

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054**

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

COMMENTS OF SBC COMMUNICATIONS INC.¹

I. Introduction and Summary.

For almost a century, federal and state regulators have relied on a patchwork of implicit subsidies to ensure that all Americans have affordable access to telephone networks and services. These subsidies were implemented by carriers with the express or tacit encouragement and approval of federal and state regulators, and resulting in the shifting of costs from rural to urban areas, residential to business customers, basic to vertical services, and from local to toll services. Implicit subsidies were feasible in an era of government-sanctioned monopoly franchises, in which carriers were guaranteed a reasonable return on their investment in return for a commitment to provide universal service at affordable rates, and successfully encouraged deployment of facilities and services to customers across the United States.

In 1996, with broad support from carriers, consumers, and others, Congress determined to open all telecommunications markets to competition, and thus to eliminate government sanctioned monopoly franchises across the country. Recognizing that these

¹ SBC Communications Inc. files these comments on behalf of itself and its operating company affiliates, including: Southwestern Bell Telephone, L.P.; Nevada Bell Telephone Company; Pacific Bell Telephone Company; Illinois Bell Telephone Company; Indiana Bell Telephone Company, Incorporated; Michigan Bell Telephone Company; The Ohio Bell Telephone Company; Wisconsin Bell, Inc.; and The Southern New England Telephone Company.

actions would remove the structural underpinnings of the implicit subsidies supporting universal service, Congress directed the Commission and states to work cooperatively to establish a comprehensive framework of federal and state universal service support mechanisms to preserve and advance universal service objectives in a competitive environment.

Over the past decade, the Commission has conducted numerous proceedings, and issued myriad orders, to implement the universal service provisions of the 1996 Act. But, rather than developing the comprehensive framework mandated by section 254, the Commission has proceeded piecemeal, adopting federal support mechanisms that depend the size of a carrier (and its ability to internally cross-subsidize) rather than the areas and customers it serves (which necessarily must be the focal point of any explicit support mechanism), and failing to encourage states to develop support mechanisms appropriate to competition. The result has been a decade of litigation and uncertainty, with no apparent end in sight.

Despite the Tenth Circuit's admonition that the Commission must develop a "complete plan for universal service" that ensures that federal universal service support mechanisms (and any state support mechanisms) work together to achieve the goals of the Act,² the Commission has continued its piecemeal approach. This proceeding exemplifies the problem. Rather than initiating a broad review to evaluate state and federal universal service support mechanisms holistically in light of market place developments, the objectives of section 254, and the Tenth Circuit Remand, this

² *Qwest Corp. v. FCC*, 258 F.3d 1191, 1201 (10th Cir. 2001).

proceeding is focused only on proposals for reforming the high cost support mechanism for “rural” carriers.³

As the Tenth Circuit unequivocally held, the Act requires more. Indeed, the plans appended to the Public Notice generally reflect a consensus that the Commission should undertake a “fresh look [at universal service] in light of recent technological, market, regulatory and judicial developments,” and develop a “unified approach” to universal service that provides support to carriers serving high-cost areas without regard to arbitrary distinctions between “rural” and so-called “non-rural” carriers serving those areas.⁴

SBC supports many of the ideas advanced in these plans. In particular, SBC agrees that the Commission should eliminate the arbitrary distinction between “rural” and “non-rural” carriers based on the size of the company receiving support, and, instead, ensure that all carriers serving rural and high-cost areas receive federal and state universal service support on an equitable and non-discriminatory basis. SBC also supports proposals to establish an objective rate benchmark to ensure that support is sufficient to achieve the goals of the Act, while, at the same time, safeguarding against unnecessary growth in the fund. Finally, SBC supports the development of federal guidelines and mechanisms to induce the states to develop their own universal service mechanisms, and to allow the Commission to step in if the states fail to act.

³ *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 at para. 1 (Rel. Aug. 17, 2005) (Public Notice).

