Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 88-341

In the Matter of

MTS and WATS Market Structure

LINK UP AMERICA, and

Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board

RECOMMENDED DECISION AND ORDER

Adopted: January 11, 1989; Released: January 31, 1989

By the Federal-State Joint Board:

I. INTRODUCTION

1. The preservation of universal service is a basic goal of this Federal-State Joint Board (Joint Board) and of the Federal Communications Commission (Commission). To further that goal, the Commission has adopted this Joint Board's recommendation to establish a federal assistance program known as "Link Up America." (Link Up)[1] The program is designed to encourage low-income households to subscribe to local exchange service by reducing initial service and installation connection charges. On July 18, 1988, the Commission issued a Notice of Proposed Rule Making[2] inviting comments on whether to eliminate certain provisions relating to the non-income eligibility requirements for the program in states which verify the income eligibility of applicants. The present rules limit assistance to individuals who have lived at an address for at least three months prior to the date assistance is requested, and who have not received this assistance within the last two years. Under the proposed rules, if the telephone company or the state verifies the applicant's income, then these two non-income criteria do not apply. Based on the comments received, we recommend that the Commission adopt the proposed rules.

II. BACKGROUND

2. The Link Up program furnishes federal assistance to cover one half of local exchange service installation and connection charges, to a maximum of 30. for eligible low-income beneficiaries. Additionally, when a local exchange carrier offers a deferred payment plan for service connection charges and does not assess the subscriber any interest charges, federal assistance is available to that carrier to cover the interest on deferred costs of up to 200.[3]

3. In order for an individual to participate in the Link Up program, he or she must meet certain eligibility criteria. These criteria were developed by this Joint Board and adopted by the Commission.[4] The program was targeted to low-income households that were not presently telephone subscribers because those households could not afford high initial service connection costs. Accordingly, the Commission adopted Section 36.711(b) of its Rules, 47 C.F.R. § 36.711(b), which provides that the applicant must: (1) have lived at an address where there has been no telephone service for at least three months; (2) not have received Link-Up assistance within the last two years; (3) not be a dependent for federal income tax purposes, unless older than 60 years of age; and (4) meet the requirements of a state-established income test. Assistance is available for one telephone line per household at the applicant's principal place of residence.[5] In order for a state or local exchange carrier to participate in the program, it must obtain Commission certification of its assistance plan before federal benefits are made available. Furthermore, the Commission's Rules provide that the state or telephone company verify either the three month and two year requirements or the income requirement. *See* Section 36.761(a)(2)-(3) of the Rules, 47 C.F.R. § 36.761(a)(2)-(3).

4. Test markets were established in Arkansas, Texas, Washington, D.C., and West Virginia to monitor the Link Up program.[6] Currently, 34 states, the District of Columbia and Puerto Rico have been certified for federal assistance through Link Up. Each participant in the program has chosen to verify income eligibility rather than to verify the three month and two year rules. Participating states have found that verification of the non-income eligibility criteria was "administratively and economically infeasible, and impractical."[7] Furthermore, telephone companies in Maine, New York, and Wisconsin informed the Commission that they would not participate in the program. These companies stated that the three month residency rule and two year limitation on receiving assistance would prevent deserving low-income households from subscribing to local exchange service.[8]

5. Two state agencies, the New York Department of Public Service (NY DPS) and the Maine Public Utilities Commission (Maine), sought waivers of the Link Up eligibility rules. The Commission's Common Carrier Bureau denied those petitions because the Bureau found that those state commissions had not made a showing of unique or extraordinary circumstances to justify a waiver of the rules.[9] In response, Maine filed a motion containing a petition to reconsider the denial of its waiver request, a petition to commence a Rule Making to repeal the three month and two year eligibility requirement for Link Up, and a petition for reconsideration of those rules. The Common Carrier Bureau denied the petition for reconsideration. However, the Commission subsequently decided to address the issue in a new proceeding. Accordingly, on July 18, 1988, the Commission issued the *Notice* in which it invited this Joint Board to review the eligibility criteria for the Link Up America program. Interested parties were invited to comment. Specifically, comments were sought on whether to eliminate the three month and two year requirements in those states which verify the income eligibility of applicants.

