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July 9, 2001

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: In the Matter of Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review – Streamlined Contributor Federal-State Joint Board on Universal Service Contributor Reporting Requirements Associated With Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, and 95-116.

Dear Ms. Salas,

Pursuant to Sections 1.415, and 1.419 of the Commission's Rules, please find enclosed the Reply Comments of the Ad Hoc Telecommunications Users Committee in the above-captioned matter.

If you have any questions regarding this filing, please do not hesitate to contact me.

Sincerely,



James S. Blaszak

**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
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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

**REPLY COMMENTS OF THE
AD HOC TELECOMMUNICATIONS USERS COMMITTEE**

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July 9, 2001

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Summary

The record in this proceeding and sound principles of economics and public policy dictate that flat per-line charges assessed on business and residential customers should replace a percentage of end-user telecommunications revenues as the methodology by which carriers assess and collect contributions to the universal service fund. Flat fees, unlike revenue-based methods, recover non-traffic sensitive costs on a non-traffic sensitive basis, avoid incentives for uneconomic bypass, avoid “deadweight loss” for the economy, do not pre-suppose a correlation between long distance usage and wealth, and will be easier to administer and more sustainable. Further, given the legality of federally-mandated per line charges such as the subscriber line charge, there is no merit to the contention of the ILECs that per line universal service charges exceed the Commission’s statutory jurisdiction over interstate communications.

In its opening round comments, Ad Hoc recommended that universal service contributions be assessed based on the number of lines connected to the public switched network for landline carriers and the number of telephone numbers associated with service enabled handsets for wireless carriers. Should the Commission determine that this method violates Section 254(d)’s requirement that every carrier make equitable and non-discriminatory contributions to the universal service fund, Ad Hoc suggests the following modification for landline providers. Per line charges should be used to assess universal service contributions on all carriers that provide a point of

interconnection to the public switched network (*i.e.*, LECs, and wireless carriers), and on pre-subscribed long distance carriers. Carriers that do not provide a point of interconnection and are not presubscribed IXCs—including dial-around providers—should be required to contribute on the basis of their revenues.

None of the arguments offered to refute the public interest benefits associated with the implementation of a per-line contribution methodology withstand scrutiny. First, the Commission has already considered and rejected the argument that non-traffic sensitive costs should be recovered on a traffic sensitive basis based on the erroneous assertion that customers who use the public switched network the most intensively derive the greatest benefit thereof. Second, based on the record in this proceeding, the Commission cannot conclude that low-volume long distance users are low income users or that flat fees are inherently unfair to low income users. Third, given that the ILECs have already implemented a number of flat, monthly regulatory fees assessed on their end-users, there is no reason to believe that ILECs and other carriers cannot assess their universal service contributions in this fashion. Finally, any administrative difficulties that are associated with a per line methodology will be outweighed by the public interest benefits of such a scheme.

In addition, the Commission should not adopt the “residual approach” advocated by AT&T and WorldCom, under which residential, wireless, and single line business subscribers would pay artificially low flat fees, and multi-line business subscribers would be responsible for funding the residuum of the

nation's universal service requirements, including any future increases in the size and scope of the fund. This residual approach is not in the public interest because no party has offered any evidence that residential and single line business customers cannot afford to contribute the same amount to the universal service fund on a per-line basis as multi-line business customers. In fact, the evidence indicates that the imposition of PICCs and LNP surcharges has not resulted in a decrease in residential subscribership. Further, if an equitable apportionment of a flat universal service fee on residential customers does raise *bona fide* affordability concerns, the solution is to provide narrowly targeted relief to low-income users through a re-vamping of the Commission's Lifeline program, rather than the blunderbuss approach suggested by AT&T and WorldCom. Finally, if implemented, the business-to-residential subsidies encompassed within the "residual approach" will have all the negative economic effects the Commission has rightfully sought to avoid by creating an explicit program of universal service subsidies.

The Commission should also not attempt to assess universal service contributions on providers of Internet-based services because the bundling and pricing of such services make such contributions administratively burdensome to collect and unsustainable as a long term means of funding universal service.

Carriers should further be permitted to impose a line item on their customer bills in the amount of the Commission-prescribed universal service contribution factor and clearly denominated as such. Suggestions by certain commenters that such explicit surcharges and line items should be prohibited by

the Commission's rules would inevitably result in carriers burying their universal service contributions in per minute rates, and as such, violate both the Communications Act and rational economic principles. Specifically, such suggestions are inconsistent with Section 254(e)'s mandate that all universal service support be "explicit." In addition, implicit subsidies artificially inflate the price of interstate and international services, thereby encouraging inefficient "bypass" and depressing demand for these services. Taxing long distance services, for which demand is elastic, also defies the teachings of optimal taxation theory. Such implicit subsidies further hide the magnitude and nature of the universal service program from the American people.

Finally, consistent with its Truth-in-Billing rules and the *Universal Service Order*, the Commission should not permit carriers to denominate any amount in excess of the Commission-prescribed contribution factor as a "universal service charge" on customer bills. In particular, carriers should not be permitted to label general overhead costs—including uncollectibles, costs related to allegedly declining revenues, and administrative costs—as "universal service" costs, as such billing practices are neither accurate nor non-misleading. Further, even if labeling such costs of doing business as related to the universal service program were permissible under the Commission's rules, the carriers have failed to provide evidence that these overhead costs even approach the magnitude of their mark-ups of the Commission's contribution factor.

