

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

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

**JOINT REPLY COMMENTS OF BELLSOUTH CORPORATION
AND SBC COMMUNICATIONS, INC.**

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BellSouth and SBC Joint Reply Comments
CC Docket No. 02-6
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TABLE OF CONTENTS

I.	INTRODUCTION AND SUMMARY	1
II.	FUNDING DECISIONS MUST BE REASONABLE	4
III.	APPLICANT-OWNED WIDE AREA NETWORKS MUST NOT RECEIVE SUPPORT	10
IV.	THE RULES SHOULD ENCOURAGE APPLICANTS AND PROVIDERS TO MUTUALLY AGREE ON A PAYMENT METHOD.....	13
V.	EXCESS SERVICES CANNOT BE USED FOR NON-EDUCATIONAL	17
VI.	UNUSED FUNDS SHOULD BE RETURNED TO CONTRIBUTORS	19
VII.	OTHER ISSUES.....	20
	A. The Same Eligibility Requirements Apply to Wireline and Wireless	20
	B. Regulatory Parity Should Exist Between Service Providers.....	21
VIII.	CONCLUSION	24

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BellSouth Corporation (“BellSouth”), on behalf of itself and its wholly owned subsidiaries, and SBC Telecommunications, Inc. (“SBC”) hereby jointly submit their Reply Comments pursuant to the *Notice of Proposed Rulemaking and Order* (“Notice”), released on January 25, 2002 in the above referenced proceeding.

I. INTRODUCTION AND SUMMARY

1. Section 254(h)(2)(A)¹ of the Telecommunications Act requires the establishment of a competitively neutral fund in a manner that is economically reasonable. Contrary to this requirement, a number of parties have made proposals that are prominently unreasonable. These parties propose a drastic expansion of the services that are eligible for funding, and propose that the cap on funding be raised or eliminated. BellSouth and SBC submit that these proposals should be rejected. Instead, decisions regarding eligible services and fund size must be made on an economically reasonable

¹ 47 U.S.C. § 254(h)(2)(A).

basis in order to satisfy the requirements of the Act. Further, the schools and libraries support mechanism is ultimately funded by other consumers of telecommunication services. In light of this fact, funding decisions should be informed by a sense of reasonability to these consumers. For those reasons, BellSouth and SBC submit that the Commission should focus on ways to manage the fund to ensure that available funding is put to appropriate uses.

2. Also, this proceeding cannot serve as the venue to address larger telecommunications issues, such as what constitutes a telecommunications service and who may provide this service. Instead, larger issues of this sort must be resolved in other proceedings that have been initiated for this purpose.

3. Wide Area Networks: As a matter of law, funding is not available for applicants to purchase wide area networks. Further, even if the funding of these purchases were legally appropriate, this funding would not be appropriate from a policy standpoint. A number of parties have expressed a desire to have applicants own wide area networks (as opposed to purchasing services from providers that utilize wide area networks), because they want services that they claim no carrier currently provides. Allowing the purchase of WAN for the creation of customized services of this sort would greatly increase the amount of funding that goes to WANs, and would produce a concomitant drain upon the fund.

4. Payment Method: The Commission should formalize in a rule the current practice of encouraging service providers and applicants to mutually agree upon a payment method. This approach would allow the Commission to police this process to

ensure that both service providers and applicants act in an appropriate and cooperative manner.

5. The Commission should not allow a combination payment method, which would allow applicants to switch from one payment method to another in the course of the year. This would create an excessive administrative burden for carriers, and there has been no quantification for the assertion that it would provide any real benefit to applicants. To the extent the Commission may deem it legally appropriate to send reimbursement checks directly to applicants, BellSouth and SBC have no objection to this approach. BellSouth and SBC, however, do oppose the unnecessarily complicated practice that some parties propose of sending dual party checks to providers, with the requirement that providers endorse the checks and forward them to applicants.

6. Use of Excess Services: As a matter of law, excess services cannot be used for non-educational purposes. Even if non-educational uses were legally sustainable (and they are not), these uses should not be allowed. Policing non-educational uses to assure that they are appropriate (according to whatever guidelines the Commission might establish for these uses) would prove to be a daunting and an extremely expensive administrative task. The burden and expense of this task would outweigh any potential benefit from allowing non-educational use.

