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

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms	)	CC Docket No. 98-171
	)	
Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990	)	CC Docket No. 90-571
	)	
Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size	)	CC Docket No. 92-237 NSD File No. L-00-72
	)	
Number Resource Optimization	)	CC Docket No. 99-200
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170

REPLY COMMENTS OF SBC COMMUNICATIONS INC.

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SUMMARY

SBC Communications Inc. (SBC) hereby submits its Reply Comments in response to the Commission's Further Notice of Proposed Rulemaking in this proceeding. The comments filed in this proceeding demonstrate the need for a universal service contribution mechanism that includes all providers of retail interstate telecommunications, regardless of the type of service provided and the technology platform used by the service provider. As expected, most commenters attempt to justify contribution mechanisms that minimize, if not eliminate, their own obligation to contribute to universal service. The Commission should reject all of these proposals to narrow the base of universal service contributions, which are not competitively and technologically neutral and would not provide a stable and sufficient source of universal service support.

There are no legal or policy reasons for the Commission to exclude any retail interstate telecommunications activity, including interstate long distance services and Internet services, from the definition of the universal service contribution base. The Coalition for Sustainable Universal Service (IXC Coalition) attempts to rewrite the provisions of section 254(d) in a futile attempt to defend the exclusion of interstate long distance services from the contribution base. In effect, the IXC Coalition supports a "corporate entity" approach whereby a provider could contribute to universal service based on a tiny fraction of its overall interstate activity and avoid any contribution obligation for the remainder of its interstate telecommunications services. This would turn section 254(d) on its head and allow the narrow *de minimis* exemption to swallow the rule. In contrast, the proposed contribution mechanism jointly developed by SBC and BellSouth (Joint Proposal) harmonizes every provision of section 254(d) and provides an equitable and

nondiscriminatory mechanism for assessing contributions on all interstate telecommunications activity.

In addition, as SBC discussed in its initial comments and in its comments in the *Broadband NPRM*, it is essential that the Commission exercise its discretionary authority under section 254(d) and expand the contribution base to include all competing providers of broadband Internet access. The Commission also should treat ISPs like IXCs, rather than end users for universal service purposes. Only a few commenters address the issue of Internet services, and none provides a legitimate basis for excluding Internet services from the contribution base.

The Joint Proposal is superior to the IXC Coalition's proposal. It provides an equitable and nondiscriminatory means of assessing contributions on all providers of retail interstate telecommunications. Unlike the IXC Coalition's proposal, the Joint Proposal is not regressive and is designed so that the amount of universal service contributions correlates to the amount of interstate telecommunications activity. It also provides a mechanism for collecting contributions from occasional use services, such as dial-around and calling card services, which reduces the burden on low volume consumers. At the same time, the Joint Proposal is more fair and equitable for business customers because it does not leave them responsible for a yet-to-be-identified residual contribution obligation. The Joint Proposal also minimizes any practical concerns about including interstate long distance services in the universal service contribution base.

Finally, as SBC discussed in its initial comments, all providers that elect to recover their universal service contributions should be required to do so through a uniform line-item charge. SBC also supports establishing a "safe harbor" mark-up that allows providers to recover a reasonable percentage for uncollectibles and administrative costs. In particular, a provider will

simply pass through the uniform line-item charge established by the Commission to all of its customers and deduct the safe harbor percentage from the total billed amount when the provider submits its contribution to USAC. This safe harbor approach addresses concerns about the wildly diverging and possibly excessive mark-ups that have occurred under the current recovery process.

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REPLY COMMENTS OF SBC COMMUNICATIONS INC.

SBC Communications Inc. (SBC) hereby submits its Reply Comments in response to the Commission's Further Notice of Proposed Rulemaking in this proceeding.[1] The comments filed in this proceeding demonstrate the need for a universal service contribution mechanism that includes all providers of retail interstate telecommunications, regardless of the type of service

[1] *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) (*FNPRM*).

provided and the technology platform used by the service provider. As expected, most commenters attempt to justify contribution mechanisms that minimize, if not eliminate, their own obligation to contribute to universal service. In contrast to these self-serving proposals, SBC and BellSouth have jointly developed a fair and equitable contribution and recovery mechanism that does not saddle certain classes of providers and their customers with a disproportionate share of the universal service burden.

