

PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION

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Proposed Fourth Quarter 1999 Universal Service Contribution Factors CC Docket No. 96-45

In this Public Notice, the Common Carrier Bureau announces proposed universal service contribution factors for the fourth quarter of 1999.¹

Fifth Circuit Opinion Concerning the Universal Service Support Mechanisms

On July 30, 1999, a three-judge panel of the United States Court of Appeals for the Fifth Circuit (Fifth Circuit) issued an opinion in *Texas Office of Public Utility Counsel v. FCC*.² In that opinion, the Fifth Circuit affirmed in part, reversed in part, and remanded in part the Commission's universal service *First Report and Order*.³ Among other things, the Fifth Circuit ruled on three issues regarding the assessment and recovery of universal service contributions. Specifically, the Fifth Circuit: (1) reversed the Commission's decision to assess contributions based on the intrastate revenues of universal service contributors;⁴ (2) reversed and remanded for further consideration the Commission's decision to assess contributions based on the international revenues of contributors having interstate revenues;⁵ and (3) reversed the Commission's decision to "require" incumbent local exchange carriers to recover universal service contributions through their interstate access charges.⁶

Commission Response to the Fifth Circuit Opinion

On September 9, 1999, the Commission filed a motion for stay of the Fifth Circuit's mandate in *Texas Office of Public Utility Counsel v. FCC*, which was set to become effective on September 20, 1999.⁷ In the motion for stay, the Commission stated that it intends to file a petition for rehearing of the July 30, 1999 opinion.⁸ The Commission requested that, if the Fifth Circuit denies the Commission's petition for rehearing or otherwise takes action that would require the Commission to alter its contribution

¹ See 47 C.F.R. § 54.709(a).

² *Texas Office of Public Utility Counsel v. FCC*, No. 97-60421, slip op. (5th Cir., July 30, 1999).

³ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Erratum, FCC 97-157 (rel. June 4, 1997), *aff'd in part, rev'd in part, remanded in part sub nom Texas Office of Public Utility Counsel v. FCC*, No. 97-60421 (5th Cir., July 30, 1999) (*First Report and Order*).

⁴ *Texas Office of Public Utility Counsel v. FCC*, 97-60421, slip op. at 105-09.

⁵ *Texas Office of Public Utility Counsel v. FCC*, 97-60421, slip op. at 72-76.

⁶ *Texas Office of Public Utility Counsel v. FCC*, 97-60421, slip op. at 50-52.

⁷ Commission's Motion for a Stay of the Mandate (filed Sept. 9, 1999) (Motion for Stay).

⁸ Motion for Stay at 1.

and recovery rules, then the Fifth Circuit stay such a mandate until the start of the following quarter so as not to disrupt universal service collection and disbursement functions during a quarter.⁹

Pursuant to Federal Rule of Appellate Procedure 41(d)(1), the filing of a motion for stay, or a petition for rehearing, stays the mandate until disposition of the motion or petition, unless the court orders otherwise.¹⁰ Thus, the Commission's motion for stay has, by operation of Rule 41(d)(1), stayed the Fifth Circuit's mandate pending further action from the Fifth Circuit. Accordingly, the Commission's existing rules regarding contributions to the universal service support mechanisms remain valid and in effect, and the contribution factors for the fourth quarter of 1999 shall be calculated based on those rules. Carriers that fail to contribute to the universal service support mechanisms in accordance with the Commission's rules will be subject to enforcement action by the Commission.¹¹

USAC Projections of Demand, Administrative Expenses, and Industry Revenues

Pursuant to section 54.709(a)(3) of the Commission's rules, the Universal Service Administrative Company (USAC) submitted the following projections of fourth quarter 1999 demand and administrative expenses:¹²

(\$ millions)

Program	Projected Program Support	Administrative Expenses	Application of Balance From Prior Period	Application of Interest Income	Application of Periodic True-Ups	Total Program Collection
Schools and Libraries	555.433	7.067	(0.000)	(2.700)	(10.700)	549.100
Rural Health Care	2.561	0.770	(1.275)	(0.002)	0.066	2.120
Subtotal	557.994	7.837	(1.275)	(2.702)	(10.634)	551.220
High Cost	432.227	1.414	(0.000)	(0.600)	0.701	433.742
Low Income	122.343	0.496	(0.000)	(0.800)	(9.363)	112.676
Subtotal	554.570	1.910	(0.000)	(1.400)	(8.662)	546.418
TOTAL	1112.564	9.747	(1.275)	(4.102)	(19.296)	1097.638

