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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

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
	)	
Number Resource Optimization	)	CC Docket No. 99-200
	)	
Telephone Number Portability	)	CC Docket No. 95-116

COMMENTS
OF THE
UNITED STATES TELECOM ASSOCIATION

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June 25, 2001

TABLE OF CONTENTS

SUMMARY i

I. INTRODUCTION 2

II. ASSESSMENT OF UNIVERSAL SERVICE CONTRIBUTION 4

A. Assessment Base 4

B. Exemptions 6

1. *De Minimis* Carriers 6

2. Cable Modem Service Providers 7

C. Fund Sufficiency 8

D. Carrier Reporting 8

E. Enforcement and Auditing 9

F. Transition 9

III. RECOVERY OF UNIVERSAL SERVICE CONTRIBUTION 10

A. Lifeline Exception 10

B. Recovery Limitations for Incumbent Local Exchange Carriers 10

C. Legal Authority 11

IV. CONCLUSION 11

SUMMARY

In the *Notice*, the Commission seeks comments on whether and how to streamline and reform both the manner in which it assesses carrier contributions to the federal universal service fund and the manner in which carriers may recover those costs from their customers. USTA strongly advocates that the Commission conclude other outstanding proceedings affecting expenses of telecommunications carriers and the size of the federal universal service fund before it resolves the issues raised in this *Notice*, which affect carriers' revenues and related obligations under the universal service program.

Should the Commission proceed with the issues raised in the *Notice*, USTA advocates that, under current policies, assessment of carriers' universal service contribution should be made annually and on the basis of a carrier's interstate and international retail revenues. Alternatives are problematic, and specifically, flat fee assessments are *per se* unlawful.

USTA also believes that the current *de minimis* carrier exemption and the lifeline exception should be retained. Furthermore, cable television operators or their affiliates that offer cable broadband transmission service should be required to contribute to the universal service fund.

Burdensome quarterly carrier reporting and resultant rate changes for recovery should be replaced with an annual factor and recovery mechanism that could correspond to carriers' annual tariff filings based on a July 1-June 30 period.

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Telephone Number Portability	)	CC Docket No. 95-116

COMMENTS
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UNITED STATES TELECOM ASSOCIATION

The United States Telecom Association ("USTA")[1] hereby submits its comments on the issues raised in the *Notice of Proposed Rulemaking* in the above-

[1] The United States Telecom Association, formerly the United States Telephone Association, is the nation's oldest trade organization for the local exchange carrier industry. USTA represents more than 1200 telecommunications companies worldwide that provide a full array of voice, data and video services over wireline and wireless networks. USTA members support the concept of universal service and are leaders in the deployment of advanced telecommunications capabilities to American and international markets.

captioned proceedings.[2] The Commission seeks comments on whether and how to streamline and reform both the manner in which the Commission assesses carrier contributions to the universal service fund and the manner in which carriers may recover those costs from their customers. The Commission states that it is initiating this inquiry in light of recent developments in the telecommunications marketplace. In considering potential changes to the universal service contribution system, the Commission acknowledges that any such modifications must be consistent with the provisions of Section 254 of the Communications Act of 1934, as amended, ("the Act")[3] governing the universal service program.

I. INTRODUCTION

The Commission has instituted a number of outstanding proceedings whose outcome will directly impact the expenses of telecommunications carriers, including as a result of potential increases to the size of the federal universal service fund. Specific proceedings include: intercarrier compensation;[4] Multi-Association Group ("MAG") proposal relating to interstate access reform for rate-of-return carriers;[5] and Federal-State

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[2] FCC 01-145, 66 Fed. Reg. 28,718 (2001) ("*Notice*").

[3] 47 U.S.C. § 254.

[4] Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, *Notice of Proposed Rulemaking*, FCC 01-132, released April 27, 2001; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68, *Order on Remand and Report and Order*, FCC 01-131, released April 27, 2001.

[5] Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC Docket No. 00-256.

Joint Board review of the definition of supported services.[6] Until the Commission resolves the issues raised in those proceedings and determines with more certainty what the obligations from an expense side of the telecommunications carriers are, the issues raised in the *Notice* are premature. In short, USTA believes that the Commission is "putting the cart before the horse" by asking the questions in the *Notice* at this time. USTA believes that the Commission should conclude the proceedings described in this paragraph before it proceeds with the issues raised in the *Notice*, since such revenue issues will necessarily have to be revisited and further revised at the conclusion of the other proceedings.

