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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 AT&T CORP.

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June 25, 2001

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COMMENTS OF AT&T CORP.

Pursuant to Section 1.415 of the Commission's rules, AT&T Corp. ("AT&T") hereby submits these comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM"), FCC 01-145, released May 8, 2001, published in 66 Fed. Reg. 28718 (May 24, 2001), in the above-captioned proceedings.

INTRODUCTION AND SUMMARY

AT&T commends the Commission for instituting this thorough reappraisal of how contributions to the Universal Service Fund ("USF") are assessed. As the Commission

recognizes, competitive developments in telecommunications markets are rapidly undermining the Commission's existing assessment method, in which each carrier contributes a percentage of its interstate and international retail telecommunications service revenues. The Commission should replace that system with a flat-rated pass-through, based on current data, with carriers remitting to the USF only those contributions that they actually collect from customers.

Several trends in telecommunications markets are undermining the current system. For example, under the current system, each individual carrier bears all of the risk of nonrecovery from its end-users. As a result, there is substantial variation in the amount of different carriers' line-item surcharges. Equally important, there is still a six-month lag between accrual and assessment of universal service obligations, which creates severe competitive distortions that favor carriers with increasing interstate revenues – especially the Regional Bell Operating Companies ("RBOCs"), as they obtain authority to offer interLATA services. In addition, carriers are increasingly bundling interstate and international telecommunications services with both intrastate services and non-telecommunications services in flat-rated packages, which is making it difficult (if not impossible) to identify interstate / international revenues for purposes of universal service contributions. For all of these reasons, the existing, revenue-based assessment method is becoming more difficult to administer, even as it imposes more and more artificial competitive disadvantages on certain carriers.

The Commission should fundamentally change this system as soon as possible. First, it should require all carriers to pass through a prescribed universal service contribution amount, and relieve individual carriers of the risk of nonrecovery. Second, it should eliminate, once and for all, the lag between accrual and assessment of universal service obligations. Third, the Commission should transition from its current, revenue-based assessment method to a

flat-rated assessment method. This mechanism can be implemented immediately for residential, wireless and switched voice business customers. Further investigation is required for business customers that use special access. If due to the complexities of business services, a flat-rate mechanism cannot be implemented immediately, then the Commission should maintain the current, revenue-based method for *all* business customers on an interim basis until the issues concerning a transition to flat-rated charges, and the impacts on the market, can be more thoroughly explored.

I. THE COMMISSION SHOULD INSTITUTE A PRESCRIBED PASS-THROUGH AND ESTABLISH MECHANISMS TO ELIMINATE CARRIER RISK OF NONRECOVERY.

The Commission seeks comment on what steps can be taken to address the significant variation in the amount of line-item surcharges of different carriers, and the possible customer confusion that results. NPRM ¶¶ 19, 23, 26, 28, 43. This variation has a single cause: the fact that, under the current system, individual carriers bear the entire risk that their contributions will not be fully recovered from their end-users and must set their USF line-item charges accordingly. The Commission should act promptly to eliminate that carrier risk and the associated variation in carrier USF line-item charges by instituting a prescribed pass-through, with carriers remitting to the fund only the contributions that they collect.[1]

[1] The Commission should also allow carriers to retain a percentage of what they collect to offset their own administrative billing expenses for the USF. The Commission should set that percentage, which should not vary by carrier.

Almost all of the anomalies in the current universal service system stem from the fact that individual carriers bear all of the risk of nonrecovery.[2] Under the existing system, carriers are assessed a percentage of their interstate and international end-user telecommunications revenues, and have the "flexibility to decide how to recover their contribution." *Universal Service Order,* CC Docket No. 96-45, Report and Order, FCC 97-157 (rel. May 8, 1997) ("*Universal Service Order*") ¶ 853. As the Commission has acknowledged, suppliers in competitive markets generally pass such costs through to their customers, and, accordingly, "many carriers recover most, if not all, of their universal service contributions through line items on their customers' bills." *See* NPRM ¶ 4 & n.11. But different carriers will always have different line-item fees under such a system. Indeed, as the Commission notes, carriers must "engage in complex calculations to account for such variables as uncollected revenues, credits, and the need to recover universal service contributions from a declining revenue base." NPRM ¶ 23. Because each carrier faces a different risk of nonrecovery, good faith efforts to fashion recovery mechanisms will inevitably result in line-item fees of substantially varying amounts. *See* NPRM ¶ 5 (noting wide variation in carriers' line-item fees). These varying line-item amounts introduce competitive distortions into telecommunications markets and may also be difficult for consumers to understand.

