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

REPLY COMMENTS OF CBEYOND COMMUNICATIONS, LLC

Cbeyond Communications, LCC ("Cbeyond"), by its undersigned counsel and pursuant to the Commission's Notice of Proposed Rulemaking released May 8, 2001 ("NPRM"), hereby submits its reply comments in the above-captioned dockets. Cbeyond urges the Commission to change the way in which end-user revenues[1] may be allocated to regulated telecommunications services in bundled service offerings for Universal Service Fund ("USF") contribution purposes. Specifically, Cbeyond believes carriers should be allowed to allocate the discount on a bundled package service offering to telecommunications services included in the package.

I. About Cbeyond

Cbeyond was founded in November 1999 and became operational in Georgia in early 2001, opening the Atlanta market in March of this year. In Georgia, Cbeyond currently employs 140 people and expects to reach 250 employees by the end of this year.

Cbeyond is a single source provider of local, long distance voice and data services to small business customers with as few as five local lines. Cbeyond's base package of services provides local and long distance voice services as well as dedicated internet access at the same price as a five line customer pays for the voice services alone today. Cbeyond expects to also begin serving even lower line size customers and telecommuters in the not too distant future. As a provider of interstate telecommunications services, Cbeyond will be directly impacted by any changes the Commission adopts in its universal service assessment methodology.

II. Current USF Methodology Unfairly Affects Carriers That Provide Bundled Service Offerings

Cbeyond believes that the universal service assessment methodology should be neutral with respect to the bundling of regulated and unregulated services, and thus, should not create artificial incentives for carriers to bundle, nor penalize those carriers who choose to bundle services. However, the current USF policies unfairly affect companies who bundle regulated telecommunications services with unregulated information services or other non-telecommunications services. Specifically, carriers that provide bundled service offerings currently must pay USF on each of the regulated services in a bundled service offering based on the stand alone price for each of these services, instead of the revenue the carrier actually bills for these services, which takes into account the discount applied to the telecommunications service for a bundled package. For example, if a packaged product consisting of long distance,

[1] Cbeyond supports the Commission's current Universal Service Fund ("USF") methodology in which USF

local and Internet services includes interstate long distance at five cents per minute, but the stand alone tariffed price for interstate long distance is seven cents per minute, under the current USF methodology, a carrier would be required to report and contribute based on the stand-alone price for the long distance service, which is two cents per minute more than it bills its customer. By prohibiting carriers from allocating the discount to the interstate telecommunications services included in a bundled service package, the Commission requires a carrier to make USF contributions on monies it doesn't actually bill for regulated services. In essence, the Commission is requiring carriers to contribute to USF based on unregulated, information services revenues that are not subject to contribution requirements.[2] Accordingly, carriers that bundle telecommunications and information services are penalized under the current USF methodology for providing their package of services, and, thus, placed at a competitive disadvantage to those entities that do not package telecommunications services with information services. This inequity can be remedied with relatively few, but significant changes to the current USF collection regime.

III. The FCC Should Allow Carriers to Allocate the "Bundle Package" Discount Amongst Each of the Bundled Services for USF Contribution Purposes

As the Commission concluded in *Computer II*, the regulation of enhanced services is unwarranted because the market for those services is competitive and consumers benefit from that competition. *Second Computer Inquiry*, 77 F.C.C.2d 384, 433 (1980) ("*Computer II*"). However, imposing USF obligations on enhanced or information services provided by

contributions are based on end-user revenues.

[2] The current alternative method of allocating revenues from bundled service offerings is even more egregious as it "permits" carriers to report the entire price of the bundled service offering as revenue subject to USF contribution requirements. *See* Policy and Rules Concerning Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended, 1998 Biennial Regulatory Review - Review of Customer Premises Equipment And Enhanced Services Unbundling Rules In the Interexchange, Exchange Access And Local Exchange Markets, *Report and Order*, CC Docket Nos. 96-61, 98-183, FCC 01-98, at paras. 47-54 (rel. Mar. 30, 2001).

telecommunications carriers in bundled products, but not enhanced or information services provided on a stand alone basis by other carriers or by enhanced service providers, *e.g.*, Internet Service Providers, unfairly disadvantages bundled telecommunications/information service providers.

In order to correct the unfair disadvantage placed on carriers with bundled telecommunications and information service offerings, the Commission should change its current USF methodology to allow carriers to report the revenue that the carrier bills for the telecommunications service, which takes into account the "discount" for each service in the bundled package. Preferably, the Commission should allow carriers to report and contribute on the discounted price of the telecommunications services as explicitly stated in the package. Alternatively, the "discount" could be allocated evenly amongst all the services in the package or, as urged by Home Telephone, Inc., allocated amongst all the services provided in the package in proportion to the percentage each service makes up of the total price of the stand-alone services (*e.g.*, if the telecommunications service is 60% of the total stand-alone prices for the services in the package, 60% of the discount gets allocated to the telecommunications service). Because carriers maintain different accounting, billing, and record-keeping systems, the Commission should continue to grant carriers the flexibility of choosing between alternative methods of reporting revenue from bundled services.

The Commission should not require carriers to allocate the entire discount to unregulated enhanced or information services (*i.e.*, Internet access services). As explained above, this effectively forces carriers providing bundled service packages to contribute to USF based on a portion of their enhanced or information service revenues that are not subject to contribution requirements. Those carriers that provide Internet access services as a part of a bundled service offering with telecommunications service are at a competitive disadvantage to carriers that do not bundle regulated and unregulated services and to Internet access providers that do not bundle those services with regulated telecommunications services. Because current allocation rules for bundled services fail the Commission's test of competitive neutrality, they should be revised.

IV. Conclusion

The current USF system has a key shortcoming with respect to bundled services that should be addressed and resolved in this proceeding. By allowing carriers to allocate the bundled "discount" amongst each of the bundled service offerings under rules that clearly prohibit allocation of the entire discount to the telecommunications service, the Commission will encourage greater competition in the domestic interstate market from providers of bundled service offerings that face economic disincentives for providing bundled services under current USF rules.

Respectfully submitted,

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