

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

In the Matter of)

Federal-State Joint Board)
on Universal Service)

CC Docket No. 96-45

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**COMMENTS OF
THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION**

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The Cellular Telecommunications Industry Association ("CTIA")¹ hereby submits its Comments in the above captioned proceeding.²

I. INTRODUCTION AND SUMMARY

When fashioning universal service requirements, the Commission should continue to adhere to the central principle of competitive neutrality as well as its commitment to market-based solutions wherever possible. With these principles as guides, CTIA strongly encourages adoption of the following universal service requirements and policies:

- The Commission should establish a fixed percentage that wireless carriers may use to allocate a portion of their telecommunications revenues to the interstate jurisdiction

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 manufacturers, including 48 of the 50 largest cellular and broadband personal communications service ("PCS") providers. CTIA represents more broadband PCS carriers and more cellular carriers than any other trade association.

² 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)("Notice").

for universal service contribution purposes. The Commission's own data shows that this percentage should be between five and six percent.

- The Commission should also permit wireless carriers the alternative option of using their own data collection figures for calculating the amount of their federal universal service contributions.
- The Commission should avoid assessing the amount of wireless universal service contributions on a flat-fee basis.
- The Commission should adopt simplifying assumptions that carriers opting out of the fixed percentage option may use when calculating their contribution amounts. As part of this, CTIA supports designation of the MTA, rather than State lines, as the dividing perimeter for interstate and intrastate CMRS traffic.
- CTIA supports the Western Wireless Petition and urges the Commission to eliminate requirements that hinder CMRS carriers from serving as Eligible Telecommunications Carriers.
- The Commission should clarify that States must adhere to the principles of competitive and technological neutrality in implementing their universal service mechanisms.
- Local usage requirements for receipt of universal service support should be kept to a minimum so as not to limit end users' choice of service providers and to avoid discriminating against CMRS providers in universal service support eligibility.

II. THE COMMISSION SHOULD PROVIDE OPTIONS TO CMRS PROVIDERS FOR CALCULATING THEIR INTERSTATE TELECOMMUNICATIONS REVENUE FOR UNIVERSAL SERVICE CONTRIBUTION PURPOSES.

A. Wireless Carriers Should Have The Option Of Using A Commission-Established Fixed Percentage Or Utilizing Their Own Data Collection Figures.

CTIA supports the Commission's tentative conclusion that permanent reliance on good faith estimates of CMRS providers' interstate and intrastate revenues for universal service contribution purposes is not appropriate due to the uncertainties involved.³ Instead, the Commission should establish a fixed percentage of end user wireless telecommunications revenues

³ Notice at ¶ 17.

that a CMRS provider may report as jurisdictionally interstate on its Form 457 Worksheet.⁴

Because PCS and cellular carriers are competitive substitutes, with similar systems and operations, they should be assigned the same percentages.⁵

The fixed percentage established by the Commission should be an option wireless carriers may elect to use, but it should not constitute the sole means permitted by the Commission for calculating wireless interstate telecommunications revenues. Specifically, the Commission should establish a fixed percentage to calculate a wireless carrier's interstate portion of its telecommunications revenues. However, as the Commission suggests, wireless carriers also should be given the option of using their own data collection procedures for calculating their interstate telecommunications revenues.⁶

CTIA supports the Commission's proposal to permit wireless carriers the option of using traffic studies to determine their percentage of interstate telecommunications revenues as an alternative to the Commission-established fixed percentage.⁷ Wireless carriers should be free to decide whether it would be possible and cost-effective to perform traffic studies and extrapolate from them the percentage of telecommunications revenues that should be attributed to the interstate jurisdiction. If after conducting their own studies, wireless carriers determine that their

⁴ See id. at ¶ 18.

⁵ Digital SMR providers should be assigned the same percentages as PCS and cellular carriers because digital SMR providers compete with PCS and cellular carriers, and because they utilize similar systems and operations. See id. at ¶ 13, n.23. References made herein to PCS and cellular operators shall include digital SMR providers, consistent with the proposal contained in the Notice.

