Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of	)	
	)	
AT&T Corp. Petition for Preemption, Pursuant	)	Docket No. 96-45
to Section 253 of the Communications Act and	)	
Common Law Principles, of South Carolina	)	DA 03-2779
Statutes that Established an Interim LEC Fund	)	
	)	

REPLY COMMENTS OF THE
SOUTH CAROLINA TELEPHONE COALITION

The South Carolina Telephone Coalition (SCTC), an organization of rural telephone companies operating in the State of South Carolina, hereby submits reply comments in the above-captioned proceeding. The SCTC filed initial comments in this proceeding on November 17, 2003.

DISCUSSION

As many of the entities filing initial comments acknowledged, the South Carolina Interim LEC Fund (ILF) is not a universal service program, but is a state program by which to accomplish the lowering of intrastate switched access rates and the simultaneous rebalancing of specific local rates.[1] As such, it is not preempted under Section 253 of the Telecommunications Act of 1996 (Act), nor is it preempted pursuant to traditional preemption principles as being in conflict with Section 254 of the Act.

[1] See Comments of South Carolina Telephone Coalition (SCTC); Public Service Commission of South Carolina (SCPSC); United States Telecom Association (USTA); National Telecommunications Cooperative Association (NTCA); CenturyTel, Inc.; Verizon; and Organization for the Advancement and Promotion of Small Telecommunications Companies (OPASTCO) (all filed on November 17, 2003).

As is clear from the express wording of the statutes creating the ILF, the legislative purpose was to lower intrastate switched access rates in South Carolina and make them comparable among all incumbent local exchange carriers. To recover the lost revenues, incumbent local exchange carriers (ILECs) were permitted to increase local rates for other services, not to exceed statewide average rates. Then, and only to the extent necessary to recover revenues lost through the concurrent reduction of intrastate switched access rates that were not recovered through rate rebalancing, ILECs were permitted to draw funds from the ILF.[2] As a state rate rebalancing program that is consistent with the goals and policies established by Congress, the FCC, and the State of South Carolina, the ILF is simply not the kind of program that should be preempted by the FCC.

Furthermore, as recognized by a number of the initial commenters, the ILF does not have the effect of prohibiting competitive entry and, in fact, has the opposite effect because ILECs increased rates for local service under the ILF program.[3] Other commenters noted that the lower access rates occasioned by the ILF program actually serve to facilitate entry,[4] and that the rebalancing of rates enabled efficient competitive entry by creating economically rational pricing

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[2] While the comments filed by CenturyTel in this proceeding are generally correct in their characterization of the ILF statutes, one statement regarding legislative intent may be misleading. On page 3 of its comments, CenturyTel asserts that "the South Carolina legislature created the Interim LEC Fund to identify support implicit in access charges as a first step in rendering it explicit." Verizon seems to make a similar assumption in arguing that the ILF "seeks to preserve and advance universal service." See Verizon Comments at 7. To the contrary, there is nothing in the ILF statute or legislative history that indicates the South Carolina legislature took cost or implicit support into account at all in redressing access rates for South Carolina ILECs. The statute, by its express terms, is intended to lower access rates to levels comparable to those of the largest LEC operating in the state, without regard to cost. Similarly, there is nothing in the SCPSC's order establishing the ILF or in its administrative procedures governing the ILF that would take the cost of access into account.

[3] See Comments of SCTC at 10; SCPSC at 4; USTA at 4; Verizon at 5; and OPASTCO at 3 (all filed on November 17, 2003).

[4] See Comments of NTCA at 4-5; Comments of OPASTCO at 4.

signals.[5] In other words, the ILF provides incentives to enter markets where prices were previously set too low.[6] AT&T's assertion that the ILF constitutes a barrier to entry is simply incorrect.

WorldCom, Inc. (d/b/a MCI), in its comments filed in support of AT&T, makes a passing reference to the South Carolina Universal Service Fund, contending that "the anti-competitive aspects of the Interim LEC Fund are reinforced by South Carolina's Universal Service Fund."[7] Besides being factually incorrect, MCI's reference to the South Carolina Universal Service Fund (SC USF) is not relevant to this proceeding. The administrative proceedings establishing the ILF and the SC USF were separate and distinct.[8] MCI's grievances with respect to the SC USF are being litigated in a separate forum and have no place in this proceeding.[9] The ILF and SC USF are separate and distinct funds, are separately administered, and have separate legislative purposes, as is clear from the statutes creating the respective funds. MCI, like AT&T, is attempting to confuse the issues in order to increase the financial benefits it has already enjoyed and continues to enjoy under the ILF program. In fact, MCI, like AT&T, participated in the administrative proceeding before the Public Service Commission of South Carolina (SCPSC) to establish the ILF and did not request reconsideration or appeal the SCPSC's final order in that matter.

The South Carolina Interim LEC Fund is a state program for rebalancing intrastate access and local rates. It is not a universal service fund and it does not have the effect of deterring

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[5] See Comments of Century-Tel at 2.
[6] See Comments of Verizon at 4-5; Comments of OPASTCO at 4.
[7] See Comments of MCI at page 2, footnote 3.
[8] ILF was addressed in Commission Docket No. 1996-318-C. SC USF was addressed in Commission Docket No. 1997-239-C.

competitive entry. The ILF should not be preempted under either Section 253(a) of the Act or traditional preemption principles, for the reasons stated herein and in the initial comments filed by SCTC and others in opposition to AT&T's petition.

Respectfully Submitted,

/s M. John Bowen, Jr._____
M. John Bowen, Jr.
Margaret M. Fox
McNAIR LAW FIRM, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
Telephone: (803) 799-9800
Facsimile: (803) 376-2219

/s Kenneth E. Hardman_____
Kenneth E. Hardman
Attorney at Law
1015 – 18th Street, N.W., Suite 800
Washington, DC 20036
Telephone: (202) 223-3772
Facsimile: (202) 833-2416

Attorneys for the South Carolina Telephone Coalition

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Columbia, South Carolina

[9] MCI participated as a party in the SC USF administrative proceeding, and a trade group of which MCI is a member has raised the issues MCI to which MCI alludes in requests for judicial review of the SCPSC's orders establishing the SC USF. Those appeals are currently pending.