

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

COMMENTS OF VERIZON¹

I. Introduction and Summary.

There is no need for a radical change in the method of assessing carrier contributions to the universal service fund. Adoption of an entirely new assessment method based on a per-line or per-account approach would violate section 254(d) of the Act by effectively extending the assessment to intrastate revenues. Such an approach has already been rejected by the 5th Circuit Court of Appeals. Moreover, the most recent data provide no support for a claim that interstate revenues are inadequate as a basis for assessing contributions to the fund. Similarly, there is no

need to change the time period over which revenues are assessed. Only three months ago, the Commission reduced the interval between the period that carrier revenues are measured and the period that contributions are assessed on those revenues to an average of six months. The Commission should examine the impact of that rule before considering a wholesale revision to the funding mechanism.

If the Commission has concerns about the stability and fairness of the current assessment method, the best way to address this would be to ensure that all providers of interstate telecommunications services contribute equally to the fund. In addition, the Commission should grant the local exchange carriers the same flexibility as other carriers in determining how to recover their universal service contributions.

II. It Would Be Unlawful And Bad Policy For The Commission To Adopt A Flat-Fee For Assessments For The Universal Service Fund.

The proposal to assess contributions to the universal service fund on a flat fee basis, either per-line or per-account, suffers from an overriding fatal flaw – it is unlawful. In *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999), the Court made it clear that the Commission is jurisdictionally barred from assessing intrastate telecommunications revenues to support the interstate universal service fund. The Court found that “inclusion of intrastate revenues in the calculation of universal service contributions easily constitutes a ‘charge . . . in connection with intrastate communication service’” which section 2(b) of the Act places outside the Commission's jurisdiction. *See id.* at 446-48; 47 U.S.C. §152(b). The Commission complied with that decision by removing intrastate revenues from the universal service fund assessment base. *See Federal-State Joint Board on Universal Service, Sixteenth Order on Reconsideration*,

¹ The Verizon telephone companies ("Verizon") are the affiliated local telephone companies of

15 FCC Rcd 1679, ¶ 15 (1999). The Court’s decision makes it clear that the Commission cannot assess universal service contributions on intrastate services, by any means.

Changing the assessment base to a per-line or per-account charge could have only one purpose – to avoid the Court’s clear mandate that the Commission must limit the assessment to interstate revenues. Treating all “lines” and “accounts” the same regardless of how much they were used to carry interstate traffic would shift the contribution burden from carriers whose revenues are predominantly interstate to those whose revenues are predominantly intrastate. It would recreate the effect of the assessment method that the Court struck down. This is illustrated in Attachment B, which compares the allocation of universal service contributions among industry participants under the existing interstate retail revenue method, the method reversed by the Court that includes both interstate and intrastate revenues, and a per-line method. It shows that the distribution of universal service contributions among local exchange carriers and interexchange carriers would be substantially the same under a per-line assessment as under a revenue assessment that includes both interstate and intrastate revenues. The Commission cannot characterize a per-line assessment as anything less than an attempt to achieve the results of the prohibited practice by other means.

A flat fee cannot be characterized as a “measure [of] the interstate telecommunications services provided,” as suggested in the Notice.² The fact that a customer account exists says nothing about the amount of interstate service, if any, that the customer obtains. For instance, the only interstate charge in a typical local exchange customer account is the subscriber line charge, which typically is less than 25 percent of the total bill. In contrast, an interexchange carrier’s

Verizon Communications Corp. These companies are listed in Attachment A.

customer account is predominantly, if not entirely, used for interstate services. To treat each equally as an interstate “service” regardless of the amount billed is like saying that a mouse and an elephant can bear the same burden because they are both mammals.

The Commission asks whether the “per-unit” assessment should be counted differently for different types of users. *See Notice*, ¶ 30. Unless the assessment were used to approximate the industry average amount of interstate services on each type of line, it would fail to reflect the differences among carriers as providers of interstate services. And any industry averaging process would be a poor and inadequate substitute for a direct measure of the interstate revenues billed by carriers for each type of service. Any flat-fee system, however intricate, that shifts the burden from interexchange carriers to local exchange carriers would fool no one that the real purpose and effect is to capture intrastate revenues and services into the federal contribution, a result clearly prohibited by the Act.