However, under these circumstances where the Commission is seeking comments on issues that affect carriers' revenues and related obligations under current policies, USTA advances the positions contained in this pleading on the issues raised in the *Notice* that are necessarily tied to current policies and would necessarily have to be reevaluated as to their continued validity upon modification through the other proceedings cited above. In this regard, USTA has filed a petition for reconsideration of the Commission's *Report and Order and Order on Reconsideration*[7] modifying the current base for federal universal service support and increasing the reporting requirements from twice per year to five time per year. If the Commission in this proceeding does not elect to immediately transition on January 1, 2002 from current quarterly factors to an annual factor, USTA urges the Commission defer further examination of the issues raised in the *Notice* until it

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[6] CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12238 (2000).

[7] Petition for Reconsideration of the *Report and Order and Order on Reconsideration*, CC Docket No. 96-45, 66 Fed. Reg. 16145 (2001) filed on April 23, 2001 ("*Reconsideration Petition*").

has completed outstanding proceedings that may result in increases to the size of the federal universal service fund.

II. ASSESSMENT OF UNIVERSAL SERVICE CONTRIBUTION

A. Assessment Base

The Commission seeks comment on whether to continue using revenues as a measure of interstate telecommunications service and, if so, how to ensure that a revenues-based methodology remains consistent with the Act over time.[8] The Commission also seeks comment on a proposal to assess universal service contributions on a flat-fee basis, such as a per-line or per-account charge.[9]

Revenues are a common thread for the assessment of many federal and state funded programs. In its *Recommended Decision*, the Federal-State Joint Board noted that:

> Commenters advocate a variety of contribution methodologies, and the majority recommend some kind of revenues-based mechanism.[10]

In the *Notice*, the Commission acknowledged that revenues are the proper assessment base when it stated:

> ...Section 254 of the Act requires providers of "interstate telecommunications services" to contribute to universal service on an equitable and nondiscriminatory basis. Thus, in establishing a universal service contribution methodology, the Commission must choose a way to measure the amount of interstate telecommunications services provided by each carrier, so that the Commission can equitably and nondiscriminatorily assess contributions. As previously

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[8] *Notice* at ¶¶17-24.

[9] *Id.* at ¶¶ 17, 25-30.

[10] Federal-State Joint Board on Universal Service, *Recommended Decision*, CC Docket No. 96-45, 12 FCC Rcd 87, 490-91 (1996) ("*Recommended Decision*").

> mentioned, the Commission has chosen revenues to gauge the amount of interstate telecommunications service provided by each carrier....[11]

Assessment on any other basis does not adequately measure the amount of interstate telecommunications services on which to assess contributions. Revenues are finite and easily measured, with clear and well-defined jurisdictional definitions.

A flat charge would include both intrastate and interstate revenues out of necessity, because the mere existence of a customer account offers absolutely no information about either the existence or amount of interstate service that a particular customer has. Furthermore, the existence or amount of interstate service varies widely depending on whether the carrier is a local exchange or interexchange carrier. The assessment basis must be equitably and nondiscriminatory, pursuant to Section 254 of the Act. Flat fee assessments would necessarily involve some type of artificial industry averaging process that are an inadequate substitute for actual interstate billed revenues billed by carriers for interstate and international service. Thus, flat fee assessments are regressive, and would not meet the requirements of the Act.

Most importantly, the flat fee approach was specifically disallowed by the Fifth Circuit in *Texas Office of Public Utility Counsel v. FCC*.[12] The Fifth Circuit reversed the Commission's decision to assess contributions based on the intrastate revenues of universal service contributors. Thus, any proposal to assess universal service contributions on a flat fee basis is *per se* unlawful and should not even be raised or seriously considered by the Commission in this proceeding.

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[11] *Notice* at ¶ 17 (footnote omitted).

[12] 183 F.3d 393, 448 (5th Cir. 1999).