III. SUMMARY OF COMMENTS AND REPLIES

A. Comments

6. Comments were received from 19 entities.[10] A majority of the commenters are state public utility commissions or local exchange carriers. In addition, United States Telephone Association (USTA), Florida Telephone Association, Consumer Federation of America (CFA) and the City of New York (NYC) filed comments. All of the initial comments support the Commission's proposal to eliminate these eligibility requirements. Generally, the commenters believe that these changes would ease administrative burdens and eliminate what they view as significant barriers to service.[11] Most of them state that it is infeasible for telephone companies and state public service commissions to maintain the necessary records to enforce the rules. *See e.g.*, BellSouth Telephone Companies (BellSouth) Comments at 3; Arkansas Public Service Commission (Arkansas) Comments at 3; NY DPS Comments at 3. In addition, the commenters cite Commission data which indicates that low income persons move more often than other families. The commenters agree that since it can be assumed that these people do not move simply to qualify for the Link Up program, it would be inconsistent with the Commission's universal service goal to deny connection assistance to the very people who need it because they have moved to a different residence. *See e.g.*, Southwestern Bell Telephone Company (Southwestern Bell) Comments at 4; US West Comments at 5,7; Public Service Commission of Texas (Texas) Comments at 2-3.

7. A number of the commenters, such as NYC and BellSouth note that fewer people than expected have participated in the Link Up program and therefore the costs were lower than expected. Such commenters contend that this finding is consistent with the Commission's tentative conclusion that elimination of the non-income eligibility rules should not result in a large increase in the costs of providing the program. New York City Comments at 15; BellSouth Comments at 3. Contel Corporation (Contel) for example, cites the Commission's test market data which illustrate that only 15 percent more applicants would be eligible to participate if the criteria were modified, an increase in participation that would still fall below original cost projections for the program. Contel Comments at 3, citing *Notice*, 3 FCC Rcd at 4535. *See also*, New England Telephone and Telegraph Company and New York Telephone Company (NYNEX) Comments at 3; BellSouth Comments at 2-3.

8. No commenter advocated continuation of the three month rule. Southwestern Bell noted that in testing the program in Arkansas and Texas, at least 36 percent of the applicants did not meet the three month requirement. Southwestern Bell Comments at 3. This result was fairly typical in those states offering the program on a trial basis.[12] Several commenters note that in practice, the three month rule makes low-income families ineligible for the Link Up program through no fault of their own. US West observes that an individual may move for a variety of reasons, such as job opportunities or job loss, that have no bearing on his or her income qualifications for the program. US West Comments at 4-5.

9. Commenters were unanimous in supporting the Commission's proposal to eliminate the rule that applicants may only receive Link Up benefits once every two years. As the Commission indicated in the *Notice*, the original estimate of approximately 5 million eligible households has now been revised to about 2.9 million households.[13] Given these numbers, the commenters found little benefit in continuing the two year rule as a means of saving costs. Southwestern Bell Comments at 4; Texas Comments at 3.

10. While all the commenters endorse easing the requirement that customers not receive benefits more than once every two years, a number of them suggest that some limit on the frequency with which customers may use the program is needed. For example, the Wisconsin Public Service Commission (Wisconsin), US West, and Ameritech Operating Companies (Ameritech) suggest that the two year rule be replaced by a one year rule. These parties argue that the alternative rule would create a reasonable balance between the need to control program costs with the program's universal service goal. Wisconsin Comments at 2; US West Comments at 6; Ameritech Comments at 4.

11. A number of other proposals were suggested by the commenters. The CFA suggests that the Commission eliminate the non-income eligibility requirements even in those states which do not have income verification. Arkansas proposes that the Link Up program be extended to include construction charges to connect customers in rural areas to the public switched network. It argues that while the Commission provides assistance to local exchange carriers serving rural, high cost areas, this assistance should be extended to the end users in those areas to offset the high cost of connection. Arkansas Comments at 3-4. In addition, the Virginia State Corporation Commission (Virginia) advocates elimination of the requirement that recipients of Link Up not be dependents unless they are 60 years of age. Virginia claims, without elaboration, that the provision is difficult to administer and enforce. Virginia Comments at 2-3. Finally, Southwestern Bell and US West propose that the Link Up program be expanded to include the transfer of service when a customer moves to a location where he or she can transfer the existing service rather than initiate new service. US West states that under its interpretation of the rules, Link Up benefits are not available for the transfer of service. Southwestern Bell Comments at 6; US West Comments at 8-9.

