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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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**
	)	**CC Docket No. 90-571**
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	)	**CC Docket No. 92-237** **NSD File No. L-00-72**
	)	**CC Docket No. 99-200**
Number Resource Optimization	)	
	)	**CC Docket No. 95-116**
Telephone Number Portability		

REPLY COMMENTS OF WORLDCOM, INC.

WORLDCOM, INC.

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Summary

The comments in this proceeding reinforce WorldCom's view that the current revenue-based Universal Service Fund ("USF") contribution system is neither equitable nor competitively neutral, cannot be sustained, and should be replaced by a connection- and capacity-based system. Contrary to the claims of the incumbent local exchange carriers ("ILECs") and their trade associations, a flat fee-based contribution system, such as the interstate connection- and capacity-based assessment proposed by WorldCom, is fully consistent both with the Communications Act and with the decision of the Fifth Circuit Court of Appeals in *Texas Office of Public Utility Counsel v. FCC*. The Commission has ample authority to adopt an interstate connection- and capacity-based contribution system.

Parties challenging the FCC's legal authority to establish a flat fee-based assessment system appear to confuse two related, but clearly separate questions that the Commission must address in establishing or revising its universal service funding system. The first question is: upon whom should the obligation to contribute to universal service fall? The second question is: how should contributions be apportioned among the members of the class of carriers who must contribute?

The answer to the first question is set forth in the plain language of Section 254: "every telecommunications carrier that provides interstate telecommunications services shall contribute" to universal service. Thus, if a carrier provides interstate telecommunications services, it falls within the class of carriers that must contribute; if a carrier provides no interstate telecommunications services, it falls outside of the class of carriers that must contribute. The answer to the second question (how carriers that have an obligation to contribute should be

assessed for their contributions) is not prescribed by the statute. Rather, the issue is committed to the Commission's expert discretion.

Nowhere in Section 254, Section 2(b), or in the Fifth Circuit's opinion in the *Texas Public Utility Counsel* case, is there a limitation on the Commission's discretion that requires it to assess contributions from contributing carriers on the basis of revenues. Moreover, despite USTA's erroneous assertions to the contrary, nowhere in its opinion does the Fifth Circuit indicate, explicitly or even implicitly, that the FCC lacks authority under the Act to adopt a flat fee-based approach to assessing contributions from interstate carriers.

In their comments, parties representing every segment of the telecommunications industry except ILECs identify fatal flaws in the current revenue-based contribution system that cannot be fixed by slight system modifications. These parties recommend replacing that system with a flat fee-based USF contribution system. At the same time, even among the parties that favor retention of a revenue-based contribution system, there are very strong disagreements about what type of revenue-based assessment would be equitable, nondiscriminatory, competitively neutral, and easy to administer. Advocates of assessments on historical vs. current vs. projected revenues, and of assessments on billed vs. collected revenues, each allege serious measurement, administrative, and/or anticompetitive problems associated with the other revenue-based options.

Also, while many parties filed comments arguing that the 15 percent interim safe harbor for calculating the interstate telecommunications revenues of wireless carriers appears to be too low and should be reexamined and raised, all the wireless carriers allege that the 15 percent safe harbor is, if anything, too high, and therefore should be maintained or reduced. Yet, not a single party – and most remarkably not a single wireless carrier – provides actual data on the

percentage of wireless usage or revenues that is interstate. A number of wireless carriers explicitly state that it is impossible to identify accurately the percentage of wireless usage or revenues that is interstate. If in fact it is impossible – or prohibitively expensive – to identify that percentage, that underscores the problems inherent in a revenue-based contribution system.

Moreover, the comments indicate that it is not only the interstate telecommunications revenues of wireless carriers that are difficult or impossible to measure. Especially with the trend toward greater bundling of services that cross traditional jurisdictional and market boundaries, the interstate telecommunications revenues of competitive local exchange carriers ("CLECs") and, indeed, of all interstate carriers will be difficult or impossible to measure.

The Notice sought comment on a flat fee-based contribution system, but because there are so many potential variations to such a system the Commission could not present a detailed proposal to elicit comment. Rather, the Commission had to seek comments on generic per-line or per-account assessments. Many parties, faced with the task of commenting on such generic flat fee-based contribution systems without a specific proposal in front of them, raised reasonable concerns about potential administrative difficulties, especially if the Commission were to implement a "one-size-fits-all" per-line or per-account assessment. With no defined "strawman" to critique, the parties did not attempt to identify the steps that could be taken to eliminate these concerns. Fortunately, in developing its connection- and capacity-based assessment proposal, WorldCom recognized some potential shortcomings of a simple per-line assessment, such as placing too great of a burden on low usage customers or failing to take into account differences in line capacities, and specifically crafted a more nuanced, but not administratively complex flat fee-based system that would resolve these issues.