I. Introduction

SBC and BellSouth have jointly developed a proposal (Joint Proposal) for a per-connection universal service contribution methodology that is a viable alternative to the existing, historical revenue-based methodology. This methodology, which assesses contributions based on the capacity of qualifying service connections (QSCs), satisfies the requirement of the Act that all providers of interstate telecommunications services must contribute to universal service on an equitable and non-discriminatory basis. By broadly defining the contribution base, SBC's and BellSouth's methodology also ensures that the amount of universal service support will remain predictable and sufficient in a rapidly changing market.

Not surprisingly, many commenters support self-serving proposals that minimize or eliminate their own contribution obligation:

- IXCs seek to avoid any contribution obligation for interstate long distance service — the largest category of interstate telecommunications service.[2]
- Wireless carriers support retaining, or even reducing the 15 percent safe harbor factor that currently applies to revenues for wireless services.[3]

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[2] *See, e.g.*, Coalition for Sustainable Universal Service (IXC Coalition) Comments at 80-92; Sprint Comments at 8; Association of Communications Enterprises Comments at 3.

[3] *See, e.g.*, Sprint Comments at 12-14; VoiceStream Comments at 7; Nextel Comments at 5; AT&T Wireless Comments at 6.

- Paging providers argue that the per-connection contribution obligation for paging units should be dramatically lower than other connections and that the wireless safe harbor factor should be maintained or reduced.[4]

- Internet service providers (ISPs) seek to avoid any contribution obligation for broadband Internet access connections or any services provided by ISPs.[5]

- Independent payphone providers seek to avoid any contribution obligation for payphone lines.[6]

- State governments seek to avoid any obligation for governmental entities to pay contribution recovery charges.[7]

Taken together, these commenters are proposing a huge reduction in the universal service contribution base at the same time as demands for universal service funding are increasing.

The Commission should reject all of these proposals to narrow the base of universal service contributions. Many of the proposed exclusions violate the guiding principle of competitive and technological neutrality that the Commission has recognized must be a consideration in establishing a contribution mechanism.[8] For example, assessing a universal service contribution obligation on DSL service, but not on competing cable modem service, effectively gives cable modem service an artificial seven percent price advantage in the market.

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[4] American Association of Paging Carriers Comments at 3; Arch Wireless Comments at 10; Concerned Paging Carriers at 12.

[5] ITAA Comments at 6

[6] APCC Comments at 6.

[7] State of Texas Comments at 2.

[8] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, ¶ 47 (1997*) (First Universal Service Order), aff'd in part, rev'd in part and remanded TOPUC v. FCC*, *cert. granted sub nom. GTE Serv. Corp. v. FCC*, 530 U.S. 1213 (2000), *cert. dismissed* 531 U.S. 975 (2000) ("Universal service support mechanisms and rules should be competitively neutral. In this context, competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.").

Similarly, assessing a contribution obligation on local telephone service, but not on competing wireless and voice over Internet services, provides an artificial price incentive for customers to migrate off of the local telephone network. These types of competitive distortions must be eliminated. Under no circumstances should end users make decisions about their choice of interstate telecommunications provider based on the amount of the carrier's universal service recovery charge.

Contrary to the position of the IXC Coalition, however, assessing a comparable contribution obligation on direct competitors in the market should *not* be the Commission's only concern.[9] The Commission's contribution methodology also should not impose a disproportionate burden on any particular segment of telecommunications providers and their customers. The reason that so many commenters are seeking to avoid incurring a contribution obligation is because they recognize the negative impact that an additional universal service charge has on their relationship with end users, even if the contribution is fully recoverable. Given this market reality, the IXC Coalition's assertion that the relative burden of universal service contributions on industry segments is "not a relevant measure of nondiscrimination or equity" is obviously false.[10]

Moreover, the definition of the contribution base has important long-term implications for the stability and sufficiency of the universal service fund. It would be particularly bad policy for the Commission to impose the vast majority of the contribution obligation on local telephone customers — the very customers whom the universal service program is designed to support. The inevitable result would be the same "death spiral" that IXCs have warned about with respect

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[9] *See* IXC Coalition Comments at 44.

