

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 – Streamlined)	
Contributor Reporting Requirements Associated)	CC Docket No. 98-171
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

**OPPOSITION OF BELLSOUTH, SBC AND VERIZON
TO APCC’S PETITION FOR RECONSIDERATION**

The Commission properly granted an interim waiver to allow carriers to continue the practice of recovering universal service charges in a way that is consistent with the “equivalency ratio” referenced in the Commission’s rules, and that preserves competitive neutrality between

Centrex services and private branch exchange equipment (“PBXs”).¹ The Commission should reject the American Public Communications Council (“APCC”) petition for reconsideration of the Waiver Order, because it is both procedurally and substantively deficient. Procedurally, the proper vehicle for addressing the Commission’s policy on universal service charges for payphones and Centrex services is not through a petition for reconsideration of an order that merely maintains the *status quo* pending more full inquiries. Substantively, the policy itself should be maintained. Allowing carriers to spread the recovery of universal service charges for Centrex customers is necessary to ensure that Commission policies do not skew the market for Centrex services. APCC’s arguments about section 276 and the “new services test,” which apply to discrimination and subsidies of payphone services, are simply inapposite.

APCC’s petition is based on policy arguments about the propriety of charges paid by payphone service providers. Procedurally, the proper vehicle for addressing these arguments is not in the context of an *interim* waiver that simply maintains the *status quo* pending the Commission’s more full consideration of universal service issues. *See* Waiver Order, ¶¶ 1, 7. The Commission stressed that granting the interim waiver “does not represent a substantive change in Commission policy” and “is only provided to allow carriers to continue an existing Commission policy, while we examine that policy and contribution issues more broadly.” *Id.*, ¶ 7. Even before the interim waiver, carriers charged Centrex customers on a one-ninth ratio for universal service, and recovered the remaining eight-ninths of the assessment on an averaged basis from their customers.² Any substantive challenge that APCC has to the Commission’s

¹ *Federal-State Joint Board on Universal Service, Order and Second Order on Reconsideration*, 18 FCC Rcd 4818, 68 Fed. Reg. 15669 (2003) (“Waiver Order”).

² *See* Petition for Interim Waiver, at 4-5 (filed Feb. 6, 2003) (“Waiver Petition”). *See also* 47 C.F.R. §§ 69.131, 69.158. The increase in universal service charges to multi-line business customers that APCC cites in its petition, APCC Petition at 4-5 & n.12, is largely due to

policies regarding universal service charges should be raised through comments to the further notice of proposed rulemaking, or the existing petitions for reconsideration and clarification on the Centrex issue.³ It should not be a basis for reconsidering the *interim* Waiver Order.⁴

Moreover, the APCC petition should be rejected on substantive grounds as well. As APCC itself recognized in earlier comments to the Commission,⁵ there exist sound policy reasons to allow local exchange carriers to assess universal service contributions to Centrex customers on an “equivalency” basis of one-ninth of the per-line charge to other multi-line business customers. The equivalency policy is based on a 1997 Commission finding, which remains valid today, that Centrex service and PBXs are “functionally equivalent” and that “Centrex customers should be treated similarly to PBX customers.” *See Access Charge Reform*, Second Order on Reconsideration and Memorandum Opinion and Order, 12 FCC Rcd 16606, ¶ 31 (1997). The equivalency policy is necessary to preserve competitive neutrality between these services. *See id.* ¶ 33; Waiver Petition, at 3-5. Without the averaging permitted by the

the fact that (1) the USAC-established universal service factor increased 25% (from 7.28 to 9.1), and (2) the interim waiver now allows carriers to recover the Centrex-based universal service charge only from multi-line business customers, whereas carriers previously were able to average universal service charges over all customer lines in the various states where they operate.

³ *See Federal-State Joint Board on Universal Service*, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 02-329, 17 FCC Rcd 24952 (2002); Petition of the United States Telecom Association for Partial Reconsideration and Clarification (filed January 29, 2003); SBC Petition for Reconsideration (filed Jan. 29, 2003).

⁴ *See generally Bell Operating Companies Joint Petition for Waiver of Computer II Rules*, DA 95-2264, Order, ¶ 33 (rel. Oct. 31, 1995) (rejecting challenge to an interim waiver order when the interim waiver “has no bearing on any final conclusions that the Commission may reach with respect to” the challenged issue, and referring to a pending remand proceeding as “the appropriate forum in which to raise this concern”).

⁵ *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of APCC, at 19-20 (filed Apr. 22, 2002) (“APCC Contribution Comments”) (citing to

Waiver Order, carriers would need to increase the contribution charge to Centrex customers. This would result in a significant increase in universal service charges to those customers and likely make Centrex unable to compete with PBXs because of regulatory fees – the result the equivalency policy was designed to prevent.

APCC’s arguments about “subsidies” prohibited under section 276, and the “new services test,” APCC Petition at 2-5, are inapposite to the issue of recovery of universal service charges for Centrex services. Section 276 of the Act prohibits any Bell Operating Company (“BOC”) from subsidizing its *payphone* services from its telephone exchange or exchange access operations. 47 U.S.C. § 276(a). APCC does not contend, nor could it, that the Commission’s interim waiver and the application of the equivalency ratio to assess universal service contributions for Centrex services, entails any direct or indirect subsidy of BOC payphone services by telephone exchange or exchange access operations.⁶ Section 276 thus is entirely beside the point.

Moreover, the language that APCC quotes regarding the Commission’s “new services test” and prohibition on “subsidies for other BOC services,” APCC Petition at 3, relates to overhead loading factors used in pricing payphone line services.⁷ Neither the new services test, nor section 276 for that matter, has anything to do with universal service fees. The Commission’s policy regarding functional equivalence for Centrex service is not an implicit

Centrex equivalency as an example in support of its argument that payphones should contribute less to universal service).

⁶ Nor, for that matter, does APCC claim that the interim waiver enables a BOC to “prefer or discriminate” in favor of its payphone services. *See* 47 U.S.C. § 276(a)(2). In fact, because a BOC’s payphone operations pay the same access charges and, consequently, universal service fees as independent payphone providers (IPPs), the interim waiver affects BOC payphone operations and IPPs alike.

pricing subsidy of Centrex services, but rather an explicit subsidy of universal services, which has been applied in such a manner as to avoid distortions in the market for PBX/Centrex services.

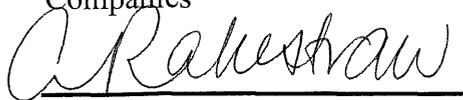
At the end of the day, APCC's challenge is not really to the Commission's policy on functional equivalency for Centrex services.⁸ Rather, APCC simply wants the Commission to reduce universal service assessments for payphone providers below the level paid by all other multi-line business customers.⁹ But, consideration of that policy issue is properly addressed through consideration of the further notice of proposed rulemaking, not through the interim waiver regarding Centrex universal service charges.

Respectfully submitted,

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⁷ See *Wisconsin Public Service Commission*, Memorandum Opinion and Order, FCC 02-25, 17 FCC Rcd 2051, ¶¶ 51-58 (rel. Jan. 31, 2002).

⁸ See APCC Contribution Comments, at 19-20 (citing to Centrex equivalency as an example in support of its argument that payphones should contribute less to universal service).

⁹ See APCC Petition, at 2-3, 6; APCC Contribution Comments, at 1-6.

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of May, copies of the foregoing "Opposition of BellSouth, SBC and Verizon to APCC's Petition for Reconsideration" were sent by first class mail, postage prepaid, to the parties listed below.

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