The only way to remove these anomalies from the system is to remove their source – *i.e.*, the Commission should eliminate individual carriers' risk of nonrecovery. The best way to accomplish that is (1) to *require* carriers to pass their contributions through to end-users in a uniform, prescribed manner, and (2) to make the *fund*, rather than individual carriers,

[2] Carriers' risk of nonrecovery is not uniform, especially because, as explained in Section II, carriers with declining interstate and international revenues must have a higher line-item USF charge to recover their USF assessments based on historical revenues.

account for nonrecovery, for example, by resizing of the line-item surcharge. (As explained in the next two sections, that prescribed pass-through should be a flat-rated charge based on a current, rather than historical, collection base.)

Although the Commission has been concerned in the past about placing limits on the means by which carriers recover their contributions (*see* NPRM ¶ 49), experience since 1998 has shown that the fund is actually in a much better position to correct for the risk of nonrecovery than individual carriers. As noted above, forcing individual carriers to bear the risk of nonrecovery and accounting for that risk results in wildly varying line-item surcharges. The current trends in telecommunications markets that the Commission identified in the NPRM are only exacerbating these risks and, thus, the variation in the line-item surcharges. *See* NPRM ¶¶ 3, 5. Under these circumstances, the universal service system is artificially creating a negative impact on competitive neutrality, and it is highly questionable whether the Commission's system, which forces individual carriers to bear all risk of nonrecovery, remains "equitable" and "nondiscriminatory" under Section 254(d). 47 U.S.C. § 254(d).

By contrast, the fund itself can account for end-user nonrecovery in a way that is much more "equitable," "nondiscriminatory," and competitively neutral. Under AT&T's proposal, each carrier would be required to pass through a prescribed line-item surcharge. Thus, there would be no variation at all in the surcharges of different carriers; universal service recovery would be fully transparent and equivalent to all consumers. Indeed, such a system would render the universal service subsidy entirely exogenous, as Congress intended. At the same time, carriers would not be required to compensate the fund for uncollected recovery from end-users; rather, the fund would make up for such nonrecovery through adjustments to the size of the uniform surcharge. Such mechanisms would ensure that the fund remained "sufficient" to

preserve and advance universal service, and all interstate carriers would fund the USF on a predictable, equitable, and nondiscriminatory basis. Under this system, the fund would spread the risk of nonrecovery evenly throughout the industry in a way that prevents varying surcharges and thus promotes transparency, predictability and competitive neutrality. The anomalies that plague the current system would be completely eliminated.

The Commission has ample authority under the statute to adopt such a system. Indeed, the Commission has a statutory responsibility under Section 254(d) to ensure that the system of contributions is "equitable" and "nondiscriminatory" (and competitively neutral, *see Universal Service Order* ¶ 47), and the Commission has broad authority to implement these requirements. As explained above, structuring the carriers' contribution obligations in a way that relieves them of the risk of nonrecovery would eliminate a number of harmful anomalies and competitive distortions caused by the current system. The result would be a system that is *more* "equitable," "nondiscriminatory," and competitively neutral than the current one, without sacrificing predictability or sufficiency. The risks and burdens of the current system do not fall equally on all carriers; the Commission has ample authority to adjust the contribution and recovery mechanisms to equalize those risks and burdens in a way that promotes the goals of the Act. *See, e.g., Alenco Comm.* v. *FCC*, 201 F.3d 608, 615 (5th Cir. 2000) ("[t]he Commission must see to it that *both* universal service and local competition are realized; one cannot be sacrificed in favor of the other").

For its part, the Commission proposes to address these problems by requiring carriers, if they choose to recover their contributions through a line-item surcharge, to limit that surcharge to a rate prescribed by the Commission. NPRM ¶¶ 42-44. This proposed rule would only make matters worse and should be rejected. In particular, such a rule would do nothing to

address the root of the problem – *i.e.*, under the Commission's proposed rule, individual carriers would still bear the risk of nonrecovery. As explained above, as long as carriers bear the risk of nonrecovery, their varying circumstances will require them to recover their contributions at different rates. The Commission's proposal, by effectively capping the permissible surcharge, would simply force carriers to recover some or all of their contributions implicitly through their rates, instead of through explicit line-item surcharges. Thus, the Commission's proposal would not eliminate any of the variation in recovery or the accompanying competitive distortions; it would simply undermine the relative transparency of the current system.