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Telephone Number Portability)	CC Docket No. 95-116

**REPLY COMMENTS OF THE
AD HOC TELECOMMUNICATIONS USERS COMMITTEE**

The Ad Hoc Telecommunications Users Committee (“Ad Hoc” or “the Committee”) hereby replies to comments submitted in response to the Commission’s May 8, 2001 *Notice of Proposed Rulemaking* (“Notice”) in the above-captioned proceedings.¹

¹ *Federal-State Joint Board on Universal Service*, FCC 01-145, 66 Fed. Reg. 28718 (2001), (“Notice”).

I. Comments Confirm That Per-line Charges Should Replace Revenues as the Basis for Assessment and Collection of USF Obligations

In its comments, Ad Hoc urged the Commission to abandon assessment of Universal Service Fund (“USF”) contributions based on end user billed revenues. Ad Hoc demonstrated that assessment of USF contributions based on end user billed revenues is economically inefficient because it effectively seeks to recover non-traffic sensitive costs on a traffic sensitive basis; it creates incentives for uneconomic bypass, and it creates a classic “deadweight loss” for the economy.² Moreover, Ad Hoc demonstrated that the existing system is inequitable as among end users.³ It presupposes an unproven correlation between income and volume of interstate usage, inequitably burdens those customers who by virtue of the size of the state in which they reside or their proximity to a state line have a relatively higher proportion of interstate calling, and disfavors those residential customers that are already paying the highest per-minute charges by causing them to contribute more for each minute of use.⁴ Finally, practical difficulties will grow if the Commission retains revenue-based assessment methodology. The administrative burden on the Commission of auditing providers, and on providers of accounting for revenues in a way that serves no purpose but to satisfy Commission-imposed obligations, will balloon. The foregoing are sufficient reasons to abandon revenue-based USF assessments. The most compelling reason to

² Ad Hoc Comments at 7-10.

³ Ad Hoc Comments at 13–16.

⁴ Consider that using the current 6.89% surcharge, assuming no mark-up by the long distance vendors, a low-use customer paying a \$0.25 per minute interstate toll rate would contribute \$0.017 per minute in USF, while a high-use customer paying a \$0.05 per minute interstate toll rate would only be required to contribute \$0.0034 per minute.

change course, however, is that the USF will not be sustainable if the Commission adheres to revenue-based USF assessments.

Comments filed by other parties are consistent with Ad Hoc's views.⁵ They support the replacement of the USF revenue-based assessment mechanism with per-line-based USF assessments, citing both the disadvantages of the existing system and the advantages offered by a per-line system. A per-line USF assessment methodology will not cure all of the deficiencies in current universal service policies and mechanisms.⁶ Nevertheless, it would be a significant step toward assuring sustainability of the USF and eliminating some of the economic inefficiencies and inequities inherent in the current USF assessment and collection system. As the Commission recently stated in adopting the CALLS plan,

It is important ... that the Commission not permit itself to be gridlocked into inactivity by endeavoring to find precise solutions to each component of this complex set of problems. It is preferable and more reasonable to take several steps in the right direction, even if incomplete, than to remain frozen with indecision because a perfect, ultimate solution remains outside our grasp.⁷

A. Per-line Charges are Consistent with Section 254(d)

ILECs and their trade association, the United States Telecom Association, oppose use of per-line or per account measures to assess and collect USF

⁵ Sprint Comments, Z-Tel Communications Comments, Nextel Comments, TelStar International Comments, AT&T Comments, and WorldCom Comments.

⁶ For a discussion of some of the deficiencies in current universal service policies, see Ad Hoc's Comments at 2, 7-26.

⁷ *CALLS Order*, 15 FCC Rcd 12962 (2000), ¶ 27.

contributions.⁸ In addition to policy objections, which are addressed elsewhere in these reply comments, they raise two legal arguments. They contend that assessment of USF contribution obligations based on line counts and the collection of USF contribution obligations through per-line charges would unlawfully involve the Commission in intrastate ratemaking, and would result in some carriers not contributing to the USF in violation of section 254(d) of the Act.⁹

1. Utilization of a Per-line Measure Would Not Exceed the Commission's Jurisdiction

Contrary to the ILECs' conclusory assertions, utilization of line counts to assess carriers' USF contribution assessment would not be inconsistent with *Texas Office of Public Utility Counsel v. FCC*.¹⁰ Therein the court of appeals held, *inter alia*, that the Commission exceeded its jurisdiction by including intrastate revenues in calculating the USF contributions of carriers. The court reasoned that carriers' USF contributions would vary with their intrastate revenues, and thus constituted a charge in connection with intrastate revenues. Assessing USF contributions based on line counts would, however, not cause carriers' contributions to vary with intrastate usage, and would not constitute charges connected to intrastate revenues.¹¹ It merely would be a mechanism for

⁸ BellSouth Comments at 2-3; SBC Communications Inc. Comments at 13-16; Verizon Comments at 2-4; and United States Telecom Association ("USTA") Comments at 5.