USAC also submitted estimated end-user telecommunications revenues for July through December 1998 based on information contained in the March 1999 Universal Service Worksheets, FCC

⁹ Motion for Stay at 2. In the event that the upcoming quarter begins less than 60 days after the Fifth Circuit's mandate, the Commission asked the Fifth Circuit to stay its mandate until the first day of the quarter subsequent to the quarter following its mandate. Motion for Stay at 2.

¹⁰ Fed. R. App. P. 41(d)(1).

¹¹ 47 C.F.R. § 54.713. See also 47 C.F.R. § 54.709(d).

¹² Federal Universal Service Programs Fund Size Projections & Contribution Base For the Fourth Quarter 1999 (filed Aug. 3, 1999).

Form 457.¹³ The amounts are as follows:

- A. Total Intrastate, Interstate, and International End-User Telecommunications Revenues from July 1, 1998 - December 31, 1998: \$101.214 billion
- B. Total Interstate and International End-User Telecommunications Revenues from July 1, 1998 - December 31, 1998: \$38.204 billion

Contribution Bases

To determine the quarterly contribution bases, we first estimate quarterly revenues by dividing USAC's six-month revenue estimates by two. Then, we decrease the revenue estimates by one percent to account for uncollectible contributions.¹⁴ Accordingly, the contribution bases for the fourth quarter of 1999 are as follows:

- A. Contribution Base for Schools & Libraries and Rural Health Care:
 $(\text{Intrastate, Interstate, and International} / 2) - \text{Uncollectibles} = \text{Contribution Base}$
 $(\$101.214 \text{ billion} / 2) - 1\% = \50.101 billion
- B. Contribution Base for High-Cost and Low-Income:
 $(\text{Interstate and International} / 2) - \text{Uncollectibles} = \text{Contribution Base}$
 $(\$38.204 \text{ billion} / 2) - 1\% = \18.911 billion

Proposed Contribution Factors

Using the preceding contribution bases, and the program collection requirements from the chart above, the proposed contribution factors for the fourth quarter of 1999 are as follows:

- A. **Contribution Factor for Schools & Libraries and Rural Health Care:**
 $\text{Total Program Collections} / \text{Contribution Base} = \text{Contribution Factor}$
 $\$0.551 \text{ billion} / \$50.101 \text{ billion} = \mathbf{0.01100}$
- B. **Contribution Factor for High-Cost and Low-Income:**
 $\text{Total Program Collections} / \text{Contribution Base} = \text{Contribution Factor}$
 $\$0.546 \text{ billion} / \$18.911 \text{ billion} = \mathbf{0.02887}$

¹³ Federal Universal Service Programs Fund Size Projections & Contribution Base For the Fourth Quarter 1999 at 24-25. Funding bases for the third and fourth quarters of 1999 are determined by subtracting the revenues reported for January through June 1998 (on the September 1998 Worksheet) from the revenues reported for January through December 1998 (on the March 1999 Worksheet).

¹⁴ See Federal Universal Service Programs Fund Size Projections & Contribution Base For the Fourth Quarter 1999 at 25.

If the Commission takes no action regarding the proposed factors within the 14-day period following release of this Public Notice, the proposed factors shall be deemed approved by the Commission.¹⁵ USAC shall then use the factors to calculate universal service contributions for the fourth quarter of 1999.

For further information, contact Jack Zinman, Accounting Policy Division, Common Carrier Bureau, at (202) 418-7400.

¹⁵ See 47 U.S.C. § 54.709(a)(3).

**DISSENTING STATEMENT OF
COMMISSIONER HAROLD FURCHTGOTT-ROTH**

Re: Proposed Fourth Quarter 1999 Universal Service Contribution Factors; (CC Docket No. 96-45).

Today, the Common Carrier Bureau releases a Public Notice announcing the proposed universal service contribution factors for the fourth quarter of 1999 that will automatically go into effect if the Federal Communications Commission takes no action within 14 days. For the reasons described below, I object to the proposed contribution levels.

