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JUN 25 2001
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 PRIMUS TELECOMMUNICATIONS, INC.

Primus Telecommunications, Inc. ("Primus"), by its undersigned counsel and pursuant to the Commission's Notice of Proposed Rulemaking released May 8, 2001 ("NPRM"), hereby submits its comments in the above-captioned dockets. The purpose of these comments is to highlight certain changes to the Commission's current Universal Service Fund ("USF") regulations that Primus believes would make administration of USF more equitable among differently-situated carriers and would provide for a more efficient administration of the USF system.

I. About Primus

Primus is a total solutions provider of telecommunications services. Through its numerous domestic and foreign licensed affiliates, Primus provides a variety of telecommunications services, including international and interstate voice and data transport, such as broadband Digital Subscriber Line ("DSL") and other services.

Primus believes that current USF policies discourage entry of international carriers into domestic markets, and unfairly affect companies with relatively high rates of uncollectable revenue. These inequities can be remedied with relatively few, but significant changes to the current USF collection regime.

II. The Current International Exemption is Arbitrary and Retards Growth in the US Domestic Market

Current Commission rules permit carriers with less than eight percent interstate traffic to contribute only on the interstate portion of their revenue, whereas carriers who exceed this low threshold must contribute on all revenue, including otherwise exempt international traffic.[1] As defined by the Communications Act of 1934, as amended ("Communications Act"), telecommunications is "interstate" when the communication or transmission originates in any state, territory, possession of the United States or in the District of Columbia, and terminates in another state, territory, possession, or the District of Columbia.[2] Foreign communications, by contrast, is defined by the Act as a "communication or transmission from or to any place in the United States to or from a foreign country, or between a station in the United States and a mobile station located outside the United States.[3] The Commission found that the base of contributors to the USF "should be construed broadly," and therefore used its discretionary authority to require

[1] 47 C.F.R. § 54.706(c).
[2] 47 U.S.C. § 153(22).

that *all* end-user revenues generated by interstate carriers, both interstate and international, should be included in the revenue base.[4] In response to the remand of the original *Universal Service Order* from the Fifth Circuit Court of Appeals in *Texas Office of Public Utility Counsel v. FCC*,[5] the Commission created the current "eight percent" rule.[6] In so doing, the Commission rejected other solutions that Primus believes warrant a fresh look, based on the competitive inequities of the current eight percent rule.

The eight percent rule creates a perverse competitive disincentive that discourages international carriers from providing domestic interstate service. Carriers who provide primarily international service remain in a position where it is economically preferable to avoid the domestic interstate market rather than incur the obligation to make substantial universal service payments. Whenever a primarily international carrier considers whether to offer interstate service, it will be faced with the possibility that providing that service will remove it from the eight percent exception and subject it to a contribution requirement on all of its revenue, including previously exempt international revenue. In many cases, the resulting universal service liability will offset any revenue from the new service, and force the carrier to offer the service at a loss. Under such circumstances, rationally acting international carriers will avoid providing interstate service.

Given the current economic situation of the telecommunications marketplace, international carriers are thus faced with a Hobson's choice: to enter the interstate market and potentially provide the service for no net revenue in the hope that it will eventually become

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[3] 47 U.S.C. § 153(17).

[4] *Federal-State Joint Board on Universal Service*, CC Docket 96-45, Report and Order, 12 FCC Rcd 8776 at 9173-74 (1997), ("*Universal Service Order*").

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

[6] *Federal-State Joint Board on Universal Service, Access Charge Reform*, Sixteenth Order on Reconsideration in CC Docket No. 96-45, Eight Report and Order in CC Docket No. 96-45, Sixth Report and Order in CC Docket No. 96-262, 15 FCC Rcd. 1679 at ¶ 15 (1999) ("*Universal Service Remand Order*").

profitable as it becomes a larger component of the company's total telecommunications traffic, or remain solely in an international market in which independent carriers have increasingly been unable to survive.[7] Yet if these carriers choose not to provide interstate service, they simply will not be able to compete with others that can offer their customers a complete package of telecommunications services. Faced with these choices, the economically rational (but still unpalatable) option will be to avoid providing the interstate service that would trigger the contribution requirement, and attempt to maintain competitiveness in the international market.