7. Unused Funds: Unused funds should be returned to contributors so that they may, in turn, reduce the funding requirements that would otherwise be passed on to the consumers who ultimately provide funding for the program. Some parties have expressed concern that if funds are returned to contributors, the contributors will not flow

this benefit back to consumers. If this is a valid concern, then the Commission should make rules or guidelines for the disposition of unused funds that are returned to contributors.

8. Wireless Services: A number of parties assert that the current rules favor wireline services over wireless services. To the contrary, the eligibility rules (e.g., that the service must be used for educational use) apply equally to wireline and to wireless services.

9. Regulatory Parity: Some parties suggest that telecommunications services provided by non-common carriers (i.e. Internet Service Providers) should be eligible. BellSouth and SBC submit that providers should be treated with regulatory parity. If ISPs are allowed to provide eligible telecommunications services, then they should be subject to the same regulatory restrictions as telecommunications common carriers, and they should be required to contribute to the USF. Moreover, this issue is the subject of other proceedings, and it should be resolved in those proceedings.

II. FUNDING DECISIONS MUST BE REASONABLE

10. The Telecommunications Act of 1996 addresses the need to make telecommunications services more affordable for schools and libraries. Nothing in the Act reflects an intent for the universal service program to become the major source of funding for any educational-related activity, as some parties suggest. The Act provides no basis for applicants to seek unlimited access to advanced services regardless of the cost. To the contrary, Section 254(h)(2) requires the Commission to establish competitively neutral rules, as follows:

(A) [T]o enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms, health care providers, and libraries²

Thus, decisions as to what should be funded must be “economically reasonable.”

11. As noted in the Comments of the State of Florida Department of Education (“D.O.E.”), with billions of dollars at stake, consideration of what is reasonable may be less than paramount. As the Florida DOE states:

It is also believed that when all applicants and service providers look at a \$2.25 billion funding source for the application process, that “reasonableness” in the application process is not the first consideration. A certain degree of greed along with “loop holes” in the program’s administration has led to waste, fraud and abuse.³

12. The Comments of some parties provide a graphic demonstration of an almost complete disregard for reasonableness. Some parties that represent applicants appear to regard the program as an unlimited source of funds, which it is not. Collectively, they propose that applicants should be able to obtain funding for services that are not telecommunications services, and for telecommunications services purchased

² 47 U.S.C. § 254(h)(2)(A) (emphasis added).

³ Comments of Florida D.O.E., p. 2. The Florida D.O.E. goes on to cite a number of unreasonable demands that applicants have placed on the program. For example, a school district of only 18 schools and 11,000 students obtained a funding commitment of \$19 million dollars for a single year. This school district also received over \$7 million for internal connections in program year three alone. As the Florida D.O.E. states, “if all other 90 percent schools across the nation embraced such installations, demand for funding would explode to over \$10 Billion.” *Id.*, p. 4

from non-common carriers.⁴ These parties also advocate that applicants receive funding to build their own networks to, in effect, provide services to themselves.⁵

13. Moreover, at least one commentator takes the position that the definition of the term “advanced services” must continually escalate so that, “new ‘advanced’ services will develop, and previously ‘advanced’ services will become standard or even obsolete.”⁶ This commentator also defines the program as successful because the demand for funding is so great.⁷ Finally, this party presents in its comments a chart that reflects the fact that in the past five years, the number of requests for funding has increased by 20% (from 30,000 to 36,043), while the estimate of the funds requested has almost tripled (from \$2.05 billion to \$5.736 billion).⁸ This increase is apparently viewed by this party as a positive state of affairs.

14. In a nutshell, a number of parties define an appropriate fund as one in which requests increase in number, and the funds required to meet these requests increase exponentially, in order to keep pace with the never-ending upward spiral of new and

⁴ See e.g., Comments of The Council of Chief State School Officers (“CCSSO”), pp. 12-14.

⁵ *Id.* at 22-24; Comments of the American Library Association (“ALA”), p. 14, fn 18.