⁹ BellSouth Comments at 3, Verizon Comments at 2-4, USTA Comments at 5.

¹⁰ 183 F.3d 393, 488 (5th Cir. 1999).

¹¹ Verizon baselessly argues at page 5 of its comments that the Commission could not characterize a per-line assessment as anything less than an attempt to achieve the results

allocating contributions to the federal USF. If Commission prescribed per-line charges would, *per se*, cause the Commission to interfere with intrastate rate making, Subscriber Line Charges and Pre-subscribed Inter-exchange Carrier Charges also would exceed the Commission's jurisdiction. That, of course, is not the case. Opponents of line counts as the basis for assessing USF contribution obligations point to nothing in the Communications Act that requires use of a revenue-based assessment methodology or that prohibits use of line counts, and for good reason, there is nothing of that nature in the Act.

2. Per-line Counts Should Also Be Used to Assess USF Contribution Obligations on Long Distance Carriers; Revenues Should Be Used to Assess USF Contribution Obligation on a Carriers with No Line Counts

After review of other parties' comments, Ad Hoc amends its per-line proposal. The Committee suggested that the Commission replace its existing revenue-based contribution mechanism with one that would assess USF contribution obligations based on lines connected to the public switched network. For wireless carriers, Ad Hoc suggested assessing contribution obligations based on telephone numbers associated with service-enabled handsets.¹² This approach could exempt certain carriers from contributing to the USF, and thus, *might* be inconsistent with the requirement in section 254(d) of the Act that every communications carrier contribute to the USF in an equitable and

achieved by assessing intrastate revenues. To supposedly support its contention, Verizon points to data in Attachment B to its comments. That data, however, do not support Verizon's contention. The data only show relative contributions of USF contributors. If the relative contributions under a per-line approach are similar to relative contributions under a revenue-based assessment methodology that includes interstate and intrastate revenues that is mere coincidence, and nothing more.

nondiscriminatory manner. If the Commission so concludes, Ad Hoc recommends that the per-line approach recommended in its comments be amended as follows:

- Assessments based on line counts should be levied on those carriers who provide points of interconnection to the public switched network (ILECs and CLECs) and on long distance carriers whom consumers designate as prescribed long distance carriers. This change could result in two line charges, one from the local exchange carrier and one from the presubscribed long distance carrier, with both carriers making payments to the USF. Alternatively, a local exchange carrier could levy a line charge on its bills to its subscribers, and then impose an explicit charge on the long distance carriers that is very similar to a PICC. The local exchange carriers then would remit to the USF amounts that would be the sum of the payments from long distance carriers and end users. Both approaches would provide for explicit USF charges and would result in local and long distance carriers contributing to the USF. Moreover, consumers who currently see USF charges on their local exchange carrier and long distance carrier bills still would see universal service charges from two carriers.
- Additionally, a USF assessment model perhaps should account for carriers, such as providers of dial-around services, who are not presubscribed inter-exchange carriers or who do not provide lines that connect to the public switched network. Ad Hoc suspects that these entities are very few in number and generate very little USF contributions. If the Commission concludes that these entities also must contribute to the USF, it should impose a revenue-based surcharge on these entities. The need to use a revenue-based assessment methodology is not reason to forego utilization of a per-line USF assessment approach for all of the major carriers.

Although the foregoing modifications to Ad Hoc's initial recommendations probably add a small amount of additional complexity to the per-line assessment and collection USF approach recommended in the Committee's initial comments,

¹² Ad Hoc Comments at 27.

the benefits of the per-line approach¹³ far outweigh the slight additional administrative complexity that the suggested changes might entail.

As a point of clarification, Ad Hoc notes that wireless carriers should not be considered carriers that neither (1) provide lines that interconnect to the public switched network nor (2) function as presubscribed long distance carriers. Instead, as noted above, Ad Hoc recommends that the USF contributions of wireless carriers be assessed per telephone number associated with a service-enabled handset.¹⁴ If the Commission adopts this recommendation, arguments about the size of the wireless safe harbor become irrelevant because the safe harbor is needed only with a revenue-based contribution assessment methodology.

B. The Opponents of Line-Based USF Assessments and Charges Advance No Compelling Policy Arguments and Identify No Significant Operational Impediment

1. So-Called *Network Externalities* Do Not Justify Retention of the Revenue-Base Assessment and Collection Mechanism

The TXOPC/CFA/CU¹⁵ (herein after referred to as Joint Commenters) argue that network externalities justify retention of the existing end-user based revenue assessment and collection mechanism. They contend that “those who actually use the network the most intensively derive the greatest benefit from the network effect. Recovering the costs in proportion to use aligns costs and

¹³ Ad Hoc Comments at 26-35.

¹⁴ Ad Hoc Comments at 27.

¹⁵ Texas Office of Public Utility Counsel, Consumer Federation of America, and Consumer Union Comments (“TXOPC/CFA/CU”).

benefits most closely.”¹⁶ Their arguments are nothing new. They consistently make the same arguments whenever the possibility of increasing line charges to cover non-traffic sensitive costs is before the Commission.

