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ILLINOIS INDEPENDENT TELEPHONE)
ASSOCIATION)

CHIEF CLERK'S OFFICE

Petition for initiation of an investigation of)
the necessity of and the establishment of a)
Universal Service Support Fund in accordance)
with Section 13-301(d) of The Public Utilities Act.)

Docket No. 00-0233

ILLINOIS COMMERCE COMMISSION)
On Its Own Motion)

Investigation into the necessity of and, if)
appropriate, the establishment of an universal)
support fund pursuant to Section 13-301(d) of)
the Public Utilities Act.)

Docket No. 00-0335

(Consol.)

Phase 2

**PHASE 2 JOINT REPLY BRIEF OF MCI WORLDCOM, INC.
AND SPRINT COMMUNICATIONS COMPANY, L.P.**

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Dated: July 18, 2001

I. Introduction

As a general matter, the issues raised by the testimony of MCI WorldCom, Inc. (“MCI WorldCom”) and Sprint Communications Company, L.P. (“Sprint”) witnesses were thoroughly addressed by the Phase 2 Initial Brief filed by MCI WorldCom in this proceeding on July 9, 2001. While MCI WorldCom and Sprint do not wish to unnecessarily burden the Administrative Law Judge or the Commission with further argument on the points that were made in MCI WorldCom’s Phase 2 Initial Brief, certain arguments raised by the briefs of the Illinois Independent Telephone Association (“IITA”), various members of the IITA,¹ Ameritech and Verizon warrant additional discussion. Through this Joint Brief, MCI WorldCom and Sprint will address those arguments that warrant further discussion.

II. Argument

A. Economic Costs Versus Embedded Costs

The Smith and the Fodor Briefs argue that the term “economic costs” as it is used in Section 13-301(d) of the Illinois Public Utilities Act (“IPUA”) means historical or “embedded costs.” (Fodor Brief, pp. 32-34; Smith Brief, pp.1-9).²

The argument that “economic costs” are equivalent to historic or “embedded costs” are contrary to position of the IITA and all other parties to this proceeding. Fodor and Smith expend a considerable amount effort arguing this point on behalf of various members of the IITA even though the IITA itself has assumed, based on discussions of cost issues before the Commission in a variety of dockets over the past several years, that most parties agree that the term “economic costs” should be interpreted as “forward looking costs.” (IITA Brief, p. 4).

¹ A single brief was filed on behalf of IITA member companies, Grafton, Gridley, Harrisonville, Home, Metamora, and Tonica telephone companies (“the Fodor Brief”) and a separate single brief was filed on behalf of Leaf River, Alhambra-Grantfork, Corssville, Glaford, Montrose, new Windsor, Oneida, Viola and Woodhull Community telephone companies (“the Smith Brief”). In addition, AT&T, Moultrie Independent Telephone Company, Ameritech, Verizon and the Staff of the Commission also filed separate initial briefs.

² A significant portion of the Smith and the Fodor Briefs are devoted to rehashing arguments that were made in a Petition for Interlocutory Review of the ALJ’s ruling striking new embedded cost studies that certain small Incumbent Local Exchange Carriers sought to introduce with rebuttal testimony in this proceeding. The Commission considered and rejected the same arguments that Fodor and Smith advance here when it denied the Petition for Interlocutory Review of the ALJ’s ruling. Accordingly, these arguments should be accorded no weight.

Consistent with its understanding of Section 13-301(d) of the IPUA, the IITA submitted into evidence forward-looking costs estimates for the 50 small companies it encompasses in order to comply in part with the requirements of 13-301(d). Not only did the IITA do so in Phase 2 of this proceeding, but it did so in Phase 1 of this proceeding.