As a result, WorldCom's proposal addresses all the concerns raised by parties in the comments. For example, WorldCom's proposal explicitly addresses the issue of equity for low usage customers and their carriers by exempting from the carrier assessment connections for Lifeline customers, setting low carrier assessment rates for connections for residential, pager, and single-line business customers, and recovering the residual USF burden from carrier assessments for connections for larger business customers. Also, to take into account capacity differences among business connections, WorldCom uses market-based data to identify three easily-defined capacity levels. In addition, WorldCom proposes a one-year transition – to allow sufficient time for the development of necessary information technology ("IT") systems without interrupting daily business activities -- before carriers are required to provide the business connections and capacity data to the Universal Service Administrative Corporation ("USAC").

The Commission should not mandate how carriers recover from their end-user customers the assessments, uncollectibles, and administrative costs associated with the USF. But flat connection-based universal service surcharges are consistent with the goals of the Communications Act and promote consumer welfare and therefore the Commission should explicitly sanction them as a means of recovery. WorldCom believes that this is the most equitable, competitively neutral, and consumer-friendly method of assessing and recovering universal service payments. Furthermore, although WorldCom agrees with the Commission's suggestion that universal service surcharges should "correspond to" the assessment amount, WorldCom concurs with the many parties asserting that carriers must be able to account in their universal service recovery surcharges for costs associated with universal service – *e.g*, uncollectibles and administrative costs.

Some carriers propose a methodology whereby carriers remit to USAC only the amount that they collect from customers. WorldCom supports this approach in that it alleviates the risk to carriers of having to pay an assessment on revenues they do not collect, but even under this approach carriers must be able to account in their surcharge for administrative and other associated costs.

WorldCom disagrees with parties arguing that the Commission should set a uniform amount that all carriers must assess to account for these administrative and other associated costs. The Commission should recognize the economic and business reality of varying circumstances and cost structures among carriers and should provide carriers with the flexibility to account for these circumstances in their surcharges. WorldCom therefore recommends that the Commission set a "safe-harbor" amount that would include the level of administrative costs that the Commission deems reasonable. The Commission could investigate any surcharge amount exceeding this "safe-harbor."

Some parties claim that carriers should be entirely prohibited from assessing universal service surcharges to recover their universal service payments. WorldCom disagrees. These charges are assessment that cannot be "competed away" in the marketplace and must be recovered for carriers to stay in business. Carriers should be able to separately identify and recover these charges on customer bills. Flat, connection-based surcharges are predictable and more easily identifiable than percentage-based surcharges or recovery amounts contained in per-minute rates.

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REPLY COMMENTS OF WORLDCOM, INC.

I. INTRODUCTION AND OVERVIEW

The comments in this proceeding reinforce WorldCom, Inc.'s ("WorldCom's") view that the current revenue-based Universal Service Fund ("USF") contribution system is neither equitable nor competitively neutral, cannot be sustained, and should be replaced by a connection- and capacity-based system. Contrary to the claims of the incumbent local

exchange carriers ("ILECs") and their trade associations,[1] a flat fee-based contribution system, such as the interstate connection- and capacity-based assessment proposed by WorldCom, is fully consistent both with the Communications Act of 1934, as amended,[2] and with the decision of the United States Court of Appeals for the Fifth Circuit ("Fifth Circuit") in *Texas Office of Public Utility Counsel v. FCC.*[3] The Commission has ample authority to adopt an interstate connection- and capacity-based contribution system.

In their comments, parties representing every segment of the telecommunications industry except ILECs identify fatal flaws in the current revenue-based contribution system that cannot be fixed by slight system modifications.[4] These parties recommend replacing that system with a flat fee-based USF contribution system. At the same time, even among the parties that favor retention of a revenue-based contribution system, there are very strong disagreements about what type of revenue-based assessment would be equitable, nondiscriminatory, competitively neutral, and easy to administer. Advocates of assessments on historical vs. current vs. projected revenues, and of assessments on billed vs. collected revenues, each allege serious measurement, administrative, and/or anticompetitive problems associated with the other revenue-based options.

Also, while many parties filed comments arguing that the 15 percent interim safe harbor for calculating the interstate telecommunications revenues of wireless carriers appears

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1 *See, e.g.,* Verizon Comments at 3, BellSouth Comments at 3, National Telephone Cooperative Association ("NTCA") Comments at 2, United States Telephone Association ("USTA") Comments at 5.

2 Communications Act of 1934, as amended by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56; codified at 47 U.S.C. §§ 151 et seq. ("the Communictions Act").

3 *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999).

to be too low and should be reexamined and raised,[5] all the wireless carriers allege that the 15 percent safe harbor is, if anything, too high, and therefore should be maintained or reduced.[6] Yet, not a single party – and most remarkably not a single wireless carrier – provides actual data on the percentage of wireless usage or revenues that is interstate. A number of wireless carriers explicitly state that it is impossible to identify accurately the percentage of wireless usage or revenues that is interstate.[7] If in fact it is impossible – or prohibitively expensive – to identify that percentage, that underscores the problems inherent in a revenue-based contribution system.

