

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the matter of:

FEDERAL-STATE JOINT BOARD
ON UNIVERSAL SERVICE

FCC Docket No.: 98-278

CC Docket No.: 96-45

**REPLY COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES
COMMISSION AND THE PEOPLE OF THE STATE OF CALIFORNIA
ON FURTHER NOTICE OF PROPOSED RULEMAKING**

I. INTRODUCTION AND SUMMARY

The People of the State of California and the Public Utilities Commission of the State of California (“California”) hereby submit these reply comments on the Further Notice of Proposed Rulemaking (FNPRM) in the above-captioned proceeding. The FCC Order accompanying this FNPRM sets interim guidelines for separating interstate and intrastate revenues pending the adoption of final rules.¹ The basic approach of creating a “safe harbor” percentage of interstate revenues, combined with the FCC’s willingness to inquire into individual carrier’s methods for calculating interstate revenues, is not objectionable and we concur with those parties which so stated in their comments. However, California trusts that the interim safe harbor allocation system applies only to the federal universal service program, free of implications for the funding of state universal service programs.

¹ The interim safe harbor interstate revenue benchmarks are 15% for cellular and PCS carriers, 12% for paging service providers, and 1% for analog specialized mobile radio carriers.

In comments submitted on January 11, 1999, some parties support the permanent adoption of the 15% interstate revenue allocator for wireless providers (Omnipoint Communications, Inc.).² California does not object to the use of “safe harbor” percentages. In addition, California does not subscribe to the view that states may not adopt a different state/interstate revenue allocation formula for these providers (Sprint PCS).

On the issue of the FCC using a funding base that combines both interstate and intrastate revenues, we differ with those parties, such as AT&T, that urge the FCC to use this methodological approach in determining interstate contributions to federal high-cost and low-income support mechanisms.

II. Interim “Safe Harbor” Benchmarks Are Not Objectionable.

The guidelines set forth in the FCC Order are an interim measure pending the adoption of final FCC rules. California agrees with the FCC’s basic approach of creating “safe harbor” percentages as approximations of interstate revenues, so long as wireless service providers are provided an opportunity to report an amount below the safe harbor percentage if they can demonstrate that such amount is justified. California concurs that the FCC should base this allocation on the best available information on the record in this proceeding. (SBC Comments at 3.) California is most concerned that this allocation system apply only to the federal universal service program and have no implications for the funding of state universal service programs. Consequently, California is concerned with the comments of Sprint PCS which suggest the need for a national Percentage of Interstate Usage (PIU) factor that would preempt states. (Sprint PCS Comments at 6-7.)

² Hereinafter, all references to other parties apply to their comments filed in this docket.

California has funded its universal service programs through an all end user surcharge on intrastate billings since January 1995. Telecommunications carriers, including wireless service providers, have applied the surcharges to end user bills since then. California's surcharge does not rely on allocation factors but on reported billings. Therefore, California sees no need to mandate a nationwide factor in a manner that would preempt this arrangement. California believes nothing in the FCC's proposal should affect that arrangement, which has effectively supported California's Deaf and Disabled Telecommunications Program, Universal Lifeline Telecommunications Service, and California High Cost Funds A and B.

III. The FCC Should Not Adopt a Combined Revenue Funding Base From Which to Determine Interstate Wireless Contributions to the Federal High-Cost & Low-Income Fund.

Some commenters urge the FCC to include intrastate revenues in the revenue base on which contributions to federal high-cost and low-income mechanisms are assessed (GTE & AT&T). California takes a different position, as most recently articulated in comments filed in response to the Joint Board's Second Recommended Decision.³ We believe that the jurisdictional lines drawn by Section 152(b) are respected in the Telecommunications Act of 1996. Specifically, Sections 254(d) & (f), respectively, require that "every telecommunications carrier that provides *interstate* telecommunications services shall contribute" to federal universal service, and "[e]very telecommunications carrier that provides *intrastate* telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State" to state universal service mechanisms (emphasis added). At the very least, there is

³ See Comments by California on Joint Board Second Recommended Decision in the *Matter of Federal-State Joint*

legal uncertainty about whether the FCC may lawfully assess the revenues of intrastate services of a carrier in calculating a federal charge paid by the carrier to support universal service. In addition, we are concerned that FCC assessment of intrastate revenues for calculating the federal universal service charge could contribute to competitive inequities. California therefore believes that the FCC should decline to assess intrastate revenues.

IV. CONCLUSION

California does not object to the FCC permitting the use of interim safe-harbor benchmarks as a temporary measure, pending adoption of final rules.

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Board on Universal Service (CC Docket 96-45, DA 98-2410), pp. 7-11, December 23, 1998.

Finally, we ask the FCC not to assess intrastate revenues in order to calculate contributions to the interstate portion of the high-cost and low-income fund.

Respectfully submitted,

PETER ARTH, JR.
LIONEL B. WILSON
MARY MACK ADU

By: /s/ MARY MACK ADU

MARY MACK ADU

505 Van Ness Ave.
San Francisco, CA 94102
Phone: (415) 703-1952
Fax: (415) 703-4432

Attorneys for the
Public Utilities Commission
State Of California

January 26, 1999

CERTIFICATE OF SERVICE

I, Mary Mack Adu, hereby certify that I have this day served a true and correct copy of the foregoing document entitled **REPLY COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION AND THE PEOPLE OF THE STATE OF CALIFORNIA ON FURTHER NOTICE OF PROPOSED RULEMAKING** upon all known parties of record in this proceeding by mailing by first-class a copy thereof properly addressed to each party.

Dated at San Francisco, California this 26th day of January, 1999.

/s/ MARY MACK ADU

MARY MACK ADU