⁶ Comments of ALA, p. 6. Likewise, another commentator proclaims that “the goal of providing as many services as possible to schools and libraries is paramount.” Comments of Education and Library Networks Coalition (“EdLiNC”), p. 7 (emphasis added).

⁷ ALA Comments, p. 29.

⁸ *Id.* at 30.

improved advanced services that will be available for funding. Not surprisingly, these same parties believe that the cap on the fund should be raised, or better yet, eliminated.⁹

15. It is obvious that these parties have a view of the fund that is in no way tempered by the concept of “reasonableness.” Perhaps this is to be expected, given the fact that they do not have to finance their utopian vision of boundless access to ever more advanced (and expensive) services. The fact remains, however, that someone does have to pay for the services supported by the fund: other consumers of telecommunications services. In essence, the entire E-Rate program (and, in fact, the entire universal service fund) is a means of reallocating costs from some consumers of services (in this case, schools and libraries) to all other consumers of telecommunications services.¹⁰ Schools or libraries that purchase services at a 90% discount rate may, understandably, be less than mindful of the cost of the services they desire. These services do have a cost, however, and this cost is recouped from other subscribers, or more accurately, from a specific subclass of subscribers. Given this, the provision of advanced services to schools and libraries should be tempered, not just by the statutorily required standard of reasonableness, but by a sense of responsibility to the consumers of telecommunications services who ultimately pay for the program. Moreover, the surcharge that customers pay has an impact on the affordability of telephone services. Unlimited funding could produce unaffordable telephone service. For these reasons, BellSouth and SBC submit

⁹ Comments of ALA, p. 30; Comments of EdLINC, p. 5.

¹⁰ In the case of the schools and libraries universal service program, these costs include not only telecommunications services, but also non-telecommunications services such as internal connections equipment.

that the vision of the fund advanced by some parties—of ever escalating services, and limitless funds—is not only unreasonable, it is also potentially irresponsible.

16. BellSouth and SBC suggest this vision is also shortsighted. While the schools and libraries program has clearly resulted in valuable benefits for the education and library communities, care must be taken to ensure it does not fail in the long run because its initial success is undercut by loop holes that can potentially lead to waste, fraud and abuse. The ultimate success of the program should not be measured in absolute fund size or the magnitude of demand, but rather by sustainability for all parties involved. The goal of sustainability requires the Commission to address the program's impact, not only on applicants, but also on service providers and the telecommunications customers who ultimately finance the program. BellSouth and SBC submit that sustainability cannot be assumed as a given with the program design that provides incentive for certain applicants to potentially overstate their actual needs. In order to maintain balance among all applicants and other parties and to maintain long-term sustainability, the concept of economic reasonableness must be applied to applicant requests.

17. Instead of the vision of ever-escalating services and limitless funds advanced by some parties, BellSouth and SBC submit that the Commission should not even entertain the thought of raising the cap on the fund. Further, funding decisions should be based upon a reasonable and responsible assessment of what is needed, not merely what some applicants desire. To this end, the Commission should look for ways to manage the program within the current constraints, rather than lifting these constraints. Although BellSouth and SBC do not have a comprehensive program to suggest to this

end, some of the things that should be considered include lowering the discount thresholds for all applicants, lowering discounts on priority two services, and investigating ways to spread benefits over greater time periods. Extremely high discount levels may potentially drive purchasing decisions that are not sustainable.¹¹ Adjusting the discount matrix for all applicants or eliminating the highest discount levels may provide more balance among all applicants and would modify the expectations of applicants as to how much funding can come from the schools and libraries program, as opposed to other sources. Also, lowering discounts on priority two services would provide more balance to the program, not only among applicants but also among service providers and the class of telecommunications customers who finance the program.¹²

18. Finally, the wholesale expansion of funding eligibility advocated by some parties should be rejected because, in addition to ignoring economic reasonableness, they ignore the overriding structure of telecommunications, and of its regulation. The E-Rate program is merely a means for certain parties to obtain discounts for telecommunications services, Internet access and internal connections. This is accomplished within the larger framework of overriding regulatory policies, not in the vacuum of the specific context of the E-Rate program. In other words, the schools and libraries program cannot be the venue to grapple with larger issues, such as what constitutes a telecommunications service, who should be allowed to provide such services, and under what circumstances.