Not only is a per-line or per-account assessment unlawful, but it is also unnecessary. The Commission notes that there has been a recent decline in some carriers’ interstate revenues. *See Notice*, ¶ 15. However, any overall decline in industry revenues appears to have leveled off. Although some carriers individually may be experiencing reductions or increases in market share, the overall level of interstate revenues appears to be sufficient for the foreseeable future to provide contributions to the universal service fund. In addition, implementation of the CALLS plan is moving a large portion of the price cap carriers’ revenues from access charges to subscriber line charges, which will increase the amount of interstate revenues subject to assessment for the universal service fund. The 2001 Annual Access Tariff Filings alone shifted

² *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Notice of Proposed Rulemaking, FCC 01-145, ¶ 17 (rel. May 8, 2001) (“Notice”).

approximately \$480 million to subscriber line charges. If carriers such as AT&T are imposing relatively high universal service surcharges on their customers, it is because they choose to shift more of the burden to low volume customers, not because the interstate revenue base is shrinking. *See Notice*, ¶ 5.

To the extent the Commission, nonetheless, is concerned about the sustainability of an adequate revenue base, the solution is not to go after revenues from state services, but to ensure that all providers of retail interstate telecommunications services contribute on an “equitable and non-discriminatory basis.” 47 U.S.C. § 254(d). The Act requires the Commission to define and regulate telecommunications services identically “regardless of the facilities used.” *See* 47 U.S.C. §153(46). The Commission's rules must keep pace as new technologies provide substitutes for circuit-switched telephone service and as non-traditional providers of interstate telecommunications services enter the market. For instance, the Commission should include cable modem service, which Courts have found to be an interstate telecommunications service when used to access the Internet. *See, e.g., AT&T v. City of Portland*, 216 F.3d 871 (9th Cir. 2000). Services such as Net2Phone, which allow a telephone to be plugged into a splitter on a DSL line to complete telephone calls over the Internet, provide interstate telecommunications services that are directly substitutable for the long distance services provided by traditional interexchange carriers. The Commission's failure to put such carriers on an equal footing with existing contributors puts the latter at a distinct competitive disadvantage and drains revenues from the assessment base.

Finally, the per-line or per-assessment methodology is administratively cumbersome and inherently unfair. It is a regressive “tax” in that it applies equally to a customer that pays \$10 per month or \$1000. Since low-income customers are likely to be low-volume as well, the

Commission's proposal shifts a disproportionate burden to the customer segments that can least afford it. The Commission asks whether it should extend the Lifeline exemption to include low-income or low-volume customers of all carriers and whether it should vary the assessment for different types of lines and for different types of users. *See Notice*, ¶¶ 30, 45. No matter how detailed, a flat fee structure would not reflect the amount of interstate services that a particular customer uses or offset the unequal burdens on different classes of customers. The need for an intricate system of exemptions and different charges for different types of accounts merely demonstrates that the flat-fee system is not capable of meeting the statutory requirement for an “equitable and nondiscriminatory” method of assessing universal service contributions.

III. The Commission Should Not Change The Assessment Method To Current Revenues.

The Commission seeks comment on a proposal to assess contributions on a carrier's current collected interstate revenues rather than its historical billed interstate revenues. *See Notice*, ¶¶ 18-23. This is proposed as a means of dealing with recent declines in the market shares of some interexchange carriers, which allegedly places them at a competitive disadvantage. *See id.*, ¶¶ 3, 14-15. However, the Commission just recently reduced the interval between assessment and recovery to six months to address this issue. The Commission found that “the revised contribution methodology will prevent the possibility that certain carriers will be at a competitive disadvantage as market conditions change.”³ The Commission should assess whether this change is working before deciding that a completely new assessment method is needed.

The Commission points to changes in market conditions, such as the entry of new carriers into the long distance market and an alleged recent decline in revenues for certain interexchange

carriers. *See* Notice, ¶¶ 3, 14-15. However, the long distance market has always had new entrants, and the fact that some established carriers have seen their traffic decline while new entrants have grown is nothing new – it has been true from the start. For instance, AT&T has seen its share of the interexchange market decline steadily from before divestiture in 1984. The entry of the regional Bell operating companies into the long distance market differs from entry of other carriers only in that it has been painfully slow and can only be achieved on a state-by-state basis. More than five years after passage of the Telecommunications Act of 1996, the RBOCs have been granted in-region authority in only five states. As the Commission notes, AT&T’s recent revenue declines stem as much or more from other factors, such as the decline in traditional voice services and growing competition from new products and from wireless carriers. *See* Notice, n.47. In addition, AT&T’s evident decision to recover proportionately more of its universal service assessment from its consumer customer base, which is declining, is a problem of its own making. One carrier’s lack of success in the market is no basis for changing the assessment method for the entire industry.