⁶ Id. at ¶ 25.

⁷ Id. at ¶ 23.

interstate telecommunications revenues vary significantly from the fixed percentage, they can use their traffic studies as a basis for utilizing another percentage on their Worksheets.

By allowing carriers to use their own data collection procedures, the Commission will encourage carriers to derive accurate estimates of their interstate revenues.⁸ As CTIA has stated previously, the distortionary effects that universal service contributions have on a competitive market such as CMRS demand that the fund be kept to minimal levels to achieve the congressionally stated objectives. By allowing carriers to calculate more accurate usage patterns, they can minimize the uneconomic impact that this contribution will have on the pricing and usage of competitive wireless services.

The Notice reveals many of the problems that would accompany mandatory use of Commission-established fixed percentages. For example, wireless carriers operating in the Northeast may have much a much greater percentage of interstate telecommunications revenues than their counterparts in Western states. Even within a single market, wireless carriers may have different interstate usage due to different service "footprints." Moreover, the calling plans marketed by individual carriers can influence substantially subscriber calling patterns. For example, pricing plans that do not distinguish between intrastate and interstate calling may encourage more of the latter. This, too, could affect the percentage of telecommunications revenues that would qualify as interstate. By extending carriers the option of using the Commission-established fixed percentage or using their own data collection methods, the Commission would allow carriers to mitigate any unfairness that may be imposed by a one-size-

⁸ See id. at ¶ 25.

fits-all approach while recognizing the technical obstacles to accurate calculations of interstate revenues.

The Commission should not vary the fixed percentage on a market-by-market basis. The Commission is correct to recognize that the service areas of some CMRS providers are smaller than others, resulting in different levels of interstate traffic.⁹ Although a carrier's service area is one factor contributing to the level of interstate telecommunications revenues, it is by no means the only factor. Carriers with identical service areas may nevertheless have widely variant traffic patterns. Allowance for variances of all origins should be permitted. In short, the Commission should permit carriers to decide whether their service area justifies a different allocation of telecommunications revenues to the interstate jurisdiction.¹⁰ This is similar to the approach adopted by the Commission in defining Cellular Geographic Service Areas ("CGSAs").¹¹

It may be difficult to accomplish the performance of joint traffic studies by wireless carriers and these joint studies may not be easily used by other carriers. As mentioned above, wireless carriers have different traffic patterns based on marketing efforts (e.g., carriers offering "one rate" service plans may encourage more interstate calling). Consequently, the individualized

⁹ Id. at ¶ 24.

¹⁰ A carrier should not be required to seek a waiver if it elects to use its own data. If a carrier opts out of the fixed percentage established by the Commission, this decision will be apparent on the carrier's Worksheet. Moreover, the Commission retains the authority to investigate any questionable or unclear carrier calculations. Upon request, carriers can describe to the Commission their data collection procedures and the calculus utilized to arrive at the percentages reflected in their Worksheets. Because the Worksheets are submitted semi-annually, the Commission should not require carriers to retain data for a period longer than 18 months.

¹¹ See 47 C.F.R. § 22.911(b)(permitting cellular providers to adopt alternative methods of determining the size of their CGSAs).

nature of a carrier's traffic patterns renders joint efforts highly imperfect. In addition, wireless carriers are reluctant to share traffic information with their rivals for obvious competitive reasons.

B. The Commission Should Establish A Fixed Interstate Percentage Between Five And Six Percent.

The Notice seeks comment on the appropriateness of using wireline traffic data (submitted for purposes of the DEM weighting program) to approximate the portion of wireless traffic attributable to the interstate jurisdiction.¹² Recent wireless figures demonstrate that the use of wireline interstate traffic percentages reported for the DEM weighting program offer a poor proxy for wireless interstate traffic percentages. Indeed, the 15 percent figure suggested in the Notice¹³ substantially overstates the percentage of CMRS traffic appropriately assigned to the interstate jurisdiction.

