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BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF CLERK

In the Matter of)	
)	
Federal-State Joint Board on)	
Universal Service)	CC Docket No. 96-45
)	
Access Charge Reform,)	
Price Cap Performance Review)	
for Local Exchange Carriers,)	CC Docket Nos. 96-262
Transport Rate Structure)	94-1, 91-213, 95-72
and Pricing, End User Common)	
Line Charge)	

PETITION FOR RECONSIDERATION AND CLARIFICATION OF THE
CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

The Cellular Telecommunications Industry Association ("CTIA")¹ respectfully submits these comments in the above mentioned proceeding.² In its Fourth Order on Universal Service, the Commission changed its treatment of resellers' revenues thereby placing additional administrative and

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers, and includes forty-eight of the fifty largest cellular and broadband PCS providers. CTIA represents more broadband PCS carriers and more cellular carriers than any other trade association.

² See In the Matter of Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge, Fourth Order on Reconsideration in CC Docket No. 96-45 and Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, FCC 97-420 (released Dec. 30, 1997) ("Fourth Order").

financial burdens on facilities-based carriers and inadvertently creating a bias that favors resale over facilities-based services. CTIA seeks reconsideration and clarification of these issues.

I. THE COMMISSION SHOULD CLARIFY THE EXTENT OF THE BURDEN THAT HAS BEEN PLACED ON UNDERLYING FACILITIES-BASED CARRIERS

In conjunction with raising the *de minimus* universal service contribution threshold from \$100 to \$10,000, the Commission specifically identified the obligations of resellers that fall under the threshold.³ Resellers that qualify for the *de minimus* exemption must notify the underlying facilities-based carriers that they are exempt from contribution requirements and "must be considered end users for universal service purposes. Thus, underlying carriers should include revenues derived from providing telecommunications to entities qualifying for the *de minimus* exemption."⁴ By requiring the underlying facilities-based carriers to include certain revenues from resellers as end user revenues, the Commission has increased the administrative and financial burden of carriers and potentially forced wireless carriers to violate their obligations to provide service to all of their customers on a nondiscriminatory basis.

The Commission's resale policies require CMRS providers to make their services available for resale on a

³ See Fourth Order at ¶¶ 297-98.

⁴ Id. at ¶ 298.

nondiscriminatory basis,⁵ but do not require resellers to identify themselves or their end user revenues. Because resellers are entitled to obtain service on the same terms and conditions available to other like customers, in some cases resale customers use the same customer agreements that are used by other large CMRS customers. Although the Commission requires resellers that are exempt under the *de minimus* threshold to notify the underlying carriers, it is unclear whether the underlying carriers also have a general obligation to identify such resellers. By requiring the underlying carriers to include reseller revenues that otherwise would not be reported, the Commission forces CMRS carriers to impose administrative processes on its customers that could be deemed discriminatory in nature.

Additionally, the Universal Service Worksheet instructions note that carriers can exclude resale revenues from their calculations only as to entities that "can reasonably be expected to contribute to support universal service."⁶ Many resellers may be unaware of their obligations or, as discussed in more depth below, simply may not comply with these obligations. The Commission should

⁵ See 47 C.F.R. § 20.12, In the Matter of Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, 3 Comm. Reg. (P&F) 895, First Report and Order at ¶ 7 (noting that, in the context of resale, CMRS carriers must also "remain subject to the general proscriptions of unjust or unreasonable practices and unjust or unreasonable discrimination under Sections 201(b) and 202(a) of the Act.") (June 12, 1996).

⁶ Universal Service Worksheet Instructions at 12.

clarify the extent to which CMRS carriers, which typically do not separately identify their resale customers, are obligated to identify those customers and determine whether the reseller may be excluded from revenue calculations.

