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

In the Matter of Federal-State Joint Board on Universal Service	CC Docket No. 96-45

BELLSOUTH COMMENTS

BellSouth Corporation, on behalf of itself and its wholly owned subsidiaries ("BellSouth"), hereby submits its comments in response to the August 17, 2005 *Public Notice*,[1] which sets forth four proposals developed by members of the Federal-State Joint Board on Universal Service ("Joint Board") to reform the mechanism for providing universal service support to rural carriers serving high-cost areas.[2] This *Public Notice* follows last year's similar request from the Joint Board for input regarding certain changes to the existing mechanism governing high-cost support for rural carriers.[3]

BellSouth applauds the efforts of the members of the Joint Board to consider new ways to meet the objectives of Section 254, which includes ensuring that consumers in rural areas have

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[1] *Federal-State Joint Board on Universal Service Seeks Comment on Proposals To Modify the Commission's Rules Relating to High-Cost Universal Service Support*, CC Docket No. 96-45, *Public Notice*, FCC 05J-1 (rel. Aug. 17, 2005) ("*Public Notice*").

[2] The four proposals are as follows: (1) The State Allocation Mechanism: A Universal Service Reform Package ("SAM"); (2) Three Stage Package for Universal Service Reform; (3) A Holistically Integrated Package; and (4) Universal Service Endpoint Reform Plan ("USERP"). *Public Notice*, Appendices A-D, pages 3-27.

[3] *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support*, CC Docket No. 96-45, *Public Notice*, FCC 04J-2 (rel. Aug. 16, 2004).

access to telecommunications services at rates that are affordable and reasonably comparable to rates in urban areas,[4] and that universal service support remains "specific, predictable and sufficient."[5] Although BellSouth believes that the proposals set forth in the *Public Notice* are a good starting point to initiate the process for developing an appropriate mechanism for rural high-cost support, BellSouth objects to certain aspects of the proposals. Specifically, BellSouth opposes allowing state commissions to determine how to distribute federal universal service support to the eligible telecommunications carriers ("ETCs") serving their states. In addition, BellSouth believes that any plans to move rural carriers to a mechanism based upon forward-looking economic costs are premature in the absence of proof that such an approach will result in sufficient support that will enable rural carriers to provide service at affordable rates.

I. THE COMMISSION SHOULD NOT ALLOW STATES TO CONTROL THE DISBURSEMENT OF FEDERAL UNIVERSAL SERVICE SUPPORT TO ETCS.

Each of the four proposals creates a new role for state commissions in the administration and distribution of federal universal service support to ETCs. Specifically, each proposal calls for states to assume the primary responsibility for distributing federal high-cost support within their states[6] based upon federal guidelines adopted by the Commission.[7] As discussed more fully below, the proposed state allocation mechanisms are problematic for a number of reasons and should not be permitted.

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[4] 47 U.S.C. §§ 254(b)(1), (3).

[5] 47 U.S.C. §§ 254(b)(5), (d).

[6] *See* SAM (Appendix A) at 3; Three Stage Package for Universal Service Reform (Appendix B) at 12; A Holistically Integrated Package (Appendix C) at 14; USERP (Appendix D) at 20.

[7] *See* SAM (Appendix A) at 3; Three Stage Package for Universal Service Reform (Appendix B) at 12; A Holistically Integrated Package (Appendix C) at 15.

As an initial matter, the Commission must be cautious when seeking to delegate certain universal service responsibilities to the states. Although the 1996 Act "contemplates a partnership between the federal and state governments to support universal service,"[8] the statute establishes separate roles and responsibilities for each. Section 254 expressly directs the Commission to develop a national universal service mechanism that is "specific, predictable and sufficient" in order to preserve and advance universal service.[9] The statute simultaneously imposes upon states an independent obligation to act on their own to preserve and advance universal service.[10] Indeed, Congress granted states full authority to design state-specific mechanisms and to distribute state universal service support as they deem appropriate.[11]

BellSouth believes that one of the most effective ways for a state to fulfill the universal service objectives of the 1996 Act is to eliminate implicit subsidies and achieve local rate comparability within its borders. Inducing states to develop their own mechanisms to promote universal service is a more appropriate role for the Commission than granting states the power to disburse *federal* universal service funds. The Commission is ultimately responsible for the national universal service program and therefore must retain responsibility for allocating federal support.

