

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
1998 Biennial Regulatory Review –)	CC Docket No. 98-171
Streamlined 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)	CC Docket No. 90-571
with Hearing and Speech Disabilities, and the)	
Americans with Disabilities Act of 1990)	
)	
Administration of the North American)	CC Docket No. 92-237
Numbering Plan and North American)	NSD File No. L-00-72
Numbering Plan Cost Recovery Contribution)	
Factor and Fund Size)	
)	
Number Resource Optimization)	CC Docket No. 99-200
)	
Telephone Number Portability)	CC Docket No. 95-116

COMMENTS OF CABLE & WIRELESS USA

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July 9, 2001

I. Introduction & Summary

Cable and Wireless USA (C&W) hereby submits reply comments in response to the Commission's Notice of Proposed Rulemaking (NPRM) in the above-captioned proceeding.¹

C&W commends the Commission for instituting this review of federal universal service funding arrangements. C&W is particularly supportive of the Commission's re-examination of the current system in light of recent market trends. Indeed, C&W shares the Commission's concern that developments in the interstate telecommunications marketplace, including the entry by the Regional Bell Operating Companies into the in-region, interLATA market, growth in the wireless telecommunications sector, and the increased use by carriers of bundled and mixed packages of services may undermine the administration of the current system. C&W believes that it is appropriate for the Commission to consider streamlining and reforming the current system to ensure that universal service contributions continue to be assessed "on an equitable and non-discriminatory basis" as required by the Communications Act.²

C&W's comments at this stage of the proceeding consist of two main components. First, we comment on alternative methods for assessing carrier contributions to the universal service fund. More specifically, we share the views raised by various commenters that the Commission should consider moving away from a revenue-based assessment, and instead adopt a system whereby universal service contributions are assessed on a flat-fee basis, such as a per-line charge.

¹ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 01-145, Notice of Proposed Rulemaking (rel. May 8, 2001).

² 47 U.S.C. § 254(d).

Second, we support the use of contemporaneous (rather than historical or forecast) data for the calculation of universal service fund contributions.

II. Revenues vs. Flat Rate (Lines) As The Basis For Calculating Contributions To Universal Service Funding

In jurisdictions where identification of eligible revenues is relatively straightforward, C&W believes that the calculation of universal service funding contributions on the basis of revenue from eligible services is a reasonably equitable system. Indeed, other subsidiaries of the Cable & Wireless PLC³ have advocated revenue as the basis for calculation of universal service contributions in jurisdictions where Cable & Wireless companies are the designated provider of universal service. However, identification of eligible revenues in the United States is not straightforward. Particular difficulties arise when a carrier must attribute a portion of a bundled or integrated service to “interstate telecommunications” in order to report revenues properly. Particularly for non-dominant carriers, this can be a highly judgmental process with no guarantee of accuracy. As far as possible, defects in the existing system should be corrected through the current proceeding. In particular, C&W supports the Commission’s decision to consider alternatives to the interstate revenue-based contribution system.

III. Attribution Of Revenues To Interstate Services, And The Use Of ‘Equivalency Ratios’

Unlike other jurisdictions around the world, the United States imposes an interstate/intrastate jurisdictional limitation on the revenue base for universal service contributions. Under current law, the Commission can assess federal universal service contributions based on interstate revenues, but it cannot assess federal

³ Cable and Wireless PLC is the parent company of Cable and Wireless USA.

universal service contributions based on intrastate revenues.⁴ The need to segregate interstate telecommunications revenue from intrastate telecommunications revenue creates significant practical problems in operating a revenue-based assessment system.

Two examples highlight the difficulties with an interstate revenues based system. First, although dominant local exchange carriers have specific tariffed rate elements that are designated as “interstate” and regulated by the FCC, rather than the states, this is not true for non-dominant local exchange carriers who have the freedom to structure charges in response to the market. Non-dominant carriers, therefore, can exercise discretion as to whether and how to divide charges between interstate and intrastate rates. One solution to this anomaly has been proposed by SBC.⁵ However, we find that this solution—mandating that a fixed percentage of a non-dominant carrier’s revenue be assigned to interstate revenues—is overly regulatory and is likely to create its own marketplace distortions.

As a second example, wireless carriers have shifted predominantly to providing service packages that mix interstate and intrastate usage into multistate regional or national calling plans, with set levels of included minutes for a particular monthly fee. Moreover, these plans often bundle customer premises equipment as well. Determining the percentage of interstate telecommunications revenue for this type of bundled offering is, at best, highly judgmental and subject to reporting gamesmanship. Yet these offerings are clearly a benefit to consumers, and the universal service system should not erect barriers to the creation of these types of flexible bundles.

⁴ *Texas Office Of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) *cert. granted*, 530 U.S. 1213, *cert. dismissed*, 121 S. Ct. 423 (2000).

⁵ See SBC Comments at 12.

As these examples illustrate, because lines are used to provide a range of services, it is impossible correctly to attribute access revenues to inter-state (or other) services. The task is becoming even more difficult as carriers increasingly offer bundled packages of services, including some that mix telecommunications services and non-telecommunications services. The attribution of revenues to interstate telecommunications will inevitably become even more judgmental and this means that there can only be limited confidence in the outcome. Clearly, inaccuracy in the identification of eligible revenues will be detrimental to the market and may distort efficient economic signals.