Their argument, however, is without merit. Retention of the current inequitable and economically inefficient USF assessment mechanism on the basis of network externalities would require that the Commission turn its back on its last twenty years of decision-making relative to the appropriate collection mechanism for non-traffic sensitive costs. Over the last two decades, each time this Commission has evaluated the appropriate mechanism for recovery of non-traffic sensitive loop costs, it has determined that flat-rated, per-line charges are the appropriate, and most economically rational answer. Recently, in its May 31, 2000 order adopting the CALLS proposal, the Commission summarized its principles regarding the recovery of non-traffic sensitive costs as follows:

Consistent with the goal enunciated in the *1983 Access Charge Order*, because the costs of using the price cap LEC's common line (or "local loop") do not increase with usage, the Commission decided that these costs should be recoverable entirely through flat, non-traffic-sensitive fees. [*Access Charge Reform Order*, 12 FCC Rcd at 16004] ¹⁷

The high cost portion of USF requirement subsidizes far more non-traffic sensitive plant, than traffic sensitive plant, and, thus, should be funded through non-traffic sensitive line charges. The Joint Commenters universal service network externalities arguments mirror arguments that have been rejected

¹⁶ TXOPC/CFA/CU Comments at 5.

¹⁷ *CALLS Order*, ¶ 65.

relative to non-traffic sensitive loop plant in the past, and should be again rejected in this context.

Even assuming *arguendo* that the Joint Commenters network externalities argument was valid as it relates to the recovery of the high cost and life-line portions of the Universal Service Funding requirement, the argument simply makes no sense with respect to that portion of the overall USF requirement associated with the schools, libraries and rural healthcare providers program.

2. Purported Evidence of a Correlation Between Income and Volume of Interstate Long Distance Usage is Inconclusive and Does Not Bolster Arguments Against the Use of a Per-line Recovery Mechanism

Ad Hoc disagrees with those parties who argue that low-income users would be disproportionately harmed if contributions to the Universal Service Fund were assessed on a per-line basis, asserting that low-volume users are disproportionately low-income users.¹⁸ In fact, the Commission has concluded that such a relationship does not exist, finding that high-volume toll users include a significant number of low-income customers.¹⁹

Verizon offers no evidence in support of its claim that flat fees would be inherently unfair to low-volume/low income customers, and the evidence that is provided by the Joint Commenters to support their claim that low-volume users

¹⁸ Verizon Comments at 5-6; TXOPC/CFA/CU Comments at 9.

¹⁹ The FCC relied upon an analysis performed by Robert W. Crandall, which showed that roughly 30 percent of households with income under \$10,000 spend more on long-distance calls than do 50 percent of the households with income over \$75,000. See, *Access Charge Reform*, CC Docket No. 96-262, First Report and Order, 12 FCC Rcd 15982, 16013 (1997); Robert W. Crandall, "Universal Service Subsidies and Consumer Welfare: Long-distance Access Charges," *Brookings Institution* (April, 1997), Table 1.

are predominantly low-income users is, at best, inconclusive.²⁰ On the other hand, a well-documented analysis performed by Robert W. Crandall and Leonard Waverman reveals that in each income category there is “enormous variance in the number of long-distance calls each month.”²¹ Crandall/Waverman found that:

- The top 10% of households with income below \$10,000 spent more than \$80 on long-distance calls.
- 50% of households with incomes above \$75,000 spent less than \$25 on long distance calls.²²

Given the Crandall/Waverman analysis and the Commission prior reliance on that analysis, the Commission cannot as a mere exercise of its discretion conclude that low-volume users are predominantly low-income users.

Furthermore, the very issue of whether or not there is a correlation between low-volume and low-income users would be relevant to whether low-income customers were being unfairly *burdened* only under two scenarios²³: *if* the USF costs being recovered varied based upon a customers’ volume of toll calling (which they do not), *or if* one of the goals of the implementing a per-line assessment were to emulate the assessments being collected under the end-

²⁰ Only aggregated data is provided in graphical form. The sources, collection methodologies and distribution of the data sets are not all specified or readily available to evaluate the validity of TXOPC/CFA/CU’s claim. See TXOPC/CFA/CU Comments, 14-17.

²¹ Crandall, Robert W. and Leonard Waverman. *Who Pays for Universal Service? When Telephone Subsidies Become Transparent*. Brookings Institute Press, Washington, D.C., 2000. at 48.

²² *Id.*, at 48-49.

²³ In that portion of its initial comments in this proceeding criticizing the existing collection mechanism Ad Hoc pointed out that the Commission had not cited evidence of a correlation between income and interstate usage, and expressed concern that low income customers that are not also low volume interstate toll customers will be subsidizing higher income households in high-cost areas via a revenue based USF system. Ad Hoc Comments at 13-14.

user revenue based approach to USF collections. Given the demonstrated inequities and economic inefficiencies that riddle the present system, the goal should be anything but emulation.

3. Alleged Administrative Problems With a Per Unit Approach are Greatly Overstated

Several parties, most notably several of the ILECs, allege that implementation of a per-unit USF recovery mechanism would be administratively difficult.²⁴ These claims are greatly overstated. The same ILECs have in place today a variety of line-based charges that are have been either required by or approved by, the Commission.

