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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 Services, 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 RURAL CELLULAR ASSOCIATION

The Rural Cellular Association ("RCA"),[1] by counsel, hereby responds to the

[1] RCA is an association representing the interests of small and rural wireless licensees providing commercial services to subscribers throughout the nation. Its member companies provide service in more than 135 rural and small metropolitan markets where approximately 14.6 million people reside. Formed in 1993 initially to address the distinctive issues facing rural cellular service providers, the membership of RCA is concerned with advancing policies that foster the implementation of wireless services in the nation's rural and smaller market areas.

Commission's invitation to comment on proposed modifications to universal service assessments on carriers.[2] RCA supports Commission efforts to streamline and rationalize all regulatory obligations, including universal service reporting and contribution obligations. In reevaluating current methodologies, however, RCA urges the Commission to take official notice of the differences among carriers to ensure that the goal of simplification does not overpower the goals of fairness and efficiency. RCA submits that all three goals may be achieved by: (1) maintenance of the 15% "safe harbor" for cellular and personal communications service ("PCS") carriers not offering nationwide calling plans; and (2) assessment of universal service contributions based upon collected, rather than billed, end-user interstate and international telecommunications services revenues.

I. THE CURRENT SAFE HARBOR PERCENTAGE REMAINS APPROPRIATE FOR CARRIERS NOT OFFERING NATIONWIDE SERVICE

As the basis for entertaining comment on the wireless "safe harbor" percentage currently established at 15% of billed end-user telecommunications services revenues,[3] the Commission notes that "wireless telecommunications providers increasingly are offering bundled local and long distance wireless services in a one-rate package . . . ."[4] Given this growth, the Commission

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[2] *In the Matter of Federal-State Joint Board on Universal Service, et al.,* Notice of Proposed Rulemaking, FCC 01-145, (rel. May 8, 2001), 66 FR 28718 (May 24, 2001) ("Notice").

[3] *See Federal-State Joint Board on Universal Service,* CC Docket 96-45, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 21252, 21258-59 (1998) ("Safe Harbor Order").

[4] Notice at para. 24. *See also* Notice at para. 12, citing *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Fifth Report, 15 FCC Rcd. 17660, 17675-76 (2000).

suggests that it is "possible that the actual percentage of interstate wireless telecommunications revenues may now significantly exceed the Commission's interim safe harbor percentages."[5] With respect to carriers providing nationwide or broad regional service, this observation may be accurate. For carriers providing cellular service within a limited number of Rural Service Areas ("RSAs") or PCS service within a limited number of Basic Trading Areas ("BTAs"), however, this observation is simply inaccurate. Because both RSAs and BTAs generally are wholly intrastate, smaller, unaffiliated carriers generally are not in a position to offer one-rate plans. Absent the universal offering of one-rate plans, there is no basis for a conclusion that the increase in interstate wireless usage is evenly distributed among carriers. Accordingly, there exists no basis upon which to conclude that the current wireless safe harbor percentage should be increased uniformly.

RCA members generally serve one or only a few licensed service areas and provide their subscribers with nationwide access to service through roaming arrangements. In those instances where small and rural carriers provide a one-rate calling plan, such plans are typically confined to a single state.[6] Subscribers of RCA member companies generally are not afforded one-rate, large regional or nationwide calling plans. Absent the existence of a nationwide one-rate plan, there is no basis upon which to conclude that the relative percentage of interstate usage for any carrier

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[5] Notice at para. 12.

[6] Smaller carriers generally are able to offer one-rate state-wide service only through roaming arrangements with other carriers.

has increased.[7] Accordingly, maintenance of the 15% safe harbor is appropriate for RCA members and similarly-situated carriers who do not provide nationwide or broad regional one-rate calling plans to their subscribers.

If the Commission finds that larger carriers or carriers offering a one-rate plan should be subject to a higher safe-harbor percentage or some other methodology for determining universal service contributions, it must exempt smaller, geographically-limited carriers from this determination in order to preserve the simplicity and fairness of the current system.[8] At a minimum, if a higher percentage or different methodology were adopted for general applicability, a smaller, geographically-limited carrier must be afforded the opportunity to demonstrate its inapplicability. This solution would, however, increase significantly the burdens on smaller carriers to produce and maintain documentation justifying different treatment, thereby eviscerating the simplicity of the current scheme. It is likely that many smaller carriers can demonstrate that the current 15% interstate factor is, in fact, too large, but the effort and expense of record-keeping and analysis to document this fact outweighs the projected savings. This situation would be exacerbated if a higher percentage were adopted for universal application, and would unacceptably sacrifice the benefits of simplifying carrier requirements to an amorphous goal of administrative efficiency. Such action would, moreover, be highly suspect in light of the

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[7] In its continued inquiry initiated through the further notice section of its Safe Harbor Order, the Commission recognized that the differing service areas of wireless providers may justify the establishment of different safe harbor percentages. Safe Harbor Order, 13 FCC Rcd. at 21265, para. 24.