[10] *Id.*

to the current contribution methodology.[11] In particular, there would be a decreasing pool of services contributing to universal service and an ever-increasing burden on local telephone customers who do not migrate to alternative services available from providers and technology platforms that are not required to contribute. Thus, a broad universal service contribution base is essential in a rapidly changing market where there are many different providers and technologies in competition with each other.

II. The Commission Should Broadly Define the Universal Service Contribution Base

As SBC discussed in its initial comments, all providers of telecommunications, including common carriers, private carriers, ISPs and other content providers, regardless of technology platform or facilities ownership, should contribute to universal service. The Joint Proposal achieves this result by defining the obligation to contribute by functionality, rather than by technology, and it includes both circuit-switched and packet-switched services in the contribution mechanism. No other commenter has submitted a proposal that would produce a universal service contribution base that is as broad or as technologically and competitively neutral as the Joint Proposal. To the contrary, most commenters seek to minimize, if not eliminate, their own contribution obligation. Below, SBC discusses why, as a legal and policy matter, the Commission should reject arguments to exclude interstate long distance services and Internet services from the contribution base.

A. Retail Interstate Long Distance Services Must be Included in the Contribution Base

The inclusion of retail interstate long distance services in the contribution base is consistent with the requirements of section 254 and provides a number of important benefits. Section 254(d) indicates that *every* telecommunications carrier providing interstate

[11] *See* WorldCom Comments at 3-4.

telecommunications services *shall* contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.[12] Consistent with section 254(d), the Commission must establish a broad universal service contribution base that includes *all* of the retail interstate telecommunications services provided by a carrier.

The Commission itself has interpreted section 254(d) as requiring a broad definition of the universal service contribution base. In its 1998 *Report to Congress* on universal service issues, the Commission interpreted the mandate of section 254(d) as requiring that it "construe broadly the class of carriers that must contribute."[13] The Commission also concluded that section 254(d) should be read as "expanding the class of entities that must contribute to universal service support mechanisms," a class of entities that previously included only IXCs.[14] In addition, the Commission found that the term "telecommunications" should be interpreted broadly so as to maximize the class of carriers deemed "mandatory contributors."[15] This definition clearly includes interstate telecommunications services provided by IXCs.

The IXC Coalition attempts to rewrite the provisions of section 254(d) in a futile attempt to defend the exclusion of interstate long distance services from the contribution base. In particular, the IXC Coalition advocates a "corporate entity" approach, whereby a provider could

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[12] 47 U.S.C. § 254(d) (emphasis added).

[13] *Federal-State Joint Board on Universal Service*, Report to Congress, CC Docket No. 96-45, 13 FCC Rcd 11501 at ¶ 107 (1998).

[14] *Id.*, at ¶ 110.

[15] *Id.*, at ¶ 111 ("The Commission concluded that to be a mandatory contributor to universal service under section 254(d): (1) a telecommunications carrier must offer "interstate" "telecommunications"; (2) those interstate telecommunications must be offered "for a fee"; and (3) those interstate telecommunications must be offered "directly to the public, or to such classes of users as to be effectively available to the public.").

contribute to universal service based on a tiny fraction of its overall interstate telecommunications activity and avoid any contribution obligation for the remainder of its interstate telecommunications services. This would turn section 254(d) on its head and allow the narrow *de minimis* exemption to swallow the rule. In contrast, the Joint Proposal harmonizes every provision of section 254(d) and provides an equitable and nondiscriminatory mechanism for assessing contributions on all interstate telecommunications activity.

The IXC Coalition argues that section 254(d) does not preclude the Commission from implementing a contribution methodology that applies to all telecommunications carriers, even if the methodology results in some carriers making no contribution.[16] In effect, the IXC Coalition takes the position that the Commission can categorically exclude carriers and services from the universal service contribution base, as long as the contribution methodology theoretically applies to all carriers. In defense of its position, the IXC Coalition asserts that that since very few telecommunications carriers provide no connections to end users, the issue of whether every provider of interstate telecommunications services is required to contribute to universal service is "not of any substantial practical importance, but a question of only marginal significance affecting only a small number of carriers."[17] This argument fails to address the full impact of the contribution requirements set forth in section 254(d). Not only is the proposal unlawful because it excludes carriers with no connections from contributing, but also because it excludes most of the interstate telecommunications activities of IXCs from the contribution base. A "connection," as the IXC Coalition defines it, does not reflect the vast majority of the retail interstate telecommunications services provided by IXCs. Conveniently, this results in IXCs grossly

[16] IXC Coalition Comments at 84.