The Commission acknowledges that the 15 percent figure may not be the most accurate estimate available.¹⁴ In fact, the Industry Analysis Division of the Common Carrier Bureau regularly publishes data that demonstrates that wireless interstate usage varies significantly from wireline usage. The Universal Service Worksheets already submitted report that approximately six percent of wireless traffic was categorized as interstate in 1997¹⁵ while the TRS worksheets show that 5.3 percent of wireless traffic was reported as interstate in 1996 (representing a decline

¹² Notice at ¶ 20.

¹³ Id.

¹⁴ Id. ("We are not aware of evidence that cellular and broadband PCS providers experience substantially more or less interstate traffic than wireline providers.").

¹⁵ See Monitoring Report, CC Docket No. 98-202, Prepared by Federal and State Staff for the Federal-State Joint Board in CC Docket No. 96-45, at T.1.5, line numbers 39, 40 (December 1998).

from 6.2 percent in 1992).¹⁶ Consequently, the cellular and PCS interstate fixed percentage is more appropriately established between 5 and 6 percent.

Finally, whether a wireless carrier utilizes the fixed percentage established by the Commission or its own traffic studies, it should be permitted to separate its non-telecommunications revenue (i.e., voice mail, call waiting, etc.) from its telecommunications revenue prior to applying the appropriate percentages, even if the non-telecommunications offerings are bundled with the telecommunications offerings. This is consistent with the Commission's findings that only telecommunications revenue qualifies as the basis for calculating a carrier's universal service contribution.¹⁷

C. A Flat Fee Would Not Account For Developments In The Wireless Consumer Market.

The Commission should not assess a flat fee per voice grade access line (or voice grade equivalent) in lieu of assessing universal service contributions as a percentage of telecommunications revenues.¹⁸ At first glance, a flat fee approach is attractive for its administrative simplicity. However, the flat fee approach would not reflect the prepaid service offerings provided by many wireless carriers and, indeed, would involve its own administrative complexities.

¹⁶ See FCC Industry Analysis Div., *Trends in Telephone Service*, Table 18.1 (July 1998). Like the figures used in the Universal Service and TRS Worksheets, the interstate minutes of use factored into the DEM weighting program are based on estimates. Consequently, neither approach boasts a superior calculus.

¹⁷ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report and Order*, 12 FCC Rcd 8776 at ¶¶ 843-44 (1997)("Universal Service Order").

¹⁸ See Notice at ¶ 26.

Many subscribers pre-pay a certain amount for wireless services and then utilize those services over a period of time, which is determined not by contract, but rather by the customer's usage. While some subscribers may use all of their pre-paid services within one month (or even days), others may stretch out their usage over many months. Since the time interval for a prepaid customer's service is unknown in advance, attempting to assess a "monthly" flat rate charge in prepaid scenarios for any one period of time would largely eliminate the administrative efficiency advantage of a flat fee approach. The Commission should avoid a flat fee approach for CMRS.

III. THE COMMISSION SHOULD ADOPT SIMPLIFYING ASSUMPTIONS FOR USE BY CMRS PROVIDERS IN COMPLETING THEIR WORKSHEETS.

CTIA supports the use of simplifying assumptions for carriers that choose to not adopt the Commission's fixed percentage.¹⁹ Recalling basic principles, the difficulty in defining the jurisdictional nature of CMRS traffic is due to the fact that "many wireless telecommunications providers operate without regard to state boundaries"²⁰ (partially a function of the federally designated license territories of CMRS providers) and the laws of physics that permit radio waves to ignore these geopolitical lines. As part of its effort to craft simplifying assumptions for universal service purposes, the Commission should recognize expressly that traditional notions of "intrastate" and "interstate" demand clarification in the context of CMRS traffic. CTIA supports designation of the Major Trading Area ("MTA"), rather than State lines, as the dividing perimeter for interstate and intrastate traffic of cellular and PCS carriers.²¹

¹⁹ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Petition for Reconsideration and Clarification of the Cellular Telecommunications Industry Association* at 19 (filed July 17, 1997).

²⁰ Notice at ¶ 32.

²¹ See id.

