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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 Universal Service	)	CC Docket No. 96-45
	)	
1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated With Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms	)	CC Docket No. 98-171
	)	
Telecommunications Services for Individuals with Hearing and Speech Disabilities and the Americans with Disabilities Act of 1990	)	CC Docket No. 90-571
	)	
Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size	)	CC Docket No. 92-237 NSD File No. L-00-72
	)	
Numbering Resource Optimization	)	CC Docket No. 99-200
	)	
Telephone Number Portability	)	CC Docket No. 95-116

COMMENTS OF THE

TEXAS OFFICE OF PUBLIC UTILITY COUNSEL

CONSUMER FEDERATION OF AMERICA

CONSUMERS UNION

June 25, 2001

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I. INTRODUCTION

A. Joint Commenters

The Texas Office of Public Utility Counsel (Texas OPC) is the state consumer agency designated by law to represent residential and small business consumer interests of Texas. The agency represents over 8 million residential customers and advocates consumer interests before Texas and Federal regulatory agencies as well as State and Federal courts.

The Consumer Federation of America (CFA) is the nation's largest consumer advocacy group, founded in 1968. Composed of over 250 state and local affiliates representing consumer, senior citizen, low-income, labor, farm, public power, and cooperative organizations, CFA's purpose is to represent consumer interests before the Congress and the federal agencies and to assist its state and local members in their activities in their local jurisdictions.

Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the State of New York to provide consumers with information, education and counsel about goods, services, health, and personal finance and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life for consumers. Consumers Union's income is solely derived from sale of *Consumer Reports*, its other publications and from noncommercial contributions, grants and fees.

These three organizations have participated in the lead docket cited in the caption to this Notice of Proposed Rulemaking from its inception almost five years ago.[1] The central

[1] Federal Communications Commission,... Notice of Proposed Rulemaking, Access Charge Reform, CC Docket No. 96-262, Price Cap Performance Review for local Exchange Carriers, CC Docket No. 94-1, Low Volume Long Distance Users, CC Docket No. 99-249 In the Matter of Federal-State Joint Board on Universal Service:, CC Docket No. 96-45 (September 15, 1999).

proposal discussed in the Notice represents another in a long line of rulemakings that proposes to shift costs into fixed line items that fall most heavily on low volume consumers in the name of promoting competition. The consumers who benefit least from competition end up paying the highest cost.

B. Recommendation

Throughout these proceedings we have argued that the universal service contribution of telecommunications carriers is a cost of doing business that should not be singled out for special treatment and placed at the bottom of the consumer's bill. Indeed, doing so violates the explicit intention of the Telecommunications Act of 1996 and imposes an unfair burden on low volume consumers, who are disproportionately low-income consumers. Unfortunately, over the course of a number of proceedings, the Commission has conceded to industry demands to add more and more of the cost of telephone service to the bottom of the bill in the most regressive manner possible, as line items on a per account basis.

The discussion in the Notice of Proposed Rulemaking (NPRM) is just the latest in that lamentable line of decisions. Instead of dealing with simple problems, like adjusting carrier contributions on a short term basis subject to true up, the industry claims competitive harm resulting from universal service contributions and presses to insulate its costs from competitive pressures by heaping line items on those with the fewest choices. The Commission should reject that approach to the recovery of universal service charges.

The Commission should make the assessment mechanism as responsive as possible to changing revenue flows in the industry by shortening the period for adjusting assessment levels and including a true up mechanism. The Commission should not mandate the use of

line items or any form for the recovery of these contributions from telecommunications carriers. If it allows line items to appear on consumers' bills, it should require companies who choose to use line items to apply a uniform percentage charge on the total customer bill that is easily calculated and verified. This is the only way to prevent over recovery of costs and to ensure that carriers do not unfairly burden one class of customers.

The Commission should also closely monitor how carriers represent these charges to the public to ensure they are not misleading about the nature of the line items. The decision by any carrier to place a line item on the bill is entirely a discretionary choice made by the carrier and should not be represented as a "mandatory" federal charge of any kind. The NPRM at paragraph 42 is misleading. It is not a "Federal Universal Service Charge." If AT&T chooses to put it on the bottom of the bill, it is an "AT&T Universal Service Charge" and that is the only way it should be identified.