[17] *Id.*, at 83-84.

under-contributing to universal service in relation to the level of their total interstate telecommunications activities.

The IXC Coalition's interpretation of section 254(d) would lead to absurd results. WorldCom boasts that under the IXC Coalition's proposal, it would contribute based on its approximately 1.5 million local residential and small business customers.[18] At the same time, however, WorldCom would avoid any obligation to contribute based on its 20 million residential and small business customers for long distance services.[19] A contribution methodology that allows a large IXC to contribute based on less than 10 percent of its interstate telecommunications activities is plainly inconsistent with the requirements of section 254(d). It also appears that, consistent with the IXC Coalition's reading of section 254(d), the Commission could place the entire contribution obligation on local exchange lines, since any telecommunications carrier is theoretically capable of becoming a LEC and being subject to the contribution obligation. These types of disparate contribution mechanisms cannot be what Congress intended when it adopted section 254(d). The more reasonable reading of section 254(d) is that the Commission's contribution methodology must ensure that a provider is subject to a universal service contribution for every retail interstate telecommunications service that it provides.

Nor does the Commission have the authority to exclude interstate long distance services from the contribution base under the exemption for *de minimis* contributions in section 254(d), as

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[18] WorldCom Comments at 6.

[19] *See* Form 10-K of WorldCom, Inc. at 20 (Mar. 13, 2002). SBC notes that this comparison does not include special access connections or long distance services, private line services and interstate data services provided to business customers.

the IXC Coalition claims.[20] As the IXC Coalition itself acknowledges, the narrow scope of the *de minimis* exemption is for those cases where a provider's interstate telecommunications activities are so limited that the administrative cost of collecting contributions from the provider would exceed the amount of the provider's contribution.[21] Accordingly, the Commission has the authority to exempt providers with a small number of connections from contributing to universal service. It does not follow that the Commission has the authority to establish a per-connection methodology that exempts any provider of retail interstate telecommunications services that does not provide a connection (*e.g.*, dial-up and calling card). It also does not follow that the Commission can exempt IXCs from contributing based on their provision of interstate long distance service — the largest category of retail interstate telecommunications services. In short, the Commission cannot create categories of exempt providers and services in its contribution methodology and simply assume than any such provider or service falls within the *de minimis* exemption created by Congress.

The IXC Coalition's assertion that there is no way to reconcile the *de minimis* exemption with the requirement that every provider of interstate telecommunications service must make a contribution to universal service is simply wrong.[22] It is apparent that the IXC Coalition is attempting to manufacture a statutory ambiguity that might open the door to its strained interpretation of section 254(d). There is no inconsistency whatsoever in Congress establishing a general requirement that every provider of interstate telecommunications services must contribute to universal service, while also including a *de minimis* exemption for cases where the

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[20] IXC Coalition Comments at 88.

[21] *Id.*, at 89.

[22] *Id.*, at 86.

administrative cost of collecting contributions from a provider would exceed the amount of the contribution generated by that provider's interstate telecommunications activities. Far from being a statutory provision "at war with itself," section 254(d) establishes a clear general requirement with a limited exemption provision as a safety valve. Thus, there is no basis for the Commission to depart from its prior determination that Congress intended for the *de minimis* exemption in section 254(d) to be narrowly construed.[23]

The IXC Coalition also makes the unremarkable claim that the requirement that every provider of interstate telecommunications service should be read and implemented with other provisions of section 254(d). In particular, the IXC Coalition argues that the "every carrier" requirement does not override the requirements that contributions shall be made on an "equitable and nondiscriminatory basis" and that the contribution mechanism be "specific, predictable, and sufficient."[24] The IXC Coalition claims that the current revenue-based contribution methodology is discriminatory and inequitable, and is less sustainable and predictable than a per-connection methodology. Ultimately, the IXC Coalition defends its proposal by arguing that neither the Commission nor any party in this proceeding has proposed a contribution methodology that is "equitable, nondiscriminatory, sufficient and that generates a positive required contribution for each and every carrier."[25]

The IXC Coalition cannot justify its proposal by relying on a "better-than-the-alternative" defense. The Commission should not replace the current revenue-based methodology, whatever its flaws, with the IXC Coalition's flawed proposal. Indeed, the IXC Coalition's proposal suffers

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[23] *First Universal Service Order*, ¶ 802.