In Phase 1, neither Smith nor Fodor nor any of the companies contested the meaning of the term “economic costs.” To the contrary, in Phase 1 those carriers that are now raising the issue specifically relied on the use of the HAI and forward-looking costs as a basis for requesting an “interim” universal service fund under Section 13-301(d). It is only now, after it has become apparent that the use of the forward-looking costs may be used to determine which small Incumbent Local Exchange Carriers (“ILECs”) may be eligible and which small ILECs may not be eligible for state universal service funding, that any party has contested the meaning of the term. In other words, when it was to their benefit, those same small ILECs did not contest that “economic costs” should be interpreted as “forward-looking” costs. MCIW and Sprint submit that for this reason alone the arguments of Smith and Fodor should be rejected.

B. Federal Law Does Not Preempt Utilization of Forward-Looking Costs

In addition to eleventh hour claims that Section 13-301(d) of the IPUA does not allow use of forward-looking costs to determine need for universal service funding, Smith and Fodor rely on a recent Federal Communications Commission (“FCC”) Order for the proposition that the Illinois Commerce Commission (“ICC”) should not rely on forward-looking costs for any purposes in this proceeding. (Smith Brief, p. 9; Fodor Brief, pp. 31, 39 citing *Federal State Joint Board on Universal Service*, CC Docket Nos. 96-45 and 00-256, Fourteenth Report and Order, Twenty Second Order on Reconsideration, issued May 23, 2001 (“Fourteenth Report and Order”). Smith and Fodor argue that the FCC’s decision to refrain from using a forward-looking costs model for interstate universal service purposes at this time (specifically the FCC’s synthesis model), means that states are preempted from doing so. (Smith Brief, pp. 9-14; Fodor Brief, pp. 36-37).

As an initial matter, there is nothing in the FCC's Fourteenth Order that disavows the use of forward-looking cost models to determine interstate universal service needs. The FCC made clear that the use of a modified embedded mechanism for interstate universal service funding purposes is temporary and designed to allow transition of rural carriers to a forward-looking high-cost support mechanism. Before the FCC can implement such a transition, it needs time to fully analyze and consider long-term solutions. In the meantime, the FCC has adopted as a temporary fix the Rural Task Force plan consisting of a modified embedded mechanism. (FCC's Fourteenth Order, para. 25). Thus, Smith and Fodor read much more into the FCC's Fourteenth Order than what it actually provides. Simply put, the FCC has not abandon forward-looking cost models. (FCC's Fourteenth Order, para. 174).

Moreover, arguments that the ICC is preempted from utilizing a forward-looking mechanism for purposes of establishing a state universal service fund are wholly without merit. Smith states that it would be inconsistent with Section 254(f) of the Telecommunications Act of 1996 ("1996 Act") and the FCC's rules for the Illinois Commission to utilize forward-looking cost model, asserting that because the FCC's rules require using historical costs Illinois is preempted from using forward looking cost mechanisms. (Smith Brief, p. 11). Fodor makes similar arguments. (Fodor Brief, p. 36-37). Neither of these arguments holds water.

In the 1996 Act, Congress sought "to shift monopoly [telephone] markets to competition as quickly as possible." H.R. Rep. No. 104-204, at 89 (1995), *reprinted in* 1996 U.S.C.C.A.N. 10, 55 ("H.R. Rep."). Under the Act, "States may no longer enforce laws that impede competition." *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 352, 371 (1999) ("*IUB*"). Congress also recognized that "because of their government-sanctioned-monopoly status, local providers maintain bottleneck control over the essential facilities needed for the provision of local telephone service." H.R. Rep. at 49, *reprinted in* 1996 U.S.C.C.A.N. at 13. Thus, Congress required incumbents to open the local network to competitors.

At the same time, Congress recognized that the implicit subsidies that previously supported universal service are not compatible with competition. *See, e.g.*, S. Rep. No. 104-230, at 25 (1995) (“S. Rep.”). Implicit subsidies deter potential competitors from entering rural markets where rates are below cost, defeating Congress’s intent to bring the benefits of competition to all Americans. Conversely, above-cost rates for business and urban customers create incentives for competitors to enter those markets and underprice incumbents, eventually eroding the excess profits that subsidize other services.