Subscriber Line Charges (SLCs), Local Number Portability (LNP) surcharges, and the ILECs' USF surcharge are per-line charges currently used by ILECs to recover certain interstate costs directly from end-users. ILEC billing systems are used to apply different line charges to Centrex lines, PBX trunks, and circuits provisioned over ISDN PRI lines. The creation of one additional line charge (or perhaps the collapse into the CALLS-originated per-line USF charge) is certainly well within the ILEC's capabilities and should not be administratively "cumbersome" to implement.²⁵

While CLECs, wireless carriers and others have not been required to implement the kinds of line-based charges identified above, there is no reason to believe that their billing systems would be any less robust or able to

²⁴ Qwest Comments at 9, USAC at 17, SBC Comments at 15-16, Verizon Comments at 5-6, Excel Communications Comments at 4-5, and EPIK Communications Comments at 3.

accommodate such a system. None of the Comments that Ad Hoc has reviewed included anything more than general statements that a per-line approach might be difficult to implement.

4. The Benefits of a Per-Line Charge Outweigh Any Alleged Administrative Problems With Its Implementation

As the Committee explained in its comments, current universal service policies are fraught with problems, are economically inefficient and inequitable, and are unsustainable even in the near term as vendors continue to bundle new services, and end users migrate to new technology. It is imperative that the Commission replace the existing mechanism with something that is both more economically efficient, and sustainable. Although Ad Hoc believes that the parties maintaining that movement to a per-line recovery mechanism would be “burdensome” have exaggerated the alleged difficulties in implementing a per-line approach, even if their implementation allegations were true, the benefits of moving away from the present system to a more economically rational and equitable system would outweigh any costs that might be incurred to adapt billing and tracking systems.

5. A Per-Line Approach That Makes No Assumptions About Affordability Should Be Implemented as Soon as Practicable

Both AT&T and WorldCom support of a per-line approach to the assessment and recovery of USF contribution obligations. Both carriers,

²⁵ It is interesting to note that these same ILECs did not raise similar concerns relative to the per-line USF charges proposed as part of the CALLS plan.

however, would set business customers USF line charges higher than residential USF line charges. They would collect a fixed stream of USF revenues from residential and single line business customers, and require all other business service customers to cover the remaining, and ever-growing, USF residual. These carriers are too sophisticated to believe that their residual approach is required because most residential subscribers could not afford to pay a USF line charge that does not discriminate in their favor. Indeed, they do not even attempt to show that application of a uniform USF line charge would render service for residential customers “unaffordable.”²⁶ Rather, AT&T and WorldCom probably believe that the Commission would require that residential line charges be lower than USF line charges collected from business customers because that is the historical model and “pressure” would prevent equal charges. These carriers know, as Ad Hoc knows, that affordability is the word used by the Commission to supposedly justify setting certain residential rates artificially low. But reasoned decision-making requires more than assumptions and unsupported conclusions.

WorldCom proposes that the Commission establish “specific low monthly assessment rates for connections for residential, pager, and single-line business customers, and that that the remainder of the fund contributions be made by the remaining business connections at the assessment levels required to meet universal service needs.”²⁷ AT&T asserts that, “the USF rate for multi-line

²⁶ AT&T Comments at 14; WorldCom Comments at 4-5.

²⁷ Specifically, WorldCom proposes a monthly connection charge of \$1.00 for Non-Lifeline residential wireline and wireless customers; \$0.00 for Lifeline residential customers; \$0.25 for residential and business pager customers; \$1.00 for wireline and wireless single-line business users; and a multi-line business charge in the range of \$2.50 to \$130.00 (\$3.25 x 40, based on

business customers could be higher than that for residential and single-line business customers”, and goes on to propose that for some “interim” period, assessments on all business services but single lines continue to be collected on as an assessment on revenues.²⁸

Neither AT&T nor WorldCom’s comments are supported by any analysis of what the appropriate level of residential and wireless charges should be, nor do they even suggest guidelines that the Commission should use in answering that question. WorldCom’s proposed charge of \$1.00 per month per residential access line appears quite literally to be pulled out of thin air. No support, documentation or explanation is offered for that value or any other value.

Affordability is one of the basic tenets and goals of the universal funding system, and this Commission should be concerned with and cautious in the application of charges that might render service “unaffordable.” However, there is simply no record evidence in this or any other proceeding as to what is or is not “affordable.” There has been no analysis or review by the Commission to determine whether or not a Universal Service charge for one class of customers should be charged a low rate while allowing another class of customers to be charged a higher rate. The Commission has not established the appropriate criteria necessary to evaluate whether a charge for one class of customer is “affordable” while not being “affordable” for another class of customers. Indeed, the Commission really has nothing other than present subscribership levels to

capacity equivalencies) for multi-line business wireline and wireless and special access customers. WorldCom Comments at 4-6.