[24] IXC Coalition Comments at 86.

[25] *Id.*, at 87.

from the same defect that it complains about with respect to the current revenue-based methodology — it does not require all providers of retail interstate telecommunications services to contribute to universal service in an equitable and nondiscriminatory manner.

The Commission has a better option. SBC and BellSouth have now proposed a per-connection contribution methodology that addresses the IXC Coalition's concerns about the current revenue-based methodology. Moreover, SBC's and BellSouth's contribution methodology is far superior to the IXC Coalition's proposal because it assesses a contribution on all retail interstate telecommunications activity, regardless of the type of service provided and the technology platform used by the service provider. This ensures that all providers of retail interstate telecommunications services contribute to universal service on an equitable and nondiscriminatory basis. Thus, SBC and BellSouth have developed a contribution methodology that harmonizes every provision of section 254(d), including the requirement for a broadly defined universal service contribution base that the IXC Coalition is attempting to read out of the statute.

B. Internet Services Should be Included in the Contribution Base

As SBC discussed in its initial comments and in its comments in the *Broadband NPRM*, it is essential that the Commission exercise its discretionary authority under section 254(d) and expand the universal service contribution base to include all competing providers of broadband Internet access services. Congress granted the Commission the authority to include providers of "interstate telecommunications" in the contribution base for the express purpose of addressing traditional bypass of the public telephone network from alternative networks (*e.g.*, private carriers). In an era of convergence, these alternative networks encompass a broad range of technologies — including wireless, packet-switched networks and the Internet — that are

creating the same type of bypass issues that Congress was concerned about when it gave the Commission the discretion to assess contributions on private carriers. The Joint Proposal anticipates the inclusion of packet-switched services, such as broadband Internet access, in the universal service contribution base and incorporates such services into the contribution mechanism.

The Joint Proposal also treats ISPs like IXCs, rather than end users for universal service purposes. In order to maintain consistency with the contribution mechanism for traditional circuit-switched traffic, the Joint Proposal requires ISPs and other content providers to contribute to universal service based on the provision of broadband information access and interstate transport services to an end user. Moreover, in order to ensure parity among all providers of broadband Internet access, the Joint Proposal assesses a separate contribution for a connection to the circuit-switched network and a connection to the Internet or another packet-switched network.

Only a few commenters address the issue of whether ISPs and broadband Internet access connections should be included in the definition of the contribution base. AOL Time Warner urges the Commission not to impose an additional contribution for DSL service offered over the same line as local telephone service.[26] That is one way to provide parity between DSL service and competing broadband Internet access services. In light of the Commission's recognition that wireline broadband Internet access is an information service that is functionally identical to Internet access provided via cable, satellite, or wireless technologies, the Commission must alter its existing universal service rules to ensure that all broadband platforms can compete on a level playing field. SBC believes the better approach to achieving parity, and the one that is more

[26] AOL Time Warner Comments at 9.

consistent with section 254 of the Act, is to require all providers of interstate telecommunications to contribute to the universal service fund.

Notably, AOL Time Warner agrees with the SBC and BellSouth that an Internet connection involves two "access points" for universal service purposes. One access point is the connection between the end user and the ISP and the other access point is between the ISP and the public Internet.[27] The Joint Proposal is consistent with AOL Time Warner's position. An ISP providing broadband Internet access service would be assessed two contributions — one for the end user connection and one for the interstate transport component of Internet service.

SBC believes this approach makes more sense than continuing to treat ISPs as end users for universal service purposes. Certainly the most critical issue for the Commission is to eliminate the arbitrary distinction between ISPs that self provision transmission facilities versus ISPs that lease transmission facilities from telecommunications carriers. As SBC explained in the *Wireline Broadband NPRM*, this disparity essentially creates an artificial percent (or more) surcharge on DSL service that does not apply to cable modem service and other bundled Internet access services.

However, contrary to the position taken by the ITAA, it also makes sense for the Commission to recognize the status of ISPs as providers of retail telecommunications, since all Internet access services rely on an underlying telecommunications component.[28]). Because all broadband platforms necessarily include an interstate telecommunications component, the Commission can exercise its discretion to require all broadband providers to contribute on an equal basis. It also is more efficient to assess universal service contributions directly on the

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[27] *Id.*, at 7.

