

**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; Review of the)
Definition of Universal Service)

COMMENTS OF AT&T CORP.

Pursuant to section 1.415 of the Commission’s rules, 47 C.F.R. § 1.415, AT&T Corp. (“AT&T”) submits these comments on the Commission’s Notice of Proposed Rulemaking in the above-captioned proceeding.^{1/} AT&T urges the Commission to adopt the *Recommended Decision* of the Federal-State Joint Board on Universal Service (“Joint Board”) that generally concludes that the definition of services supported by universal service should not be expanded.^{2/}

I. THE JOINT BOARD IS CORRECT THAT ADVANCED AND HIGH-SPEED SERVICES DO NOT MEET THE LEGAL REQUIREMENTS FOR UNIVERSAL SERVICE SUPPORT.

AT&T agrees with the Joint Board’s general conclusion that no new service, including advanced and high-speed services, satisfies the criteria for universal service support set forth in section 254(c) of the Act.^{3/} Although it is true that these services could be “extremely beneficial” to some consumers, the statutory question is whether such services are “essential” to

^{1/} *Federal-State Joint Board on Universal Service*, 18 FCC Rcd 2932 (2003) (“*Notice*”).

^{2/} *Federal-State Joint Board on Universal Service*, 17 FCC Rcd 14095 (2002) (“*Recommended Decision*”).

^{3/} *Recommended Decision* ¶¶ 1, 2, 12; 47 U.S.C. § 254(c).

consumers, particularly residential consumers.^{4/} Given that many Internet resources related to education, public health, or public safety are readily accessible through alternative means, this question cannot be answered affirmatively. Nor are high-speed and advanced services subscribed to by a substantial majority of residential consumers, as required under section 254(c).^{5/} As the Joint Board points out, the Commission's own data demonstrate that only a small percentage of U.S. households subscribe to such services today.^{6/}

There also is no public interest rationale for including advanced and high-speed services in the definition of supported services. As the Joint Board observes, supporting advanced or high-speed services provided by ETCs may not be competitively neutral because many providers of such services do not provide the other core telecommunications services that are required to qualify for ETC designation.^{7/} Furthermore, as the Commission has recognized, "supporting an overly expansive definition of core services could adversely affect all consumers by increasing the expense of the universal service program and, thus, increasing the basic cost of telecommunications services for all."^{8/} Similarly, the Joint Board correctly recognizes that "the definition of universal service must strike the appropriate balance between ensuring the availability of fundamental telecommunications service to all Americans and maintaining a federal universal service fund of sustainable size."^{9/} Providing support to advanced and

^{4/} *Recommended Decision* ¶ 12.

^{5/} *Recommended Decision* ¶ 13.

^{6/} *Recommended Decision* ¶ 13 (citing *Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, 17 FCC Rcd 2844 (2002)).

^{7/} *Recommended Decision* ¶ 16.

^{8/} *Federal-State Board on Universal Service*, 12 FCC Rcd 8776, ¶ 61 (1997) ("Universal Service Order").

^{9/} *Recommended Decision* ¶ 1.

high-speed services would undermine this balance by significantly increasing the financial burden on both carriers and consumers, and jeopardizing support to those carriers that likely need it the most (*i.e.*, those that lack the financial and technical means to offer such services).^{10/}

Similarly, the Commission should not expand the definition of voice grade access bandwidth.^{11/} As the Joint Board concludes, a network transmission component of Internet access is neither “essential to education, public health, or public safety” nor subscribed to by a substantial majority of residential consumers.^{12/} Moreover, because there is no concrete evidence that expanded bandwidth would result in improved dial-up connection speeds, it would not serve the public interest to substantially increase the size of the universal service fund by requiring carriers to upgrade their networks through investment in mature narrowband technologies.^{13/}

II. THE LIST OF SUPPORTED SERVICES SHOULD NOT BE REVISED IN WAYS THAT EXPAND THE FUND UNTIL THE COMMISSION HAS REFORMED THE CONTRIBUTION MECHANISM TO BE SUSTAINABLE AND COMPETITIVELY NEUTRAL, AND HAS ADDRESSED THE POTENTIAL FOR UNCONTROLLED GROWTH OF EXISTING PROGRAMS.

Like the Joint Board, the Commission should decline to support proposals to expand the definition of supported services to include broadband, soft or warm dialtone, toll or expanded area services, prepaid calling plans, unlimited local usage, payphones, transport and several other services discussed in the *Recommended Decision*. Not only do these services fail to meet the

^{10/} *Recommended Decision* ¶¶ 15, 17. Unit broadband costs are falling today as carriers deploy their own fiber loops. Because this has the effect of lowering carriers’ internal costs, there is no way to determine the amount of incremental funding necessary to support advanced or high-speed services on a nationwide basis. Accordingly, a Commission decision to add these services to the definition of universal service would be premature.

^{11/} *Recommended Decision* ¶ 22.