Congress therefore adopted Section 254 of the 1996 Act, which creates express statutory authority for the FCC to advance universal service through procompetitive means. Section 254 does not oust the states from their primary role in supporting universal service. The 1996 Act envisions that “Federal and State mechanisms” shall together be “sufficient . . . to preserve and advance universal service.” 47 U.S.C. §254(b)(5); *see* Conf. Rep. No. 104-458, at 128 (1996) (“Conf. Rep.”). Accordingly, the 1996 Act preserves state authority to promote universal service. 47 U.S.C. §254(f). The 1996 Act also leaves intact the states’ authority to regulate the retail rates that local telephone carriers charge to consumers for intrastate services. *See* 47 U.S.C. §152(b); *see also IUB*, 525 U.S. at 381 n.8.

In Section 254(b), Congress endorsed the traditional universal service policies of ensuring that quality services be “available at just, reasonable, and affordable rates,” and that these rates be “reasonably comparable” in all areas of the country. 47 U.S.C. §254(b)(1), (3). Section 254 departs from traditional approaches to universal service, however, by requiring federal subsidy mechanisms to be compatible with a competitive marketplace. *See* S. Rep. at 25; *See Federal-State Joint Board on Universal Service*, Ninth Report and Order, 14 F.C.C.R. 20432, ¶17 (1999) (“*Ninth Order*”). Section 254 accordingly provides that any such subsidies must be “explicit.” 47 U.S.C. §254(e). *See also* Conf. Rep. at 131. Further, all telecommunications carriers must

share the funding burden by “mak[ing] equitable and nondiscriminatory contribution[s] to the preservation and advancement of universal service.” 47 U.S.C. §254(b)(4); *see also id.* §254(d), (f).

Finally, Congress made clear that the “total of any contributions required [for universal service] shall be no more than that reasonably necessary to preserve and advance universal service.” S. Rep. at 28. The consumers that pay for subsidies through their telephone bills should not pay more than what is strictly necessary to preserve universal service. Excessive exactions on subscribers would violate the principle that rates be “just, reasonable, and affordable.” 47 U.S.C. §254(b)(1).

In short, nothing in the 1996 Act or the FCC’s rules prohibits states from making determinations concerning intrastate universal service needs, including using forward-looking costs. The 1996 Act expressly preserves states’ authority to make such determinations concerning state universal service matters. Contrary to the arguments of Smith and Fodor, the Commission is not preempted by the 1996 Act or the FCC from utilizing forward-looking costs. Indeed, if the Commission utilizes such costs it should do so consistent with the 1996 Act to ensure that the total of any contributions required for state universal service shall be no more than that reasonably necessary to preserve and advance universal service.

Finally, it would appear as though this is not the appropriate forum in which to assert that state law or the Commission is preempted. In particular, Section 253 of the 1996 Act states in pertinent part:

If after notice and an opportunity for public comment, the [Federal Communications Commission] Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates subsection (a) or (b), the Commission shall preempt the enforcement of such statute, regulation, or legal requirement

to the extent necessary to correct such violation or inconsistency.

47 U.S.C. Section 253(d).

Because the 1996 Act requires the FCC to make the determination as to whether a given state statute or regulation should be preempted, the FCC is the appropriate entity for Smith and Fodor to request preemption. Absent a finding from the FCC that the ICC's use of forward-looking costs for state universal service purposes and Section 13-301(d) of the IPUA is preempted, the Commission is free to implement the Illinois universal service law in the manner it sees fit. In essence, Smith and Fodor have lodged their complaint in the wrong forum. For this reason, the ALJ and the Commission should reject their arguments that the Commission is precluded from utilizing forward-looking costs to determine state universal service needs or eligibility.