II. DISCUSSION

A. Universal service charges are just a cost of doing business.

The universal service contribution is just a cost of doing business. It is a common cost, attributable to no specific service or customer class. Although theoretical economists chafe at the thought of recovering shared costs across a range of products, common sense and real world experience demonstrate that this is the way markets work. Telephone companies do not identify specific line items for other costs, like executive salaries, profits or unemployment insurance, and break them out separately on each consumer's bill. There is no reason that universal service contributions should be broken out separately.

The NPRM at footnote 11 completely confuses cost recovery with line items by

stating that "suppliers generally pass such costs on to their customers" in competitive markets. In competitive markets suppliers pass through costs only to the extent that the elasticity of the demand allows. Moreover, they do not generally break out each type of cost separately on the bill. In fact, the discussion of product bundling in the NPRM at paragraph 3 suggests that the industry is moving away from breaking out even separate services on the bill.

B. Carrier contributions to universal service should not be recovered as line items.

Joint Commenters continue to urge that the Telecommunications Act of 1996 did not contemplate a line item charge for the recovery of universal service costs. The use of a line item contradicts the clear requirement in the statute that *carriers* make a contribution to universal service. A line item shifts the entire cost of universal service onto end users. The federal statute makes no provision for recovery of telecommunications service provider contributions for universal service from ratepayers in the form of a line item surcharge on ratepayers' bills. The federal statute is quite clear that it is telecommunications service providers who must contribute.

> **Sec. 254.** (d) Telecommunications Carrier Contribution - Every telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis... .
>
> **Sec. 254.** (f) STATE AUTHORITY - A state may adopt regulations not inconsistent with the Commissions rules to preserve and advance universal service. Every telecommunications carrier that provides intrastate telecommunications services shall contribute.

Claims that only a line item on a consumer's bill can meet the requirement that universal service is explicit is a thinly veiled effort to avoid the responsibility the law placed on telecommunications service providers. If a telecommunications service provider is

assessed a contribution explicitly to be paid to a universal service fund administrator and pays no other universal service support in any of the prices it is charged, then the funding is explicit. The law does not say funding must be explicit to the customer, it says it must be explicit to the service provider.

C. Line items tend to blunt market forces to compete costs away.

As long as all providers are assessed a fair share of the costs of universal service in an explicit rate element, the requirements of the statute will be met. Assessing providers allows them to decide how to recover the universal service costs. Some might pass it through in the form of usage charges. Some might pass it through in the form of customer charges. Still others might not pass it through in an effort to gain market share.

The FCC recognizes this dynamic process in earlier ruling in this proceeding.

> As telecommunications carriers and providers begin merging telecommunications products into single offerings, for example package prices for local and long distance service, we anticipate that they will offer bundled services and new pricing options. Mandating recovery through end-user surcharges would eliminate carrier's pricing flexibility to the detriment of consumers...
>
> In addition, we agree with the state Joint Board members that an end-user surcharge is not necessary to ensure that contributions be explicit. We find that basing contributions on end-user telecommunications revenues satisfies the statutory requirement that support be explicit because carriers will know exactly how much they are contributing to the support mechanism...
>
> As competition intensifies in the markets for local and exchange services in the wake of the 1996 Act, it will likely lessen the ability of carriers and other providers of telecommunications to pass through to customers some or all of the former's contribution to the universal service mechanisms. If contributors, however, choose to pass through part of their contributions and to specify that fact on customer's bills, contributors must be careful to convey information in a manner that does not mislead by omitting important information that indicates that the contributors has chosen to pass through the contribution or part of the contribution to its customers and that accurately

describes the nature of the charge.[2]

D. If line items are allowed, they should be on a percentage of bill basis for all customers of the carrier.

Ensuring universal service as a public policy is grounded, at least in part, in the recognition that telecommunications exhibits network externalities. The larger the number of subscribers on the network, the greater the value of the network to all subscribers. Although it is difficult to measure who derives the greatest benefit from the network externality, the most reasonable basis on which to base that analysis is on usage. The presumption underlying the concept of a direct communications network externality is that it facilitates more intensive use of that network. It is reasonable to assume that those who actually use the network most intensively derive the greatest benefit from the network effect. Recovering the costs in proportion to use aligns costs and benefits most closely.