[28] *See* ITAA Comments at 12-14.

provider of interstate telecommunications that has the retail relationship with the end user, rather than indirectly. Even though an ISP may purchase telecommunications services from a LEC where it does not own its own broadband information access facilities, it also provides telecommunications to its end users.[29] This approach also helps to mitigate the arbitrage opportunity for software developers and other ISPs that offer voice over the Internet capabilities without triggering a universal service contribution.

III. The Joint Proposal Provides an Equitable and Nondiscriminatory Means of Assessing Contributions on All Providers of Interstate Telecommunications

The Joint Proposal provides a stable universal service fund in an evolving market by assessing contributions on all interstate telecommunications activity. In an era of convergence, it is essential that the contribution base include alternative networks that encompass a broad range of technologies, including wireless, packet-switched networks and the Internet. Further, the Joint Proposal provides a contribution mechanism that is competitively and technologically neutral, which ensures that end users do not make purchasing decisions about their choice of interstate telecommunications provider because of the universal service recovery charge.

A. The Joint Proposal is Superior to the IXC Coalition's Proposal

The IXC Coalition argues that assessing a separate connection charge on interstate long distance service is unnecessary and a reflection of "backward looking industry labels."[30] This characterization is wrong for at least two reasons. First, universal service contributions should be assessed on the provision of all interstate telecommunications, not on a corporate entity basis

[29] As SBC discussed in its initial comments, it makes no sense to determine an ISP's contribution obligation based on whether it owns broadband information access or interstate transport facilities. An ISP should be treated no differently than a long distance or local reseller, both of which are required to contribute to universal service even if they do not own any of their own facilities.

[30] IXC Coalition Comments at 81.

that assesses contributions only on particular categories of interstate telecommunications that may be provided by diverse telecommunications companies. The fact that traditional IXCs are now providing local service and traditional LECs are now providing interstate long distance service is irrelevant. What matters is that many end users have — and will continue to have — separate retail relationships with an access provider and an interstate transport provider for the interstate telecommunications services they receive. The Commission has no basis to assume that all local and long distances services have converged or will converge any time in the foreseeable future.

Far from being backward looking, the Joint Proposal is more consistent with intercarrier compensation reform, which the Commission currently is considering in a pending rulemaking proceeding. If the Commission implements its proposed bill and keep regime for intercarrier compensation, access charges will largely disappear and most (if not all) access costs will be recovered directly from end users, rather than from IXCs. The clear distinction between retail access and interstate transport services purchased by end users will be even more apparent in a bill and keep regime. An end user will still be able to enter into a single retail relationship or two retail relationships (one for access and one for interstate transport) for their interstate long distance service, but there will no longer be any overlap in the services purchased from each provider. The full cost of the access connection will be paid directly to the LEC, rather than a portion of such access costs being paid indirectly as part of the payments to the IXC for interstate long distance service.

Second, assessing separate contributions for access and interstate transport functionalities is essential to maintaining the competitive and technical neutrality of the contribution mechanism. The Commission cannot just consider whether local and long distance voice

services are being bundled together; it also must consider how to assess contributions on the analogous functionalities when an Internet service, or some other type of packet-switched service, is involved. Many end users have separate retail relationships with a broadband Internet access provider and an ISP that provides interstate transport for the Internet services they receive. Likewise, a business customer may purchase an integrated access service that provides connections to various circuit-switched and packet-switched transport services. Given these existing business realities, it would be erroneous to assume that all access and interstate transport services are being bundled.

Not only is the Joint Proposal competitively and technologically neutral, but it also addresses a number of concerns that have been raised about the IXC Coalition's per connection proposal. A number of commenters, including the California Public Utilities Commission (PUC) argue that the IXC Coalition's proposal is unfair and inequitable because households with low interstate usage would be assessed a disproportionate amount of the universal service contribution burden.[31] The California PUC correctly points out that consumers who use the network the most benefit the most.[32] In addition, to the extent there is a significant overlap between low volume users and low-income users, the IXC Coalition's regressive proposal places the bulk of the contribution obligation on those who are least able to pay.[33]

Unlike the IXC Coalition's proposal, the Joint Proposal is not regressive and is designed so that the amount of a provider's universal service contributions correlates to the level of its interstate telecommunications activity. As SBC previously indicated, a low volume consumer

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[31] California PUC Comments at 5.