⁴ Public Notice, Appendix B at 8, 12; Appendix C at 16; Appendix D at 25 (“The plan would apply to all companies, rural and non-rural. This would be an effective means to address issues raised in *Qwest II* and would eliminate the present pattern that rates and support can depend on the type of carrier that owns an exchange, rather than on whether that exchange is rural or high-cost.”).

However, the Commission should not consider or adopt these proposals in isolation, as part of an effort to reform only the “rural” high cost support mechanism. Such an approach would “leave unresolved the sufficiency of federal support to non-rural carriers, a matter that must be addressed following *Qwest II*.”⁵ Rather, the Commission should fold the instant proceeding into a broader review, and develop a unified approach that encompasses all carriers and regions, and provides incentives for state action consistent with federal law and policy. As part of that review, the Commission should consider proposals for a State Allocation Mechanism (or SAM), as described in the plans appended to the Public Notice. At this time, SBC is concerned that such a mechanism would result in increased administrative costs and additional litigation over the disbursement of universal service funding. But, the merits of such a mechanism should be considered as part of a holistic review of federal and state universal service support.

II. The Commission Should Provide Support to All Carriers Serving Rural and High-Cost Areas.

As noted above, the proposals attached to the Public Notice reflect a consensus that judicial, technical and marketplace developments require the Commission to develop a “unified approach” to universal service reform. As a first step, the Commission must abandon its approach of basing support on the type of carrier that serves a particular area, rather than on whether that area is rural or high-cost.⁶ This approach has arbitrarily denied support to many of the purportedly “non-rural” carriers that serve the vast

⁵ *Id.*, Appendix D at 25.

⁶ *Id.*, Appendix D at 25; Appendix B at 12 (“Differences in treatment between rural and non-rural carriers, between incumbents and new entrants, and between technologies should be eliminated.”) Appendix C at 16 (“The HIP adopts the principle advanced by the NICP that support for high cost rural areas should not be based on whether that area is served by a “rural” or “non-rural” carrier.”).

majority of consumers living in rural and high cost areas on the false premise that these carriers are large enough to internally cross subsidize those areas with revenues from customers in lower cost areas. This approach is not only inconsistent with the goals of the Act insofar as it has perpetuated the market distorting effects of implicit subsidies, but also doomed to fail because revenues from lower cost areas, and the cross-subsidies they provide, are rapidly eroding in the face of growing competition for the most lucrative customers. Existing federal and state universal service support mechanisms thus are unsustainable and fail to ensure that carriers serving rural and high cost customers receive “specific, predictable and sufficient” support as required by the Act. As the “Universal Service Endpoint Reform Plan” rightly observes, any plan that is limited “solely to rural companies” or that “treat[s] rural areas differently based upon the identity of the carrier that serves it,” would “leave unresolved the sufficiency of federal support to non-rural carriers, a matter that must be addressed following *Qwest II*.”⁷ Only by eliminating the arbitrary distinction between “rural” and “non-rural” carriers, will the Commission and Joint Board be able to establish a comprehensive framework that preserves and advances universal service in today’s competitive marketplace, as required by the Act.

III. FCC Should Establish an Objective Rate Benchmark and Federal Universal Service Guidelines to Ensure that Support is Sufficient to Achieve Universal Service Objectives Without Unnecessarily Expanding the Size of the Fund.

As the Commission previously has recognized, universal service support should be “only as large as necessary to meet . . . statutory goal[s].”⁸ Congress intended universal service support to be a safety net, providing support only where the cost of

⁷ *Id.*, Appendix D at 25.

⁸ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Order on Remand*, 18 FCC Rcd 22559 at para. 30 (2003).

providing essential services would make those services unaffordable at market-based rates. It thus intended to provide universal service subsidies only to the extent necessary to permit carriers to recover their costs while still charging an affordable rate for supported services. By focusing only on whether rates are too high, rather than on whether rates are below an affordable level, the Commission's existing universal service support mechanisms have unnecessarily increased the size of the fund and the cost of telecommunications services for other end users. As a consequence, the Commission not only has provided more support than necessary to ensure that rates are affordable, but also created strong opposition to any reform that might increase support to those carriers serving high cost areas that currently receive little, or no, support.