The eight percent threshold, while avoiding the possibility that a carrier will remit *all* of its interstate revenue to the USF system, does *not* alleviate the economic disincentives for primarily international carriers that also provide interstate services. Primus recommends that the eight percent rule be replaced with a more substantial threshold or other test that would encourage greater entry in the domestic interstate market. Of course, the simplest alternative would be to exclude international revenues from the contribution base entirely. In that regard, it is worth noting that, in Primus's opinion, Section 254 does *not* require a finding that "interstate" encompasses both domestic and intentional services.[8] Rather, the FCC chose to include international revenues in the contribution base pursuant to its discretionary statutory authority to ensure that universal service contributions are made on an equitable and nondiscriminatory basis.

Alternatively, the Commission could retain a percentage threshold, but provide a higher trigger amount – perhaps 25 to 50 percent – thereby making it possible for primarily international carriers to rationally enter the domestic market with more vigor. Or, as was

[7] Primus notes the recent bankruptcy filings of some of the largest independent international carriers: Pacific Gateway Exchange, Inc., RSL Communications, Ltd., and Viatel, as reported by the Commission in it most recent *Report on International Traffic & Revenue Data*. These companies were primarily international carriers who may have been dissuaded from increasing their domestic presence because of the USF policies, only to face harsh commercial realities in an increasingly cost-sensitive international telecommunications marketplace.
[8] *Universal Service Remand Order* at ¶ 22.

suggested to the Commission during the USF remand proceeding, to provide a sliding scale approach for international carriers with small percentages of domestic interstate revenues.[9]

In sum, the current eight percent rule leaves much to be desired in terms of the fairness to international carriers who provide a small, but potentially growing, percentage of interstate revenue. When faced with the possibility of offering a service, only to remit all revenue from that service (collected or not) to the USF system, rationally acting carriers will likely avoid providing domestic interstate service. Such a result is not consistent with the mandates of the Act or the overall policy goals of the USF system to promote competition in all telecommunications markets and bring a choice of telecommunications service providers to all Americans.

III. The USF Contribution Base Should Include a Deduction for Uncollectable Revenue

Current USF polices require contribution based on a company's *billed* revenues.[10] While such a system may be administratively expedient, it creates an inherent unfairness in the allocation of contribution against those companies that have relatively high rates of uncollectable revenue. Thus, carriers catering to a customer base that is less likely to amass uncollectable revenue have an effectively much lower contribution factor. Carriers that serve residential, immigrant or more impoverished customer bases may suffer an effectively higher rate of contribution. Carriers faced with this economic reality may increase rates to these customers or may avoid serving these markets at all. Ironically, these may be some of the same customers who are intended to benefit from the policy goals of the USF system.

Primus suggests that, to account for this disparity, USF regulations should allow companies to report collected revenue, or if that information is not available on a quarterly basis,

[9] *Id.*, at ¶ 24.

permit a true up based on the differential between billed and collected revenue when that information becomes available to the reporting carrier.[11] Primus notes that current USF guidelines for establishing the quarterly contribution rate accounts for USAC's uncollected revenue from carriers who should be contributing.[12] Carriers thus already pay a premium to offset unremitted USF payments; requiring carriers to further contribute on revenue that they themselves do not collect is a particularly harsh penalty for serving under-served markets that may have a higher rate of uncollected revenues.