The Commission's continued control over the disbursement of federal universal service support is necessary not only to fulfill the statutory obligations under Section 254 but also to

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8 *Qwest v. FCC,* 258 F.3d 1191, 1203 (10th Cir. 2001).

9 47 U.S.C. §§ 254(b)(5), (d).

10 47 U.S.C. § 254(b)(5).

11 47 U.S.C. § 254(f).

ensure administrative efficiency. Allowing 51 different jurisdictions to decide how to distribute federal universal service funds to ETCs could lead to arbitrary and inconsistent results.

Although the proposals contemplate the creation of federal guidelines for states to consider in allocating high-cost support, the proposals provide limited details regarding the substance of any future guidelines. Moreover, notwithstanding the existence of national guidelines, the proposals suggest that states would have wide latitude in deciding which ETCs receive funding and how much. For example, under the proposed "State Allocation Mechanism," states would be permitted to make adjustments to an ETC's allocation on a case-by-case basis.[12] This discretionary authority could lead to overfunding for some ETCs and underfunding for others. Such an outcome is inconsistent with Section 254's requirement that the federal mechanism be "specific, predictable and sufficient."[13] Moreover, harm to consumers could ensue if carriers are unable to provide supported services at affordable rates due to insufficient federal support. To ensure that the national universal service program complies with the 1996 Act and to avoid arbitrary or inequitable results, the Commission should not grant states the authority to allocate federal universal service support to ETCs.[14]

In addition, the Commission should retain disbursement responsibility in order to achieve administrative efficiency and consistency in the national universal service program. The

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[12] SAM (Appendix A) at 4.

[13] 47 U.S.C. §§ 254(b)(5), (d).

[14] Although BellSouth objects to allowing states to control the disbursement of federal universal service funds to ETCs, if the Commission should nevertheless establish such a system, it must adopt specific, clearly defined mandatory guidelines. Vague or permissive guidelines are likely to result in arbitrary and inconsistent decisions that harm carriers and consumers. For example, the Commission should not allow one state to use embedded costs to calculate high-cost support, while another state relies on forward-looking costs. Such an approach would not be competitively neutral and could adversely affect certain carriers and consumers.

Commission has already expressed its intent to streamline the administration and management of the universal service fund.[15] Potentially establishing 51 different state allocation systems is inconsistent with this objective. Instead of USAC distributing funds directly to carriers based upon Commission rules, USAC would disburse funds to carriers based upon decisions made by the states. The insertion of another entity into the disbursement process has the potential to delay the distribution of universal service support to carriers. For example, would applications have to be submitted to the state commissions? Would hearings be necessary? Would oppositions be allowed? The answers to these questions could have a significant effect on the state resources necessary to make disbursement decisions as well as the timing of such disbursements. BellSouth cautions against any system that would overburden state commissions or delay an ETC's receipt of universal service support.

BellSouth also has concerns about the administrative burdens associated with auditing multiple state allocation mechanisms. Headlines of fraud and abuse by certain participants of the universal service program are all too familiar and have made Commission oversight even more important. As the agency ultimately responsible for the federal universal service program, the Commission is obligated to ensure that waste, fraud, and abuse within the system are minimized. This already difficult task becomes even more critical and challenging when 51 different processes for distributing federal universal service funds exist.

In sum, a system that allows states to control the disbursement of federal universal service support is not only an inappropriate delegation of Commission authority but also is

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[15] *See Comprehensive Review of Universal Service Fund Management, Administration, and Oversight, et al.*, WC Docket No. 05-195, *et al.*, *Notice of Proposed Rulemaking*, 20 FCC Rcd 11308 (2005).

directly at odds with the Commission's on-going efforts to eliminate waste and inefficiency in the administration and management of the universal service programs. Accordingly, the Joint Board should not recommend the creation of state allocation mechanisms.