C. Small ILEC Switched Access Rates Should Not Be Increased

Verizon argues in its brief that the Commission should direct IITA members to increase intrastate switched access rates in order to recover costs before determining whether to establish an intrastate universal service fund. (Verizon Brief, pp. 9-10). Verizon asserts that the HAI because the IITA's run of the HAI model shows that IITA members are not recovering their costs, IITA members should increase intrastate switched access rates before they can be eligible for support. Such a claim is disingenuous and contrary to provisions of the IPUA that prohibit carriers from recovering universal service contributions from wholesale services. As MCI WorldCom pointed out in the Phase 2 Initial Brief and in testimony, IITA's changes to the HAI model cause it to understate the size of the subsidies contained in intrastate switched access rates. (MCI WorldCom Ex. 1 (Sands Direct), p. 7-8; Phase 2 Initial Brief, p. 8). Moreover, the discrepancy in the results of the IITA run HAI for purposes of sizing the state universal service fund and the IITA's actual "needs" request for state universal service strongly suggests that the forward looking cost estimate is grossly in error. That holds true for estimates of the costs of switched access as well. To accept Verizon's claims in light of these shortcomings of the IITA

run HAI for purposes of evaluating switched access charges would be irresponsible. Verizon's half-hearted attempt to argue that switched access charges would be subsidized by universal service should be rejected out-of-hand.

In any event, the Commission continues to have a "mirroring" requirement for small ILEC access charges. Accordingly, there is no basis for allowing increases in such charges at this time. More importantly, Section 13-301(d) is clear that the Commission is prohibited from allowing carriers to recover their universal service funding obligations through charges paid by other carriers, such as switched access rates or unbundled network element ("UNE") prices. Section 13-301(d) states in pertinent part that:

the Commission shall not permit recovery of such costs from another carrier for any services purchased and used solely as an input to a service provided to such certificated carriers' retail customers.

220 ILCS 5/13-301(d).

For all of these reasons, Verizon's argument that IITA members should be required to increase intrastate switched access rates before the Commission determines whether to establish a universal service should be rejected.

D. True-up Mechanism

Predictably, Ameritech and Verizon argue that there should be no "true-up" of payments that carriers have made into the existing and past temporary Dial Equipment Minute Weighting Funds ("DEM Weighting Funds") which have been in place since 1998. (Ameritech Brief, pp. 14-18; Verizon Brief, pp. 10-13). Ameritech and Verizon argue that there should be no true-up because the DEM Weighting Funds are "access charge replacement" funds and not "universal service funds." According to Ameritech and Verizon, the Commission's November 21, 2000 order in Phase 1 of these proceedings supports this contention.³ Ameritech and Verizon claim

³ Ameritech and Verizon cite the following order for this proposition: Illinois Independent Telephone Association Petition for Initiation of Investigation of Necessity of and the Establishment of a Universal Service Support Fund in

that the November 2000 USF Order should be determinative on this point. (Ameritech Brief, p. 15; Verizon Brief, pp. 11-12). Ameritech's and Verizon's arguments on this score are without merit and should be rejected.

First, while Ameritech and Verizon rely heavily on the Commission's characterization of the DEM Weighting Funds in its November 2000 USF Order, they conspicuously fail to acknowledge the fact that they both filed motions to amend and clarify that order. They also fail to acknowledge that the Commission on December 19, 2000, denied the motions of Verizon and Ameritech which had asked the Commission to clarify and/or modify the November 2000 USF Order to specifically determine the "permanent funding methodology" for purposes of trueing-up payments made by carriers into the temporary DEM Weighting Funds be the same methodology under by which payments were originally made into those funds, i.e., payments based primarily on toll revenue. The Commission declined to do so, leaving the issues of the determination of a permanent funding methodology and true-ups of past payments into DEM Weighting Funds to be resolved in Phase 2 of this proceeding.⁴