Additionally, as the competitive telecommunications industry undergoes financial hardships, carriers who serve other carriers are increasingly at risk for being held responsible for a reseller's unpaid USF contribution obligations. Currently, a carrier who receives assurances from resellers that the reseller is remitting the USF payments to the Commission need not add that wholesale revenue to its contribution base.[13] But, should a carrier become financially non-viable, it may fail to pay both its underlying carrier and its USF obligations. Because the underlying carrier may not be able to receive certification from this reseller that the USF contribution has been paid, the current Form 499 instructions could effectively require the underlying carrier to remit this contribution—even though the underlying carrier has received little or no payment for these *wholesale* services. This adds insult to (economic) injury by demanding contribution from the underlying carrier for revenue it will never realize.

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[10] Form 499-A Instructions, at 14.

[11] Primus notes that not all carriers may be able to retrieve this information on monthly basis, and may only account for uncollected revenue on a quarterly or annual basis, and thus the Commission should permit some flexibility in allowing carriers to either report collected revenue directly, or to true-up future revenue filings with an amount of uncollected revenue. If the Commission were to permit an adjustment for uncollectable revenues, its current true-up rules would impose an unwarranted penalty on such carriers.

[12] *See, e.g.*, Form 499-A, at Line 302.

[13] Form 499-A Instructions, at 13. Primus notes that the "reasonable expectation" standard did not appear in the Commission's initial order nor its regulations, but rather first appeared in worksheet instructions.

IV. The USF Worksheet Should Be Placed on Public Notice for Public Comment

In administering the USF system, the Commission and USAC have developed numerous forms for carriers to use in calculating their applicable USF contribution base. These forms, such as the 499-A and 499-Q, offer varying degrees of complexity and clarity for carriers. While the forms serve a necessary and useful purpose, they also serve as a point of great confusion and consternation for carriers attempting to complete them in a timely fashion. Too often, carriers do not receive any prior opportunity to review or comment on these forms before they must complete the information and submit it to USAC for calculation of their USF contribution.

The complexity of these forms, and the lack of input from carriers in their creation, is invitation for inconsistent reporting. Form 499-A alone consists of a seven-page worksheet and 26 pages of instructions that carriers must consider in completing the form. Moreover, certain boxes have purported to collect certain data that is excluded from the USF contribution, or have instructions that are open to interpretation based on both the instructions on the form and the applicable Commission regulations. These factors are particularly true for carriers that carry significant foreign-billed, transiting or other international services.[14]

Primus believes this annual rite of passage, whereby carriers and their counsel are left guessing as to how to complete the form accurately, consistently and fairly, can be minimized by providing carriers an opportunity to comment on the form before it is finalized. Giving carriers a chance to review and work through the worksheets and provide the Commission with input on its strengths and weaknesses will result in a more consistently applied USF system.

[14] *See, e.g.*, Instructions for Form 499-A, Line 412. This line requests that revenue from traditional "transiting" traffic be excluded; it says nothing about increasingly common re-origination traffic or traffic settled in non-traditional manners. Yet, the instructions request that the reported traffic match the revenue figures filed made pursuant to Section 43.61, a fact which may not be possible if this traffic is excluded.

V. Conclusion

The current USF system has several key shortcomings that should be addressed and resolved in this proceeding. By altering the current eight percent threshold for international carriers, the Commission will encourage greater competition in the domestic interstate market from primarily international carrier who now face economic disincentives for providing this service. Second, by permitting carriers to contribute based on collected, rather than on billed, revenue, the Commission will eliminate some of the disparities faced by carriers with higher than average levels of uncollectable revenue. And, finally, by offering carriers an opportunity to comment on the current USF forms before they are finalized, the occasional confusion and uncertainty concerning USF reporting will be reduced, if not eliminated.

Respectfully submitted,

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June 25, 2001

CERTIFICATE OF SERVICE

I, Penny Jackson, hereby certify that on this 25th day of June, 2001, copies of the attached, **"COMMENTS OF PRIMUS TELECOMMUNICATIONS, INC."**, were sent via hand delivery, to the following:

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