Moreover, the comments indicate that it is not only the interstate telecommunications revenues of wireless carriers that are difficult or impossible to measure. Especially with the trend toward greater bundling of services that cross traditional jurisdictional and market boundaries, the interstate telecommunications revenues of competitive local exchange carriers ("CLECs") and, indeed, of all interstate carriers will be difficult or impossible to measure.[8]

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4 *See,* in particular, the Ad Hoc Telecommunications Users Committee ("Ad Hoc") Comments at 7-10 and 13-26.

5 *See, e.g.,* NTCA Comments at 4, SBC Comments at 4, National Exchange Carrier Association ("NECA") Comments at 7, Iowa Utilities Board Comments at 2-3, Home Telephone Co. Comments at 8.

6 *See, e.g.,* Cellular Telecommunications & Internet Association ("CTIA") Comments at 7-9, AT&T Wireless Comments at 3, Rural Cellular Association Comments at 4, Verizon Wireless Comments at 2-3, Cingular Wireless Comments at 5-6. Nextel Communications prefers replacing the current revenue-based contribution system with a flat fee-based system, but supports retention of the 15 percent safe harbor if the Commission were to retain the revenue-based system. (Nextel Comments at 11.)

7 *See, e.g.,* AT&T Wireless Comments at 3, Verizon Wireless Comments at 4-5.

8 *See, e.g.,* SBC Comments at 11, Ad Hoc Comments at 22-26.

The Notice sought comment on a flat fee-based contribution system, but because there are so many potential variations to such a system the Commission could not present a detailed proposal to elicit comment. Rather, the Commission had to seek comments on generic per-line or per-account assessments. Many parties, faced with the task of commenting on such generic flat fee-based contribution systems without a specific proposal in front of them, raised reasonable concerns about potential administrative difficulties, especially if the Commission were to implement a "one-size-fits-all" per-line or per-account assessment. With no defined "strawman" to critique, the parties did not attempt to identify the steps that could be taken to eliminate these concerns. Fortunately, in developing its connection- and capacity-based assessment proposal, WorldCom recognized some potential shortcomings of a simple per-line assessment, such as placing too great of a burden on low usage customers or failing to take into account differences in line capacities, and specifically crafted a more nuanced, but not administratively complex flat fee-based system that would resolve these issues.

As a result, WorldCom's proposal addresses all the concerns raised by parties in the comments. For example, WorldCom's proposal explicitly addresses the issue of equity for low usage customers and their carriers by exempting from the carrier assessment connections for Lifeline customers, setting low carrier assessment rates for connections for residential, pager, and single-line business customers, and recovering the residual USF burden from carrier assessments for connections for larger business customers. Also, to take into account capacity differences among business connections, WorldCom uses market-based data to identify three easily-defined capacity levels. In addition, WorldCom proposes a one-year transition – to allow sufficient time for the development of necessary information technology

("IT") systems without interrupting daily business activities -- before carriers are required to provide the business connections and capacity data to the Universal Service Administrative Corporation ("USAC").

In Section II of these reply comments, WorldCom disproves allegations that its proposed interstate connection- and capacity-based USF contribution system is not consistent with the Communications Act and the Fifth Circuit decision in *Texas Public Utility Counsel,* and shows that the FCC has ample discretion to adopt such a system. Section III presents a number of policy arguments made by other parties in support of a flat fee-based assessment that supplement or reinforce the analysis in the WorldCom comments. Section IV shows how the concerns raised in some comments about a flat fee-based rate are fully addressed in WorldCom's connection- and capacity-based proposal. Section V explains how the comments of wireless carriers in support of maintaining or lowering the 15 percent safe harbor demonstrate that a revenue-based system cannot work. Section VI addresses WorldCom's preference for consolidated reporting to USAC. Section VII explains why flat fee-based universal service surcharges on customer bills would meet the goals of the Telecommunications Act and promote consumer welfare.

In sum, the comments in this proceeding reinforce the need to implement WorldCom's proposal for an interstate connection- and capacity-based USF contribution system.

II. WORLDCOM'S PROPOSED INTERSTATE CONNECTION- AND CAPACITY-BASED USF CONTRIBUTION SYSTEM IS FULLY CONSISTENT WITH THE COMMUNICATIONS ACT AND THE FIFTH CIRCUIT DECISION AND THE COMMISSION HAS AMPLE DISCRETION TO ADOPT SUCH A SYSTEM

A. The Commission should adopt an interstate connection- and capacity-based contribution system

As described in its initial comments in this proceeding, WorldCom recommends that the Commission assess universal service contributions from every provider of interstate telecommunications services on the basis of connections used or usable for interstate telecommunications services. Under WorldCom's proposal, the assessment would vary with the capacity of the end user's connection. WorldCom further demonstrated in its comments that its proposed approach is both superior to the current revenue-based assessment method and well within the discretion committed to the agency by Section 254 of the Act.[9]

Briefly stated, Section 254 requires that "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute" to the federal USF.[10] The statute does not specify how contributions should be assessed. Rather, Congress assigned to the Commission the task of adopting a system for apportioning universal service obligations among interstate carriers in a manner that is "equitable and nondiscriminatory."[11] As WorldCom explained in its initial comments, a contribution mechanism that allocates responsibility among carriers on the basis of interstate connections to end users is clearly both more equitable and less discriminatory than the revenue-based system currently in

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9 47 U.S.C. § 254.