¹¹ For example, applicants must be able to continue paying for the non-discounted portion of funded services or the existing services will become stranded or temporary.

¹² For example, the Schools and Libraries Divisions of USAC website data shows that for program year 5, of the funding requests received within the filing window, almost \$4 billion (over 68%) were for internal connections.

These larger issues devolve from the Act (or other statutory sources), and from the Commission's interpretation and application of the controlling law. Neither the Commission, nor the parties, have the ability to simply discard the larger regulatory and legal framework because some parties believe that it would be in their interests not to be constrained by this framework. To the contrary, the treatment in the E-Rate program of services, and the providers of services, must be consistent with the broader regulatory treatment of these same services and providers.

III. APPLICANT-OWNED WIDE AREA NETWORKS MUST NOT RECEIVE SUPPORT

19. A number of commentors (primarily applicants or their representatives) state a preference for being able to purchase Wide Area Networks ("WANs") at a discounted rate, rather than leasing WANs.¹³ Funding should not be available for purchased WANs, however, because such funding is not legally permissible, and because such funding would likely have an adverse effect on the program in general.

20. First, it must be noted that any comparison of leasing WANs to purchasing WANs is based on a fundamental mischaracterization. Instead, the real distinction is between an applicant buying telecommunications services from a common carrier, as contrasted with an applicant building a private network to, in effect, provide services to itself. As BellSouth and SBC stated in their initial Comments, an applicant does not "lease" a service provider's wide area network or related network equipment. Instead, the applicant subscribes to end-to-end services from a telecommunications provider.

¹³ See, Comments of CCSSO, pp. 22-24; State of Alaska, p. 4.

21. In contrast, what some parties refer to as the “purchase” of a WAN is either constructing or purchasing from a vendor a private network that the applicant would own. If an applicant wishes to build a private network, it certainly has that option. However, E-Rate discounts are not available to fund these privately-owned networks. The Commission has clearly ruled that funding for applicant-owned networks is not legally permissible. Specifically, the Commission stated in the Fourth Report and Order the following:

. . . [T]o the extent that states, schools, or libraries build and purchase wide area networks to provide telecommunications, the cost of purchasing such networks will not be eligible for universal service discounts. We reach this conclusion because, from a legal perspective, wide area networks purchased by schools and libraries and designed to provide telecommunications do not meet the definition of services eligible for support under the universal service discount program. First, the building and purchasing of a wide area network is not a telecommunications service because the building and purchasing of equipment and facilities do not meet the statutory definition of “telecommunications.” [Citation Omitted] Moreover . . . the definition of “telecommunications service” is intended to encompass only telecommunications provided on a common carrier basis. [Citation omitted].¹⁴

Thus, the fact that some applicants would prefer to receive funding to build networks rather than to purchase services is of no consequence. The Commission has made it clear that, legally, this is not an option.

22. The *Notice* also stated that some parties had raised the concern that internal connections are being categorized as WANs because, due to the Priority One

¹⁴ *In the Matter of Federal-State Joint Board on Universal Service, et al.*, CC Docket No. 96-45, *et al.*, *Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72*, 13 FCC Rcd 5318, 5430, ¶ 193 (1997) (“*Fourth Order on Reconsideration*”).

status of WANs, this would make the approval of funding more likely.¹⁵ As BellSouth and SBC stated in their Comments, to the extent that an applicant or provider engages in this practice, it is improperly mischaracterizing the equipment. Definite distinctions exist between a WAN and an internal connection, both as a matter of ownership and function. Thus, to the extent equipment is being mischaracterized as a result of the perception that this mischaracterization will increase the chances of obtaining funding, then this improper practice should be addressed by rules to ensure that this does not occur.