^{12/} *Recommended Decision* ¶ 25.

other statutory criteria in Section 254(c), providing support for them would be contrary to the public interest because it would unacceptably increase the size of the universal service fund.

As the Commission is aware, the existing universal service contribution mechanism cannot continue to support even the current list of core services. The Commission staff has projected that the fund will grow by approximately \$1 billion, or another 16 percent between 2003 and 2007, and that the contribution factor will reach 11.4 percent by 2007.^{14/} The support mechanism is collapsing under the pressure of an increasing fund and declining contribution base of end user interstate and international telecommunications revenues. Adding to the list of supported services in ways that would increase the size of the fund will only increase this strain and accelerate the speed with which end users, particular enterprise business users, seek to find ways to minimize universal service contributions.

Moreover, because the current contribution mechanism is not competitively neutral, an increased funding burden and higher contribution factors will increase the extent to which end users migrate to services that are treated more favorably, further destabilizing the universal service fund. In a parallel proceeding, the Commission is considering changes to the universal service contribution mechanism to restore the fund to a sufficient, stable and competitively neutral footing.^{15/} To ensure that it can sufficiently support all designated services, the

^{13/} *Recommended Decision* ¶ 23.

^{14/} Wireline Competition Bureau Staff Study of Alternative Contribution Methodologies, attached to Public Notice, *Commission Seeks Comment on Staff Study Regarding Alternative Contribution Methodologies*, 18 FCC Rcd 3006 (2003) (“Staff Study”). The contribution factor will probably be much higher by 2007 than predicted by the Staff Study because the study’s assumptions that wireless carriers will allocate 28.5 percent of their telecommunications revenues to the interstate jurisdiction and that the Commission will continue to assess ADSL revenues for universal service contributions may be unfounded.

^{15/} *See Federal-State Joint Board on Universal Service; 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability,*

Commission should complete the reforms contemplated in that proceeding before considering further expansion of the universal service fund.

Likewise, before the Commission adds more services to the list of supported services, it should make sure that it has addressed the potential for uncontrolled growth in existing programs, especially the high cost fund. The Commission and Joint Board recently initiated a proceeding and are awaiting comment on the Commission's rules relating to high-cost universal service support and the process for designating entities as eligible telecommunications carriers ("ETCs").^{16/} Among the issues to be addressed in that proceeding is whether the Commission should continue to provide universal service support for all lines, or whether support should be limited to a single connection to a residential or single line business end-user.^{17/} If the Commission continues to define universal service as supporting all lines to a household, not just access for a household, there will be the potential for dramatic and wholly unchecked increases in the size of the universal service fund. In addition, the revenue guarantees that the current high cost mechanisms provide to rate-of-return LECs threaten to balloon the universal service fund as competition enters rural areas.

and Universal Service Support Mechanisms; Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990; Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size; Number Resource Optimization; Telephone Number Portability; Truth-in-Billing and Billing Format, 17 FCC Rcd 24952 (2002).

^{16/} *Federal-State Joint Board on Universal Service, 17 FCC Rcd 22642 (2002) (referring certain issues regarding ETC designation to the Joint Board) ("ETC Referral Order"); Federal-State Joint Board on Universal Service Seeks Comment on Certain Of the Commission's Rules Relating to High-Cost Universal Service Support and the ETC Designation Process, 18 FCC Rcd 1941 (2003) (seeking comment on the Commission's referral of ETC designation issues) ("ETC Notice") (collectively, "ETC Designation Proceeding").*

^{17/} *ETC Notice* ¶ 28.

Many of the issues addressed in the Joint Board's *Recommended Decision* in this proceeding are integrally connected to the issues raised in the *ETC Designation Proceeding*. If, for example, the Commission limits support to a single connection to a residential or single line business end user, the precise specification of the supported service, including equal access, can be better left to the marketplace.^{18/} As AT&T has previously explained, in a competitive market, the combination of limiting support to primary lines and declining to mandate exact service packages allows the customer to cast his or her “vote” in the marketplace for the carrier that offers the service plan that best suits the customer’s “basic” telecommunications needs and avoids predetermining which carriers, based on technology or other irrelevant factors, may compete to provide such services.^{19/}

Because the Commission cannot assure itself that the universal service fund will not be subject to uncontrolled growth in existing programs, and because the contribution mechanism itself is insufficient, unsustainable and not competitively neutral, the Commission should decline to modify the definition of supported services in ways that will expand the fund. The Commission needs to ensure that it can handle its existing tasks, before it adds new ones.^{20/}

^{18/} The only disagreement among the Joint Board members regarding the definition of universal service involves whether equal access should be supported. *Recommended Decision* ¶¶ 67-86. As discussed herein, like the remainder of the services rejected by the Joint Board for universal service support, it would be premature to add equal access to the list of supported services.

^{19/} Reply Comments of AT&T Corp., CC Docket No. 96-45, at 4 (filed Jan. 25, 1999).