Second, the record in this proceeding does not support Ameritech's and Verizon's arguments. The argument that DEM weighting funds were an "access replacement fund" and not a true high cost "universal service fund" are beside the point. As Sprint witness Rearden testified, the interexchange carriers agreed to the DEM Weighting Funds, which were financed in a discriminatory manner, on the condition that payments into the DEM Funds would be trueed-up upon the establishment of a permanent high cost fund for the small ILECs based on the competitively neutral funding methodology the Commission adopts for a permanent fund. The 13-301(d) universal service fund proposed in Phase 2 of this proceeding is such the permanent fund that was contemplated by the DEM Weighting Fund stipulations. (Sprint Ex. 1.1 (Rearden Rebuttal), pp. 2-3). The stipulations themselves were attached to the rebuttal testimony of MCI

Accordance with Section 13-301(d) of the Public Utilities Act, Docket Nos. 00-0233 and 00-0335 (Consol.), First Interim Order, November 21, 2000 ("November 2000 USF Order").

⁴ Illinois Independent Telephone Association Petition for Initiation of Investigation of Necessity of and the Establishment of a Universal Service Support Fund in Accordance with Section 13-301(d) of the Public Utilities Act, Docket Nos. 00-0233 and 00-0335 (Consol.), Order to Clarify, December 19, 2000 ("Clarification Order"), at p. 3.

WorldCom witness Sands. (MCI WorldCom Ex. 2 (Sands Rebuttal), Attachments MRS-1 and MRS-2).

As Mr. Rearden noted, the interexchange carriers did not recover their contributions to the DEM weighting funds in an explicit manner. In other words, the rates charged by interexchange carriers for toll services – competitive services whose prices are dictated by the competitive market – were unable to recover those contributions via an explicit surcharge. To the extent that the competitive market would allow recovery of such contributions, the interexchange carriers were free to attempt to recover their contributions to the fund implicitly through rates for their competitive services. Similarly, Ameritech and Verizon, fully aware that they would be responsible to true-up payments into the DEM Weighting Funds, have been free to recover implicitly the contributions that they are aware pursuant to the stipulations they are obligated to make once the permanent fund is established. Given the knowledge that Ameritech and Verizon had about the true-up obligations, it is reasonable for the ALJ and the Commission to conclude that Ameritech and Verizon have already recovered their anticipated increased contributions from their rate payers, but that they have nevertheless not paid those monies into the DEM Funds. In other words, while Ameritech and Verizon have collected from their ratepayers contributions to the DEM Funds, Ameritech and Verizon have yet to pay those monies into the fund, a matter that the stipulations specifically contemplated would be accomplished via the true-up provisions contained therein. (Sprint Ex. 1.1 (Rearden Rebuttal), pp. 2-3).

Contrary to Ameritech's claims, the size of the true-up is not a factor that should be considered when establishing whether a true-up should occur. Ameritech and Verizon should not and would not have agreed to true-up amounts that they were not subsequently prepared to pay. Surely, firms with the resources of Ameritech and Verizon could have reasonably predicted the amount of the true-ups, especially since the caps limit carriers' true-up liability. The time for Ameritech and Verizon to express concern for the plight of their ratepayers was at the time the stipulations were signed, not now when the true-up provisions of those stipulations are ripe for implementation. Moreover, the intent of the DEM Weighting Funds is irrelevant for purposes of the stipulations. The universal service fund being sought in this proceeding will be a "permanent

fund,” and therefore the provisions of the stipulations relating to the true-up apply to any fund established as a result of this proceeding. In fact, the point of the stipulations is that the DEM Weighting Funds were not permanent funds, but merely an interim solution to a problem faced by the small ILECs. But for the true-up provisions, MCI WorldCom and Sprint would not have agreed to the temporary DEM Funds.