23. Even if funding the construction of WANs were appropriate from a legal standpoint (and, again, it is not), allowing funding for this sort of construction would also be inappropriate from a policy perspective. The *Notice* cites to concerns that the Commission's policies regarding WANs (i.e., allowing the purchase of services based upon WANs to be covered in the program) have resulted in a drain on program resources.¹⁶ Thus, the *Notice* inquires whether the funding of WAN-based services is unduly depleting funding that would otherwise be available for other services. The Comments of several parties confirm that, if the purchase or construction of WANs by applicants were funded, their grandiose plans for network construction would quickly deplete the funding for other Priority One services. Specifically, at least two parties state as a primary justification for providing funding for applicants to build WANs, the contention that providers are not offering the sort of services that applicants desire.¹⁷

¹⁵ *Notice*, ¶ 20. *See also*, Comments of USAC, pp. 12-13; Comments of City of Boston, p. 3.

¹⁶ *Notice*, ¶ 18.

¹⁷ Comments of CCSSO, p. 23; Comments of State of Alaska, p. 4.

These are, of course, some of the same commentators (discussed earlier) who subscribe to the view that advanced services that are to be funded under the Act should be defined in such a way that these eligible services continually escalate in complexity and technological capability, which would, of course, also result in continual escalation of the costs that applicants would seek to recover from the fund. Thus, allowing parties the opportunity to develop their own “state of the art” networks with program funds has the potential to deplete funding much more so than would the funding of WAN-based services under the current approach.

IV. THE RULES SHOULD ENCOURAGE APPLICANTS AND PROVIDERS TO MUTUALLY AGREE ON A PAYMENT METHOD

24. Again, BellSouth and SBC emphasize, as they did in their initial Comments, that the best approach is to formalize in a rule the current practice of applicants and providers working together to determine a mutually agreeable payment method. This rule would require providers to be capable of offering both the discount option and the BEAR reimbursement option, and require providers and applicants to arrive at a selected payment method through mutual agreement. The formalization of this practice in a rule would give the Commission the power to police the practice, and to ensure that both providers and applicants are working to set a mutually agreeable payment method in a truly cooperative process.

25. Some commentators take the approach that the rule should be amended to simply state that the applicant has the choice of payment method.¹⁸ BellSouth and SBC oppose this approach because it would discourage the type of cooperative process that is prescribed by current practice. It is contrary to the spirit of the program to place this decision that impacts multiple parties in the hands of the applicant alone. The program is successful because it reflects a balance between USAC, applicants and service providers, functioning as equal partners. Consistent with this, the process of mutually arriving at a payment method should be encouraged.

26. Most commentators who support changing the rules so that applicants have sole discretion to choose an option do so based on complaints about individual service providers.¹⁹ BellSouth and SBC emphasize, however, that these isolated instances of abuse by particular providers cannot serve as a general indictment of the BEAR reimbursement method. The BEAR reimbursement process offers an effective and efficient payment option. Instead, these are simply individual examples of abuse or overreaching by particular carriers, and they should be dealt with as such. Codification of a rule requiring the selection of a payment method by mutual agreement would give the Commission the ability to ensure that individual providers (and for that matter, applicants) do not act inappropriately. This is the best means for dealing with bad

¹⁸ Comments of CCSSO, pp. 34-35; Comments of the National Education Association, International Society For Technology In Education and The Consortium For School Networking (collectively, "NEA"), p. 17.

¹⁹ *See, e.g.*, Comments of Montana Public Service Commission, p. 4.

actions, and it is preferable to disposing of a cooperative process that has served the program well.

27. Some commentors have also advocated that the Commission allow a combination payment method. Under this proposal, applicants would be able to switch in a given program year from being reimbursed through the BEAR program to paying a discounted rate. The theory is that allowing an applicant to switch to the payment option of choice whenever it is able to do so would ease the administrative burdens on the applicant. The problem with this approach is that it would increase substantially the administrative burdens on service providers. Considering the large number of applicants that may be served by any given service provider, the process of setting up multiple potential payment options that can be selected on a yearly basis is substantial. It would complicate the program, and increase the administrative costs to service providers considerably, if the program were changed to allow applicants to change payment methods at will during any given year.

28. Moreover, the parties that advocate this approach do not quantify the extent to which allowing applicants to change payment methods would ostensibly save them money or administrative labor. On the other hand, requiring service providers to make the systemic adjustments necessary to make this option a possibility (even if this option is never used) would be guaranteed to require substantial administrative labor and cost. BellSouth and SBC submit that this administrative burden should not be placed upon service providers.