In fact, the Commission's proposal would be unlawful, for two reasons. First, by permitting (and effectively forcing) interexchange carriers to recover some of their contributions through basic service rates, the Commission would be maintaining implicit universal service subsidies in violation of Section 254(e). 47 U.S.C. § 254(e). As the Fifth Circuit has held three times now, "the plain language of Section 254(e) does not permit the Commission to maintain any implicit subsidies." *COMSAT Corp.* v. *FCC*, No. 00-60044 (5th Cir., May 3, 2001) (Commission may not even permit the maintenance of implicit subsidies); *Alenco Comm.* v. *FCC*, 201 F.3d 608, 623 (5th Cir. 2000); *Texas Office of Public Utility Counsel* v. *FCC*, 183 F.3d 393, 425 (5th Cir. 1999). Recovery of universal service contributions through basic service rates would unquestionably constitute an implicit subsidy. *See Alenco*, 201 F.3d at 623 ("[w]e made clear in *TOPUC* that the implicit/explicit distinction turns on the distinction between direct subsidies from support funds and recovery through access charges and *rate structures*"

(emphasis added)). Congress has mandated that universal service subsidies be fully transparent to consumers, carriers, and the Commission – not buried in rates.[3]

Second, forcing carriers to bear the risk of nonrecovery, while limiting their ability to design recovery mechanisms that adequately compensate for such nonrecovery, would not be "equitable" or "nondiscriminatory" under Section 254(d). Such a system would unduly penalize carriers that happened to have a higher rate of uncollected revenue or other risk factors. There is no sound basis in either the statute or public policy for subjecting carriers to such discriminatory treatment. In addition, the Commission's proposal flies in the face of any legitimate "truth in billing" concern. *See* NPRM ¶ 49 & n.106. As long as carriers bear the risk of nonrecovery, they must have the freedom to design recovery mechanisms, as long as they are candid with customers about what costs those mechanisms are designed to recover. The Commission's proposed rule would actually *require* nontruthful billing: under the Commission's proposal, the surcharge would be effectively capped, thus forcing carriers to recover some or all of their universal service costs through their rates, while at the same time prohibiting carriers from telling customers that anything other than the surcharge is a "Federal Universal Service Charge." NPRM ¶ 42. Such a rule would be blatantly unlawful; the Commission can lawfully limit carriers' ability to design recovery mechanisms only if it simultaneously acts to relieve carriers of the risk of nonrecovery.

In sum, adopting a prescribed pass-through, coupled with relieving carriers of the risk of nonrecovery, is the only system that is truly "equitable," "nondiscriminatory,"

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[3] This statutory prohibition would not prohibit folding the explicit USF surcharge into another line item on the retail bill, such as the LEC SLC or IXC PICC that is billed directly to the end-user, for an interim, transitional period, as long as it was labeled as such.

competitively neutral, simple to administer, and transparent to consumers, carriers, and the Commission. The Commission should adopt such a system without delay.

II. THE COMMISSION SHOULD ELIMINATE THE "USF LAG" AND MAKE UNIVERSAL SERVICE ASSESSMENTS BASED ON CURRENT DATA.

The Commission should also eliminate the "USF lag" once and for all. *See* NPRM ¶ 20. As the Commission notes, there is still a six-month lag between the accrual and the assessment of universal service contribution obligations. *Id.*; *see Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order and Order on Reconsideration, FCC 01-85 (rel. March 14, 2001) ("*USF Lag Order*") (reducing the lag from one year to six months). Although this is an improvement over the previous system, the six-month lag is still severely anticompetitive. Carriers with increasing interstate and international revenues obtain an artificial competitive benefit under this system, because they are not obligated to contribute to the USF for six months, when they can spread the recovery of those contributions over a larger revenue base. Carriers with declining interstate and international revenues accrue a larger assessment, which then must be spread over a smaller revenue base.

These anticompetitive distortions in the universal service system have become even more severe in recent years as the RBOCs enter the long distance market. Under the current system, RBOCs that obtain interLATA authority still make *no* USF contributions for six months, and continue thereafter to spread the recovery of their obligations over an ever-increasing revenue base. This places carriers who compete with the RBOCs in an untenable position. The RBOCs have an insuperable universal service cost advantage that others cannot match. This has nothing to do with competition on the merits; it is solely an artifact of the faulty design of the universal service system, which affirmatively creates competitive disparities. As

more and more RBOCs obtain interLATA authority, these disparities will only become more severe.