B. Reply Comments

12. Six of the 19 commenters filed reply comments.[14] In response to Arkansas' proposal that the program be extended to include assistance in rural areas, five of the reply commenters oppose the idea, saying that it is beyond the scope of the program and is too costly.[15] *See e.g.*, Ameritech Operating Companies Reply at 6; USTA Reply at 2 (stating that other programs offer assistance to rural subscribers). US West opposes the proposal of the CFA that the non-income eligibility criteria be eliminated regardless of whether a state verifies income. It asserts that requiring state verification of applicant eligibility is an appropriate method of ensuring that the program assists those that are truly in need and of preventing abuse. US West Reply at 6. *See also*, BellSouth Reply at 2. Ameritech opposes Virginia's proposal to eliminate the requirement that applicants for Link Up not be dependents for federal income tax purposes unless more than 60 years of age. Ameritech claims that if this requirement were dropped, it could result in multiple members of the same household receiving Link Up assistance. *Id.*

NYNEX, however, supports Virginia's proposal, although it offers no explanation for its position. NYNEX Reply at 2. US West suggests as an alternative that the Commission clarify the rule to establish that only one telephone line per household at the subscriber's principal place of residence be permitted. US West Reply at 7.

13. The reply commenters support elimination of the two year rule but are divided on the implementation of a one year rule. For example, US West continues to support the proposal, although it now suggests that states which may wish to develop their own rules should be permitted to request and receive waivers of the Commission's Rules for that purpose. *Id.* at 4. BellSouth and NYNEX, on the other hand, reiterated their support for elimination of the two year rule. BellSouth Reply at 2; NYNEX Reply at 2. NYNEX suggests that while there is no reason to impose a blanket restriction of the number of times a person may receive Link Up assistance within a given period of time, NYNEX proposes instead that states address any problems, such as applicants repeatedly applying for Link Up benefits after having their telephone service terminated for non-payment, which may result from eliminating the two year rule. NYNEX Reply at 2.

IV. DISCUSSION.

14. It is clear from the comments and reply comments that there is substantial support for the Commission's proposal to eliminate the non-income eligibility requirements for the Link Up program in states which verify income eligibility. Moreover, all of the parties cite statistics concerning the frequency of moves by low income persons to support their position that the restrictions place an undue hardship on applicants who moved for personal reasons and then could not receive the benefits of the program designed to help them. These figures are consistent with those cited by the Commission in the *Notice* to support its tentative conclusion that the restrictions should be removed. *Notice*, 3 FCC Rcd at 4534-4535.

15. When the Link Up program was implemented, the Commission relied upon an estimate of five million unconnected low-income households to estimate the cost of connecting them to the local exchange network. *Id.* at 4535. It appears that this estimate was too high and that only about 2.9 million low income households are without telephone service. *Id.* Also, the Commission noted that the pool of potential recipients is further reduced in certain states due to other state-imposed restrictions. *Id.* The Commission tentatively concluded that ". . . it appears that we may be able to expand the scope of the program without exceeding our original cost estimates." *Id.* The comments received in this Rule Making support this conclusion. Thus, we find that elimination of the non-income eligibility requirements in states which verify income should not unduly increase the costs of implementing the Link Up program. Moreover, as the commenters agreed with the Commission's tentative conclusion that states and telephone companies do not generally maintain the type of records necessary to enforce the non-income eligibility requirements, adoption of the proposed rules will, for all practical purposes, result in elimination of those criteria. Finally, the proposed rule changes should result in increased participation in the program, thus furthering the Commission's goal of universal service.

16. We do not believe it is advisable at this time to replace the two year rule with the less restrictive one year rule as suggested by Wisconsin, Ameritech, and US West. It is clear from the comments that it is infeasible for states and telephone companies to maintain records necessary to verify the non-income criteria. Therefore, adoption of these revised rules will, for all practical purposes, eliminate these criteria. We recommend that the Commission continue to monitor the Link Up program to determine what effect the revised rules have on participation in and costs of the program. We do favor, however, allowing the states to develop rules which would address the problem of persons repeatedly requesting Link Up assistance when they have been disconnected due to non-payment of telephone charges.[16]

17. No commenters supported Arkansas's proposal to expand the Link Up program to include assistance to rural subscribers. Ameritech Reply at 3; BellSouth Reply at 3; NYNEX Reply at 3. As USTA states, other programs exist to assist this class of subscribers. USTA Comments at 2. Furthermore, the proposal is beyond the scope of this proceeding, which sought comments solely on whether, when income eligibility is verified, to eliminate the non-income eligibility criteria from the Commission's rules. Accordingly, we do not recommend adoption of this proposal.