[8] The Commission has recognized its obligation to ensure that the contribution system be simple to administer and equitable. Notice at para. 6.

absence of any rational link between the overall increase in wireless interstate traffic and any increase in interstate traffic due to the services offered by smaller, geographically-limited carriers.

Application of a higher percentage universally also would disproportionately burden the customers of smaller carriers who do not participate in nationwide calling plans. It would be inequitable and discriminatory to require non-nationwide carriers and their subscribers to bear a portion of the interstate universal service contribution more appropriately associated with the identifiable users of interstate services.

While changing market conditions may warrant a review of current methodologies, the lack of uniformity in market structure also warrants close scrutiny. Given the statute's clear directive that universal service contributions be based on interstate telecommunications services and that such contributions be assessed "on an equitable and nondiscriminatory basis . . . ,"[9] the Commission must avoid generalizations which jeopardize its ability to fulfill its statutory mandate and potentially violate its commitment to competitive neutrality.

II. COLLECTED REVENUES PROVIDE A MORE APPROPRIATE BASIS FOR ASSESSMENT OF UNIVERSAL SERVICE CONTRIBUTIONS

RCA supports the maintenance of a revenue-based contribution methodology, but advocates its modification from the current utilization of "billed" gross end-user revenues, to the more rational measure of those interstate telecommunications service end-user revenues actually

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[9] 47 U.S.C. § 254(d).

collected.[10] Utilization of the measurement of collected revenues is consistent with general accounting and reporting practices, and, as recognized by the Commission, eliminates the difficult and costly calculations required to attempt to ensure that recovery from subscribers is accurate and fair.[11] This proposal not only simplifies the contribution payment and recovery process, but also would alleviate potential distortions in carrier obligations which may arise during periodic regional economic downturns when wide-spread late payments or default on billings affect significantly the difference between billed and collected revenues during a particular accounting period.[12]

RCA opposes a flat-fee approach because of the inequities and distortions which would arise. As RCA notes herein, increases in interstate usage likely is traceable to a defined group of subscribers served by specific carriers. Under these circumstances, homogenizing the universal service contribution obligation across carriers and subscribers is unfair and likely to lead to market distortions because costs will be disassociated from cost-causation. Subscribers of localized services will subsidize the interstate usage of those customers subscribing to nation-wide one-rate plans. Adoption of this process would compromise the Commission's goal of

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[10] As demonstrated above, RCA advocates the application of the current 15% safe harbor percentage (or such lower payment as a carrier deems economic to demonstrate) to collected interstate telecommunications service end-user revenues.

[11] *See* Notice at para. 23.

[12] RCA is opposed to additional reporting requirements. If the gross billed revenue standard were replaced with collected revenues, increasing the frequency of the quarterly reporting now being required (*see* Notice at para. 10), would not appear to be warranted. In fact, smaller carriers should be afforded the opportunity to report only on a semi-annual basis, with the option to report more frequently for true-up purposes.

competitive neutrality and distort the marketplace by irrationally disfavoring small and niche carriers. The potential gains in simplicity are outweighed by the inequities associated with this approach, not the least of which would be the disproportionate burden to be borne by low-volume users. Accordingly, RCA supports the maintenance of a revenue-based assessment methodology, modified to reflect collected, rather than billed, revenues.

III. CONCLUSION

As the Commission considers whether to increase its safe harbor percentages in light of current market trends, RCA urges the Commission to maintain the current 15 % safe harbor for RCA members and similarly-situated carriers who do not provide one-rate calling plans to their subscribers. Adoption of a higher percentage universally would, at a minimum, increase significantly the administrative burdens on smaller carriers and disproportionately burden the customers of smaller carriers who do not participate in nationwide calling plans. Additionally, RCA urges the Commission to modify its current utilization of "billed" gross-end-user revenues, to the more rational measure of collected interstate telecommunications service end-user revenues. This modification would simplify the contribution payment and recovery process and alleviate the potential for distortions in the marketplace.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Nancy Wilbourn, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that a copy of the foregoing Comments of the Rural Cellular Association was served on this 25th day of June 2001, via hand delivery to the following parties:

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