The Commission recognized its "exclusive authority to define the authorized license areas of wireless carriers" when it defined "the local service areas for calls to or from a CMRS network for the purposes of applying reciprocal compensation obligations under Section 251(b)(5)."²² The Commission concluded that

because wireless licensed territories are federally authorized, and vary in size, . . . the largest FCC-authorized wireless license territory (i.e., MTA) serves as the most appropriate definition for local service area for CMRS traffic for purposes of reciprocal compensation under section 251(b)(5) as it avoids creating artificial distinctions between CMRS providers.²³

This same rationale should be applied in the context of determining a CMRS provider's federal universal service obligations. Traffic that originates and terminates within an MTA should be classified as intrastate and all other calls should be classified as interstate for purposes of the universal service Worksheet.

CTIA also supports the Commission's additional proposal to consider the originating point of a call to be the location of the antenna that first receives the call,²⁴ and to consider the terminating point of a call to be the State that corresponds to the area code to which the call was placed.²⁵ As the Notice recognizes, the Commission's proposal for identifying the originating

²² Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, *First Report and Order*, 11 FCC Rcd 15499 at ¶ 1036 (1996)("Local Competition Order").

²³ Id.

²⁴ Notice at ¶ 29.

²⁵ Id. at ¶ 31.

point of a call is consistent with its reciprocal compensation decision in the Local Competition Order.²⁶

CTIA supports the AirTouch proposal for simplifying the allocation of a portion of roaming traffic to the interstate jurisdiction for universal service purposes. Just as CTIA noted above with respect to the jurisdictional allocation of wireless telecommunications revenues overall, establishing a fixed percentage of roaming revenues to be allocated to the interstate jurisdiction will provide certainty and administrative simplicity for carriers and the Commission alike. Given the absence of any evidence that roaming traffic has different jurisdictional characteristics than "home" traffic, the Commission should permit carriers to use the same percentage, i.e., five to six percent, to simplify the jurisdictional allocation of roaming revenues. Moreover, CTIA agrees with AirTouch that this approach will avoid unnecessary costs by eliminating the need for extensive information exchanges between carriers.

IV. COMPETITIVE NEUTRALITY MUST REMAIN A GUIDING PRINCIPLE OF UNIVERSAL SERVICE RULES.

CTIA strongly supports the Commission's adoption of competitive neutrality as a principle upon which to base its universal service policies.²⁷ CMRS providers must be permitted to participate fully and equally in achieving the Commission's universal service goals. The Commission interpreted the competitive neutrality principle to require that providers using all technologies, including wireless, may qualify as eligible carriers under Section 214(e).²⁸ ETC and

²⁶ Local Competition Order at ¶ 1044 ("For administrative convenience, the location of the initial cell site when a call begins shall be used as the determinant of the geographic location of the mobile customer.").

²⁷ Universal Service Order at ¶ 48.

²⁸ Id. at ¶¶ 145-147.

universal service policies that favor ILECs undermine this guiding principle. The Commission should avoid creating burdens that hinder the ability of competitive carriers to serve as Eligible Telecommunications Carriers ("ETCs").

To this end, CTIA supports the Western Wireless Petition for Clarification or Rulemaking.²⁹ The Western Wireless Petition notes that competitive ETCs "may have to wait as long as two years before receiving any universal service support."³⁰ Moreover, it goes on to explain that "unlike the ILECs, competitive ETCs apparently have no opportunity to provide updated [working loops] information."³¹ Competitive wireless ETCs, like ILECs, must be authorized to submit updated information on a rolling basis, or each calendar quarter, as the basis for calculating the number of consumers served within a universal service study area. Moreover, wireless ETCs must be able to enter the universal service high-cost support funding system at frequent intervals, at least quarterly, and must be able to receive support payments based on their current number of customers, or a recent count of the same.

Finally, the Commission must ensure that States' implementation of universal service rules do not discriminate against wireless carriers. In the Universal Service Order, the Commission stated that

it is reasonable to conclude that Section 254 grants the Commission the primary responsibility and authority to ensure that universal

²⁹ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Western Wireless Corporation Petition for Clarification or Rulemaking* (filed Oct. 15, 1998)("Western Wireless Petition").