10 47 U.S.C. § 254(d).

11 *Id.*

place.[12] WorldCom's proposal is therefore entirely consistent with the FCC's statutory mandate.

Some commenters object, however, to WorldCom's proposed approach on legal as well as policy grounds. As discussed below, these objections are meritless and should be rejected. The Commission, therefore, should move expeditiously to adopt and implement the new system for assessing universal service contributions among interstate carriers proposed by WorldCom.

B. The Commission has authority to adopt an interstate connection- and capacity-based contribution system

Notwithstanding the broad discretion the Act grants to the FCC to fashion a system for assessing universal service contributions, some commenters – most notably the incumbent LECs and their trade organizations – erroneously contend that the Commission lacks authority to determine the universal service contributions of interstate carriers on the basis of a per-connection or per-account assessment. They wrongly claim, for example, that "[c]hanging the assessment base to a per-line or per-account charge could have only one purpose – to avoid the [Fifth Circuit's] clear mandate that the Commission must limit the assessment to interstate revenues,"[13] and that "the flat fee approach was specifically disallowed by the Fifth Circuit in *Texas Office of Public Utility Counsel v. FCC*." [14] These contentions plainly are based on a misreading of the Fifth Circuit's decision and should be rejected summarily.

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12 WorldCom Comments at 18.

13 Verizon Comments at 3.

14 USTA Comments at 5 (citing *Texas Office of Public Utility Counsel v. FCC*)

Parties challenging the FCC's legal authority to establish a flat fee-based assessment system such as WorldCom has proposed appear to confuse two related, but clearly separate questions that the Commission must address in establishing or revising its universal service funding system. The first question is: upon whom should the obligation to contribute to universal service fall? The second question is: how should contributions be apportioned among the members of the class of carriers who must contribute?

The answer to the first question is set forth in the plain language of Section 254: "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute"[15] to universal service. Thus, if a carrier provides interstate telecommunications services, it falls within the class of carriers that must contribute; if a carrier provides no interstate telecommunications services, it falls outside of the class of carriers that must contribute.[16] The answer to the second question (how carriers that have an obligation to contribute should be assessed for their contributions) is not prescribed by the statute. Rather, the issue is committed to the Commission's expert discretion.

Nowhere in Section 254, Section 2(b), or in the Fifth Circuit's opinion in the *Texas Public Utility Counsel* case, is there a limitation on the Commission's discretion that requires it to assess contributions from contributing carriers on the basis of revenues. Moreover, despite USTA's erroneous assertions to the contrary, nowhere in its opinion does the Fifth

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15 47 U.S.C. § 254 (d)

16 Pursuant to the permissive authority granted by Section 254(d), the Commission has authority to require other providers of interstate telecommunications to contribute to the federal universal service support mechanisms. *See* 47 U.S.C. § 254(d).

Circuit indicate, explicitly or even implicitly, that the FCC lacks authority under the Act to adopt a flat fee-based approach to assessing contributions from interstate carriers.[17]

In fact, the Fifth Circuit did not hold, nor could it, that the Communications Act requires the Commission to assess universal service contributions on a revenue-basis. Instead, the Fifth Circuit held that the Commission "exceeded its jurisdictional authority when it assessed contributions for § 254(h) 'schools and libraries' programs based on the combined intrastate and interstate revenues of interstate telecommunications providers...."[18] The Fifth Circuit reasoned that the inclusion of intrastate revenues in the calculation for universal service contributions constituted a "charge ... in connection with intrastate communications service" in contravention of Section 2(b) of the 1934 Act.[19] The court did not hold – or even imply – that the Act mandated that the Commission implement a revenue-based assessment system.

The Fifth Circuit's concern was that the particular revenue-based scheme adopted by the FCC in 1997 improperly intruded into the jurisdiction of state regulatory commissions. Specifically, the court was concerned that, because under a revenue-based system the amount of a carrier's universal service contributions would increase as the carrier's intrastate revenues increased, the Commission's decision to include intrastate revenues in its USF calculations would "affect carriers' business decisions on how much intrastate service to provide . . .."[20] In the court's view, "[t]his federal influence over intrastate services is

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17 *Compare Texas Office of Public Utility Counsel,* 183 F.3d at 448 *with* USTA comments at 5.

18 *Texas Office of Public Utility Counsel*, 183 F.3d at 409.

19 *Id.* at 447, (quoting 47 U.S.C. § 152(b)).

20 *Id.* at 447, n. 101.

precisely the type of intervention that § 2(b) is designed to prevent."[21] The court therefore required the Commission to consider only interstate and international revenues in determining a carrier's USF contributions in a revenue-based system.