²⁸ AT&T Comments at 14 and 16.

use as it evaluates the question of affordability. The Joint Board found in its 1996 *Recommended Decision* in CC Docket No. 96-45 (relied upon by the Commission in its 1997 *Access Reform Order*) that “[s]ubscribership levels, while not dispositive on the issue of affordability, provide an objective criterion to assess the overall success of state and federal universal service policies in maintaining affordable rates.”²⁹

All available evidence indicates that subscribership levels have not been harmed by the imposition of PICCs and LNP surcharges. Customers have not dropped off the network as a result of the imposition of the per-line USF charge by the ILECs following last July’s *CALLs Order*. In fact all available evidence demonstrates that overall expenditures on telephone service have been increasing over time³⁰, just as subscribership levels have been increasing. In short, there is no empirical basis of which Ad Hoc is aware for concluding that the application of a uniform per-line surcharge would render residential service “unaffordable”. Indeed, in the face of ever increasing consumer expenditures on items such as Cable TV programming, and internet access, it strains credibility to believe that an increase of a few dollars would cause even a few, if any, Americans to disconnect their telephone service.

The Ad Hoc Committee has always supported appropriately targeted subsidies. If and to the extent that the application of a uniform per-line surcharge

²⁹ *Federal-State Joint Board on Universal Service* (Recommended Decision), 12 FCC Rcd 87, ¶ 154 (1996); and *Access Reform Order*, 12 FCC Rcd 15982 ¶ 70 and n.63.

³⁰ Average annual consumer telephone expenditures increased from \$658 in 1993 to \$849 in 1999. See Bureau of Labor Statistics, Consumer Expenditure Surveys, Multi-Year Tables,

does result in a hardship for certain low-income customers, then the solution is to specifically target a reduced rate to those subscribers, not to all residential subscribers. This Commission has had in place a quite successful lifeline plan for more than a decade. Some parties have suggested that the Commission's lifeline plan is not sufficient to address the affordability concerns raised by the imposition of a per-line charge.³¹ If and to the extent that is the case, then the problem lies in the lifeline plan – not in a uniform USF per-line assessment, and it may be time to take a look at that plan again. Ad Hoc would support revisions to the lifeline plan that would ensure that implementation of a uniform per-line USF assessment does not unduly burden low-income customer. Ad Hoc cannot support a plan that requires business customers to pay an unreasonably inflated charge so that *all* residential subscribers, regardless of income level, receive a reduced rate. The Commission should not rely on a residual calculation to establish Universal Service charges for multi-line business customers. Instead, the Commission should apply consistent per unit charges to all customers – residential, wireless, single-line and multi-line business.

Additionally, the AT&T and WorldCom residual approaches to USF contribution assessment and recovery would exacerbate the unavoidable distortions that will occur from even the most equitable USF recovery mechanism. The goal of regulation is, and should be, to limit economic pricing distortions as much as is practicable. As the Commission itself has recognized in

1993-99; Utilities, fuels and public services: telephone, Series ID: CXUUTT00101. <http://stats.bls.gov/csxmulti.htm>, accessed July 9, 2001.

³¹ TXOPC/CFA/CU Comments at 10-11.

the past, “dead weight welfare loss rises as a quadratic function of the relative price distortion.”³² Setting USF recovery levels for business subscribers on a residual basis will necessarily distort prices to a relatively greater degree than would the uniform and equitable application of charges.

Finally, a residually based approach would result in business users automatically funding all future increases to the USF funding requirement. As Ad Hoc reported in its comments in this proceeding, *The Fiscal Year 2002 Budget of the United States Government: Analytical Perspectives*, projects an ever growing USF fund, increasing from the FY 2000 receipts of \$4.57-Billion to over \$7.9-Billion in FY 2006.³³ It would be grossly inequitable to require business users to fund increases in the USF in their entirety, while insulating, residential and single business customers from any increase.³⁴ Moreover, structuring the funding requirement in such a manner may have the unintended effect of shielding the growth in the USF from the public scrutiny that it most certainly deserves.

6. The Commission Should Not Attempt to Collect USF Contributions from Providers of Internet-Based Services

At least two commenters urge the Commission to assess universal service contributions on IP voice services.³⁵ The Commission should not do so.

³² *Access Reform Order*, n.47, quoting from F.M. Schere and David Ross, “Industrial Market Structure and Economic Performance” (1990) at 662.

³³ Ad Hoc Comments at 5.

³⁴ It would also increase the pricing distortions discussed above.

³⁵ SBC Comments at 10-12; Verizon Comments at 5-6.

Commission efforts to assess revenue-based contributions on vendors who provide IP telephony with other services would be administratively very burdensome and ultimately unsustainable as a reliable and predictable source of funding for the USF.³⁶ As information service alternatives to traditional telecommunications services appear in the marketplace, consumers will use those alternatives, and higher USF surcharges will provide consumers with greater incentive to do so. There is no sound reason to question this forecast. The size of the fund is forecast to increase substantially, and will likely grow faster than the interstate services revenue base against which the USF surcharge is applied to fund the USF.³⁷ Even the local exchange carriers would concede that alternatives to the services currently subject to the USF surcharge are on the horizon. The stage is thus set for USF surcharge increases, and accelerated migration away from services subject to the USF surcharge.