18. We do not endorse the CFA's suggestion that the non-income eligibility requirements be eliminated even in those states which do not verify income. This program was designed specifically to aid low income persons. Without some guidelines governing eligibility by either the state or telephone company administrating the program, there would be no protection against abuse. Therefore, there is ample reason to maintain some eligibility criteria.

19. Finally, we address the proposal by Virginia that the 60 year old dependancy rule be eliminated. We agree with Ameritech that, if the rule is eliminated, this could result in numerous members of a household being eligible for Link Up assistance. Ameritech Reply at 2. The Commission articulated its intent underlying the rule, namely that assistance "be available for a single telephone link at the principal place of residence." *Report and Order*, 2 FCC Rcd at 2955. Therefore, we see no need to revise the rule.[17]

V. CONCLUSION

20. In summary, we conclude that it is in the public interest to eliminate two non-income eligibility criteria: that an applicant must have lived at an address where there has been no telephone service for at least three months prior to the date that assistance is requested, and that the applicant must not have received this assistance within the last two years, in states which verify income. In the *Notice*, the Commission expressed concern that these eligibility rules were impeding the Link Up program. It is apparent from the comments that the Commission's assumptions were correct. These limits on eligibility were orginally recommended by this Joint Board and adopted by the Commission in order to target the participants for the program and to keep the costs of the program low. However, as the commenters make clear, the restrictions have worked to prevent persons from receiving benefits who should be eligible. At the same time, it has become apparent that fewer persons than originally estimated are eligible for the program. Therefore, we conclude that the

restrictions can be removed without substantial cost increases in the program. Under these circumstances, it is in the public interest to remove these non-income restrictions on the Link Up program in states where income is verified.

VI. PAPERWORK REDUCTION ACT

21. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980, and found to impose no new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

VII. ORDERING CLAUSE

22. ACCORDINGLY, the Joint Board RECOMMENDS that the Commission adopt the proposals discussed above and the attached revisions to Part 67 of the Commission's Rules.[18]

FEDERAL COMMUNICATIONS COMMISSION

FOR THE FEDERAL-STATE JOINT BOARD

APPENDIX A

LIST OF PARTIES FILING COMMENTS

Ameritech Operating Companies
Arkansas Public Service Commission
Bell Atlantic Telephone Companies
BellSouth Telephone Companies
City of New York
Consumer Federation of America
Contel Corporation
Florida Public Service Commission
Florida Telephone Association
GTE Telephone Companies
Maine Public Utilities Commission
Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company and Pacific Northwest Bell Telephone Company (US West)
New England Telephone and Telegraph Company and New York Telephone Company (NYNEX)
New York Department of Public Service
Public Service Commission of the District of Columbia
Public Utility Commission of Texas
Southwestern Bell Telephone Company
United States Telephone Association
Virginia State Corporation Commission
Wisconsin Public Service Commission

APPENDIX B

PARTIES FILING REPLIES

Ameritech Operating Companies
BellSouth Telephone Company
City of New York
NYNEX Telephone Companies
United States Telephone Association
US West

PROPOSED RULE CHANGES

Part 36 of Title 47 C.F.R. is proposed to be amended as follows:

1. The AUTHORITY for Part 36 continues to be Sections 4, 201, 202, 203, 205, 218, 221(c), 403, and 410(c) of the Communications Act of 1934 as amended, 47 U.S.C. Sections 154, 201, 202, 203, 205, 218, 221(c), 403, and 410(c).

2. Section 36.721 is proposed to be amended by revising the introductory text of paragraph (a)(2); the texts of (a)(2)(ii) and (a)(2)(iii); by adding a new paragraph (a)(2)(iv); and by revising paragraph (a)(3) and removing paragraph (a)(4), to read as follows:

Section 36.721. Telephone company eligibility for lifeline connection assistance expense allocation.

(a) In order to be entitled to the additional interstate expense adjustment described in this Subpart a telephone company:

(1) * * *

(2) Shall verify that subscribers meet the eligibility criteria set out in Section 36.711(b) provided that:

(i) * * *

(ii) If the eligibility criterion in Section 36.711(b)(4) is verified, then the criteria in Section 36.711(b)(1) and (2) shall not apply;

(iii) If the eligibility criterion in Section 36.711(b)(4) is self-certified, then the eligibility criteria in Section 36.711(b)(1) and (2) shall apply and must be verified;

(iv) In all cases, the eligibility criterion in Section 36.711(b)(3) may be self-certified.