WorldCom's proposal is consistent with the Fifth Circuit's decision. Unlike the revenue-based system at issue in that case, the interstate connection- and capacity-based mechanism recommended by WorldCom would not in any way "affect carriers' business decisions on how much intrastate service to provide . . ." or otherwise "influence" intrastate services.[22] Indeed, one of the many advantages of an interstate connection- and capacity-based assessment is that it requires carriers to contribute a single flat-rated amount for each interstate connection they provide and does not vary with, and thereby "influence," the volume of intrastate services a carrier may provide over the connection. In short, because interstate connection- and capacity-based assessments would be unaffected by changes in a carrier's intrastate revenues, there is no risk that USF considerations would influence carriers' decisions regarding the provision of intrastate service.[23]

Arguments that an interstate connection- and capacity-based charge would constitute an assessment on intrastate services[24] misconstrue WorldCom's approach. The connection- and capacity-based mechanism proposed by WorldCom is *not* a proxy for revenues – intrastate or otherwise. Instead, it constitutes a new and different approach to universal service – one that is specifically designed to avoid the many shortfalls inherent in revenue-based assessments. By focusing on the interstate connection to the end user – and the

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21 *Id.*

22 *Id.*

23 *See Id.*

24 *See, e.g.,* USTA comments at 5; Verizon Comments at 3.

capacity of that connection -- WorldCom's proposal provides a more accurate and equitable contribution mechanism and eliminates many of the administrative problems associated with the current system.[25]

It bears emphasis that universal service contributions under WorldCom's proposal would be calculated on the basis of the number and capacity of end user connections used or usable for *interstate* services. Such connections may be either wholly used or usable for interstate service (*e.g.*, interstate private lines) or partially used or usable for interstate service (*e.g.*, local loops).[26] Connections that are used solely for intrastate services (*e.g.*, intrastate private lines) would not be subject to federal USF assessments under the proposal made by WorldCom. Thus, the Commission's decision to adopt the interstate connection- and capacity-based approach recommended by WorldCom would not impinge in any way on the authority reserved to state commissions by section 2(b) of the Act.

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25 WorldCom Comments at 13-15; 20-22.

26 As the D.C. Circuit has explained, "[t]he same loop that connects a telephone subscriber to the local exchange necessarily connects that subscriber into the interstate network as well." *National Association of Regulatory Utility Commissioners, et al v. FCC*, 737 F.2d 1095, 1113 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1227 (1985) (upholding FCC's authority to impose flat-rate end user access charges). The Commission's jurisdiction over interstate telecommunications services clearly extends to the provision of access to interstate services by local exchange carriers. *See Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, ¶ 808 (Rel. May 8, 1997). It is the interstate nature of these services that permits the FCC to regulate access charges for interstate calls, for example. *See, e.g.*, 47 C.F.R. § 36.213 (assigning switched access and special access revenue to interstate operations); *Southwestern Bell Telephone Co. v. FCC*, 153 F.3d 523 (8th Cir. 1998) (upholding Commission's decision to maintain a flat-rated Subcriber Line Charge ("SLC") on primary residential lines and increase the SLC for both non-primary residential lines and multi-line business lines).

III. OTHER PARTIES' COMMENTS SUPPLEMENT THE ANALYSIS IN WORLDCOM'S COMMENTS SUPPORTING A FLAT FEE-BASED ASSESSMENT

A number of parties, representing all segments of the telecommunications industry except ILECs, provide strong policy arguments in support of a flat fee-based assessment from their varied perspectives. Z-Tel Communications[27] and AT&T Corp.[28] explain how a flat fee-based contribution system, by eliminating the need for carriers to undertake the difficult and costly task of measuring the interstate telecommunications revenues generated by bundled services, encourages carriers to develop creative packages of interstate, intrastate, and enhanced services and customer premises equipment that customers, especially small customers, prefer.

Z-Tel[29] and Nextel Communications[30] explain that a flat fee-based assessment also helps customers because it is more likely than a revenue-based assessment to be passed through to end-users as a fixed monthly surcharge. A fixed surcharge is less confusing to customers and allows simpler comparisons with other carriers' surcharges (to use Nextel's language, are more "transparent") than a revenue-based surcharge that varies each month.

A number of parties support a flat fee-based assessment because it would be simpler and less costly for both carriers and USAC to administer than a revenue-based contribution

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27 Z-Tel Comments at 5.