Contrary to the Commission's assumption, applying a percentage contribution factor to current collected revenues will *increase* the administrative burden on the carriers. Instead of filing four quarterly historic revenue reports, they would have to report collected revenues each month to show how they determined their obligation. *See id.*, ¶ 22. Moreover, unless the Commission prescribed a “tax” that a carrier would have to apply uniformly to all of its end user charges, the carrier would still have to determine how and where to adjust its rates to collect enough money to meet its obligation. Therefore, the Commission cannot assume that the carriers would no longer

³ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order and Order on Reconsideration, FCC 01-85, ¶ 2 (rel. Mar. 14, 2001).

need to engage in “complex calculations” to account for factors, such as shifting demand for different services, that will affect the carrier’s ability to recover its universal service obligation. Also, if the Commission did impose a tax-like mechanism, it would eliminate the carriers’ pricing flexibility. This would disadvantage all carriers, regardless of whether their market share were increasing or decreasing. Either way, shifting to a current revenue assessment would not improve the process.

IV. The Commission Should Give The Incumbent Local Exchange Carriers The Same Flexibility As Interexchange Carriers In Determining How To Recover Their Universal Service Contributions.

The Commission should not adopt its proposal to require that carriers who recover their universal service contributions through a line item or other “surcharge” on end user bills adhere to a uniform level corresponding to the Commission-prescribed quarterly assessment factor. *See Notice*, ¶ 42. This would reduce the carriers’ pricing flexibility and prevent carriers from competing in the types of pricing options that they offer their customers. For services that are subject to greater competition, market forces and the ability of customers to seek alternatives and compare carrier offerings provide sufficient protection for the consumer against unreasonable charges. Instead of adopting more restrictive pricing rules, the Commission should allow the incumbent local exchange carriers the same flexibility that the interexchange carriers have today to develop the appropriate charges for recovering their obligations to the fund. To the extent that the Commission maintains requirements on the incumbent local exchange carriers, however, the same restrictions should be imposed on the competitive local exchange carriers. Otherwise, the Commission would allow universal service recovery to artificially hinder the incumbent local exchange carriers’ ability to compete for the most sought-after customers.

At a minimum, the Commission should allow the incumbent carriers the same flexibility as the interexchange carriers to waive the universal service charge in some market segments and to recover it in others, so long as the amount in each price cap basket matches the Commission-prescribed contribution factor. For services that have been taken out of price caps, there should be no restriction on the method of recovering universal service contributions.

Currently, incumbent local exchange carriers are required to file tariff changes every quarter to collect enough revenue to meet their contribution obligation under the Commission-prescribed factor. This generates unnecessary administrative work for both the carriers and the Commission staff that must review the tariff filings. Even more important, it creates confusion and disruption for customers. It also creates additional costs for the carriers in sending notices to customers and in responding to customer questions about the changes in the charge. This entire process is unnecessary. The Commission's rules only require an annual update to the carriers' interstate access charges, and the same should be sufficient for the universal service charge. The carriers should be permitted to file annual factors designed to recover their projected contributions. They could then adjust the factors for the next year based on a true-up between the amount collected in the previous year and the actual obligation to the fund. For instance, if a carrier over-recovered in the first year, this amount would be taken out of the charge for the following year. Similarly, any under-recovery would be added to the next year's charge.⁴

Alternatively, the Commission should adopt an annual contribution factor, and allow the fund administrator to true-up the next annual factor to compensate for any under-collection or

⁴ The Commission should also make it clear that customer notification of changes in the universal service surcharge should be concurrent with the billing of such changes. This is necessary because notification of the new contribution factors is normally too late to place in a prior month's bill notice.

over-collection of contributions compared to fund obligations. Any under-recovery in a given year could be funded through borrowing, which is permitted under section 54.709(c) of the Commission's rules, or through "loans" from funds that have surpluses to those that do not.

V. Conclusion

For the foregoing reasons, the Commission should not adopt its proposals to assess universal service contributions based on a flat-fee or current revenue approach. Rather, it should expand the fund to include all providers of retail interstate telecommunications services, and it should give the incumbent local exchange carriers the same flexibility as other carriers in recovering their contributions.

Respectfully submitted,

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THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Midwest Incorporated d/b/a Verizon Midwest
GTE Southwest Incorporated d/b/a Verizon Southwest
The Micronesian Telecommunications Corporation
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Hawaii Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.