The burden of identifying those reseller customers that should be excluded from revenue calculations should be placed on the entities with the most accurate and reliable information needed to make that determination -- *i.e.*, the resellers themselves. Correspondingly, if a reseller fails to notify the underlying carrier of its status, the underlying carrier should be allowed to treat all customers similarly. In other words, carriers should be allowed to pass through to any customers that have not identified themselves as exempt resale providers any universal service charge otherwise imposed on other end user customers.⁷

II. THE PUBLIC INTEREST REQUIRES NONDISCRIMINATORY TREATMENT OF RESELLERS

By requiring underlying carriers to include revenues derived from resellers that qualify for the *de minimus* exemption, the Commission has, without justification, categorized resale revenues in a discriminatory manner and

⁷ See contra In the Matter of Federal-State Joint Board on Universal Service (Report to Congress), CC Docket No. 96-45, Comments of the Telecommunications Resellers Association (filed Jan. 26, 1998) ("TRA"). The TRA argues that resale customers will be competitively and financially disadvantaged if "their underlying network service providers treat resale carrier customers like other business customers and impose universal service charges." TRA Comments at 10-11. Absent clear identification of reseller status, however, CMRS carriers often will be unable to distinguish between its resale customers and other high volume users.

inadvertently affected its policies regarding the treatment of resellers. The *de minimus* exemption was designed to relieve smaller carriers of the contribution obligation if compliance costs associated with contributing to universal service would exceed actual contribution amounts.⁸ When the Commission examined the accuracy of the threshold amount, however, it also created an exception from the *de minimus* exemption for resale revenues. In effect, the *de minimus* exemption does not apply to resellers. Moreover, the obligation to account for these revenues is shifted to the underlying facilities-based carrier. The Commission has provided no basis for this aberration.

This unique exception is contrary to the objectives of the exemption itself, since the underlying carrier will incur the same costs that the reseller would have incurred which, according to the Commission's assumptions, would exceed the corresponding contributions. If resale revenues are to be included in the universal service contribution factor, regardless of the *de minimus* exemption, then the resellers themselves should be responsible for making the contribution and the *de minimus* exemption should be eliminated for those carriers altogether. In other words, facilities based carriers should not be burdened with accounting for revenues of other carriers merely due to their status as carrier customers.

⁸ Fourth Order at ¶ 295.

The Commission also promotes resale and the potential of underreporting by resellers by substantially raising the *de minimus* threshold and requiring underlying carriers to account for those revenues. Resellers now have an incentive to neglect their reporting obligations since the universal service contribution will be lower if they allow the underlying carrier to account for their revenues.

Resale is based on a business arrangement such that the underlying carrier sells its service to the resale customer at a wholesale rate. The reseller then resells that service at a higher, retail ("end user") rate. If the underlying carrier is burdened with the total universal service contribution and treats the resale customer's revenues as end user revenues, the universal service contribution that is ultimately passed through to the reseller's customers is based on the wholesale revenues received from the reseller. This contribution will be less than what would amount from calculating a contribution based on the reseller's retail revenues from its end users.⁹ Forcing facilities-based carriers to account for only a portion of the relevant revenues derived from resellers understates the total industry contribution base by the margins added by the

⁹ For example, if a facilities-based carrier charges its resale customers ten cents per minute for interstate service and the contribution rate is 10 percent, then the per minute contribution for these revenues will be one cent per minute. If the reseller sells that service for 15 cents per minute, then it is obtaining a windfall of 0.5 cents per minute by having the underlying carrier account for its universal service revenues.

reseller.¹⁰ As noted by AT&T, if the total industry contribution base is understated, all contributors are harmed because they must each pay a higher amount.¹¹

¹⁰ See In the Matter of the Federal-State Joint Board on Universal Service (Report to Congress), Comments of AT&T at n.11 (filed Jan. 26, 1998).

¹¹ Id. An extension of this reasoning demonstrates the further incentive for resellers to structure business arrangements into multiple, smaller entities that would fall under the *de minimus* threshold and avoid contribution payments. Such actions would be allowed pursuant to the Commission's policy requiring each affiliate or subsidiary that "bills end-user telecommunications revenues" to file a separate Universal Service Worksheet. See "Universal Service Update: Frequently Asked Questions by Wireless Service Providers," Public Notice at 4 (Oct. 6, 1997).

CONCLUSION

For the foregoing reasons, the Commission should clarify the extent to which CMRS carriers are obligated to identify their reseller customers and account for their revenues in their universal service contribution calculations. Additionally, the Commission should reconsider its decision to require underlying facilities-based carriers to account for revenues from resellers that fall under the *de minimus* exception.

Respectfully submitted,

**CELLULAR TELECOMMUNICATIONS
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