To avoid the resulting erosion of revenues and the escalating USF surcharges that would result, ILECS urge the Commission to impose USF contribution obligations on providers of such services. They urge the Commission to impose USF contribution obligations on services that heretofore have not been compelled to make such contributions.³⁸ Such an effort would ultimately be futile. Ad Hoc's comments explained that, "Discrete pricing information for voice over the internet will not exist in many instances, or if such

³⁶ Ad Hoc Comments at 24-26.

³⁷ *Id.* at 5.

³⁸ SBC Comments at 11-12; Verizon Comments at 5.

pricing does exist in some instances, the revenue subject to the Commission prescribed USF surcharge in all likelihood will be well below the traditional service revenues that would have been subject to the surcharge.”³⁹ In such conditions, a revenue-based USF surcharge would spiral upward as the revenue base contracts, would become a public relations nightmare for the cause of universal service and ultimately would be unsustainable. The Commission can avoid this scenario by adopting a USF contribution assessment methodology that is based on line counts, with the minor exceptions noted hereinabove. Now is the time for the Commission to do so.

II. Pursuant to Section 254(e), Universal Service Charges Levied on End Users Must Be Explicit

A number of commenters argued that carriers should not be permitted to recover their universal service contributions through “surcharges and line items” on customer bills.⁴⁰ The Commission should reject these arguments because such an implicit means of funding the universal service program is inconsistent with the plain language of Section 254(e) and sound economic and public policy.

If carriers are not permitted to pass through the direct, FCC-prescribed costs of their contributions to the universal service fund, they must bury these costs in their per-minute rates. Such implicit subsidies are illegal pursuant to Section 254(e)’s command that “Any [universal service] support should be

³⁹ Ad Hoc Comments at 25-26.

⁴⁰ National Association of State Utility Consumer Advocates Comments at 2. *See also* TOPUC/CFA/CUC Comments at 4-5; West Virginia Consumer Advocate Comments at 5.

explicit....”⁴¹ The Fifth Circuit has clarified that this statutory provision unambiguously mandates that the universal service support system must be explicit: “We are convinced that the plain language of § 254(e) does not permit the FCC to maintain *any* implicit subsidies for universal service support.”⁴²

Not only are implicit subsidies illegal, they represent unsound economic policy for the reasons set forth in Ad Hoc’s opening round comments. Specifically, burying the cost of subsidies to high-cost areas, schools and libraries, and rural health care providers in interstate and international rates artificially inflates the price of interstate and international services. This distortion in pricing causes customers to: (1) seek inefficient “bypass” services and; (2) demand less service at a given price, thereby leading to a “deadweight loss” on the part of carriers and customers. Further, burying universal service subsidies in interstate and international rates defies the teachings of “optimal taxation literature,” which states that taxes should be assessed on services for which demand is inelastic, such as local exchange services.

Finally, implicit subsidies represent bad public policy because they hide the size and nature of the universal service program from the American public. In a democracy, citizens should be made aware of government mandates that add ten percent or more to their interstate and international telephone bills. If universal service subsidies are made a line-item on customer invoices, the

⁴¹ 47 U.S.C. § 254(e).

⁴² *Texas Office of Public Utility Counsel*, 183 F.3d at 425 (emphasis in original).

American people can register their approval or disapproval thereof with their elected representatives.

III. Carriers Should Not Be Permitted to Denominate Any Amount in Excess of the Commission's Contribution Factor as Attributable to the Universal Service Program, and Have Failed to Justify the Existence of Such Costs

In its opening round comments, Ad Hoc echoed the Commission's concern that carriers were marking-up their FCC-mandated contribution factor far beyond any amounts that could reasonably be attributed to the carriers' costs associated with collecting this fee. As stated in the *Notice*, during the fourth quarter of 2000, the Commission's contribution factor was 5.67 percent, and Sprint was charging its customers an 8.6 percent universal service fee.⁴³ Similarly, during the first quarter of 2001, while the FCC's contribution factor was 6.68 percent, AT&T was assessing its end-users a universal service fee of 9.9 percent, while WorldCom was assessing its end-users a universal service fee of 12 percent.⁴⁴

AT&T, WorldCom, and Sprint all posit that the wide gap between the Commission's prescribed contribution factor and the amount they seek to collect from their customers can be ascribed to: (1) billed, but uncollected revenues;⁴⁵ (2) the six month lag between the reporting of revenues and the contribution of funds in an industry with declining revenues;⁴⁶ (3) administrative costs of

⁴³ *Notice*, ¶ 5 and n.13

⁴⁴ *Id.*

⁴⁵ Sprint Comments at 3; AT&T Comments at 4; WorldCom Comments 26.

⁴⁶ Sprint Comments at 3; AT&T Comments at 4.

collection;⁴⁷ and (4) carriers' need to "gross up" collections in order to take into account the fact that universal service contributions are levied on a carrier's end user telecommunications revenue, *including* the universal service fees collected from the end users.⁴⁸

Consistent with the principles set forth in the Truth-in-Billing rules and the *Universal Service Order*, carriers should not be permitted to denominate any costs other than the Commission's mandated contribution factor as attributable to the universal service program. Further, even if it were permissible for carriers to denominate such costs—including those related to uncollectibles, declining revenues, administrative costs, and "gross ups"—as "universal service costs," the carriers have failed to establish the legitimacy and magnitude of these costs.

