

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

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

**BELLSOUTH REPLY COMMENTS**

BellSouth Corporation, on behalf of itself and its wholly owned subsidiaries (“BellSouth”), submits this reply to comments filed in response to the *Second Further Notice of Proposed Rulemaking* released by the Commission on December 23, 2003.<sup>1</sup>

**I. EXISTING COMMITMENT ADJUSTMENT PROCESSES SHOULD BE REFORMED THROUGH RULEMAKING**

SBC correctly observes that the existing COMAD procedures have failed thus far to provide proper incentives for applicants and the Administrator to comply with e-rate rules.<sup>2</sup> This has led a number of commenters to call for reform of the current process.<sup>3</sup> BellSouth agrees with these comments and urges the Commission to initiate a proceeding that will result in rules

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<sup>1</sup> *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, *Third Report and Order and Second Further Notice of Proposed Rulemaking*, FCC 03-323 (rel. Dec. 23, 2003) (“*Third Report and Order*” or “*Second FNPRM*”).

<sup>2</sup> SBC Communications Inc. (“SBC”) Comments at 3-4.

<sup>3</sup> Cox Communications, Inc. (“Cox”) Comments at 9-10; General Communications, Inc. (“GCI”) Comments at 5-8; Qwest Communications International Inc. (“Qwest”) Comments at 10; SBC Comments at 3-10; Sprint Corporation (“Sprint”) Comments at 7-8; Comments of Verizon on Second Further Notice of Proposed Rulemaking at 2-9 (“Verizon Comments”).

more closely aligned to the actual allocation of responsibilities amongst applicants, service providers and the Administrator.

The Commission should adopt a number of tentative conclusions in this regard. First, the new rules should provide that the applicant will be responsible for paying back distributed funds when the applicant is in error and the service provider is not involved in the mistake.<sup>4</sup> The applicant must have the burden of proving service provider involvement in the mistake. Nor should the service provider be liable for repayment as the result of errors committed by the Administrator.<sup>5</sup> Simply put, recovery should only be sought from the entity (or entities) at fault for the program violation.<sup>6</sup> Service providers should be liable for repayment only to the extent they are at fault.<sup>7</sup>

The Commission should seek comment on Verizon's proposal that the Administrator should not seek repayment of funds except in cases of waste, fraud, abuse or statutory violations.<sup>8</sup> BellSouth agrees with Verizon that procedural or technical violations are generally an inadequate basis for fund recovery efforts, particularly when, as the situation exists today, the Administrator looks to a service provider for repayment even though the service provider had nothing to do with the violation. The Commission should also seek comment on an appropriate

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<sup>4</sup> Cox Comments at 9-10. *Accord* GCI Comments at 5 (recovery should be sought from the entity or entities at fault for the program violation); Qwest Comments at 10 (fund recovery efforts should be directed at the party that was responsible for the erroneous disbursement); SBC Comments at 3-4 (it is simply unfair to require refunds by the service provider for errors caused by the applicant or the Administrator); Sprint Comments at 7-8 (funds disbursed in error by action of either the applicant or the administrator should be recovered directly from applicant); Verizon Comments at 2-5 (FCC should change policy seeking repayment from service providers).

<sup>5</sup> SBC Comments at 3-4; Sprint Comments at 7-8.

<sup>6</sup> GCI Comments at 5-8.

<sup>7</sup> Sprint Comments at 7-8; SBC Comments at 5-9.

<sup>8</sup> Verizon Comments at 2-9.

statute of limitations for recovery actions.<sup>9</sup> A statute of limitations will provide incentives for the administrator to initiate recovery actions promptly, and establish certainty in the market place.

## **II. DARK FIBER SHOULD NOT BE ELIGIBLE FOR FUNDING**

BellSouth agrees with Qwest that dark fiber is a facility rather than a telecommunications or Internet access service.<sup>10</sup> For this reason, BellSouth opposes the comments of Fibertech Networks; their test acknowledges a capital expense justification component<sup>11</sup> but it is inappropriate to subsidize a service provider's installation of backbone infrastructure. In order for an applicant who has previously purchased dark fiber to receive program funding by converting the contract to an end-to-end Priority One service, the *Tennessee* tests must be met.<sup>12</sup> The Commission should reject the proposals to include dark fiber in program funding, and instead clarify the parameters of dark fiber funding consistent with the *Industry Ex Parte*.

## **III. THE COMMISSION SHOULD NOT DEFINE INTERNET ACCESS IN A WAY THAT ALLOWS WASTE, FRAUD AND ABUSE**

Verizon correctly observes that adopting the Rural Health Care ("RHC") definition of Internet access will only divert resources from other basic services required by schools and libraries program applicants.<sup>13</sup> To the extent the definition of Internet access is broader in the rural health care support mechanism program, it is reflective of the special needs of telemedicine

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<sup>9</sup> See Cox Comments at 9-10 (proposing two year statute of limitations); Verizon Comments at 9-10 (proposing one year statute of limitations).

