be distributed to applicants in future years. That rule does no such thing. Rather it simply states that "funding authority" that is unused in the funding year will be carried over to future years, without specifying the disposition of the unused funds.¹¹ Moreover, section 54.709(b) directs the Administrator to use funds carried over from a previous quarter to reduce the contribution factor.¹²

Finally, the fact that demand in a particular funding year exceeds available funds is not a legitimate basis for distributing the unused funds in a later year and thus exceeding the \$2.25

⁹ BellSouth/SBC at 38.

¹⁰ See *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001).

¹¹ 47 C.F.R. § 54.507(a).

¹² 47 C.F.R. § 54.709(b).

billion cap. In maintaining this cap, the Commission has recognized that demand will likely exceed the level of the cap, but has concluded that maintaining this level of funding reasonably balances the goal of providing support to eligible schools and libraries against the costs associated with establishing a larger support mechanism.¹³ Moreover, even without distributing the carryover funds, the support mechanism currently satisfies all Priority 1 requests.

III. CONCLUSION

For the reasons discussed above, the Commission should mandate direct reimbursement to schools and libraries and permit service providers to continue to work with schools and libraries to determine appropriate payment options. In addition, the Commission should amend its rules to clarify that unused funds will be applied to lower the contribution factor in future quarters.

Respectfully submitted,

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¹³ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 *Twelfth Order on Reconsideration*, FCC 99-121 ¶ 9 (rel. May 28, 1999).

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **REPLY COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.** to be filed with the FCC via its Electronic Comment Filing System, and a copy of the **REPLY COMMENTS** to be served, via email, on all parties listed below.

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