A. Costs in Excess of the Contribution Factor Cannot Be Labeled By Carriers as Attributable to the Universal Service Program

The Commission's rules do not permit carriers to label any costs in excess of the Commission's contribution factor as universal service costs. In particular, all of the aforementioned costs that carrier's seek to recover from end-users as "universal service costs" represent general overhead or costs of doing business. As such, non-dominant carriers such as interexchange carriers can recover these costs in any manner they see fit, and dominant carriers such as ILECs can recover these costs in any manner consistent with the Commission's price cap rules.

⁴⁷ Sprint Comments at 4-6; WorldCom Comments 26.

⁴⁸ Sprint Comments at 3.

What the carriers cannot do, consistent with the Truth-in-Billing rules and the *Universal Service Order*, is denominate these costs as attributable to the universal service program. In particular, the Truth-in-Billing rules state that “Charges contained on telephone bills must be accompanied by a brief, clear, non-misleading, plain language description of the service or services rendered.”⁴⁹ Similarly, in the *Universal Service Order*, the Commission stated that, “[i]f contributors [to universal service] choose to pass through part of their contributions and to specify that fact on customer’s bills, contributors must be careful to convey information ... that accurately describes the nature of the charge.”⁵⁰

Therefore, if a carrier assesses its customers a 12 percent “universal service” fee at a time when the contribution factor is 6.68 percent, that carrier has not provided its customers with a “non-misleading,” “accurate[.]” description of the “nature of the charge.” Bad debt, declining carrier revenues, and administrative overhead are simply not directly related to the universal service program and cannot be represented to customers as such.

⁴⁹ 47 C.F.R. § 64.2401(b).

⁵⁰ 12 FCC Rcd 8776, ¶ 855 (1997).

B. The Carriers Have Failed to Justify Their Mark-Ups of the Commission's Contribution Factor

Even assuming that these costs of doing business could be classified as universal service costs—an assumption that Ad Hoc disputes—the carriers have failed to submit any evidence that they actually incur these costs in an amount sufficient to justify their extravagant mark-ups of the universal service contribution factor. As such, these mark-ups appear to be an attempt by the carriers to turn the universal service program into a profit center.

First, none of the aforementioned carriers have submitted any evidence of what specific percentage of their billed revenues they actually fail to collect. Without such evidence, it is impossible to evaluate whether uncollectibles are, in fact, a legitimate reason to mark-up the universal service charge and by how much. In the experience of Ad Hoc's members, however, carriers do not lightly walk away from unpaid bills, and are quite willing to pursue collection actions.

Second, the carriers provide little evidence of the extent to which their long distance revenues have declined—if at all—over the past few years.⁵¹ Similarly, the carriers provide no factual basis for their assertion that their universal service mark-ups are due to the administrative costs of collecting their universal service contributions. Again, without such evidence, it is impossible to submit their entitlement to a substantial mark up to any meaningful scrutiny.

⁵¹ WorldCom cites a J.P. Morgan Securities study projecting an industrywide decline in wireline long distance revenues from \$84 billion in 1999 to \$71.1 billion in 2005. WorldCom Comments at 9. The carriers, however, fail to discuss any decreases in their individual long distance revenues.

Finally, Ad Hoc acknowledges that the need for carriers to “gross up” their contributions is a legitimate factor in making the amount billed to the carrier’s customers greater than the carrier’s contribution factor. This “gross up” amount, is however, relatively small compared to the magnitude of the carrier mark-up. Using Sprint’s example, if the contribution factor is 6 percent, and a customer’s interstate bill is \$100, the customer should be assessed an unmarked up universal service fee of \$6. The carrier, however, must contribute 6 percent of \$106, or \$6.36 to the universal service fund. Thus, while a legitimate reason to charge customers more than the FCC’s contribution factor, this entire gross up only accounts for a fraction of one percent of a carrier’s contribution burden. As such, gross up alone does not account for anywhere near the 3 to 5 percent in mark up to which carriers claim to be entitled.

The record in this proceeding therefore fails to demonstrate that the magnitude by which carriers’ universal service surcharges on their customers exceed the Commission’s contribution factor represents anything more than a profit center for the carriers. Unless and until the carriers can provide hard data to support their allegations of uncollectible debt, declining revenues, and administrative overhead, the Commission should eliminate any carrier flexibility to mark-up universal service charges.

Conclusion

In view of the foregoing, Ad Hoc respectfully requests that the Commission implement rules that require landline carriers to contribute to the universal service fund and collect universal service contributions from their customers based on the number of lines served. Similarly, the contributions of, and the assessments by, wireless carriers should be based on the number telephone numbers associated with service initialized handsets. These per-line contribution requirements should be the same for residential customers, single line businesses and multi-line businesses, and any affordability concerns should be addressed through the Lifeline program. Because such a contribution methodology is explicit, equitable, economically rational, and sustainable, it best serves the public interest and the Commission's statutory mandate in this proceeding.

Respectfully submitted,



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