The DEM Weighting Fund stipulations are very clear on the nature of the trade-off that the interexchange carriers and the ILECs made in agreeing to establishment of the temporary funds. They do not lend themselves to creative interpretation as one might gather from the positions espoused by Ameritech and Verizon. For example, the 1998 DEM Fund Stipulation states, “Following the adoption of a Permanent Funding Method, pursuant to a final and non-appealable Commission Order, there shall be a ‘true-up’ solely between and among the 1998 Funding Carriers who have contributed to the 1998 Fund using the Temporary Funding Method.” (Attachment MRS-1 to MCI WorldCom Ex. 2 at paragraph 15). That paragraph of the Stipulation goes on to note how the true-up should occur, and that it is subject to the 150% cap. The DEM stipulations are unambiguous. The ALJ and Commission should so find and direct that the true-up be accomplished as contemplated by the parties without further delay.

For all of the foregoing reasons, and for those reasons stated in the Phase 2 Initial Brief of MCI WorldCom and the reasons stated in the testimony of MCI WorldCom witness Sands and Sprint witness Rearden, MCI WorldCom and Sprint respectfully request that the ALJ and the Commission reject Ameritech’s and Verizon’s thinly veiled attempts to avoid paying their fair share to support small ILEC universal service needs in the state of Illinois. The ALJ and the Commission should find that the existing funding methodologies for the DEM Weighting Fund and the High Cost Fund are discriminatory and do not meet the competitively neutral requirements of Section 13-301(d). Rather, if a 13-301(d) fund is deemed necessary, the Examiner and the Commission should order the immediate implementation of a funding mechanism based on carriers’ intrastate regulated revenue. Consistent with that finding, the Commission should direct that the fund administrator to affect the true-up of past payments made to support the Temporary DEM Weighting Funds based upon the carriers’ total intrastate

regulated revenues and require the true-up payments to be made forthwith. In the event that the Commission determines that a 13-301(d) fund is not warranted, it should nevertheless determine what a competitively neutral mechanism is for trueing-up past payments into the DEM Weighting Funds, as was contemplated by the Commission and the DEM Weighting Fund stipulations that it approved in the past. In that case, the Commission should find that the mechanism for purposes of trueing-up past payments into the DEM Weighting Funds be based upon each of the funding carriers' total intrastate regulated revenues. (MCI WorldCom Ex. 1 (Sands Direct), pp. 17-18).

III. Conclusion

For all of the foregoing reasons, MCI WorldCom and Sprint respectfully request that the ALJ adopt an order that incorporates their recommendations without change. The arguments of Smith, Fodor, Ameritech and Verizon discussed above should be rejected.

Respectfully submitted,

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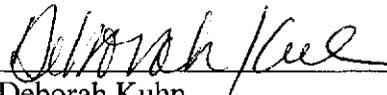
Dated: July 18, 2001

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ILLINOIS COMMERCE COMMISSION

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Petition for initiation of an investigation of the necessity of and the establishment of a Universal Service Support Fund in accordance in accordance with Section 13-301(d) of The Public Utilities Act.)	Docket No. 00-0233
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Investigation into the necessity of and, if appropriate, the establishment of an universal support fund pursuant to Section 13-301(d) of the Public Utilities Act.)	Docket No. 00-0335 (Consol.) Phase 2

NOTICE OF FILING

Please take notice that on July 18, 2001, I caused to be sent by Airborne Express next business day delivery the Phase 2 Joint Reply Brief of MCI WorldCom, Inc. and Sprint Communications Company, L.P. to Donna Caton, 527 E. Capitol, Springfield, Illinois 62701.



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)	(Consol.)
)	Phase 2

CERTIFICATE OF SERVICE

I, Deborah Kuhn, an attorney employed by WorldCom, Inc., certify that I caused to be served from MCI WorldCom's Chicago, Illinois offices copies of the Phase 2 Joint Reply Brief of MCI WorldCom, Inc. and Sprint Communications Company, L.P., together with a Notice of Filing, upon all active parties designated on the attached service list on the 18th day of July, 2001, by United States First Class Mail, postage pre-paid. Electronic versions of this document were also forwarded via electronic mail to the parties this same date.



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