[32] *Id.*, at 6.

[33] *Id.*, at 5-6.

can minimize the amount of universal service recovery charges by not presubscribing to an IXC (thereby saving a connection charge) and not using any occasional use services. The Joint Proposal also provides a mechanism for collecting contributions from occasional use services, such as dial-around and calling card services, which further reduces the burden on low volume consumers.

At the same time, the Joint Proposal is more fair and equitable for business customers because it does not leave them responsible for a yet-to-be-identified residual contribution obligation. The General Services Administration (GSA) and Ad Hoc Telecommunications Users Committee (Ad Hoc) both raise concerns about the lack of information regarding the residual contribution for business services, as well as the potential for future increases in the federal universal service fund.[34] They have good reason to be concerned. To the extent the Commission justifies adoption of the IXC Coalition's proposal on the fact that it will not result in an increase in residential end users' universal service recovery charges, it will be difficult for the Commission subsequently to increase the amount of those charges.

The Joint Proposal is premised on the fundamental principle that the amount of universal service contributions should be based on the level of its interstate telecommunications activity, not the type of end user or provider involved. Accordingly, the Joint Proposal assesses additional contributions for higher capacity access and interstate transport connections. It does not, however, assess a higher contribution for a 64 kbps business line than for a comparable residential line. In addition to being more equitable, the Joint Proposal avoids the need for the

[34] GSA Comments at 6-7; Ad Hoc Comments at 8-9. GSA points out that multi-line business customers already bear a disproportionate share of interstate access costs through higher SLCs and PICCs.

Commission to make difficult decisions in the future if (as expected) the amount of the federal universal service fund increases.

B. The Joint Proposal Will be Easy to Administer

The Joint Proposal minimizes any practical concerns about including interstate transport services in the definition of the universal service contribution base. Undoubtedly, the IXC Coalition will continue to raise arguments as to why IXCs should be allowed to avoid a universal service contribution. One of the arguments raised by the IXC Coalition is that IXCs may not have information about whether an end user is a business or a residential customer.[35] As previously discussed, the Joint Proposal obviates the need to obtain information about residential versus business customers.

In addition, the IXC Coalition claims that there is a higher level of churn in the long distance market than the local market, which creates a more significant administrative problem.[36] Conveniently, the IXC Coalition neglects to mention that wireless carriers would be forced to contribute under its proposal, despite having churn rates that rival (if not exceed) that of IXCs. Further, the IXC Coalition's blanket assertion ignores the increasing level of churn in the local market. WorldCom, for example, is "aggressively targeting" the local residential market and is expecting to acquire an additional 1.5 million local customers by the end of the year.[37] It would be extremely short sighted for the Commission to make universal service policy decisions based on the relative amount of churn among various industry segments.

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[35] IXC Coalition Comments at 80.

[36] *Id.*

[37] WorldCom Comments at 6, 12.

The IXC Coalition also complains that IXCs will have to recover their contributions from customers who make no interstate or international long distance calls in a given month.[38] There is nothing unreasonable with that outcome, given that actual usage is irrelevant under a connection-based contribution mechanism. An IXC will continue to have a retail relationship with the end user for a QSC connection whether or not the end user makes any long distance calls during the month. In addition, an IXC has the flexibility to implement a wide variety of billing arrangements to accommodate customers with no usage, including recovery of the universal service contribution.

Moreover, the IXC Coalition's argument that including interstate long distance services in the universal service contribution base is analogous to the creation of the PICC is completely misplaced.[39] The PICC is an implicit universal service support mechanism that assists in the recovery of a LEC's access costs that are assigned to the interstate jurisdiction by creating a flow of charges through the IXC back to the end user. A universal service contribution, by contrast, is an explicit obligation on the IXC itself for the interstate telecommunications it is providing to the end user. In addition, unlike the PICC, continuing to assess universal service contributions on interstate long distance will not create any new charges on end user bills. To the contrary, the Joint Proposal will bring much-needed uniformity and consistency to the end user recovery charges paid by IXC customers.

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[38] IXC Coalition Comments at 80.

[39] *See id.*, at 80-81.

