

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

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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

**COMMENTS OF AT&T CORP.**

AT&T Corp. ("AT&T"), by its attorneys, hereby submits its comments in response to the Further Notice issued in the above-captioned proceeding.<sup>1/</sup>

**INTRODUCTION AND SUMMARY**

In the Further Notice, the Commission seeks comment on the mechanisms that wireless telecommunications providers could use in allocating their revenues between the interstate and intrastate jurisdictions, the competitive neutrality of its Universal Service rules, and the appropriate amount of local usage that should be included as a component of the "basic service" package for Eligible Telecommunications Carriers ("ETCs").

As AT&T explained in its December 23, 1998 Comments on the Joint Board's Second Recommended Decision, establishing a combined interstate and intrastate revenue base for purposes of reporting revenues for, and assessing contributions to, the high cost and low income funds would eliminate the problem of allocating end-user revenues between the interstate and intrastate jurisdictions. AT&T urges the Commission to adopt this approach and thus avoid the

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<sup>1/</sup> Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, FCC 98-278 (rel. Oct. 26, 1998), 63 Fed. Reg. 68224 (pub. Dec. 10, 1998) ("Memorandum Opinion and Order" or "Further Notice").

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need to jurisdictionally identify wireless revenues. In the alternative, AT&T endorses the adoption of a “safe harbor” percentage of interstate revenues for wireless carriers, provided that such carriers have the ability to demonstrate instead actual revenues in a reasonable, not unduly burdensome fashion.

AT&T also agrees with Western Wireless that requiring new carriers to serve customers in high cost areas for two years before receiving federal support severely undermines their ability and incentive to compete for such customers. The Commission should institute measures promptly to cure this time lag problem and the corresponding competitive inequity it creates.

Finally, AT&T supports the Joint Board’s original recommendation that Universal Service Fund (“USF”) support be available for only primary connections would not only properly limit the size of the USF to politically sustainable levels, it would allow a competitive market to operate efficiently without encumbering the “basic service” package with additional usage or service quality requirements. By contrast, if all lines used by a customer continue to be subject to support, the size of the USF will burgeon, and the Commission will need to impose basic usage parameters, despite the fact that, as the Commission itself recognizes, establishing a minimum usage figure is likely to favor one technology over another and limit the choices that would otherwise benefit consumers.

**I. MECHANISMS FOR SEPARATING INTERSTATE AND INTRASTATE REVENUES ARE UNNECESSARY IF THE JOINT BOARD’S RECOMMENDATION ON COMBINED REVENUES IS ADOPTED.**

AT&T supports the Joint Board’s recommendation that the Commission assess combined intrastate, interstate, and international end-user telecommunications revenues for reporting

revenues and calculating contributions to the high cost and low income components of the USF.<sup>2/</sup> As the Joint Board noted in its Second Recommended Decision, utilizing a combined revenues methodology would allow the Commission to resolve the troublesome issue of separating interstate and intrastate end-user telecommunications revenues for wireless telecommunications providers and simultaneously tap into broader revenue bases for the USF.<sup>3/</sup> This simple approach presents the most efficient solution to the problems inherent in establishing two distinct jurisdictional assessment bases -- without the need for a data-intensive fact-finding process or the imposition of additional regulatory burdens on wireless providers.<sup>4/</sup>

If the Commission nonetheless decides against adopting a combined revenue assessment base, AT&T agrees that the Commission should establish fixed percentages of revenues that wireless providers must report on the Universal Service Worksheet (“Worksheet”) subject to the opportunity for carriers to make alternative showings.<sup>5/</sup> AT&T proposes that the Commission adopt the “safe harbor” percentages of interstate end-user wireless telecommunications revenues set forth in the Memorandum Opinion and Order as permanent fixed reporting percentages.<sup>6/</sup>

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<sup>2/</sup> See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Second Recommended Decision, DA No. 98-2410 at ¶ 63 (rel. November 25, 1998)(“Second Recommended Decision”); Comments of AT&T Corp. at 6-7 (filed December 23, 1998).

<sup>3/</sup> See Second Recommended Decision at ¶ 63.

<sup>4/</sup> Regardless of whether the Commission adopts a combined revenue base or maintains the current jurisdictional assessment base for high cost and low income support, AT&T urges the FCC to impose the same policy upon all service providers, not just wireless providers, to ensure competitive neutrality.

<sup>5/</sup> Further Notice at ¶¶ 18, 25.

<sup>6/</sup> Memorandum Opinion and Order at ¶¶ 10-15. AT&T supports the use of different interim “safe harbor” interstate revenue percentages according to type of wireless provider (15% for cellular, broadband PCS, and digital SMR providers, 12% for paging providers, and 1% for SMR providers).