B. Exemptions

1. *De Minimis* Carriers

Section 254(d) of the Act grants the Commission authority to exempt a carrier or class of carriers from the requirement to contribute to the federal universal service fund if the carrier's telecommunications activities are limited to such an extent that the level of such carriers' contribution to the preservation and advancement of universal service would be *de minimis*.

USTA believes that the contributions from carriers currently classified by the Commission as *de minimis* would also be *de minimis* when compared to the current fund as a whole. For example, using 1999 revenue data from the Commission's *Telecommunications Industry Revenues: 1999*,[13] the total interstate and international revenues for 2,708 filers that were *de minimis* or otherwise exempt from universal service support requirements was $143,000,000 out of a base of about $80,000,000,000 or .00179 percent ($143,000,000/$80,000,000,000). USTA estimates that if these *de minimis* carriers did contribute in 2000, their contribution would have been approximately $8,151,000 ($143,000,000 x .0570 percent), based on an average contribution factor for 2000 of .00570 percent.[14] The $8,151,000 represents approximately .00181 percent of the fund of about $4,500,000,000 ($8,151,000/$4,500,000,000).

USTA continues to support the current Commission policy set forth in Section 54.798 of the Commission's rules[15] that exempts from the obligation any interstate and

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[13] Released September 25, 2000, Table 4.

[14] This percentage was calculated as follows: .058770 + .057101 + .055360 + .056688 ÷ 4 = .0570.

[15] 47 C.F.R. § 54.798.

international telecommunications carrier whose annual universal service contribution would be less than $10,000. The only interstate and international telecommunications revenues of the majority of USTA members that fall in the *de minimis* category are those carriers' interstate subscriber line revenues.

USTA's position is consistent with the Federal-State Joint Board's *Recommended Decision* and the Joint Explanatory Statement that s "the *de minimis* exemption applies only to those carriers for which the cost of collection exceed the amount contribution."[16] USTA is not aware any changes in the status of these *de minimis* carriers to remove their current exemption.

2. Cable Modem Service Providers

On September 26, 2000, USTA filed a *Petition for Declaratory Ruling* with the Commission requesting that cable television operators or their affiliates that provide telecommunications services be required to contribute to the universal service fund. Such a finding is consistent with the Ninth Circuit's determination in *AT&T Corporation v. City of Portland*[17] that found that cable broadband transmission service offered by cable operators over cable systems is a telecommunications service. As such, those cable operators are obligated to comply with Section 254(d) of the Act and contribute to the universal service fund. USTA again urges the Commission to act favorably on its petition.

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[16] *Recommended Decision* at 498 (footnote omitted).

[17] 216 F.3d 871 (2000).

C. Fund Sufficiency

The Commission would satisfy the Section 254(d) requirements of a specific, predictable, and sufficient mechanism that would preserve and advance universal service if it adopts an annual contribution factor based on current, gross-billed interstate and international (*i.e.*, retail) revenues. Such an approach would require carriers to file FCC Form 499 once a year with an annual true-up to assist USAC in determining any under or over assessments in the fund. The Universal Service Administration Company ("USAC") has been given the responsibility by the Commission to administer the universal service support mechanism in an efficient, effective and competitively neutral manner.[18] USAC's experience should allow it to recommend to the Commission accurate estimates of the appropriate level of carrier contributions. Furthermore, any current year shortfalls could be offset by adjusting the next year's contribution factor and any over assessments could be deducted from the next year, thus avoiding the need for a reserve fund.

D. Carrier Reporting

As set forth in Section (I) above,[19] USTA has filed a *Reconsideration Petition* seeking a change in the carrier reporting requirement recently adopted by the Commission so that carriers would file their annual retail revenues to USAC and that the quarterly requirement would be eliminated. USTA again urges the Commission to adopt that request.

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[18] 47 C.F.R. Part 54, Subpart H.

[19] *See* n.7, *infra*.