E. Universal service costs should be recovered from business and residential customers.

It is important to recognize that businesses should not escape contributions to universal service. Businesses benefit from the ubiquitous network, as well as residential customers by being able to be reach and be reached by a larger group of potential consumers. Businesses market over the phone and use it for follow up. Businesses are also much heavier users of the network, both quantitatively and qualitatively. Businesses drive costs because they demand higher levels of network performance. They drive costs because their demand is most likely to be present on the network at peak periods.

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[2]FCC, Universal Service Order, paras. 853, 854, 855.

F. Wireless telecommunications service providers should make an equitable contribution to Universal Service.

Cellular service has grown rapidly over the past half decade (NPRM, para. 12). The value of wireless service still rests substantially on its ability to interconnect with and receive or deliver calls from the wireline network, which has been extended to ubiquity with universal service policies. It is hard to imagine the wireless network grown to 100+ million subscribers as it has in the past half decade if wireless customers could only reach other wireless customers. Consequently, wireless telephony should make an equitable and fair contribution to universal service (NPRM, para 24).

One of the important drivers of universal service accomplishment has been the ability to expand the base of users to support the ubiquity of the network. With the wireless industry having gone through a period of phenomenal growth in recent years, now is the proper time to bring this telecommunications service fully into the base of universal service.

G. Per account line items disproportionately burden low volume users.

Joint Commenters oppose universal service recovery on a flat rate basis. These allocation methodologies are regressive and disproportionately burden low volume users. In addition, flat rates allocations are arbitrary and do not correctly reflect cost causation or the benefits received.

One type of flat rate recovery methodology would collect universal service contributions on a per account basis (regardless of the number of lines provided under each account). This methodology would allocate the costs universal service to each subscriber equally. The other type of flat rate recovery would impose line items based on the number

of lines. This methodology would allocate the costs in proportion to the number of lines each subscriber has.

In contrast, line items based on use, as proposed by Joint Commenters, would allocate costs in proportion to usage. Percentage of bill charges allocate universal service charges in proportion to the amount spent on long distance service, which reflect differences in usage and prices paid, and would align cost recovery with "willingness to pay" for services consumed. Businesses and high volume residential users account for the vast majority of usage of the interLATA network, which is the basis for assessing the universal service charges.

It would appear that all but the per line approach are easily implemented. Per line charges have proven difficult to implement because of claims of confidentiality of commercially sensitive information.

Recovering universal service charges from consumers on a per account basis (which is the most likely approach the industry would take given its difficulties in dealing with the issue of exchanging data on the number of lines in each account), imposes a burden on low volume users that is far higher than and out of proportion to low volume users' share of use of the network. The following discussion provides order of magnitude estimates of the differential impact of recovering these costs on a per account and minute of usage basis, based on FCC data contained in the *Trends in Telephone Service* and *Statistics of Common Carriers.*

Exhibit 1 presents a graphical representation of the difference between costs recovered on a per account basis versus those recovered on a usage basis. The diagonal line represents the line of equality, or the distribution of account. Approximately 12 percent of

all accounts make no phone calls in a given month. In contrast, the top 10 percent of residential accounts comprise 40 percent of all residential call minutes. Half of the residential consumers account for about 30 percent of all residential calling minutes.

Exhibit 2 adds in business accounts and minutes of use on the top of the residential customer class.[3] Because businesses tend to make much more intensive use of the network, the distribution of usage deviates farther from the distribution of account. The 50 million households that fall below the median of residential usage would bear approximately 47 percent of the burden on a per account basis, but they account for only about 15 percent of the usage of the interLATA network.

A shift of universal service recovery from a usage basis to a per account basis will sharply increase the burden on residential consumers, and low volume residential consumers in particular. The precise shift in the burden would depend on an number of factors including the extent that businesses presently escape universal service charges through negotiations, the extent to which higher volume users received discounts and whether future cost recovery would be on a per account or per line basis.

H. Low volume users are disproportionately low income users, who would be disproportionately harmed by a shift to per account line items.