28 AT&T Comments at 12.

29 Z-Tel Comments at 7.

30 Nextel Comments at 7.

system.[31] Nextel, AT&T, and Ad Hoc all explain how a flat fee-based contribution system is equitable, non-discriminatory, and competitively neutral.[32]

Ad Hoc provides two other very important reasons why a flat fee-based contribution system would be a great improvement over a revenue-based system. Ad Hoc explains that "the use of a revenue-based mechanism to fund universal service subsidies for non-traffic sensitive plant distorts prices and results in a deadweight loss to consumers. A per-line charge would eliminate those very inefficiencies, resulting in lower prices which benefit both end users and carriers. In addition, a per line charge would enhance competition by removing from the marketplace the distorted price signals that result from a traffic-sensitive universal service charge."[33]

Finally – and most importantly -- Ad Hoc explains[34] how a per line assessment would establish a sustainable funding mechanism for universal service because it "can be applied regardless of the [interstate telecommunications] service for which a particular line is used." Neither the use of "new technologies that allow subscribers to use the same communications facilities for both telecommunications and information services" nor "the migration of demand for traditional telecommunications services to Internet-based and other information services" nor "the marketplace trend towards offerings that bundle jurisdictionally mixed telecommunications services, information services, and CPE" would undermine the sufficiency and sustainability of a per-line USF contribution system, though each already is

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31 *See, e,g,*, Telstar International Comments at 4, AT&T Comments at 13, Nextel Comments at 2-4 and 7, Ad Hoc Telecommunications Users Committee ("Ad Hoc") Comments at 31-33.

32 *See* Nextel Comments at 4 and 7, AT&T Comments at 11-13, Ad Hoc Comments at 29-31.

33 Ad Hoc Comments at 28.

playing havoc with the revenue-based system. As Ad Hoc points out, this is especially important in light of the projection in the Bush Administration's Fiscal Year 2002 budget that fiscal year 2006 USF receipts will be over $7.9 billion,[35] compared to the current $5.5 billion USF level.

IV. THE CONCERNS RAISED BY SOME PARTIES ABOUT A FLAT FEE-BASED ASSESSMENT ARE FULLY ADDRESSED IN WORLDCOM'S CONNECTION- AND CAPACITY-BASED CONTRIBUTION PROPOSAL

In the Notice, the Commission sought comment on a flat fee-based contribution system, such as a per-line charge or a per-account charge. Parties identified several potential concerns with a flat fee-based system: (1) it might place an unfair burden on low usage customers and the carriers that serve these customers; and (2) there may be administrative difficulties associated with a per-line assessment, especially if line equivalents are used. In developing its connection- and capacity-based contribution proposal, WorldCom recognized and explicitly addressed each of these concerns.

A. The WorldCom proposal explicitly addresses low usage customers and the carriers that serve those customers

A number of parties expressed concern that a per-line contribution system would shift a disproportionate share of the USF contribution burden to low-volume customers by requiring them to pay a per-line surcharge that would be larger than their current revenue-based surcharge.[36] In addition, several parties expressed concern that a per-line contribution

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34 *Id.* at 33.

35 *Id.* at 5.

36 *See, e.g.,* OPASTCO Comments at 5, IDT Corporation Comments at 5, American Public Communications Council at 3, Iowa Utilities Board Comments at 2, Texas Office of Public Utility Counsel, *et.al*, at 7-11, NTCA Comments at 3.

charge would harm carriers that serve low volume users or create a disincentive to serve those customers.[37] WorldCom appreciates that a simplistic across-the-board line assessment might increase the burden on low volume customers. It also understands that an inefficient method for assessing carriers could harm carriers serving low volume customers or could discourage carriers from serving those customers. WorldCom explicitly took these factors into account when it developed its connection- and capacity-based proposal.

In setting the assessment rate, WorldCom distinguishes between the connections for the broad user categories that tend to be relatively light interstate telecommunications users – residential, pager, and single-line business – and those that tend to be heavier users of interstate telecommunications. The monthly assessment rate is set at zero for connections for Lifeline customers, $1.00 for connections for all other residential customers, $0.25 for connections for pager customers, and $1.00 for connections for single-line business customers. The assessments for all other business connections would be set to contribute the residual USF needs, taking into account the capacity of those connections.

Currently, residential customers typically pay a USF fee of $0.35 on their local telephone bills (to cover the USF assessment on the interstate SLC charge) plus a surcharge of approximately 10 percent on their interstate long distance bills. In a statistical survey of 2109 U.S. households conducted by the Yankee Group in 2000,[38] the average monthly long distance bill was $25.10; the median was between $15.00 and $19.99.[39] Approximately two-

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[37] *See, e.g.*, ASCENT Comments at 5, Excel Communications Comments at 2, Home Telephone Comments at 3.

[38] Yankee Group, 2000 TAF Survey at 31, 195-197.

[39] The data were presented in a range and therefore it is not possible to identify a specific value. 47.1 percent of respondents had long distance bills of $14.99 or lower; 55.4 percent had long distance bills of $19.99 or lower.