The Commission should eliminate these competitive imbalances immediately, by eliminating the USF lag altogether. To implement this approach, the Commission should require each interstate telecommunications carrier to submit on a quarterly basis to USAC a verified accounting of its assessable amounts (lines or revenues, as it transitions to a flat-rated assessment) in the Form 499 Telecommunications Reporting Worksheet. USAC would then estimate the total federal support that will be needed for the following quarter, as it does currently. Based on this estimate, USAC would then develop a factor that is equal to the ratio of the federal support requirement to total assessable amounts for the period. Each telecommunications service provider would then be required to apply the USAC factor to its current assessable monthly amounts.[4] Thus, even if an RBOC or other new entrant had no long distance revenues when it submitted its Form 499, universal service contributions would nonetheless be assessed by applying the USAC factor to its current period assessable amounts. The lag in the existing system would be eliminated, and the new system would be competitively neutral.

Eliminating the USF lag altogether would *not* impose undue reporting burdens. To be sure, carriers would be required to submit on a monthly basis a statement of their prior month assessable amounts and a contribution based on application of the USF assessment rate to

[4] The factor should be adjusted by the Commission to allow carriers to offset their own USF administrative billing expenses.

those amounts.[5] But carriers *already* submit such payments on a monthly basis. Basing the assessment on current data would not materially increase the reporting and administrative burdens that carriers already face under the current system.[6] In all events, any additional administrative burdens under this proposal would be small compared to the severe competitive disparities that the current system creates in the marketplace. The Commission should promptly eliminate this anticompetitive feature of the current system.

III. A FLAT-RATED ASSESSMENT AND RECOVERY MECHANISM HAS MANY ADVANTAGES.

An assessment method based on flat-rated charges instead of interstate and international retail revenues has many advantages over the current system, and the Commission should institute a transition to such a system. NPRM ¶¶ 25-30.

Moving to a flat-rated assessment mechanism is necessary for three principal reasons. First, a flat-rate mechanism is necessary to maintain equity and competitive neutrality in the face of prevailing trends in telecommunications pricing. NPRM ¶ 28. As the Commission notes in the NPRM, trends in telecommunications markets are rapidly undermining the viability of the Commission's original, revenue-based assessment method. In particular, carriers are increasingly "bundling services together in creative ways, such as offering flat-rate packages that include both interstate and intrastate telecommunications and non-telecommunications products and services." NPRM ¶ 3. As a result, it is becoming difficult or impossible to identify

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[5] As indicated in Section I, carriers would only contribute to the USF what they collect through end-user pass-through charges.

[6] The twelve monthly submissions to be filed 30 days after the close of the billing month would only need to identify the carrier's collected assessable amounts (lines or revenues) multiplied by the Commission-specified USF factor to confirm the correctness of the carrier's USF contribution.

interstate / international end-user retail telecommunications revenues. Under those circumstances, a simple, flat-rated assessment and recovery mechanism is the most "equitable" method of assessment, because it ensures that each carrier pays a fair, uniform contribution to the preservation of universal service.

Moreover, the "safe harbors" the Commission recently adopted for calculating interstate revenues within a bundled package are not an adequate substitute for a flat-rated assessment mechanism. *See Policy and Rules Concerning the Interstate, Interexchange Marketplace, et al.*, CC Docket No. 96-81 *et al.*, Report and Order, FCC 01-98 (rel. March 30, 2001) ("*Bundling Order*"). In that order, the Commission adopted two safe harbors: (1) if the bundled products are also available separately, the carrier may use the price of the separately offered telecommunications service, or (2) the carrier may use the price of the bundled package. *Id.* ¶¶ 49-53. Both of these safe harbors systematically overstate interstate and international telecommunications revenues, which unduly penalizes carriers who offer bundled packages. Although these are merely safe harbors, and carriers may attempt to identify interstate and international revenues in some other manner, any such attempt would be costly for both the carriers and the Commission and would potentially subject carriers to penalties if the Commission did not agree with the carrier's approach.[7] The universal service system should not create an artificial disincentive to offer bundled services; a flat-rated assessment is the most equitable means of addressing the proliferation of bundled offerings.

[7] Indeed, because carriers can be expected to opt for different methods of calculating interstate and international revenues, the variation in carriers' universal service recovery mechanisms will likely increase.

