Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	CC Docket No. 96-45
	)	
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
	)	
Number Resource Optimization	)	CC Docket No. 99-200
	)	
Telephone Number Portability	)	CC Docket No. 95-116

To: The Commission

COMMENTS OF CINGULAR WIRELESS LLC

Cingular Wireless LLC hereby submits its comments in response to the Commission's Notice of Proposed Rulemaking on methods to streamline and reform the universal service assessment and collection methodology.[1] Cingular urges the Commission to retain the current

[1] *Federal State Joint Board on Universal Service; 1998 Biennial Regulatory Review; Telecommunications Services for Individuals with Hearing and Speech Disabilities; Administration of the North American Numbering Plan; Number Resource Optimization;*

assessment system, which has been found to be equitable, non-discriminatory, and competitively neutral. Further, Cingular opposes proposals to tie carriers' recovery of their contributions to assessment rates because such an approach would be unworkable for carriers offering bundled packages of services that include intrastate and interstate usage as well as non-telecommunications. Cingular supports allowing companies to file a single reporting worksheet, rather than filing by operating entity, and reducing the frequency of reporting to annual, with true-up filings for revisions. Cingular opposes the creation of a reserve fund because of the burden it would create for contributions and consumers. In summary, Cingular believes that the current assessment system and recovery of universal service contributions is working well. Changes proposed in the NPRM will increase carriers' compliance costs to no countervailing public good.

I. Assessment of Universal Service Contributions

For the reasons described below, Cingular supports maintaining the status quo with respect to the assessment of universal service contributions.

A. Assessment on a Revenue Basis

The current assessment methodology, using gross-billed, historical revenues, was adopted based on the Joint Board's recommendations and has previously been found to be equitable, non-discriminatory, competitively neutral, and relatively easy to administer.[2] The Commission has made minor changes to the methodology to address particular concerns, most recently reducing the lag between reporting and assessment to approximately six months. This change addressed

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Telephone Number Portability, Notice of Proposed Rulemaking, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, FCC 01-145 (rel. May 8, 2001) (the "NPRM").

[2] *Federal State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 9206-09 (1997) (*"Universal Service Order")*.

the concern that carriers with declining revenues may be making an inequitable share of contributions. As it currently stands, the existing system is working well, and should not be changed.

Carriers have expended large amounts of effort and money over the last three years to develop systems to support the existing rules, and should not be required to establish new systems so soon to accommodate any of the proposed major changes. Cingular has developed internal systems to support the revenue reporting that the existing methodology requires, and has established methods and procedures, which are incorporated into its billing system, to recover its contributions equitably from its customers. These systems were developed at significant cost to the company and serve no other purpose than complying with regulatory requirements. Cingular is loathe to repeat the process if the methodology is changed. All carriers presumably have gone through a similar process. The public interest would not be served by throwing away that investment and requiring new investment, particularly since the existing system is working reasonably well and none of the proposals meet the Commission's universal service goals any better.

First, Cingular opposes the Commission's proposal to base contributions on projected revenues because of the enormous administrative complications it would create for carriers and for USAC. Either carriers or USAC would be required to engage in the dubious exercise of projecting their revenues into the future. Because projections are never perfectly accurate, an elaborate true-up mechanism would have to be implemented to correct for differences between projected and actual revenues, increasing the burden on both carriers and USAC. Further, requiring carriers to generate the revenue projections could invite abuse, as carriers may have an

incentive to under-project revenues to reduce their short-term contribution liability.[3] Alternatively, if USAC were required to estimate carriers' projected revenues, it would create an enormous burden on USAC and raise the specter of carrier appeals of USAC projections if the carrier believed the projection over-inflated its contribution obligation. This, in turn, could undermine USAC and the Commission's ability to determine the contribution base accurately and set the contribution factor. If the Commission seeks in this proceeding to "simplify and streamline" the reporting process,[4] implementing a system that depends on revenue projections would be a step in the wrong direction.

Second, Cingular also opposes the proposal to assess contributions based on collected, rather than gross billed telecommunications revenues. This approach would re-allocate the universal service burden based on uncollectible revenue rates. Such an approach could have perverse consequences, such as encouraging carriers to manipulate their collections efforts to determine the contribution period in which revenue is received. Further, such a change would require costly modifications to carriers' reporting and billing systems, yet would bring no meaningful public benefit. The purported benefit of the proposal – to eliminate carriers' need to collect a different amount than they are assessed in order to account for uncollected revenue and other factors[5] – would not materialize. For the reasons discussed in Section I.B., below (including the prevalence of bundled rate plans), it is not feasible to mandate that carriers recover

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[3] In the numbering administration context, the Commission recently moved away from carrier projections in favor of concrete data for similar reasons. *Numbering Resource Optimization*, Second Report and Order, Order on Reconsideration, 16 FCC Rcd 306, 320-21, paras. 27-29 (2000).