E. Enforcement and Auditing

If the Commission adopts USTA's recommendation to move from quarterly factors to an annual factor as sought in its *Reconsideration Petition*, this would remove the advantage, if any, of underreporting of revenues in one quarter and over-reporting of revenues in another quarter to reduce a carrier's contribution obligations. USTA believes that USAC and the Commission currently have the necessary oversight authority and responsibilities to monitor all interstate and international telecommunications carriers' compliance with the reporting and contribution requirements of the federal universal service program. USTA is of the opinion that the current Section 54.707 of the rules,[20] "Audit Controls," provides the fund administrator with the necessary authority to audit contributions and carrier reporting of revenues data to the administrator. In addition, the Commission with its enforcement rules is in a position to enforce Section 54.707. Furthermore, USTA believes that Section 254(d) of the Act and Section 54.706 of the rules[21] provide sufficient authority to collect assessed contributions from carriers.[22]

F. Transition

Since USTA is not advocating a major change from the current contribution assessment methodology, a transition would not be required if USTA's position is adopted.

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[20] 47 C.F.R. § 54.707.

[21] 47 C.F.R. § 54.706.

[22] *See* PTT Telekom, Inc., *Forfeiture Order*, FCC 01-187, released June 15, 2001.

III. RECOVERY OF UNIVERSAL SERVICE CONTRIBUTION

A. Lifeline Exception

USTA believes it would be inconsistent with the current principles and purpose of the lifeline support program to recover a portion of the federal universal service program cost from this group of consumers. Therefore, USTA supports the continuation of the current provisions associated with the recovery of universal service contribution from lifeline customers found in Section 54.401 of the rules.[23]

USTA's position on low-income and/or low-volume consumers is to continue to recover a portion of the federal universal service support cost. USTA is not aware of any method to identify low-income consumers except through the lifeline support program. Low-volume consumers may or may not be low income consumers. Furthermore, some consumers' low-volume status could change from month to month. USTA is currently not aware of a definition for a low-volume consumer and questions whether it would be appropriate to base a definition on a dollar amount for local service, long distance service, non-regulated services, or a combination of all services.[24] For instance, a low-volume consumer to a USTA member company could very well be a high-volume consumer to a calling card carrier.

B. Recovery Limitations for Incumbent Local Exchange Carriers

As advocated in Sections (II) (C) and (D) above, the Commission should fix a flawed process that requires burdensome quarterly rate changes for recovery of universal service contributions. The Commission should adopt an annual factor for all carriers, or

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[23] 47 C.F.R. § 54.401.

[24] Furthermore, public disclosure of such information would very likely be a violation of 5 U.S.C. § 552.

allow carriers to develop their universal service charges on an annual basis that would be sufficient to satisfy their obligations to the universal service fund. This could correspond to the carriers' annual tariff filings based on a July 1-June 30 period. Although an annual factor could create the potential for under or over-recovery, the fund administrator should be given the authority to manage the fund by allowing for cash reserve, borrowing, or other cash management tools typically used in such circumstances. This would reduce administrative burdens for the Commission, USAC, and carriers, as well as decrease customer confusion by limiting changes in the level of an end user charge to an annual basis, rather than a quarterly basis.

Alternatively, the Commission should give the incumbent local exchange carriers the same flexibility as the rest of the industry to recover their universal service contributions. They should be allowed to adopt an annual universal service charge. Any shortfall or over-recovery in the revenues as compared to the payments due to the fund administrator would be added to, or subtracted from, the following year's rates.

C. Legal Authority

USTA maintains that the Commission's authority to enact the changes to the recovery mechanism proposed herein by USTA is contained within the parameters of the Act. However, USTA takes no position with regard to the Commission's legal authority to adopt other, more far-reaching proposals contained in the *Notice*.

IV. CONCLUSION

USTA believes that the Commission should conclude other outstanding proceedings affecting expenses of telecommunications carriers and the size of the federal universal service fund before it resolves the issues raised in this *Notice* affecting carriers'

revenues and related obligations under the universal service program. However, should the Commission proceed, USTA advocates that, under current policies, assessment of carriers' universal service contribution should be made annually and on the basis of a carrier's interstate and international retail revenues. USTA also advocates that the current *de minimis* carrier exemption and the lifeline exception be retained, and that cable television operators or their affiliates offering cable broadband transmission service be required to contribute to the universal service fund.

Respectfully submitted,

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June 25, 2001

CERTIFICATE OF SERVICE

I, Meena Joshi, do certify that on June 25, 2001, Comments of The United States Telecom Association was either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the attached service list.

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