In our extensive analysis in the Low Volume Users proceeding, we have shown that there is a clear relationship between income and usage. On average, low income households

[3] There are approximately 7 million business establishments in the U.S. (*Statistical Abstract,* Table 864) compared to approximately 100 million households with telephone services (*Statistics of Common Carriers,* Table 5.2). Businesses account for approximately 33 percent of all lines (*Statistics of Common Carriers,* Table 2.4). Residential consumers account for about half of all interLATA calls (*Trends in Telephone Service,* Table 16.2 for number of residential minutes of use; Table 17-1 for number of residential accounts and Table 12.1 for total interLATA minutes.

make substantially fewer long distance calls. As a result, a shift to line items would have an inequitable impact on low income households.

Exhibit 3 demonstrates a correlation between income and usage. It shows that households with incomes below $5,000 have long distance bills that are between one-half and one-third of upper income households. The data from a Florida Public Service Commission provides insight into the segment of the market that reports no long-distance charges. In the survey data, we find that 15 percent of the respondents report no long distance calls. Forty percent of the respondents with incomes below $10,000 report no long distance expenditures (see Exhibit 4). Twenty percent of respondents with incomes between $10,000 and $20,000 report no long distance expenditures. In this data set, 75 percent of all respondents who report no phone calls have incomes below $30,000.

I. Exempting lifeline subscribers addresses only a small part of the inequitable shift of the burden of cost recovery.

The clearly inequitable impact of a shift to a per account or per line basis certainly requires that the Commission exempt lifeline customers from bottom of the bill charges (as discussed in para. 45). However, this small exception does not address the substantial burden that the increase in bottom of the bill charges will impose on low income consumers. Lifeline programs have a pitifully low penetration rate among low income households who are eligible for the program because many states have failed to implement and the FCC has failed to require automatic enrollment of those on assistance programs. Many of the working poor are not eligible for federal programs and, therefore would not benefit from this

exemption. Non-low income, low volume users would bear the full burden of the shift in cost recovery.

J. The role of uniformity.

Joint Commenters analysis of the "benefits and burdens" of universal service cost recovery underscores a need for the commission to think broadly and clearly about the question of whether any "recovery approach will prevent carriers from recovering through the line item more that the carriers' universal service contribution obligations deriving from that customer (NPRM, para. 43)." The commission decides how large the obligation is deriving from each customer and can also decide to limit or mandate how the obligation is recovered.

It is far too simplistic to grab on to an administratively easy approach, like per account charges, and say this solves the problem because it matches up the obligation to the cost recovery. If the underlying decision to define the obligation is unfair or uneconomic, matching up the cost recovery only cements the mistake in place.

We have argued that usage is the correct measure of obligation. If the Commission wants to play a larger role in matching cost recovery to the obligation, it should require uniform charges based on usage. It is just as easy to require charges to reflect a uniform percentage of usage charges, or even be a multiple of minutes of use, as it is to have charges reflect the number of accounts of lines. Telephone companies count all of these things and, therefore, a uniform charge can be based on any of these items, which appear on the bill.

Relying on a uniform usage based charge would also solve the outrageous problem posed by dial-around services, some or which appear to charge a substantial fixed "universal

service fee" for each call. These charges may be as high a $1 per call, which clearly over-recovers universal service costs. Neither obligations nor cost recovery for these service can be made on a per line or per account basis, since consumers may use multiple dial-around-services, or combinations of PICC and dial-around services. The only reasonable solution here is to preclude such charges, or to require uniform usage based charges. For the above reasons, we urge the commission to steer clear of "identical flat-fee line items (NPRM, para. 28).

Whether or not uniform line items "will result in bills that are simple and easier to understand (NPRM, para. 43)," is an open question. Another line item on the bill will not make it any simpler. There is no reason to believe that a per account or per line charge would be any easier to understand than percentage of usage or per minute charge. It can certainly be argued that not allowing these charges to be put on the bill simplifies matters even more, since the companies will recover the use costs in what they charge consumers for their plans (usage plus monthly payments). Consumers would have one price to compare, although the complexity of product offerings would not be reduced.