[4] NPRM at para. 4.

[5] NPRM at para. 23.

a prescribed percentage or amount from each customer for universal service.[6] Thus, the proposal to assess contributions based on collected, rather than gross-billed, revenues should be rejected.

Finally, Cingular urges the Commission to continue to allow wireless carriers to avail themselves of a "safe harbor" percentage for allocating their revenues between the interstate and intrastate jurisdiction. This is another element of the current system that is working well and should not be disturbed. Many wireless carriers have no other method for allocating their revenues between the interstate and intrastate jurisdictions.[7] As the Commission noted in adopting the safe harbor, the mobile nature of wireless services makes it difficult for carriers to classify traffic by jurisdiction.[8] Wireless traffic is often transmitted or routed by antennas or switches that are located in different states from the points where a call originates and terminates.[9] Thus, the safe harbor is a practical and useful tool to assist wireless carriers in separating their revenue.

Moreover, the 15 percent safe harbor level is appropriate and should be retained. The Commission cited in the NPRM to information in the *Fifth CMRS Competition Report* showing a rise in carrier *offerings* of bundled local and long-distance packages.[10] However, there are no data in the report suggesting that customer calling patterns for these rate plans have caused significant changes in wireless carriers' interstate traffic amounts. While regional and national plans are growing in popularity, they are still a small percentage of the plans to which customers

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[6] *See infra* Section I.B.

[7] Nevertheless, as discussed in Section I.B., *infra*, Cingular opposes the alternative flat-fee assessment proposal.

[8] *Federal State Joint Board on Universal Service*, Memorandum Opinion & Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 21252, 21255-56 (1998).

[9] *Id.*

[10] NPRM at para. 12. n.39.

subscribe to. Indeed, there is no evidence that changes in market conditions have caused the 15 percent safe harbor to become an inappropriate "backstop" way for carriers to estimate their interstate usage.

B. Assessment on a Flat-Fee Basis

The proposal to assess universal service contributions on a flat-fee basis would violate several statutory principles underlying the Commission's universal service system. As the Commission itself has observed, its obligation to assess contributions from all providers of interstate telecommunications service on an equitable and non-discriminatory basis requires it to "choose a way to measure the amount of interstate telecommunications services provided by each carrier."[11] In contrast to the existing assessment based on interstate telecommunications revenue, a flat-fee assessment does not serve this end. Instead, it would inequitably shift the universal service burden from carriers providing a larger "amount of interstate services" to carriers with the most lines or accounts.

In addition to being inequitable and discriminatory, this assessment methodology would violate the prohibition against assessing federal universal service contributions against intrastate revenues. This would raise the specter of court challenges to the Commission's assessment system, as well as customer challenges to carriers' recovery of "illegal" contributions.[12]

The only way a flat-fee system could be made to be equitable and jurisdictionally sound would be to assess different flat fees on different types of services, depending on their interstate

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[11] NPRM at para. 17.

[12] As the Commission is aware, class action lawsuits were filed against some carriers by their customers in the wake of the Fifth Circuit Court of Appeals' decision invalidating the assessment of universal service contributions for schools and libraries support based on intrastate revenues. *Texas Office of Public Utility Council v. FCC*, 183 F.3d 393, 448 (5th Cir. 1999).

character. Establishing and administering such a matrix, however, would only serve to complicate the assessment system further to an unworkable level.

The NPRM also seeks comment on whether a flat-fee assessment should differ for different types of users, such as residential users, single-line business users, or multi-line business users.[13] Cingular wishes to point out that wireless carriers do not generally segregate their accounts in this manner. Frequently, wireless carriers do not differentiate between a business and a residential account.[14] Indeed, the concept of a "residential" account is foreign to wireless service, which is by its nature mobile.[15] Thus, any effort to prescribe different flat-fee assessments for different types of accounts would be administratively unworkable.

C. Fund Sufficiency

As the Commission itself notes, the "current assessment methodology, which uses historical revenue data from a prior quarter, does not raise significant fund sufficiency issues because the Commission knows the exact amount of the revenue base when it calculates carrier contribution assessments."[16] Because, as the Commission notes, the proposals discussed in the NPRM would make it more difficult for USAC to ensure fund sufficiency,[17] the Commission should reject the alternative proposals. These other more volatile assessment methods could

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[13] NPRM at para. 30.

[14] Although some carriers may track business accounts that are affiliated, for example, with a particular national or regional account, smaller business users generally take service pursuant to the same generally applicable rate packages also available to "residential" users.

[15] In addition, it is not uncommon for customers to have a single wireless telephone that they use for both personal and business purposes, which is paid for in part by their business and in part with personal funds.

[16] NPRM at para. 33.