^{20/} The one existing task under Section 254 that needs to be brought within the scope of universal service is explicit support to continue Section 254(g)’s policy of rate integration and rate averaging. The Commission, to date, has declined to establish an economically sustainable foundation for Section 254(g), and unless it does so promptly, its rate integration and averaging policies may crumble in the marketplace.

III. OTHER COMMISSION AND STATE PROCEEDINGS ARE MORE APPROPRIATE VENUES TO DETERMINE THE LEVEL OF SUPPORT REQUIRED FOR CERTAIN SERVICES.

A number of the services discussed as potential candidates for universal service support are the subject of both Commission and state proceedings and are particularly inappropriate for resolution in a rulemaking aimed at determining whether to expand the scope of the federal universal service definition. For example, as the Joint Board points out, both Braille TTY and Two Line Voice Carry Over (“2LVCO”) services have been addressed in Commission proceedings designed to ensure access to the network for consumers with disabilities.^{21/} Indeed, the Commission has asked for comment in a pending proceeding about whether Telecommunications Relay Service centers should be required to support 2LVCO.^{22/} Moreover, Braille TTY is not eligible to be included on the list of supported services because it is customer premises equipment, not a telecommunications service.^{23/} In light of the existing pressure on the universal service fund, it should not be used as a means to promote the deployment of facilities and services that plainly do not fulfill Congress’ intent as specified in the section 254(c) criteria, but are addressed elsewhere in the Act.^{24/}

^{21/} *Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Petition for Clarification of WorldCom, Inc.*, 17 FCC Rcd 7779 (2002).

^{22/} *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, 15 FCC Rcd 5140 (2000).

^{23/} *Recommended Decision* ¶ 52.

^{24/} *See Recommended Decision* ¶ 53 (“Unlike section 255, which is explicitly designed to ensure the accessibility of telecommunications services, section 254 does not mention disabilities and provides no guidance on how the Joint Board and Commission should evaluate requests for separate universal service programs for people with disabilities or any other population within the United States.”).

For similar reasons, AT&T supports the Joint Board's conclusion that individual states are in the best position to consider whether deployment of several of the services discussed in the *Recommended Decision* would serve the needs of their residents and, if so, whether the state's universal service program or other state-specific mechanism should be used to support their implementation. For example, as the Joint Board recognizes, even though soft dial tone or warm line requirements do not satisfy the statutory requirements for addition to the federal universal service definition, a number of states have already established and funded successful soft dial tone or warm line programs.^{25/} Likewise, the Joint Board appropriately determines that unlimited local usage is not essential to education, public health, or public safety, as required under section 254(c), and that, in any event, "states are in a better position to determine whether limited local usage offerings are beneficial in certain circumstances."^{26/}

In light of state efforts to establish and implement service quality standards, AT&T also agrees with the Joint Board's recommendation that the Commission refrain from imposing technical or service quality standards on carriers as a condition to receiving universal service support.^{27/} Although AT&T sees a compelling need for the expeditious adoption of federal performance standards and remedies in certain circumstances (*e.g.*, interstate special access services),^{28/} there is absolutely no basis for using the universal service fund as a means to

^{25/} *Recommended Decision* ¶ 28.

^{26/} *Recommended Decision* ¶ 43. The Joint Board urges the Commission not to include unlimited calling on the list of federally supported services because it would prevent states from requiring metered pricing as a means to encourage subscribership among low-income or low-volume customers. *Recommended Decision* ¶ 43, n.107 (noting that many states require or permit carriers to offer local metered service options).

^{27/} *Recommended Decision* ¶ 63.

^{28/} See generally Comments of AT&T Corp., CC Docket No. 01-321 (filed Jan. 22, 2002); Reply Comments of AT&T Corp., CC Docket No. 01-321 (filed Feb. 12, 2002).

accomplish that objective. In addition, the Joint Board is correct that universal service support for payphones is unnecessary. States are best equipped to make decisions about payphone deployment, and they can use the Commission's guidelines promulgated pursuant to section 276(b)(2) of the Act, for the establishment of "public interest payphones" to help ensure access by consumers that lack residential voice grade telephone service.

In sum, efforts to encourage the development and deployment of particular services and equipment should be undertaken directly through targeted rules rather than by further expansion of universal service mandates. As the Joint Board's *Recommended Decision* makes clear, the Commission has at its disposal a number of avenues to ensure adequate service quality and promote access by individuals with disabilities, low-income consumers, and public safety organizations. The universal service fund cannot and will not be maintained at sustainable size if it is used to accomplish objectives unrelated to ensuring the availability of fundamental telecommunications services to all Americans.

CONCLUSION

For the foregoing reasons, the Commission should adopt the conclusion of the Joint Board in its *Recommended Decision* not to expand the current list of telecommunications services supported by universal service.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Susan S. Ferrel, hereby certify that on this 14th day of April 2003, I caused a copy of the foregoing "Comments of AT&T Corp." to be sent to the following via electronic mail:

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