thirds of long distance revenues are interstate revenues, so average residential interstate revenues are about $16.74 and median interstate revenues are between $10.00 and $13.33. With a 10 percent surcharge, this yields average universal service surcharges today of $2.02 ($1.67 + $0.35) and median surcharges between $1.35 ($1.00 + $0.35) and $1.68 ($1.33 + $0.35). By comparison, under the WorldCom proposal the residential Universal Service surcharge most likely would be $1.00 plus a markup to recover associated administrative costs. Thus, for the typical residential customer, a $1.00 monthly line charge, when marked up somewhat to recover associated administrative costs, would still be lower than the combined current USF surcharges from that customer's ILEC and IXC. While it is true that some low usage customers who do not receive Lifeline service might face a higher surcharge initially, it is important to look beyond the immediate period. The main reason for moving from a revenue-based assessment to a connection- and capacity-based assessment is that market forces are eroding interstate telecommunications revenues at the same time as the size of the USF is increasing. Without reform of the contribution system the current 6.88 percent contribution factor (assessment rate) is likely to increase to 10 percent or more, with the surcharges on end-user revenues increasing accordingly. To the extent that the current system cannot accurately measure and assess interstate wireless revenues[40] and that large business customers have the incentive and ability to find alternative ways to obtain service that bypass the USF assessment,[41] there will be continuing upward pressure on the USF surcharges imposed on low usage long distance customers. The danger of ever-increasing end-user surcharges placing the current system into a death spiral, and thereby placing all

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40 *See* the discussion in Section V below.

41 *See* Ad Hoc Comments at 22-26.

Lifeline customers at risk, is very real. A connection- and capacity-based assessment has a broader base and will slow down the rate of increase in surcharges.

The Texas Office of Public Utility Counsel, *et al* ("Texas OPC") purports to demonstrate in exhibits to its comments the difference between assessing (and recovering) USF costs on a per-account basis and on a usage (proxy for revenues) basis.[42] These exhibits, however, fail to reflect the fact that minutes of use do not directly correlate with revenues. Long distance charges, per minute, are lower for customers who choose calling plans than for those who do not. Calling plan customers tend to be heavier long distance users, and very small users tend to pay higher per minute rates. Thus, the gap between the two curves in each exhibit would be smaller if actual revenues, rather than minutes of use, were plotted. In addition, these exhibits do not reflect the WorldCom proposal to set a significantly lower assessment rate for residential connections than for most business connections.

The Texas OPC also contends that placing a greater burden on low usage households effectively places a higher burden on low income households, presenting data from Florida that shows a correlation between income and usage.[43] In contrast, Ad Hoc describes factors that reduce the correlation between income and usage.[44] The Texas OPC also states that many low income households that qualify for Lifeline service do not participate in the program and therefore would not benefit from a surcharge exemption for Lifeline customers.[45] The Texas OPC therefore opposes per-line assessments on carriers and per-line

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42 Texas OPC Comments at Exhibits 1 and 2.

43 Texas OPC Comments at Exhibit 3.

44 Ad Hoc Comments at 14.

45 Texas OPC Comments at 10.

surcharges on customer bills. WorldCom disagrees with the Texas OPC. It is both more efficient and more effective to implement programs that foster low income household participation in the Lifeline program and a connection- and capacity-based USF contribution system with relatively low assessment rates for residential customers than to maintain the inefficient and anticompetitive revenue-based USF contribution system that will, at best, require ever increasing end-user surcharges, and might not prove to be sustainable over time and thus might place all Lifeline customers at risk.

Home Telephone Co. states that "[f]lat 'per unit' assessments based on either per line or per account could result in a disincentive to serve small volume customers. This would result from the fact that the assessment on the carrier could exceed the revenues generated by the end user."[46] Home Telephone is concerned that a per line assessment would be about $2.50, compared to its current USF surcharge of $0.25. Home Telephone raises an important concern, but does not demonstrate that there is any actual problem. The important concern is that any flat fee-based USF assessment (and surcharge on customer bills) not be so great that it results in customers discontinuing telephone service altogether. The numbers presented by Home Telephone suggest there is no danger of this happening. If Home Telephone's customers have similar calling patterns to the households in the Yankee Group survey, in addition to the $0.25 surcharge on their ILEC bills, they also currently have a revenue-based surcharge on their long distance bills that typically exceeds $1.00. At the same time, under the WorldCom proposal the total residential assessment would only be $1.00 plus a markup for associated costs, not $2.50. There is no reason to believe that Home Telephone's customers would discontinue telephone service altogether if they now had a $1.00 plus

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46 Home Telephone Co. Comments at 3.

markup surcharge on their ILEC bill while at the same time the approximately 10 percent USF surcharge on their long distance bill were eliminated. Nor does Home Telephone present any evidence that would suggest that it or other rural carriers would not be able to recover the $1.00 plus markup USF assessment from its customers and therefore would have any disincentive to serve them.