29. Also, some commentors suggest that the best method for payment would be to send reimbursement checks directly to applicants (that is, without having them go to the service provider first).²⁰ BellSouth and SBC express no opinion as the legality of this approach. BellSouth and SBC, however, do state that if the Commission deems this approach to be proper legally, then they would have no objection to this approach. Other parties propose as an alternative to direct payment, sending a dual party check to the service provider with the requirement that the provider endorse the check and forward it to the applicant.²¹ BellSouth and SBC are opposed to this option because it would only increase the administrative burden upon providers, and would do so unnecessarily. This is especially true for providers such as BellSouth and SBC who have a recurring monthly billing relationship with schools and libraries and process hundreds of BEAR checks a month. In this dual party check or endorsement process, the provider would be doing nothing more than serving as a conduit for making payment to the applicant, albeit in a circuitous and inefficient way. Instead of speeding payments to the applicants, this approach would require service providers to revert to a manual process, adding time and complexity to the payment process. In addition, the service provider would no longer be able to verify the deposit of a check or have the ability to reissue a lost check. These functions would become an additional administrative burden, which would require the applicant to return to the SLD for resolution. Again, if the Commission deems it

²⁰ Comments of Colorado Department of Education, p. 7; Comments of State of Alaska, p. 7.

²¹ *See e.g.*, Comments of Jim Harris, Alabama Department of Education, p. 5.

appropriate to have reimbursement checks go to applicants, then these checks should be sent to the applicants directly, with no involvement by the service provider.

V. EXCESS SERVICES CANNOT BE USED FOR NON-EDUCATIONAL PURPOSES

30. A number of parties support the expansion of the rule waiver granted to the State of Alaska, which allowed excess services to be used for non-educational purposes. Some parties take the general position that allowing non-educational uses of excess services for worthy causes would be in the public interest.²² Other parties identify specific non-educational uses that they believe would be appropriate.²³

31. First, the notion that allowing non-educational uses of excess services is in the public interest is not a consensus opinion.²⁴ Beyond this, there are two problems with this approach: 1) it is not legally permissible under the Act; 2) it would create extreme administrative problems.

32. On the first point, the parties that support the expansion of the Alaska waiver generally provide no analysis to support the conclusion that this approach is legally sustainable. Instead, they appear simply to assume the legality of non-educational use, and then recommend what they believe would be appropriate from a policy standpoint. However, the legal impediments to the expansion of the Alaska waiver cannot be ignored. As BellSouth and SBC stated at length in their Comments, the Act provides that the subject support is for educational use, and the Act does so in

²² See, e.g., Comments of NEA, p. 21.

²³ See, e.g., Comments of the New York City Board of Education, p. 7.

²⁴ See, Comments of Sprint, p. 13; Comments of Verizon, pp. 3-5.

unambiguous language that makes it clear that other uses are not allowed.²⁵ The Act does not grant authority for universal service funding to be used for every cause that any party believes to be noble. Thus, the fact that someone may believe that a particular non-educational use is worthy, does nothing to change the fact that non-educational uses are prohibited.

33. At the same time, policing these non-educational uses would be all but impossible. In even the most benign scenario, schools in rural and/or impoverished areas will no doubt wish to make excess services available to their communities, and they will be tempted to do so even if it increases the cost of the supported service. On the other end of the spectrum, there will unquestionably be instances in which blatant fraud or abuse occurs. In both of instances, ensuring that the non-educational uses are proper (by whatever definition arises from the contemplated new rules) would be extremely difficult. The Universal Service Administrative Company (“USAC”) makes this point specifically in its Comments. USAC notes that it would be a “significant new workload for USAC to monitor service levels from year to year to see if increases are justified purely by educational use.”²⁶ USAC also observes in its Comments that “[v]erifying the terms under which services outside of school and library hours are made available to service providers for distribution in the community could also create a significant administrative burden.”²⁷ Finally, USAC raises the prospect of having a third party (such as a state or

²⁵ BellSouth and SBC Joint Comments, p. 19, citing 47 U.S.C. § 54.504(B).