(3) Shall file information with the Commission Secretary demonstrating that it is eligibile for the additional interstate expense adjustment.

(b) The additional interstate expense adjustment shall be effective as soon as the Commission certifies that the state or local telephone company is eligible for the additional interstate expense adjustment, the local exchange company files the data required by Section 36.731 with the National Exchange Carrier Association, and the relevant tariff provision become effective.

The AUTHORITY for Part 36 continues to be Sections 4, 201, 202, 203, 205, 218, 221(c), 403, and 410(c) of the Communications Act of 1934 as amended, 47 U.S.C. Sections 154, 201, 202, 203, 205, 218, 221(c), 403, and 410(c).

FOOTNOTES

[1] MTS and WATS Market Structure and Amendment of Part 67 of the Commission's Rules, CC Docket Nos. 78-72 and 80-286, 2 FCC Rcd 2953 (1987) (*Report and Order), reconsideration*, 3 FCC Rcd 4543 (1988).

[2] MTS and WATS Market Structure, Link Up America, and Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, Notice of Proposed Rule Making, 3 FCC Rcd 4534 (1988) (*Notice)*.

[3] The Commission has also adopted the recommendation of this Joint Board and established the Lifeline assistance program. This program helps low income households stay on the public switched network by exempting them from federal subscriber line charges in states which offer matching assistance benefits. MTS and WATS Market Structure and Amendment of Part 67 of the Commission's Rules, CC Docket Nos. 78-72 and 80-286, 51 Fed. Reg. 1371 (Jan. 13, 1986).

[4] MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket Nos. 78-72 and 80-286, Recommended Decision and Order, 52 Fed. Reg. 19,896 (May 18, 1987) (*Recommended Decision); Report and Order, supra*, 2 FCC Rcd at 2956.

[5] *Report and Order, supra*, 2 FCC Rcd at 2955-2956; Section 36.711 (b)(1)-(4) of the Commission's Rules, 47 C.F.R. § 36.711 (b)(1)-(4).

[6] *Notice, supra*, 3 FCC Rcd at 4538 n. 13.

[7] *Id.* at 4535.

[8] *Id.* at 4534.

[9] Letter of Gerald Brock, Chief, Common Carrier Bureau, to John J. Kelliher, Secretary, State of New York Department of Public Service, Nov. 2, 1987; Letter of Gerald Brock, Chief, Common Carrier Bureau, to Charles Jacobs, Administrative Director, State of Maine Public Utilities Commission, Aug. 11, 1987.

[10] The names of the parties who filed comments are listed in Appendix A. A number of the parties filed short comments supporting, without elaboration, the Commission's proposed rules. The Florida Public Service Commission (FPSC) filed its comments, which it titled "Reply Comments" although it had not filed comments, after the deadline for filing comments. In the interest of compiling a complete record, we will accept the FPSC filing. However, we will treat its submission as a comment rather than as a reply.

[11] NYC states that its experience with New York Telephone's Life Line program indicates that the program has been quite successful in providing telephone service to low-income households. However, it asserts that many of the recipients would not have been eligible under the Link Up program. New York Telephone's program was denied participation in the Link Up program for failure to meet the Commission's eligibility requirements. NYC Comments at 5, 9-10.

[12] USTA states that over 42 percent of total ineligible applications in Askansas, Texas, Washington, D.C., and West Virginia (C&P only) were due to the three month rule. USTA Comments at 4.

[13] *Notice, supra*, 3 FCC Rcd at 4535 (1988).

[14] These parties are listed in Appendix B.

[15] The remaining reply, that of US West, does not address Arkansas' proposal.

[16] The Maine Public Utility Commission has enacted one such regulation. The state established an Installation Subsidy Program, which limits the use of the subsidy for restoration of service after disconnection to no more than once per year. Maine Comments at 2. Florida has adopted similar regulations. Florida Telephone Association Comments at 2.

[17] US West and Southwestern Bell contend that the current Link Up rules preclude a person who is transferring service, rather than initiating new service, from receiving Link Up assistance. We do not interpret the Commission's Rules to deny benefits to an applicant for Link Up assistance if the applicant is transferring service.

[18] This recommendation is adopted pursuant to Sections 4(i), 4(j), 201, 202, 203, 221, 403 and 410 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i-j), 201-203, 221, 403, and 410.