³⁰ Id. at 6.

³¹ Id.

service mechanisms are "specific, predictable, and sufficient" [to fulfill the statutory requirements].³²

The Commission should clarify that States must adhere to the principles of competitive and, derivatively, technological neutrality in implementing their universal service mechanisms.

Specifically, the Commission should ensure that States do not render wireless ETC qualifications more burdensome than wireline ETC qualifications. For example, by basing ETC requirements on a wireline model, States will bias the process against wireless participation in universal service efforts. Moreover, States must not be permitted to use requirements for ETC qualification in a manner that amounts to regulation of CMRS rates in contravention of Section 332(c)(3).³³

V. TO ENSURE WIRELESS PARTICIPATION IN ACCOMPLISHING UNIVERSAL SERVICE OBJECTIVES, LOCAL USAGE REQUIREMENTS MUST BE MINIMIZED.

The Notice seeks comment on how much, if any, local usage ETCs must provide customers as part of a basic service package in order to be eligible for universal service support.³⁴

The correct resolution of this issue is critical to the ability of CMRS carriers to participate as universal service providers. The Commission correctly notes that

[d]ifferent technologies have different cost and rate structures and . . . wireline and wireless carriers will be affected differently by the level of flat-rated local usage that a carrier must provide in order to be eligible to receive universal service support.³⁵

³² Universal Service Order at ¶ 816 (citation omitted).

³³ 47 U.S.C. § 332(c)(3).

³⁴ Notice at ¶ 46.

³⁵ Id. at ¶ 47.

For this reason, the Commission's efforts to adopt a local usage requirement must not be based on the wireline model of unlimited local usage. As the Commission has recognized, wireless carriers have lower access costs but higher variable, or usage-based, costs than the typical wireline company.³⁶ An inordinately high local usage figure would distort competitive alternatives by eliminating more traffic-sensitive service providers in favor of wireline carriers. Unlimited local usage -- or other excessive amounts -- would thereby serve as a barrier to the use of spectrum-based technologies in universal service programs -- a result in tension with the principle of competitive and technological neutrality. Consequently, to realize the Commission's intention of CMRS participation in universal service, the Commission should limit any local usage requirements.

Moreover, the Commission should be very reluctant to design carrier pricing and marketing practices. By narrowing what carriers can offer, excessive local usage requirements limit creative marketing practices and ultimately reduce consumer choice. Indeed, if a wireless carrier's basic service package is unable to compete with that of a wireline carrier for a universal service customer, then absent countervailing cost and feature benefits, the market (rather than Commission policy) would favor the wireline structure. Still, the Commission should not impose the type of basic service package to which all universal service customers must subscribe. It is entirely foreseeable that universal service customers, like more than sixty-five million CMRS customers, will put a great value on the mobility associated with CMRS service. The Commission's primary objective must be to provide consumers with access to telecommunications

³⁶ Federal-State Joint Board on Universal Service; Forward Looking Mechanism for High Cost Support for Non-Rural LECs, CC Docket Nos. 95-45, 97-160, *Further Notice of Proposed Rulemaking*, 12 FCC Rcd 18514 at ¶ 177 (1997).

services. Ultimately, consumers in rural and high cost areas should have the same option to utilize wireless mobile services. Put simply, the Commission should allow the market to serve the cost and feature preferences of all consumers.

The adoption of a local usage requirement is a legitimate and reasonable means to achieve the Commission's and Congress' social objectives for universal service. Nevertheless, the Commission must not permit a local usage requirement to be used as a means of circumventing the principle of competitive neutrality by disqualifying one technology with higher variable costs and the benefits of mobility in favor of another technology characterized by high fixed costs and the lack of mobility.

VI. CONCLUSION

For the foregoing reasons, CTIA respectfully requests that the Commission adopt universal service policies for wireless carriers consistent with the proposals presented herein.

Respectfully submitted,

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