Respectfully submitted,

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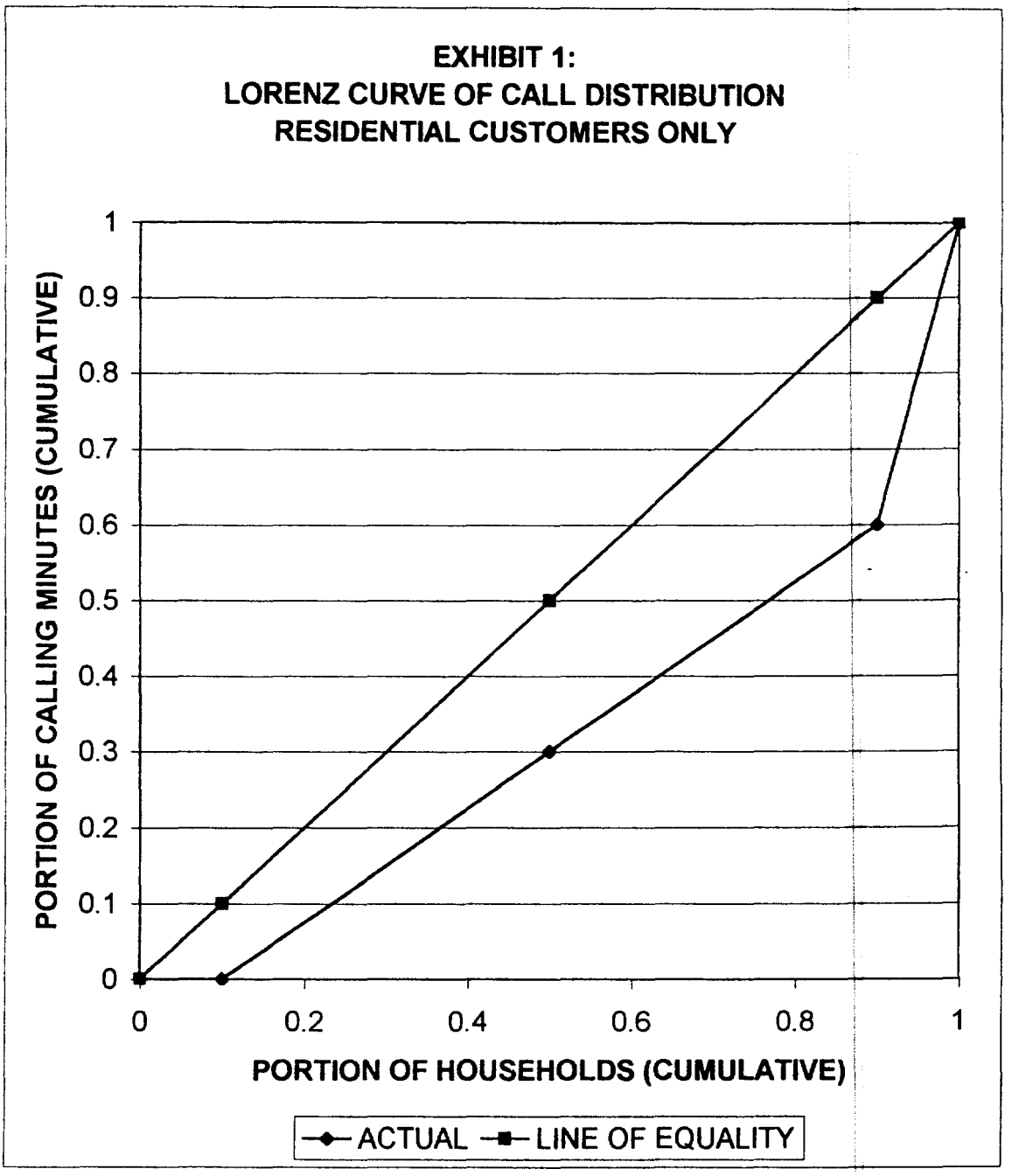
EXHIBIT 1:
LORENZ CURVE OF CALL DISTRIBUTION
RESIDENTIAL CUSTOMERS ONLY
PORTION OF CALLING MINUTES (CUMULATIVE)
1
0.9
0.8
0.7
0.6
0.5
0.4
0.3
0.2
0.1
0
0
0.2
0.4
0.6
0.8
1
PORTION OF HOUSEHOLDS (CUMULATIVE)
ACTUAL
LINE OF EQUALITY