<sup>10</sup> Qwest Comments at 2-7.

<sup>11</sup> Fibertech Networks Comments at 6-9.

<sup>12</sup> Letter from Mary L. Henze, Assistant Vice President, Federal Regulatory, BellSouth Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (Feb. 27, 2004) ("*Industry Ex Parte*").

<sup>13</sup> Verizon Comments at 11.

services.<sup>14</sup> Moreover, as Sprint observes, any expansion of the Internet access definition will only further blur the line between “pure” Internet access services and telecom services because, in most cases, it is impossible to distinguish between voice and data packets.<sup>15</sup> The very nature of the service makes it more susceptible to waste, fraud and abuse. It is even unclear whether the scope of the RHC definition of Internet access would encompass the content described in certain comments.<sup>16</sup> This lack of clarity, in conjunction with no easily understood demarcation points between “transmission” and “content,” suggests that expanding the definition of Internet access would simply create confusion and make this aspect of the program even more vulnerable to misunderstanding, error, and waste, fraud and abuse.

But the most immediate impact is noted by the American Library Association: expansion of the definition of Internet access would necessarily mean a concomitant expansion of applicant demand with resulting increases in the universal service fund.<sup>17</sup> The Commission should not take any action that negatively impacts the longest and most equitable distribution of Priority One funding possible.

#### **IV. THE COMMISSION MUST MAKE APPROPRIATE USE OF TECHNOLOGY PLANS AND FORM 470**

Technology plans have an important function. They are essential strategic planning documents, and should not be used as the program administrator’s audit checklist. Thus, BellSouth supports those comments of parties that actively oppose efforts to, for all practical

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<sup>14</sup> *Id.*; Sprint Comments at 4 (rural health care/schools and libraries definitional conformity is neither mandatory nor desirable because of differing circumstances for each program).

<sup>15</sup> Sprint Comments at 4.

<sup>16</sup> Kellogg & Sovereign Consulting, LLC Comments at 8-9; Louisiana eRate Filers Organization Comments at 6.

<sup>17</sup> American Library Association (“ALA”) Comments at 20.

purposes, convert technology plans into detailed RFPs themselves.<sup>18</sup> Such efforts only make the administration of the plan more detailed and complicated. There is an appropriate balance to be struck between general planning documents and detailed technical criteria. Therefore, before the FCC takes any steps to micromanage the technology planning process it should reconsider the wisdom of attempting to audit to a planning document.

BellSouth also opposes those commenters who would eliminate Form 470.<sup>19</sup> Form 470 serves a valuable purpose to the service provider community. BellSouth, as a service provider, regularly visits the program website, obtains 470 information, and uses it in its contacts with applicants. The transparent posting and dissemination of information can only be beneficial to other applicants and service providers as a public source of general market intelligence. BellSouth does agree with SECA that the current 20% funding denial rate based on errors in Form 470 is unacceptably high.<sup>20</sup> The Commission, with input from the industry, should review and redesign Form 470 with an eye toward avoiding applicant errors, and clarify the minimum acceptable standard for Form 470 processing.

At the present time, BellSouth perceives that many denials are the result of a failure to “check the box” rather than a substantive problem with the contents of the form itself.

BellSouth supports the WFA Task Force recommendations relative to Form 470 including modification of the form to require the listing of all products and services needed, regardless of

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<sup>18</sup> Arkansas E-rate Work Group Comments at 6; Comments of the Consortium for School Networking and International Society for Technology in Education at 11-12; Illinois State Board of Education Comments at 16; American Association of School Administrators & Association of Educational Service Agencies Comments at 6; E-rate Central Comments at 9; Pennsylvania Department of Education Comments at 7-10.

<sup>19</sup> E-rate Central Comments at 4-5; Education and Libraries Networks Coalition Comments at 5.

<sup>20</sup> State E-Rate Coordinators’ Alliance Comments at 15.

the existence of an RFP, and no automatic denial of unrelated funding requests that are contained on a 470 for which procurement or contract problems are specifically identifiable to a specific funding request or a specific vendor.

### **CONCLUSION**

The Commission should take action consistent with BellSouth's comments and reply comments in order to minimize waste, fraud and abuse within the program and to ensure the maximum amount of program funding is available to the maximum number of program applicants.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I do hereby certify that I have this 12th day of April 2004 served the following parties to this action with a copy of the foregoing **BELLSOUTH REPLY COMMENTS** by electronic filing and/or by placing a copy of the same in the United States Mail, addressed to the parties listed on the attached service list.

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