[17] *Id.* The NPRM refers to the alternative assessment methods as "streamlined" proposals although, as discussed above, they are all more cumbersome than the existing method.

require the creation of a reserve fund in order to ensure fund sufficiency. The assessment on carriers to amass such a reserve fund would create an additional burden on contributors, which inevitably, would be passed on to consumers of telecommunications services in higher rates or surcharges. This is yet another reason why the alternative proposals should not be adopted.

D. Carrier Reporting

In the context of the NPRM's goal of streamlining and simplifying universal service assessment and reporting, Cingular expresses its support for rule changes to accommodate the waiver petition submitted by AT&T Wireless Services, Inc. seeking a change in the rules to allow the submission of a single contribution worksheet for a holding or parent company, rather than individual worksheets for each legal entity.[18] The filing of a single worksheet would provide the Commission with the same information as the individual legal entity filings, and will in no way alter existing liabilities for universal service contributions. It would, however, reduce burdens on both carriers and USAC. USAC would have fewer Forms 499 to review and fewer monthly invoices to prepare and mail. Carriers, too, could prepare fewer Forms 499 and might be able to consolidate their internal record-keeping systems to report for a single entity. Presently, Cingular must file fifty-three Forms 499 for its various operating subsidiaries. Cingular estimates that substantial costs could be saved by consolidating these filings into a single worksheet.

In the interest of simplifying reporting requirements, Cingular also supports a reduction in the frequency of reporting to once per year. Carriers that wish to report more frequently because of changes in revenue amounts should be permitted to report as often as quarterly.

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[18] Petition of AT&T Wireless Services, Inc. For Waiver of 47 CFR §54.711(a) (filed April 27, 2001).

II. Recovery of Universal Service Contributions

The NPRM proposes to require carriers that recover contributions through a line-item on end-user bills to do so through a uniform line-item that corresponds to the prescribed assessment percentage or flat-rate amount established by the Commission.[19] Indeed, most of the proposals to modify the assessment methodology elsewhere in the NPRM appear geared towards eliminating carriers' need to collect an amount that differs from the assessment amount (for example, to eliminate the need to correct for uncollectable accounts or changing revenues over time). As a carrier that must respond to customers' questions about universal service recovery, Cingular shares the Commission's concerns in this area.

However, Cingular does not believe that any of proposals in the NPRM would allow the Commission to prescribe a universal service recovery rate or amount. The primary problem with this approach is that not all customer revenues are interstate telecommunications revenues. Bundled packages of services may include, in addition to interstate telecommunications services, either intrastate telecommunications services or non-telecommunications services (such as information services), or both.[20] Application of the prescribed assessment amount to the bill of a customer purchasing a bundled package would thus result in over-recovery.

The only way to avoid this result would be for carriers to (1) devise elaborate programs to ensure that only the percentage of interstate usage of a bundled plan is assessed the prescribed rate (as explained in I.A. above regarding the safe harbor, this in itself is extremely problematic); (2) absorb the assessment as it relates to bundled plans thereby imposing significant restrictions

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[19] NPRM at para. 42.

[20] For example, wireless service packages may include such information services as voice mail or wireless Internet access.

on carriers' pricing flexibility and product offerings in the marketplace; or (3) apply the safe harbor rate to a customer's bill for interstate usage negating any consistency that the Commission's proposal desires. This is clearly not a result that is consistent with the pro-competitive goals of the Telecommunications Act of 1996. Such changes would be costly, and are not justified given the relative success of the current program.

The existence of such bundled packages is cited as a seeming advantage of the proposal in the NPRM to assess contributions on a flat-rated basis.[21] As noted above, however, flat-rate assessment of contributions raised grave concerns about the equitability and jurisdictional propriety of the assessment mechanism.[22] Indeed, flat-fee assessment appears attractive precisely because it sidesteps the Commission's responsibility to "choose a way to measure the amount of interstate telecommunications services provided by each carrier."[23] Under the statute, however, the Commission may not simply abdicate this responsibility.

In the interest of consistency, however, Cingular does not oppose the idea of a uniform nomenclature or label for carrier line items to recover universal service contributions, such as the proposed "Federal Universal Service Charge."[24] Although it is not clear that such an approach is necessary, it could lead to some greater measure of clarity for consumers. However, as the Commission is aware through the Truth in Billing Proceeding, many carrier's billing systems do not allow for 32 characters in the description field. A shortened 18-character or lower description should also be considered.

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[21] NPRM at para. 28.

[22] *See supra* Section II.B.

[23] NPRM at para. 17.

[24] NPRM at para. 42.

CONCLUSION

The Commission chose the existing assessment method based on the recommendation of the Joint Board which itself only acted after considerable deliberation. Three years of experience with this method has shown that it works reasonably well. Further, the carrier community has expended considerable effort and money to create reporting and billing systems that work with the existing method. The proposals in the NPRM, rather than simplifying or streamlining the assessment process, would substantially complicate it. Cingular urges the Commission to retain the existing system.

Respectfully submitted,

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