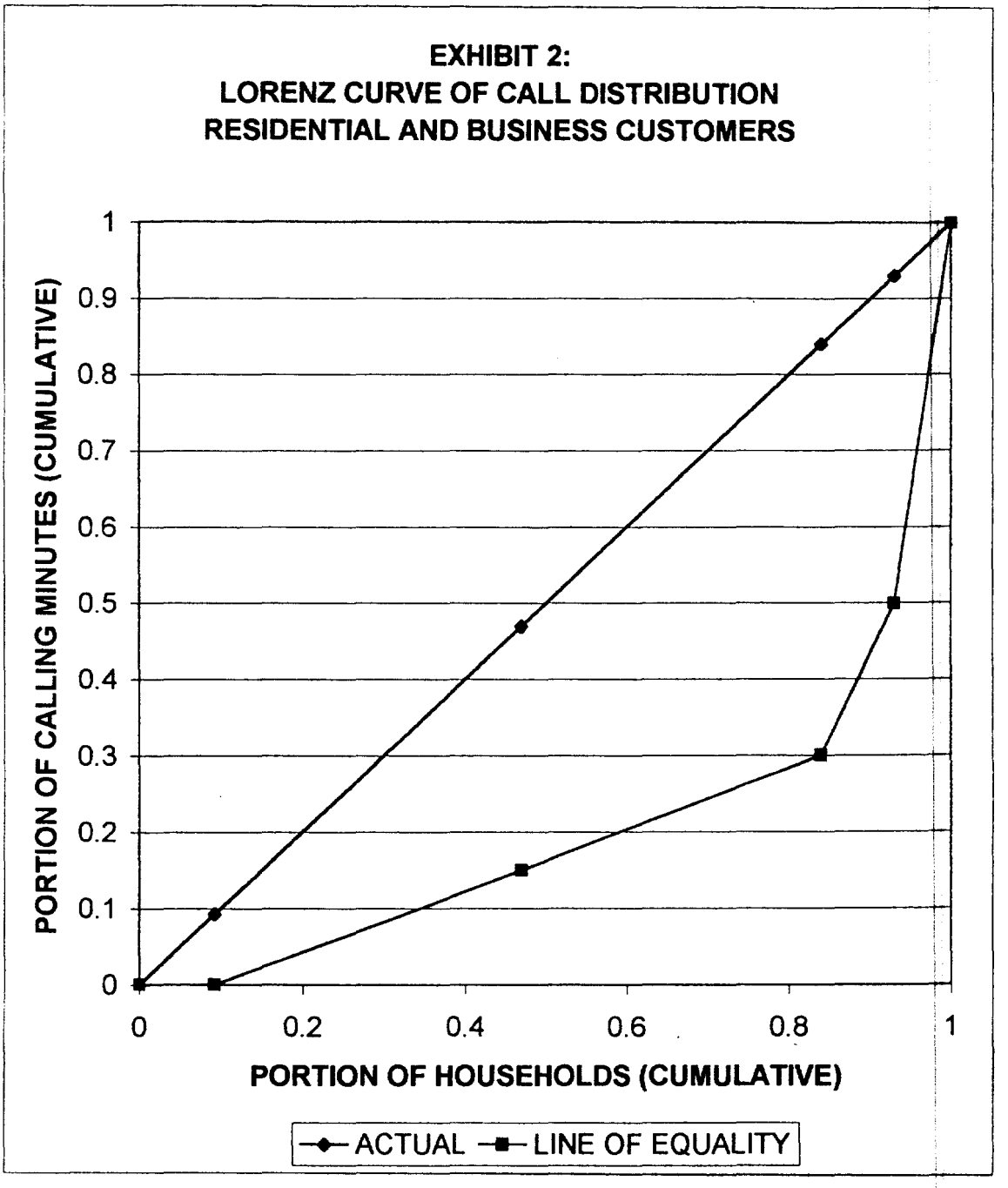
EXHIBIT 2:
LORENZ CURVE OF CALL DISTRIBUTION
RESIDENTIAL AND BUSINESS CUSTOMERS
PORTION OF CALLING MINUTES (CUMULATIVE)
1
0.9
0.8
0.7
0.6
0.5
0.4
0.3
0.2
0.1
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0.4
