

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

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

COMMENTS OF BELLSOUTH

BELLSOUTH CORPORATION

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amount of available funds,” and to provide “certainty regarding when unused funds will be carried forward for use” in the program.³

III. THE COMMISSION’S PROPOSED MODIFICATION RELATING TO APPROVAL OF TECHNOLOGY PLANS DOES NOT BENEFIT THE PROGRAM

In the belief that “it may be difficult for an applicant to obtain approval of a technology plan well in advance of the commencement of a funding year,” the Commission proposes to allow applicants to “indicate that their technology plan will be approved by an authorized body by the time that the services supported by the universal service mechanism for schools and libraries begin.”⁴ BellSouth believes that such a requirement will further dilute, and render essentially meaningless, what should be a critical foundational element of the funding mechanism.

Instead of allowing applicants to “indicate” prospective approval by third parties, the Commission can and should require more rigorous compliance with technology plans to ensure that applicants are ready to fully utilize supported products and services.⁵ At a minimum, technology plans should be completed and approved before products and services are purchased and installed. In this way, technology plans fulfill their best purpose as a planning tool. The Commission’s proposal would appear to diminish this role and make the plan a meaningless exercise in paperwork.

³ *Id.*, ¶ 97.

⁴ *Id.*, ¶ 100.

⁵ Statement of Margaret Greene, President, Regulatory & External Affairs, BellSouth Corporation, before the FCC’s Forum on the E-rate Program (May 8, 2003) at 12, *submitted in this proceeding under cover of letter* from Mary L. Henze to Marlene H. Dortch, CC Dkt. 02-06; Schools and Libraries Universal Service Support Mechanism (May 9, 2003) (“Greene Statement”).

Current efforts to combat waste, fraud and abuse will be served if the technology plan becomes a substantive planning tool that also operates as an effective control to ensure only appropriate technologies are developed for and purchased by applicants. The Commission should therefore examine ways to make the technology plan the keystone in an applicant's proposed network architecture. It can do this best by articulating its own vision on the proper role and purpose of the technology plan within the framework of the mechanism, and seek comments from the applicant and service provider community on this. The Commission should seek comments on whether the existing technology plan requirements should be strengthened, what the role of the plan should be with respect to both initial funding decisions and post commitment review, what role the plan will play in possible subsequent waste, fraud and abuse investigations, and whether current procedures should be modified and new rules codified to ensure that the purpose of the technology plan is achieved.

IV. THE COMMISSION'S PROPOSED COMPUTERIZED ELIGIBLE SERVICE LIST FOR TELECOMMUNICATIONS SERVICES AND INTERNET ACCESS CATEGORIES IS IMPRACTICAL

As BellSouth explained in earlier filed comments, it would be all but impossible to develop an exhaustive list of telecommunications services that participants could use in conjunction with their applications.⁶ With the recent inclusion of voice mail as an eligible service, only 1% of BellSouth's communications product line is *per se* ineligible under the program.⁷ There are no significant telecommunications services available from BellSouth that are not eligible for funding if they are used for eligible purposes. Moreover, as BellSouth

⁶ *In the Matter of Schools and Libraries Universal Service Support Mechanism*, Joint Comments of BellSouth Corporation and SBC Communications, Inc., CC Docket No. 02-6 (filed Apr. 5, 2002) at 7-8 ("Joint Comments").

⁷ Greene Statement at 14.

explained earlier, because the ultimate eligibility decision is made by the Administrator based primarily on eligible use, a computerized list of *potentially approvable* eligible services may mislead applicants into thinking that selection of services from the list will lead to automatic approval by the Administrator.

In sum, with the recent decision to include voice mail as an eligible service, the complexities and costs that BellSouth outlined in its comments on the Commission's proposal last year are only heightened, with no corresponding increase in whatever minimal benefit the list may provide. The Commission should not adopt an online eligible services list requirement for telecommunications and Internet access service categories because it is not feasible. Since it is not feasible in the first instance, BellSouth does not comment on the legal issues raised by the proposal.