Although not necessarily accurate in all circumstances, extrapolating from known wireline usage figures is a reasonable accommodation for an industry that operates without regard to state boundaries.<sup>77</sup> In addition, as Comcast points out, such an approach would help eliminate competitive inequities associated with the use of differing allocation assumptions and methodologies.<sup>8/</sup>

Providing carriers with the option to use either a safe harbor percentage or actual revenues is essential to protect the rights of carriers whose customers do not engage in significant interstate calling. Carriers that choose the safe harbor approach, however, should not be required to adjust their reports even if actual data would produce a higher interstate figure and even if they have reported higher percentages in the past. One important purpose of establishing a fixed percentage is to give carriers comfort that their submissions will not be challenged by competitors or Commission staff. This certainty would be undermined if a carrier's safe harbor were open to question after the fact.

For carriers that choose to report actual interstate revenues, the Commission should not impose a "compelling evidence" or other unduly burdensome evidentiary standard. Although there is a need for documentation sufficient to substantiate the reported revenues, extensive

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<sup>77</sup> See Memorandum Opinion and Order at ¶ 13 ("We find that establishing a safe harbor that assumes that wireless carriers receive interstate and intrastate revenues in similar proportions to wireline carriers represents a conservative estimate, and that such a conservative approach is reasonable as an interim safe harbor."); Further Notice at ¶ 25.

<sup>8/</sup> Further Notice at ¶ 18. See also id. at ¶ 42, n.85, citing Federal-State Joint Board on Universal Service, CC Docket 96-45, Report and Order, 12 FCC Rcd 8776, 8801, ¶ 46 (1997) ("Universal Service Order"), as corrected by Errata, CC Docket No. 96-45, FCC 97-157 (rel. June 4, 1997), appeal pending in Texas Office of Public Utility Counsel v. FCC, No. 97-60421 (5<sup>th</sup> Cir. argued on December 1, 1998) (definition of competitive neutrality requires that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one (continued on next page)

verification standards and procedures would create a de facto obligation to use the Commission's fixed percentages. In addition, requiring carriers to obtain advance approval to use a particular figure in a semi-annual USF filing would both disadvantage carriers that do not employ the safe harbor approach and burden Commission and USAC staff. Accordingly, AT&T proposes that the Commission adopt a certification procedure for wireless providers who choose to report actual revenues and require them to maintain adequate information, which would be available to the Commission or USAC upon request, to verify the reported interstate percentage.

**II. TO ENSURE COMPETITIVE NEUTRALITY, THE COMMISSION MUST ELIMINATE THE DELAY BETWEEN PROVISION OF SERVICE AND RECOVERY OF USF SUPPORT.**

As the Western Wireless Petition shows, the Commission must eradicate the competitive disadvantage to new entrants created by the inordinate delay between providing services eligible for universal service support and receiving universal service funding.<sup>9/</sup> Section 54.307(b) of the Commission's rules requires competitive ETCs to submit reports of the number of their lines eligible for support from the USF to the Universal Service Administrative Company ("USAC") by July 31 of each year, based on loop counts from the previous calendar year, in order to receive funding for those lines for the subsequent calendar year. Western Wireless correctly calculates that, under these rules, a competitive local exchange carrier ("CLEC") serving a high cost line beginning in January, 1998 would have to wait until July 31, 1999 to submit its report including that line to the USAC and would not begin receiving support for that line until January, 2000, a

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provider over another, and neither unfairly favor nor disfavor one technology over another).

<sup>9/</sup> See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Public Notice on Western Wireless Corporation Petition for Clarification or Rulemaking, DA 98-2138 (rel. Nov. (continued on next page)

full two years after the CLEC began providing service.<sup>10/</sup> By contrast, Section 36.612 of the Commission's rules allows ILEC ETCs to provide updated information on a regular basis and that information is factored into the computation of high cost support.<sup>11/</sup> Moreover, if a CLEC ETC wins a new customer from the ILEC, the ILEC would continue to receive the universal service support for the two-year delay period. There is no question that this mismatch between service provider and USF recipient violates the Commission's edict that no entity should "receive[] an unfair competitive advantage that may skew the marketplace or inhibit competition by limiting the available quantity of services or restricting the entry of potential service providers."<sup>12/</sup>

To ensure the competitive neutrality of its USF rules, the Commission should adopt Western Wireless's proposal to permit competitive ETCs to submit updated information to USAC to demonstrate their eligibility for high cost support and then receive the appropriate level of funding in a more timely manner.<sup>13/</sup> In addition, the Commission should implement appropriate tracking mechanisms to preclude an ILEC from claiming a supported line won by a CLEC in subsequent data submissions. By these actions, the FCC would significantly enhance the ability of service providers that historically have not provided services eligible for federal

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3, 1998, pet. filed Oct. 15, 1998)("Western Wireless Petition").