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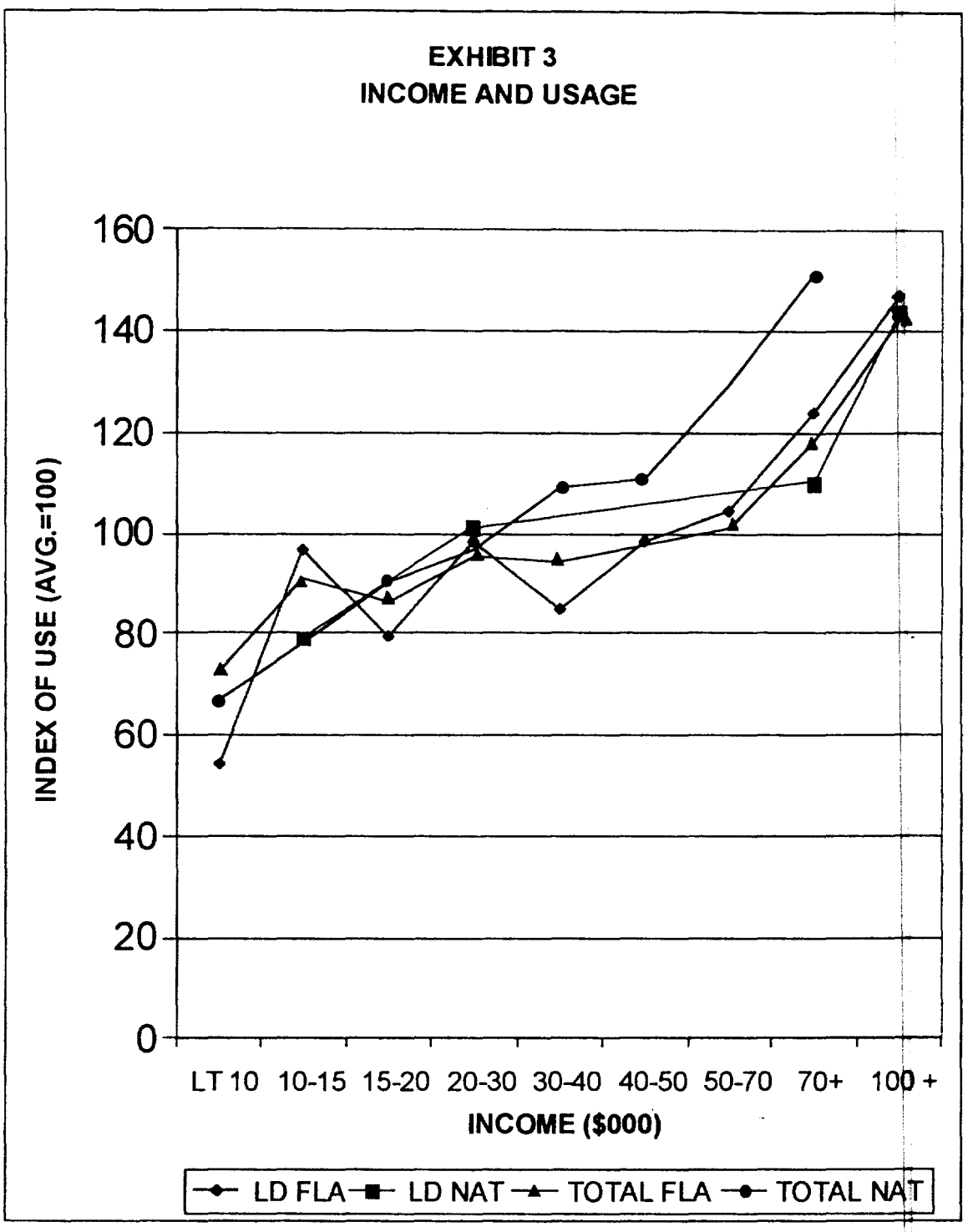
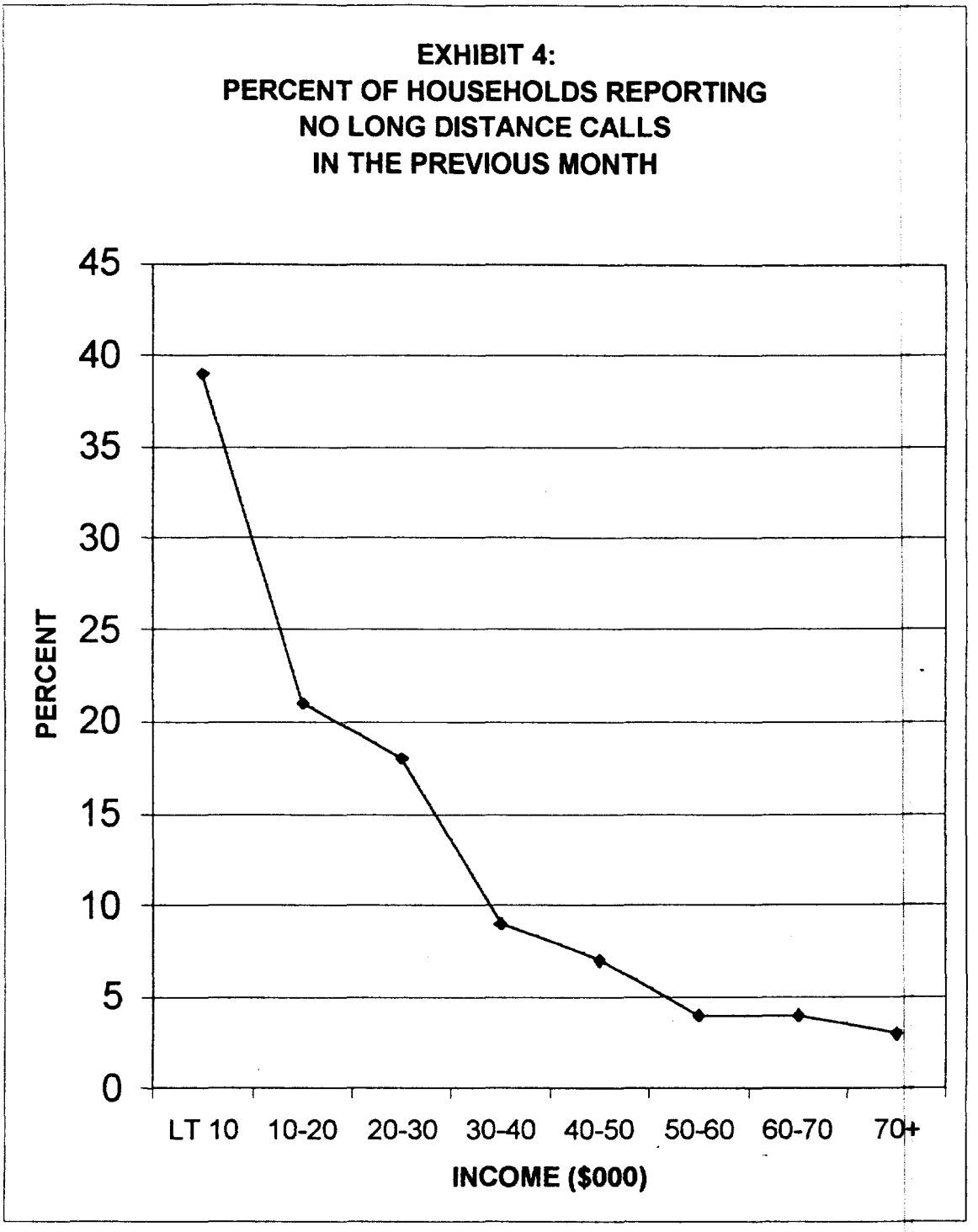
0.8
1
PORTION OF HOUSEHOLDS (CUMULATIVE)
ACTUAL
LINE OF EQUALITY



SOURCE: Florida PSC Survey; Bureau of Labor Statistics, *Consumer Expenditure Survey: 1997*; The Yankee Group, *Understanding Consumer Spending on Communications*, December, 1998.



SOURCE: Florida Public Service Commission Survey