V. BELLSOUTH SUPPORTS THE COMMISSION'S EFFORTS TO COMBAT WASTE, FRAUD AND ABUSE

BellSouth is a member of the SLD Waste, Fraud and Abuse Prevention Task Force. BellSouth has supported the Commission's proposed enforcement tools in the past.⁸ The Commission's current proposals on other measures to prevent waste, fraud and abuse are consistent with BellSouth's earlier comments, and BellSouth supports these proposals with the following observations.

Any mechanism developed to ensure the integrity of the program should be applied to all participants, regardless of size or type. Penalties that may be appropriate for fraudulent or criminal activity may not be appropriate for minor or inadvertent infractions, including non-certification paperwork mistakes or less than strict adherence to administrative guidelines. The

⁸ Joint Comments at 35-37.

Commission proposes, “debaring only those willful or repeated [sic] offenders whose actions threaten to undermine program integrity and result in waste, fraud, or abuse.”⁹ The Commission should develop a matrix that accords the greatest weight to the severity of the infraction, so that, to some reasonable point, multiple minor infractions are never treated the same as a single, or multiple but less frequently occurring major infractions that “threaten to undermine program integrity and result in waste, fraud, or abuse.”

The Commission should recognize that when an entire applicant or multiple service providers are punished for the misdeeds of an individual or a single company, it may ultimately be the nation’s school children and library patrons who are punished most severely. Debarment and participation bans should therefore be confined, to the extent possible, to the individuals guilty of illegal conduct, and extended to only those entities that are guilty of fraud and corruption at the officer level, or of systemic corruption at the next highest level. Corruption at these levels is an adequate basis for imputation for corporate debarment. BellSouth supports the Commission’s proposal to investigate SLD referrals of suspected willful or repeated major violations.¹⁰

In general, the Commission should permit applicants whose service provider has been debarred to change their service provider before their application has been approved or after the last date for invoices, if doing so would not unduly disrupt the Commission’s goals of fairness and efficiency. However, before approving such a change the Commission must be sure that the applicant is not implicated in the activities that triggered the debarment. In attempting to control waste, fraud, and abuse, the Commission must recognize that all e-rate participants – applicants,

⁹ *Further Notice*, ¶ 106.

¹⁰ *Id.*, ¶ 108.

service providers, and consultants – are subject to the rules and procedures and thus are equally capable of violating them.

Among the preventive solutions that the Commission can take to reduce opportunities for waste, fraud, and abuse, and its consequent enforcement ramifications, are to 1) eliminate rules that create wasteful incentives, chiefly by reducing the highest current discount level, limiting the transfer or funding of capital equipment, and requiring more rigorous needs assessment and compliance with technology plans at the outset to encourage more efficient behavior; 2) eliminate or modify complicated or poorly crafted procedures that invite error, for example, by eliminating the post-commitment distinction between recurring and non-recurring services, tailoring rules and procedures to the actual risks posed, and exposing more policy and procedural issues to public notice and comment; and 3) expanding official USAC outreach to applicants and service providers by increasing frequency and developing more effective education and support tools.¹¹ By tightening internal program mechanisms and controls and improving access to quality information, the Commission will conserve its limited enforcement resources and allow those resources to be more efficiently deployed in the event of a potential situation of waste, fraud or abuse.

VI. CONCLUSION

The Commission should adopt its proposals relating to unused funds carryover rules and other measures to prevent waste fraud and abuse, as these are reasonably related to current efforts to streamline the program and ensure that Congress's objectives are met. The Commission should not adopt its proposals relating to technology plans and computerized

¹¹ Greene Statement at 9-17.

eligible services lists for telecommunications and Internet access categories, because the immediate and ultimate costs of these proposals, if implemented, will far exceed any tangible benefits that may result.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that I have this 21st day of July 2003 served the following parties to this action with a copy of the foregoing **COMMENTS OF BELLSOUTH** by electronic filing addressed to the parties listed below.

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