As an initial matter, I note that the factors proposed today are based on illegal Commission rules requiring carriers to make contributions based on *intrastate* revenues. As I have long maintained, the Communications Act does not permit the Commission to assess contributions for universal service support mechanisms based on intrastate revenues. Rather, the Act makes clear that the power to collect charges based on such revenues rests within the exclusive province of the States. The United States Court of Appeals for the Fifth Circuit recently reached precisely the same conclusion.

In addition, as I have described on several occasions, I believe the size and scope of the current schools and libraries program is far in excess of what was envisioned by Congress.¹⁶ I object to the burden this increased program places on telecommunications ratepayers. The schools and libraries program, which now exceeds the high cost program by more than \$120 million per quarter, is far in excess of what was envisioned by Congress. This is not what Congress meant by universal service, nor what the law requires. I object to the relative size of the schools and libraries program and to the Commission's increase of only one aspect of universal service, while at the same time delaying higher priorities.

¹⁶ See Testimony of Commissioner Harold Furchtgott-Roth Regarding Universal Service before the Ways and Means Committee of the House of Representatives. See also, Dissenting Statement of Commissioner Harold Furchtgott-Roth Regarding Federal State Joint Board on Universal Service, CC Docket 96-45, *Third Order on Reconsideration*, 12 FCC Rcd 22801 (1997); Statement of Commissioner Harold Furchtgott-Roth Regarding the Second Quarter 1998 Universal Service Contribution Factors, rel. March 20, 1998; Dissenting Statement of Commissioner Harold Furchtgott-Roth Regarding the Federal-State Joint Board Report to Congress, rel. April 10, 1998; Dissenting Statement of Commissioner Harold Furchtgott-Roth Regarding the Report to Congress in Response to Senate Bill 1768 and Conference Report on H.R. 3579, rel. May 8, 1998; Statement of Commissioner Harold Furchtgott-Roth Regarding the Common Carrier Bureau's Proposed Revisions of 1998 Collection Amounts For Schools and Libraries and Rural Health Care Universal Service Support Mechanisms, rel. May 13, 1998; Statement of Commissioner Harold Furchtgott-Roth Regarding the Common Carrier Bureau's Clarification of "Services" Eligible for Discounts to Schools and Libraries, rel. June 11, 1998; Statement of Commissioner Harold Furchtgott-Roth Regarding the Common Carrier Bureau's Third Quarter 1998 Universal Service Contribution Factors, rel. June 12, 1998.

Moreover, I continue to object to the excessive administrative expenses of the schools and libraries program. Under today's Notice, the administrative expenses of the schools and libraries program will exceed \$7 million for the fourth quarter alone. These administrative expenses are considerably higher than the administrative expenses of all of the other universal service programs combined. I cannot endorse the disparity -- and certainly not one of this magnitude -- between the administrative expenses of the schools and libraries program and those of the other universal service programs.

Indeed, section 2005(b)(2)(A) of Senate Bill 1768, which prompted several universal service corporate structural revisions, provides for an extremely limited administrative entity:

[T]he entity proposed by the Commission to administer the programs -- (i) is limited to implementation of the FCC rules for applications for discounts and processing the applications necessary to determine eligibility for discounts under section 254(h) of the Communications Act of 1934 (47 U.S.C. 254(h)) as determined by the Commission; (ii) may not administer the program in any manner that requires that entity to interpret the intent of Congress in establishing the programs or interpret any rule promulgated by the Commission in carrying out the programs, without appropriate consultation and guidance from the Commission.

In light of this more limited administrative function, I fail to see the need for such excessive administrative expenses. I cannot help but wonder whether the overly bureaucratic structure adopted by the Commission, with its formal divisions and multiple committees overseeing them, has contributed in some way to these expenses.¹⁷

Conclusion

I reiterate my desire to reconsider some of our conclusions related to the implementation of this program. At the very least, however, we must become more involved in the oversight of this program and the burden its administrative expenses are placing on the telecommunications ratepayers.

¹⁷ Dissenting Statement of Commissioner Harold Furchtgott-Roth Regarding Changes to the Board of Directors of the National Exchange Carrier Association, Inc; Federal-State Joint Board on Universal Service; (CC Docket Nos 97-21, 96-45), rel. November 19, 1998.