IV. Alternatives to Assessing Universal Service Contributions on the Basis of Revenues

C&W believes that it is appropriate to consider alternatives to the revenue system. The main alternative to revenue as the basis for calculation of contributions discussed in the NPRM and in responses to it is a flat rate system, most likely based on the number of lines a carrier serves.

In discussing this alternative, some commenters have referred to the conclusions of the Commission and the Federal-State Joint Board on Universal Service in 1997.⁶ A lines-based contribution system was considered at that time but rejected, inter-alia, on the ground that it would require the Commission to calculate complex ‘equivalency ratios’ to derive funding contributions. There would undoubtedly be difficulties in calculating equitable equivalency ratios. However, as discussed above, similar difficulties exist with the current system in the attribution of

⁶ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd. 8776 (1997), as corrected by *Federal-State Joint Board on Universal Service*, Erratum, CC Docket No. 96-45, FCC 97-157 (rel. June 5, 1997) *aff'd in part, rev'd in part, remanded in part sub nom. Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) *cert. denied* 530 U.S. 1210 (2000) (*Universal Service Order*).

access revenues to inter-state services. Thus, C&W does not believe that a lines-based approach should automatically be rejected in this proceeding because of methodological difficulties associated with equivalency ratios. Moreover, even if equivalencies create some marketplace distortions, a contribution system based on interstate revenues may be subject to even great marketplace distortions.

V. Advantages to the Adoption of a Lines-Based Calculation Approach

There are some advantages to adopting a lines-based approach to calculating universal service contributions. For example, as is well known, wireless operators are currently unable accurately to identify revenues from inter-state services and therefore the Wireless Safe Harbor was created as a proxy for precise attribution of wireless revenues to inter-state services. This measure would not be necessary if a lines-based system were adopted. C&W believes that it is important for wireless services to contribute to universal service funding and that the contributions of wireless operators are assessed on a basis that is technologically neutral (*i.e.*, on the same basis as fixed line operators). C&W believes that it is particularly important to consider this point as voice traffic increasingly migrates from fixed to wireless networks.

There are some methodological issues that would need to be resolved before any lines based system could be introduced. We have already commented above on the use of equivalency ratios. Equivalency ratios would be required to calculate universal fees for high-capacity lines (*e.g.*, special access) because these lines do not equate to a given quantity of PSTN lines. Any method adopted by the Commission would need to be competitively neutral and not discriminate for or against particular groups of customers. C&W believes that equivalency ratios would need to be constructed in such a way as not to discourage investment in broadband capacity. In fact, in order to ensure continued development in broadband services, C&W urges the

Commission to consider adopting an equivalency ratio for a high-capacity line that is sufficiently less than the equivalent number of voice grade channels.

VI. C&W Supports the Use of Contemporaneous Data to Calculate Universal Service Contributions

Currently, universal service contributions are calculated for each carrier according to the gross revenues it has reported for eligible services in the penultimate quarter before the calculation takes place. Hence there is a delay of about six months between the reporting of revenues and calculation of contributions.

The Commission has pointed out that this delay works in favor of carriers whose revenue share for eligible services is growing, and against those whose revenue share is decreasing. This is because carriers with growing revenues can spread the cost of their universal service fund contributions across a larger revenue base than that on which the contribution was calculated. Such carriers, therefore, have an artificial and unfair competitive advantage. The time delay is likely particularly to favor new market entrants, particularly new entrants into the interexchange markets, such as Regional Bell Operating Companies (RBOCs). The same dynamic would apply in a line-based calculation system if contributions were based on historic data (though arguably to a lesser extent because lines are likely to be less volatile over time than revenues).

The NPRM includes discussion of alternative methodologies—for example using forecast data. C&W agrees with those respondents who point out that the use of carriers' own forecasts would be prone to inaccuracy and possibly even abuse. As USAC suggests, there could be penalties for shortfalls between forecasts and actual revenue results, but this in turn would result in uncertainty for contributing carriers who may genuinely have difficulty in making accurate forecasts.⁷

⁷ USAC Comments at 12-13.

C&W would favor a system whereby contributions are calculated as closely as possible on the basis of contemporaneous data (either number of lines served or revenue, as described above), thus eradicating distortions arising either from time lags or inaccurate forecasting. Unfortunately, a truly contemporaneous system is impossible and there will always be some element either of time lag or forecasting. C&W, therefore, advocates a system whereby short-term forecasts of likely revenue for all carriers in aggregate are made by an expert but neutral party. This would eradicate incentives for abuse of the system. The USAC would set a contribution rate based on its own aggregate forecast of revenues or pre-subscribed lines. Admittedly, this may result in some over or under recovery from the fund in any one quarter, but this could be rectified in subsequent periods.

VII. Calculation On The Basis Of Collected Rather Than Gross Billed Revenues

The NPRM discusses the alternatives of calculation on the basis of gross billed revenues (as now) or collected revenues. In the event that the revenue base for calculation of universal service contributions is continued, C&W would advocate movement to a collected revenues system as this will remove the distortions which currently result from discrepancies between billed and collected revenues (e.g. which can result from non-payment of bills).

Respectfully submitted,
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