

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

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

SBC Communications Inc. (SBC) hereby submits its reply comments in support of its petition for reconsideration of the Commission’s Report and Order in the above-referenced proceeding.¹ The Commission should either provide the limited averaging flexibility requested

¹ *Federal-State Joint Board on Universal Service et al.*, CC Docket Nos. 96-45 et al., Report and Order and Second Further Notice of Proposed Rulemaking and Report and Order, FCC 02-329 (rel., December 13, 2002) (*USF Contribution Order* or *Second Further Notice*).

by SBC or adopt alternative solutions to the cost recovery and competitive neutrality problems caused by the application of the Commission's new line item requirement to Centrex services, miscellaneous interstate charges assessed on Lifeline customers and DSL services. It also must provide a mechanism for price cap LECs to recover administrative costs related to the universal service program, particularly the significant one-time implementation costs associated with the new line item requirement.

SBC's petition for reconsideration asked the Commission to defer the April 1, 2003 implementation deadline for its new requirement that no universal service line item charge may exceed the relevant interstate telecommunications portion of the customer's bill times the relevant contribution factor. It also proposed a transitional requirement that would give carriers that currently assess flat-rated universal service line item charges limited flexibility to average such charges within customer categories (*i.e.*, business and residential customers). Commenters that oppose SBC's petition claim that implementation problems associated with the new line item requirement do not provide a sufficient basis to grant the relief requested by SBC.² These commenters completely ignore the fact that SBC's petition raises significant cost recovery and competitive neutrality problems caused by the Commission's new line item requirement.

As SBC discussed in its petition for reconsideration, the Commission appears to have mistakenly assumed that the flat-rated subscriber line charge (SLC) is the sole source of ILEC interstate revenues.³ Because of this apparent oversight, the Commission failed to consider how its new line item requirement would affect other ILEC interstate charges that are subject to universal service contributions. For example, the Commission failed to address the

² NASUCA Opposition at 3-4; WorldCom Comments at 2-4; AOL/Time Warner Comments at 3.

³ NASUCA repeats this mistake in its opposition when it asserts that ILEC universal service line item charges are based on the interstate SLC. NASUCA Opposition at n.10

inconsistency between its new line item requirement and the current universal service treatment of Centrex services. Under the Commission's existing rules, which were not discussed let alone reversed in the *Universal Service Contribution Order*, ILECs are allowed to apply the equivalency ratio established for Centrex lines to the universal service line item charge.⁴ The Commission's new line item requirement conflicts with the existing rule and leaves ILECs with two equally problematic alternatives. They can either pass through the full cost of universal service contributions to Centrex customers, which would cause rate shock and create a competitive disparity between Centrex and PBX services, or forgo cost recovery and absorb tens of millions of dollars of universal service contributions. SBC and USTA quite reasonably have asked the Commission to resolve the internal inconsistency in its rules in a manner that preserves the equivalency ratio for Centrex services.

The Commission also failed to consider the fact that its new line item requirement effectively denies regulated eligible telecommunications carriers (ETCs) the ability to recover the cost of contributions related to miscellaneous interstate charges (*e.g.*, PIC change charge, LNP charge) assessed on Lifeline customers. The Commission's new rules require ETCs to exempt Lifeline customers from universal service line item charges for all interstate services (*e.g.*, PIC change charge, LNP charge), even though the Lifeline-related exemption from universal service contributions applies only to the SLC.⁵ This results in a discrepancy between the contributions generated by Lifeline customers and the recovery of those contributions, which does not include Lifeline customers. However, under the Commission's new line item requirement, carriers are no longer permitted to recover Lifeline-related contributions from non-

⁴ 47 C.F.R. § 54.712.

⁵ *Id.*

Lifeline customers by averaging the universal service line item charge. Therefore, regulated ETCs have no way to recover the cost of contributions associated with services provided to Lifeline customers.

In addition to creating a cost recovery problem, the Lifeline exemption exacerbates the implementation issues associated with the Commission's new line item requirement. SBC expects that it will be able to implement "work around" solutions for the assessment of universal service line item charges associated with miscellaneous interstate charges. These solutions, however, cannot be implemented in a manner that excludes Lifeline customers from being assessed a universal service charge in connection with miscellaneous interstate charges. The problem is that SBC's billing systems currently are not designed to identify miscellaneous interstate charges that are assessed on Lifeline customers, since Lifeline customers are not exempt from such charges. In order to solve this billing problem, SBC would have to establish uniform percentage-based universal service line item charges and establish a means of identifying which miscellaneous interstate charges are assessed on Lifeline customers. As SBC previously demonstrated, this is a costly and time consuming process that will require many thousands of hours of programming time. Thus, the Commission's resolution of the Lifeline issue has a direct impact on SBC's ability to implement the new line item requirement by the April 1, 2003 deadline.