Second, a flat-rated assessment and recovery mechanism would also promote competitive neutrality by allowing the Commission to dispense with its increasingly complex patchwork of special rules and exceptions for different classes of carriers. For example, adoption of a flat-rated mechanism would allow the Commission to eliminate entirely the special safe harbors that apply to wireless carriers. As the Commission itself notes, the proliferation of bundled local and long distance calling plans from wireless carriers is leading consumers to "shift[] their long distance calling from traditional wireline service to wireless service," and as a result wireless carriers' percentage of interstate and international telecommunications probably "significantly exceed[s] the safe harbor percentages." NPRM ¶ 24. The Commission could also eliminate the special rules that allow certain interstate carriers offering predominantly international services and carriers with *de minimis* contributions to avoid making universal service contributions. *See* NPRM ¶ 21. All of these special exceptions are unwarranted and violate competitive neutrality; basing assessment on a flat-rate mechanism, rather than interstate and international revenues, would render all of them unnecessary.

Third, a flat-rate assessment and recovery mechanism would be far simpler to administer. *See* NPRM ¶ 27. Carriers would no longer have to report interstate and international revenues; rather, they would simply report assessable amounts (lines), which is much simpler (and which should be done monthly, as explained in the previous section). Similarly, such a system would be simpler for USAC and the Commission; line counts are much less variable than interstate and international revenues, and therefore switching to a flat-rate assessment would enhance the stability and predictability of the system. *Id.*

IV. THE COMMISSION SHOULD INSTITUTE A TWO-STAGE TRANSITION TO FLAT-RATED ASSESSMENTS.

The Commission should immediately begin a transition from an assessment based on end-user revenues to one based on a flat-rated method. *See* NPRM ¶¶ 25-30. Specifically, the Commission should immediately adopt a flat per-line assessment for residential, wireless and switched voice business customers. It should seek further comment on the optimal design for a flat-rate mechanism for businesses that use special access.

First, the Commission should immediately adopt a flat, per-line assessment for residential, wireless and single-line business customers. A per-line charge should be assessed for multi-line businesses in the same manner as the multi-line business PICC (which would result in recovery of USF solely from switched access lines).[8] The USF rate for multi-line business customers could be higher than that for residential and single-line business customers.

This per-line assessment should be applied to either the LEC or the presubscribed interexchange carrier. A per-line assessment and recovery method would be the simplest to administer and would promote maximum predictability and stability in the program. Carriers could implement such a flat-rate per-line mechanism for residential and switched voice

[8] This would not require a new line-item charge, as the multi-line business PICC charged by IXCs to end-users could indicate that the USF surcharge is an additional component of that line-item charge.

businesses quickly and easily, and therefore there is no reason for the Commission to delay such a transition.[9]

Further, if the Commission chooses the presubscribed interexchange carrier as the USF billing agent, it should also make clear that if the end-user has two presubscribed interexchange carriers, the second interexchange carrier would also bill the end-user for the full per-line charge as the customer would have a separate line with that carrier. If the end-user does not have a presubscribed interexchange carrier, the LEC would bill the end-user for the per-line universal service charge (as was the case with the PICC).

Fashioning an appropriate flat-rate assessment and recovery method for businesses that use special access is more difficult, because there is no universally accepted definition of what constitutes a "line." Accordingly, in the longer term, the Commission could apply some sort of capacity charge relating to whether the business is using narrowband or broadband facilities for those services for which it is impossible to identify individual voice grade "lines." Such a capacity charge would result in recovery of USF from special access, data *as well as* switched voice access lines. This method would have different impacts on the marketplace and therefore requires further study.

Because of the complexity of business services, if it is not possible to apply the switched voice per-line approach suggested above, then once the Commission applies the per-line mechanism to residential and wireless accounts, it should apply a revenue-based

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[9] If the Commission determines that it is the interexchange carrier's obligation to bill the universal service charge, such obligation should be made contingent, however, on reasonable rates for billing from the incumbent LEC. If the incumbent's rates for billing are not reasonable, then the LEC should have the obligation to bill the universal service charge.

assessment to *all* business revenues to recover the residual USF revenue revenue requirement that remains for an interim period while it investigates the appropriate mechanism for business customers. In no event, however, should the Commission delay a transition to flat, per-line assessments for residential and wireless customers.

CONCLUSION

For the foregoing reasons, the Commission should modify its rules concerning contributions to the Universal Service Fund as described above.

Respectfully submitted,

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June 25, 2001

CERTIFICATE OF SERVICE

I hereby certify that on this twenty-fifth day of June, 2001, I caused true and correct copies of the forgoing Comments of AT&T to be served on all parties by mailing, postage prepaid or hand delivery to their addresses listed on the attached service list.

Dated: June 25, 2001
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