IV. The Commission Should Mandate That Universal Service Contributions Be Recovered Through a Uniform Line-Item Recovery Charge

As SBC discussed in its initial comments, all providers that elect to recover their universal service contributions should be required to do so through a uniform line-item charge that corresponds to the prescribed flat-rated contribution factor for QSCs. In the case of "occasional use" types of services, providers that wish to recover their contributions are required to charge the prescribed percentage-based contribution factor. Because there is no lag between the reporting period and the contribution, there is no need for providers to inflate the amount of the line item charge to make up for declining interstate revenues. Thus, SBC's proposal eliminates many of the customer confusion, arbitrage and stability problems caused by the current contribution and recovery mechanism.

Commenters generally agree with SBC that some reform of universal service recovery methods is necessary to ensure that carriers do not shift more than an equitable share of universal service cost to any particular class of customers.[40] AT&T, in particular, agrees with SBC that the Commission should require providers to recover their contributions from end users in a "*uniform, prescribed* manner."[41] A few commenters argue that contributions should be viewed as just another cost of doing business and that line-item charges should be prohibited.[42] Contrary to these positions, however, a universal service contribution cannot fairly be characterized as a cost of doing business that should be absorbed by a provider — rather, it is a charge that supports a government-established public policy program. In addition, a prohibition on line-item charges would encourage providers to improperly shift recovery of their contributions among various

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[40] *See, e.g.*, California PUC Comments at 13; AT&T Comments at 9

[41] AT&T Comments at 9.

[42] NASUCA Comments at 16.

classes of customers, which is one of the concerns that led the Commission to initiate this proceeding. A better solution is to bring much-needed uniformity and consistency to universal service recovery charges.

SBC also supports establishing a "safe harbor" mark-up that allows providers to recover a reasonable percentage for uncollectibles and administrative costs. As AT&T explains, this can be done one of two ways: (i) providers can mark up their line-item charges by the safe harbor percentage or (ii) the safe harbor percentage can be built into the funding requirement that generates the provider contributions.[43] SBC believes the latter approach is preferable. A provider will simply pass through the uniform line item charge established by the Commission to all of its customers and deduct the safe harbor percentage from the total billed amount when the provider submits its contribution to USAC. The Commission should establish a uniform safe harbor percentage based on industry data, and any provider that withholds an amount that exceeds the safe harbor amount would have the burden of demonstrating its additional costs.

This safe harbor approach addresses legitimate concerns that GSA and others have about the wildly diverging and possibly excessive mark-ups that have occurred under the current recovery process.[44] By establishing a uniform safe harbor percentage, the Commission can eliminate concerns about gaming and mischief that could occur in a pure "collect and remit" process. It also can eliminate any concern that a collect and remit process could reduce the stability and predictability of the fund. Moreover, an important benefit of this approach is that the line-item charge paid by the end user remains uniform, even if a provider's uncollectibles and administrative costs exceed the safe harbor percentage. With a safe harbor in place, there is no

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[43] AT&T Comments at 7.

[44] GSA Comments at 8-9, Ad Hoc Comments at 19-22.

reason for the Commission to consider attempting to deny providers the legitimate right to recover uncollectibles and administrative costs.

SBC's proposed approach also addresses Ad Hoc's concern that it might be misleading for a provider to add its uncollectibles and administrative costs to the recovery line-item charge and label it as the Federal Universal Service Fee.[45] The safe harbor percentage will be established by the Commission and incorporated into the funding requirement, thereby making it part of the universal service program. Administrative costs incurred by USAC are already incorporated into the funding requirement, and providers are no less entitled to cost recovery than USAC. This includes uncollectibles, which equate to an administrative overhead cost associated with the universal service contribution and recovery process.

V. Conclusion

For these reasons, the Commission should adopt SBC's and BellSouth's proposal to assess universal service contributions based on the number and capacity of a provider's interstate connections. The contribution obligation should extend to *all* providers of retail interstate telecommunications, regardless of the type of service provided and the technology platform used by the service provider. In addition, all providers that elect to recover their universal service

[45] Ad Hoc Comments at 20-21.

contributions should be required to do so through an explicit line item charge on the end user's bill. The Commission should reject various proposals to exclude categories of interstate telecommunications or certain providers from the obligation to contribute to universal service.

Respectfully Submitted,

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