In its comments, Sprint also points out that the *Universal Service Contribution Order* did not address the competitive disparity caused by the inclusion of DSL services and the exclusion of competing broadband services in the universal service contribution base.⁶ One way to address this disparity would be to allow wireline providers to average the cost of DSL-related

⁶ Sprint Comments at 2-3.

contributions across other customers on an interim basis until the Commission establishes a competitively neutral requirement.⁷ SBC supports Sprint's proposed solution to the extent the Commission fails to take any other immediate action to eliminate the unjustifiable disparity in the universal service treatment of broadband services. The need for immediate relief is even more pressing now that the Commission has increased the universal service contribution factor to 9 percent, which only serves to broaden the competitive disparity between DSL services and competing broadband services.

With the exception of WorldCom, commenters do not question the need for the Commission to grant some type of relief that addresses these issues.⁸ Instead, commenters raise concerns about the particular solution identified in SBC's petition for reconsideration.⁹ SBC, however, is not seeking reconsideration of the requirement that universal service line item charges must correspond to a carrier's contributions. SBC made clear in its petition that it fully supports the Commission's new line item requirement and is seeking only a deferral of the implementation deadline for the requirement while the Commission conducts the *Second Further Notice* proceeding. Commenters also ignore the limitations that SBC's petition would impose on the averaging of universal service line item charges.¹⁰ The limited flexibility requested by SBC would apply only to carriers that currently assess flat-rated and would allow carriers to average only within the same class (*i.e.*, business and residential) of customer.

⁷ *Id.*

⁸ *See* WorldCom Comments at 5-6.

⁹ NASUCA Opposition at 3-4; WorldCom Comments at 2-4; AOL/Time Warner Comments at 3.

¹⁰ *See* NASUCA Comments at 4.

Moreover, SBC is not opposed to the Commission adopting alternative solutions that adjust the universal service contribution methodology for Centrex, Lifeline and DSL services, rather than the recovery process. That is the approach the Commission took in providing relief for CMRS providers in its *Order on Reconsideration*.¹¹ A number of contribution-related solutions have already been identified in this proceeding. In particular, the Commission could address the Centrex issue by adjusting the contribution methodology to incorporate the equivalency ratio for Centrex services. This would avoid any need to average universal service line item charges as a way of maintaining the equivalency ratio. With respect to miscellaneous interstate charges assessed on Lifeline customers, the Commission could hold that Lifeline customers are not exempt from universal service line item charges associated with these miscellaneous interstate charges. If the Commission chooses to expand the scope of the Lifeline exemption from universal service line item charges, it should do so by excluding interstate services provided to Lifeline customers from the contribution base. Finally, as Commissioner Abernathy indicated in her separate statement, the Commission can provide immediate parity in the contribution obligation of DSL and other broadband providers by exempting from assessment any DSL transmission service provided to ISPs pending the outcome of the *Wireline Broadband* proceeding.¹² Such an interim solution would not prejudice the Commission's ultimate determination about whether or not broadband services should be included in the universal service contribution base.

¹¹ *Federal-State Joint Board on Universal Service et al.*, CC Docket Nos. 96-45 et al., Order and Order on Reconsideration, FCC 03-20 (rel., January 30, 2003).

¹² *Universal Service Contribution Order* Separate Statement of Commissioner Kathleen Q. Abernathy.

The Commission can adopt these alternative solutions, but it cannot simply ignore the cost recovery and competitive neutrality problems created by its new line item requirement. It is disingenuous for commenters to oppose SBC's petition for reconsideration without even acknowledging the effect that the Commission's new line item requirement has on Centrex, Lifeline and DSL services. These problems are much more than just implementation issues, which could be addressed by granting the waiver request submitted by SBC, BellSouth and Verizon. Moreover, the problems are the result of internal inconsistencies in the Commission's contribution and recovery rules that were created by the *Universal Service Contribution Order*. Thus, the Commission should either grant the relief requested by SBC in its petition for reconsideration or adopt alternative solutions that adjust the contribution methodology.