II. THE JOINT BOARD SHOULD NOT RECOMMEND THE USE OF FORWARD-LOOKING COSTS TO CALCULATE UNIVERSAL SERVICE SUPPORT FOR RURAL CARRIERS, UNLESS AND UNTIL SUCH AN APPROACH HAS BEEN SHOWN TO PROVIDE SUFFICIENT SUPPORT FOR SUCH CARRIERS.

In considering how to reform the overall rural high-cost support program, it is appropriate to review alternatives to the current method of calculating support based upon embedded costs. There is general agreement that the use of forward-looking economic costs to determine a carrier's level of universal service support has some advantages in that it encourages efficiency, sends the proper signals to new entrants, and helps control the overall size of the universal service fund. However, to realize these benefits and ensure that carriers receive adequate support, forward-looking costs must reflect the costs that an efficient carrier would be expected to incur, rather than some artificially low cost that is unattainable by even the most efficient carrier. Unless and until the Commission can demonstrate that the use of forward-looking costs to calculate high-cost support for rural carriers will provide "specific, predictable and sufficient"[16] support for such carriers, the Commission should continue to use an embedded cost methodology to calculate support for these carriers.

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[16] 47 U.S.C. §§ 254(b)(5), (d).

If the Commission were to adopt a forward-looking cost methodology for rural carriers,[17] it would have to develop a set of reasonable inputs that would not produce skewed results or lead to the types of problems experienced under the current cost model developed for non-rural carriers.[18] As BellSouth and others have demonstrated in a separate proceeding, the existing forward-looking cost model used to calculate support for non-rural carriers serving high-cost areas is deficient.[19] For example, the existing model does not accurately account for high-capacity non-switched lines. Additionally, the Commission's failure to use a consistent set of line counts, customer counts, and road data creates false economies of scale that do not reflect actual conditions facing carriers today. In reality, most, if not all, traditional telephone companies are losing switched lines due to competition from cable companies and providers of Internet-protocol based services. Simultaneously, the size of service territories are expanding as new housing and office developments are constructed farther away from central offices. The current model's failure to account for this market reality (larger network footprints serving fewer switched lines) leads to an understatement of non-rural carriers' costs per line. These

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[17] Using a forward-looking cost methodology to calculate high-cost support for large and mid-sized rural carriers, while continuing to use embedded costs for small rural carriers, may be a reasonable compromise. Such an approach recognizes the unique characteristics of small rural carriers and protects them by ensuring the continued receipt of sufficient universal service support. *See* Three Stage Package (Appendix B) at 8-9.

[18] The State Allocation Mechanism acknowledges the deficiencies of the current forward-looking cost model used for non-rural carriers: "Experience with the current FCC [Forward-Looking Economic Cost Model] suggests that it involves relatively large errors for particular wire centers. This is not a problem when the model is applied to a carrier with a large number of wire centers, but, when the model is applied to carriers with few wire enters, the errors become a more serious problem." SAM (Appendix A) at 4.

[19] *See, e.g.,* Verizon Comments at 1-2 (CC Docket No. 96-45) (filed Nov. 5, 2004); Comments of the Maine Public Utilities Commission and the Vermont Public Service Board at 1-2 (CC Docket No. 96-45) (filed Nov. 5, 2004); BellSouth Reply Comments at 2-3 (CC Docket No. 96-45) (filed Nov. 19, 2004).

understated costs, in turn, result in an understatement of a carrier's need for universal service support. Thus, the clear deficiencies present in the existing forward-looking cost model developed for non-rural carriers makes that model completely inappropriate for calculating high-cost support for rural carriers.

While there may be some potential advantages to ultimately using a forward-looking cost methodology to calculate universal service support for rural carriers (perhaps with the exception of small rural carriers), there is no evidence on the record to date to support the adoption of such a requirement. Unless and until the Commission is able to develop a forward-looking cost model that can account for the legitimate cost differences among rural carriers and is free of the shortcomings of the existing model for non-rural carriers, it should continue to use embedded costs to calculate high-cost support for rural carriers.

Respectfully submitted,

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September 30, 2005

CERTIFICATE OF SERVICE

I do hereby certify that I have this 30th day of September 2005 served a copy of the foregoing **BELLSOUTH COMMENTS** by electronic filing and/or by placing a copy of the same in the United States Mail, addressed to the parties listed below.

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