²⁶ USAC Comments, p. 26.

²⁷ *Id.*

regional government) agree to maintain records to ensure that the non-educational uses are proper.²⁸

34. BellSouth and SBC believe that it is unlikely that state or regional governments across the country would volunteer to take on this significant administrative task. Moreover, either way, whether the additional administrative labor is undertaken by USAC or by state and regional governments, the labor is substantial. Thus allowing non-educational uses has the potential to increase the administrative cost of the program tremendously.

35. As BellSouth and SBC have stated previously, non-educational uses are not legally allowable. Even if these uses were allowed, however, it would still be necessary to consider the balance between the potential benefit from allowing such uses and the potentially huge administrative cost of policing the activity of every recipient in the program to ensure that this exception is not abused.²⁹ Considering all pertinent factors (and setting aside the legal impediments to allowing other uses), the balance tips heavily in favor of not allowing non-educational uses.

VI. UNUSED FUNDS SHOULD BE RETURNED TO CONTRIBUTORS

36. The *Notice* suggested two ways to deal with unused funds. 1) crediting the funds back to contributors; 2) adding the funds to the amount to be distributed in future years.³⁰ The parties that advocate the second option are, in many cases, applicants,

²⁸ *Id.*, pp. 26-27.

²⁹ Moreover, there is the substantial possibility that, even with this tremendous expenditure of money, some abuse or fraud would remain undetected.

³⁰ *Notice*, ¶ 70.

and in almost all cases, they subscribe to the view that the larger the fund, the better.³¹ As noted previously, BellSouth and SBC believe that the fund should be managed so that the demands that it makes on the consumers of telecommunications services who will ultimately pay for the fund are not too great. Consistent with this, BellSouth and SBC submit (as they did in their Comments) that the fund should be returned to contributors so that they may, in turn, reduce the funding requirements that would otherwise be passed on to consumers.

37. Some parties oppose this approach based on the contention that contributors will not return funds to consumers.³² If this is a concern, then the appropriate remedy is not to abandon this approach, but rather to set rules or guidelines for the disposition of unused funds that are returned to contributors. Returning the funds to contributors by reducing the amount of funds that must be generated each year guarantees that all consumers will benefit from unused funds. Ultimately, any concerns about whether providers will flow the funds back to consumers should be dealt with through rules that address these concerns specifically, not by the general abandonment of this approach.

VII. OTHER ISSUES

A. The Same Eligibility Requirements Apply to Wireline and Wireless Services

38. A number of parties assert that the current rules favor wireline services over wireless, and that the program rules should be changed to increase the circumstances

³¹ See, Discussion of Comments of ALA and CCSSO, *supra*, p. 3.

³² See, Comments of American Association of School Administrators, p. 2.

in which wireless services are eligible for discounts.³³ BellSouth and SBC disagree with the assertion that wireline services are not given equal consideration. The program has (and should have) certain requirements that apply to eligible services (e.g., services must be used for educational purposes). These requirements apply equally to wireline and wireless services, i.e., the criteria for eligibility is the same for both types of service. To the extent that any party intends to assert that wireless services should not have to comply with the same eligibility criteria as wireline services, BellSouth and SBC strongly disagree. Under the current rules, wireline and wireless services are treated precisely the same, and this practice of equal treatment should continue.

B. Regulatory Parity Should Exist Between Service Providers

39. The assertion of CCSSO that certain services provided by non-common carriers should be eligible for discounts (specifically, service purchased from an Internet service provider (ISP) for telecommunications purposes) is an example of the type of regulatory issue that the Commission should consider outside of this particular USF docket. CCSSO states that the Commission has “recently tentatively concluded that wireline broadband access to the Internet, when offered by a telecommunications service provider, constitutes the use of rather than the provision of telecommunications, and is classified as an information service.”³⁴ CCSSO then asserts that a service should not be precluded from E-Rate eligibility simply because it is offered by a non-traditional service provider (i.e., an ISP). Instead, CCSSO proposes “that the E-Rate rules be amended to

³³ See Comments of Colorado Department of Education, p. 3; TAMSCO, p. 2; Missouri Research and Education Network, p. 6.