A key component of any reform must be the establishment of an objective rate benchmark to ensure that support is sufficient to meet the statutory objectives of affordability and reasonable comparability, without unnecessarily bloating the fund. As Commissioner Baum has aptly observed, a rate benchmark would “establish an expectation that local consumers would be responsible for the costs of the local network serving them up to a level at which the price of supported services would not be affordable or reasonably comparable, as required by §254.”⁹ Any such benchmark thus should be set at an “affordable” level (that is, the amount end users can afford to pay for telephone services) based on economic and demographic data, such as household income or the cost of living.¹⁰

⁹ Public Notice, Appendix A at 4.

¹⁰ *Id.* at 5. *See also id.*, Appendix B at 11 (“using a national revenue benchmark . . . in determining support, [would ensure that] Carrier A is not penalized because it has high local rates, and Carrier B is not benefited because it has low rates.”).

Federal and state universal service support mechanisms should be designed to compensate carriers for the difference, if any, between the costs of serving customers in a relevant geographic area and the revenues a carrier receives from end users. In particular, federal support should be limited to the difference, if any, between the cost of service and the objective rate benchmark.¹¹ States should be responsible for supporting the difference between a carrier's revenues derived under existing rates and the rate benchmark, either by providing explicit state universal service support or by rebalancing rates. To the extent a state fails to either establish its own universal service support mechanism or to rebalance rates, the Commission should step in and establish a federal universal service program specific to that state to make up the difference.¹²

Basing federal universal service support on an affordability benchmark would ensure that federal support is sufficient to ensure that rates are affordable and reasonably comparable across all markets, without providing more support than necessary. Such an approach also would ease pressures on the universal service fund and ensure that consumers and carriers in each state bear no more than their fair share of the burden of meeting universal service objectives. In addition, it would preserve state authority over local rates and accommodate differences in state ratemaking designs, while, at the same time, aligning those decisions with national universal service policies and objectives. Finally, such an approach would allow the Commission to establish a comprehensive

¹¹ While the affordable rate would vary between geographic areas, based on differences in household income, cost of living or other relevant factors, rates between such areas would remain reasonably comparable insofar as they represent a particular percentage of household income or cost of living.

¹² See Public Notice, Appendix D at 25-26.

framework for universal service that meets all of the objectives of section 254(b) of the Act, consistent with the 10th Circuit's mandate.

IV. The Commission Should Consider Proposals for A State Allocation Mechanism Only as Part of Broader Universal Service Reform.

As previously discussed, the Commission and Joint Board cannot, consistent with the Act and the 10th Circuit remand, consider the rural high cost support mechanism in isolation. Rather, the Commission must undertake a broader review, and develop a comprehensive, unified approach to universal service reform that encompasses all carriers and geographic regions (urban and rural) and provides incentives for state action consistent with federal objectives and policy. As part of that review, the Commission should consider the various proposals for a state allocation mechanism for distributing federal universal service support.

At this time, it is far from clear that such a mechanism is necessary or appropriate. In particular, SBC is concerned that such a mechanism would result in an unnecessary, additional level of bureaucracy in a system that already is complex. SBC further is concerned that such a mechanism could increase significantly the administrative costs of the program – requiring additional rulemaking proceedings at the federal and state levels and additional oversight to prevent waste, fraud and abuse, as well as spawning further litigation over the disbursement of universal service funding – with seemingly little off-setting benefits. But, until the Joint Board and the Commission develop a comprehensive plan for universal service consistent with the Act and the 10th Circuit's remand, and explains the place of a state allocation mechanism within the context of that plan, SBC cannot fully evaluate the merits of such a mechanism.

V. Conclusion.

For the foregoing reasons, the Joint Board should recommend that the Commission fold the existing proceeding into a broader proceeding to evaluate state and federal universal service support mechanisms holistically in light of market place developments, the objectives of section 254, and the Tenth Circuit Remand, and to develop a comprehensive plan for universal service consistent with the principles outlined herein.

Respectfully submitted,

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