The Commission also must provide some mechanism for price cap LECs to recover administrative costs associated with the universal service program. NASUCA opposes granting SBC and other carriers limited averaging flexibility that will significantly reduce the implementation costs associated with the Commission's new line item requirement.¹³ At the same time, NASUCA opposes USTA's request for a cost recovery mechanism that allows price cap LECs to recover their administrative costs.¹⁴ This inconsistency is illustrative of how some comments are completely divorced from the real world implications of the Commission's changes to its contribution and recovery rules. The Commission cannot avoid the fact that a decision to deny carriers relief from implementation and other problems created by its new line item requirement will result in higher administrative costs that will be passed on to consumers.

For these reasons, the Commission should grant SBC's petition for reconsideration and adopt a transitional line item requirement that gives carriers limited flexibility to average such

¹³ NASUCA Opposition at 3.

charges within customer categories. In the alternative, the Commission should adjust the contribution methodology for Centrex, Lifeline and DSL services to mitigate cost recovery and competitive neutrality problems caused by the new line item requirement. The Commission also should ensure that all carriers are allowed to recover administrative costs, especially significant one-time implementation costs, associated with the universal service program.

Respectfully Submitted,

/s/ JEFFRY A. BRUEGGEMAN

JEFFRY A. BRUEGGEMAN

GARY L. PHILLIPS

PAUL K. MANCINI

SBC COMMUNICATIONS INC.

1401 Eye Street, NW, Suite 400

Washington, D.C. 20005

(202) 326-8911 – Phone

(202) 408-8745 – Facsimile

ITS ATTORNEYS

March 10, 2003

¹⁴ *Id.* at 4.

CERTIFICATE OF SERVICE

I, Anisa A. Latif, do hereby certify that a copy of **Reply Comments of SBC Communications Inc.** has been served on the parties attached via first class mail – postage prepaid on this 10th day of March 2003.

/s/ Anisa A. Latif

By: _____
Anisa A. Latif

James S. Blaszak
Levine, Blaszak, Block & Boothby, LLP
Counsel for Ad Hoc Telecommunications
Users Committee
2001 L Street, NW
Suite 90
Washington, D.C. 20036

Laura H. Phillips
Laura S. Gallagher
Drinker Biddle & Reath, LLP
Attorneys for NEXTEL
Communications, Inc.
1500 K Street, NW, Suite 1100
Washington, D.C. 20005

Judy Sello
Mark C. Rosenblum
Lawrence J. Lafaro
Attorneys for AT&T Corp.
Room 3A229
One AT&T Way
Bedminster, New Jersey 07921

Lawrence Sarjeant
Indra Sehdev Chalk
Michael T. McMEnamin
United States Telecom Association
1401 H Street, NW, Suite 600
Washington, D.C. 20005

Richard A. Askoff
National Exchange Carrier Association,
Inc.
80 South Jefferson Road
Whippany, New Jersey 07981

John T. Scott, III
Anne E. Hoskins
Verizon Wireless
1300 Eye Street, NW
Suite 400 West
Washington, D.C. 20005

Leonard J. Kennedy
Lawrence R. Krevor
Carnet M. Goins
NEXTEL Communications, Inc.
2001 Edmund Halley Drive
Reston, Virginia 20191

Lori Wright
WorldCom, Inc.
1133 19th Street, NW
Washington, D.C. 20036

Robert S. Tongren
David C. Bergmann
NASUCA Telecommunications Committee
Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485

NASUCA
8300 Colesville Road, Suite 101
Silver Spring, MD 20910

Michael Altschul
Cellular Telecommunications & Internet
Association
1250 Connecticut Avenue, NW, Suite 800
Washington, D.C. 20036

Steven N. Teplitz
AOL Time Warner Inc.
800 Connecticut Avenue, NW
Suite 200
Washington, D.C. 20006

Donna N. Lampert
Mark J. O'Connor
Lampert & O'Connor, P.C.
Counsel for AOL Time Warner Inc.
1750 K Street, NW
Suite 600
Washington, D.C. 20006

Dave Baker
EarthLink, Inc.
1375 Peachtree Street, Level A
Atlanta, GA 30309

Mark J O'Connor
Lampert & O'Connor, P.C.
Counsel for EarthLink, Inc.
1750 K Street, NW, Suite 600
Washington, D.C. 20006