³⁴ Comments of CCSSO, p. 13.

prescribe that telecommunications providers that are not common carriers may provide information services such as Internet access to eligible applicants, and applicants may use those same facilities to transmit telecommunications.”³⁵ Further, “the applicant should be permitted to use telecommunications over the same facilities that it has leased from a provider of Internet access, without jeopardizing the eligibility of the service provider to receive discounts of Internet access service.”³⁶ Thus, in effect, CCSSO proposes that the Commission allow an ISP to provide a service that applicants can use for telecommunications purposes without the regulatory oversight required of telecommunications common carriers, or the requirement that the ISP contribute into the universal service fund.

40. These issues, however, are the subject of other proceedings, such as Docket 02-33,³⁷ which addresses the appropriate framework for broadband access to the Internet over wireline facilities and the universal service obligations of broadband providers. The *Notice* in CC Docket 02-23 raises issues regarding the nature of universal service obligations that providers of broadband Internet access should have, and how such obligations should be administered in an equitable and non-discriminatory manner.

³⁵ *Id.*, p. 14.

³⁶ *Id.*

³⁷ *In the Matter of Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities, et al.*, CC Docket Nos. 02-33, 95-20, 98-10, *Notice of Proposed Rulemaking*, FCC 02-42 (rel. Feb. 15, 2002).

Also, Docket No. 96-45 addressed the existing universal service assessment methodology.³⁸

41. BellSouth and SBC suggest (as also suggested in these other dockets) that parity in the regulatory treatment of carriers should be required. When two entities provide equivalent services, the regulations that apply to each should be the same. Thus, unless regulatory restrictions are lifted from ILECs, other providers (such as ISPs) must be subject to the same restrictions. Also the current mechanism allows for interstate communications to shift to Internet-based offerings provided by ISPs, and thus to escape assessment for universal service purposes. The Commission should not allow universal service obligations to be avoided by disguising the way in which a service is provided. Instead, the Commission should exercise its authority to require ISPs to contribute to the universal service fund. Under the sort of regulatory parity that should exist, a telecommunications carrier and an ISP that provide a comparable service should be subject to comparable regulatory treatment, including the requirement to contribute to the USF.

42. Again, these issues are being addressed in other proceedings, and need not be addressed at this time in this docket. Once decisions about these issues are made in these other proceedings, the E-Rate program may need to be adjusted to reflect those decisions, but not before.

³⁸ *In the Matter of Federal-State Joint Board on Universal Service et. al*, CC Docket Nos. 96-45, *et al.*, *Further Notice of Proposed Rulemaking and Report and Order*, FCC 02-43 (rel. Feb. 26, 2002) (“*USF Contribution Methodology*”).

VIII. CONCLUSION

43. For the reasons set forth above, BellSouth and SBC submit that the fund must be managed in a way that not only satisfies the statutory requirements of economic reasonableness, but also in a way that takes into consideration the responsibility of the program to consumers of other telecommunications services who ultimately pay for the program. The suggestions of some parties, that the definition of advanced services should continually escalate, that eligible services should be drastically expanded, or that there should be no funding cap, are not economically reasonable, and are inconsistent with the requirements of the Act.

BellSouth and SBC also reiterate (1) that payment methods must be reached by mutual agreement of applicants and service providers; (2) applicants can not use program funds to construct privately owned networks; the use of excess capacity for non-educational purposes is not only contrary to the Act, but also improper as a matter of policy; and (4) unused funds should be returned to contributors.

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+ VIA ELECTRONIC FILING

BellSouth and SBC Joint Reply Comments
CC Docket No. 02-6
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CERTIFICATE OF SERVICE

I do hereby certify that I have this 6th day of May 2002 served the following parties to this action with a copy of the foregoing **JOINT REPLY COMMENTS OF BELLSOUTH CORPORATION AND SBC COMMUNICATIONS, INC.** by electronic filing and/or by placing a copy of the same in the United States Mail, addressed to the parties listed on the attached service list.

/s/ Debbie Smith
Debbie Smith