<sup>10/</sup> See Western Wireless Petition at 5-7.

<sup>11/</sup> Id. at 5.

<sup>12/</sup> Further Notice at ¶ 42, citing Universal Service Order, 12 FCC Rcd at 8802, ¶ 48.

<sup>13/</sup> See Western Wireless Petition at 7-8.

universal service support to supply eligible services, increase the abysmally low number of CLECs applying for high cost support, and lessen opportunities for ILEC abuse.<sup>14/</sup>

**III. SERVICE QUALITY AND MINIMUM USAGE REQUIREMENTS ARE UNNECESSARY IF USF SUPPORT IS LIMITED TO PRIMARY CONNECTIONS.**

In the Further Notice, the Commission seeks comment on how much, if any, local usage it should require ETCs to provide to customers as part of a “basic service” package to be eligible for universal service support. The Commission should adopt the Joint Board’s original recommendation that USF support for designated services be limited to “primary connections,” and thereby obviate the need to define basic service package and service quality criteria.<sup>15/</sup> Restricting support in this manner would place the customer in the best position to select the service that best suits his or her needs. For example, within a service area requiring high cost support, one customer may determine that traditional ILEC service packages with unlimited local calling is most appropriate for his family’s calling needs. Another customer, however, might favor the mobility and wider local calling scopes offered by wireless carriers and be willing to sacrifice the unlimited landline usage option. By limiting the high cost support to the primary line, each customer decides which service provider is entitled to receive the support on his or her behalf. This permits high cost support to be distributed in a competitively neutral manner without encumbering the supported services with unnecessary restrictions or definitions. As the

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<sup>14/</sup> See Remarks of Cheryl Parrino, CompTel Fall Business Conference, October 7, 1998. As of July 31, 1998, USAC received only two applications from CLECs for USF support for a total of 782 lines.

<sup>15/</sup> Universal Service Order, 12 FCC Rcd at 8829-8830, ¶ 96; Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd 87, 132-134, ¶¶ 89, 91-92 (1996) (“First Recommended Decision”).

Joint Board emphasized in its First Recommended Decision, “competition should ultimately give carriers the incentive to provide quality services by allowing consumers to choose among various telecommunications providers.”<sup>16/</sup> Limiting support to primary connections would also ensure that the USF is no larger than necessary to meet the goals of the 1996 Act.<sup>17/</sup>

In contrast, a decision to support all of a customer’s lines would require the Commission to establish some sort of minimum level of usage as well as service quality standards as a matter of competitive neutrality.<sup>18/</sup> Failure to have such standards would allow different carriers to provide widely disparate service packages, each of which would be subject to the same USF support. Coupled with the availability of USF support for multiple lines, this would greatly expand the size of the USF.

Moreover, establishing the minimum usage level is a daunting task. As the Commission correctly recognizes, “[s]etting an unreasonably high or low level of local usage can significantly affect competition among different technologies.”<sup>19/</sup> It would likely be impossible to establish a local usage requirement that did not advantage one class of carriers and simultaneously preclude the provision of universal service by another class. Accordingly, AT&T urges the Commission to provide support only for primary connections in order to encourage competition and render regulatory intervention unnecessary.

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<sup>16/</sup> First Recommended Decision, 12 FCC Rcd at 140-141, ¶ 106.

<sup>17/</sup> By reigning in the size of the USF, the Commission will also preserve political support for the universal service programs.

<sup>18/</sup> See Further Notice at ¶¶ 46-47, citing Universal Service Order, 12 FCC Rcd at 8814, ¶ 69.

<sup>19/</sup> Further Notice at ¶ 49.

## CONCLUSION

For the reasons set forth above, the Commission should base all federal USF contributions on both intrastate and interstate revenues rather than attempt to determine the proper jurisdictional allocation of wireless revenues. In addition, the Commission should correct the competitive disparity created by its rules on the timing of the distribution of USF funds to CLECs. Finally, the Commission should make USF high cost support available only for primary connections, thereby eliminating the need to establish minimum usage or service quality standards.

Respectfully submitted,

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January 11, 1999

**CERTIFICATE OF SERVICE**

I, Elizabeth A. Dees, hereby certify that on this 11<sup>th</sup> day of January, 1999, I caused copies of the foregoing "Comments of AT&T Corp." to be sent to the following by hand delivery:

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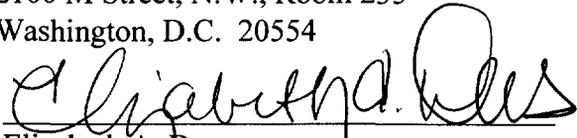
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