ASCENT and Excel raise a different issue. ASCENT's members are service resellers that offer primarily long distance service. Excel also is primarily a long distance provider. These carriers target residential and small business customers and therefore have a large portion of relatively low usage long distance customers. They are concerned that they would bear a disproportionate share of the USF contribution burden and also would have to bear sizeable costs to modify their billing systems. But under the WorldCom proposal, these carriers would only have to contribute to the USF when they are providing their customers' interstate connections – if they are acting as a CLEC or a provider of interstate private line services. As discussed in its comments, WorldCom recognizes that it is inefficient to impose a flat fee-based USF assessment on carriers that are not directly providing the connection to the end-user and therefore proposes that the assessment be placed only on the carrier providing that end-user connection.[47] IXCs that serve residential and small business customers would not be assessed. (Of course, IXCs that provide special access connections

[47] A major problem with requiring IXCs to contribute to a flat fee-based assessment is that approximately 10 percent of IXC customers have zero usage in any given month and therefore are not billed that month. (Exhibit 4 to the Texas OPC Comments provides data on zero usage customers for Florida.) Also, IXCs do not have information on which of their customers are Lifeline customers and therefore would have a difficult time identifying which customer lines are exempt from the assessment (and which customers therefore should not receive a USF surcharge).

for their customers to originate or terminate interstate traffic would be assessed for those lines.)

In its comments, Sprint Corporation, which is both an ILEC and an IXC, provides strong analytical support for placing the full responsibility for collecting the universal service assessment on the carrier providing the connection to the end-user:

> [T]he universal service system has too many collection agents. It is confusing and inconvenient for customers to be charged for federal universal service on both their local and long distance bills. There is no need for both LECs and IXCs to collect universal service funds from the same end user on the same line or connection to the network to achieve the same social welfare goal. For the sake of efficiency and ease of administration, end users should pay one federal universal service charge for access to the network. Almost all of these same consumers are presubscribed to an interexchange carrier, and they access the long distance network through the local exchange carrier.
>
> Some parties might argue that such an arrangement would disadvantage the collecting party competitively, but this fear is without foundation. If, for example, LECs serve as the collecting party there would be no benefit to a customer from switching LECs since the assessment would remain regardless of what LEC served the end-user. In summary, a per line charge equalizes the amount that end-users pay across all users, and a single charge per line eliminates inefficiencies.[48]

B. The WorldCom proposal eliminates concerns that some parties have raised about administrative difficulties with a flat fee-based assessment

Many parties, faced with the task of commenting on a generic flat fee-based assessment, without a specific proposal in front of them, raised reasonable concerns about potential administrative difficulties. But these concerns can readily be resolved by simple rules. The concerns include:

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[48] Sprint Comments at 7-8.

- Which types of carriers would be subject to the contribution requirement and which carriers are responsible for certain customers or classes of customers?[49]
- How would a line or account or a connection be defined? How, if at all, would differences in customer class or in the capacity of lines or connections be taken into account in setting assessment rates?[50]
- What would be the costs associated with new accounting and billing systems for carriers and USAC to implement a new assessment base?[51]

The issue of which carriers are subject to the contribution requirement can be addressed with the simple rule that WorldCom proposed in its comments: the assessment obligation would fall on the carrier from whom the customer is obtaining the connection. Thus, when carrier A is providing a special access, unbundled network element-platform, or unbundled network element-loop connection to carrier B, so that carrier B can provide a connection for its end-user, it is carrier B, not carrier A, who would have the assessment obligation.

Similarly, an interstate carriers providing a customer an interstate telecommunications service, but not providing the interstate connection, would not be assessed. As WorldCom explained in its comments,[52] a customer may be served by dial-around and pre-paid card providers as well as (or instead of) a presubscribed IXC. Or a customer with a PBX may route its calls to a variety of interexchange carriers, depending on time of day, location being

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[49] *See, e.g.,* USAC Comments at 16, NTCA Comments at 3, OPASTCO Comments at 6, BellSouth Comments at 3, NECA Comments at 5.

[50] *See, e.g.,* USAC Comments at 17, Cingular Comments at 6-7, Time Warner Comments at 4, EPIK Communications Comments at 3, IDT Comments at 5.

[51] *See, e.g.,* USAC Comments at 17, EPIK Communications at 3, NTCA Comments at 3, OPASTCO Comments at 6.

called, or other factors. There would be no practical way to determine how to assess the multiple services providers for the single connection charge. Moreover, requiring an assessment to be shared by multiple carriers unnecessarily increases administrative costs. The cost of one carrier collecting $1.00 from an end-user will be lower than the cost of two carriers each collecting $0.50 from that customer.

The issue of how to define a line or account or connection and set assessment rates is fully addressed by the connection- and capacity-based USF contribution proposal presented in WorldCom's comments,[53] and therefore only summarized briefly here. Carriers would be assessed nothing for Lifeline connections they provide their end-user customers, $1.00 for each residential and single-line business connection they provide their end-user customers, and $0.25 for each pager connection they provide their end-user customers.[54] The remainder of the USF funding would come from assessments on other business connections, based on the capacity of those connections. There would be three capacity levels – less than 1.544 Mb/s (Level 1), 1.544 or greater but less than 45 Mb/s (Level 2), and 45 Mb/s or greater (Level 3). A Level 2 connection would be assessed at five times the rate of a Level 1 connection and a Level 3 connection would be assessed at eight times the rate of a Level 2 connection. These three Levels and their relative assessment rates are based on current

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52 WorldCom Comments at 24-25.

53 WorldCom Comments at 23-24.

54 Cingular Wireless notes in its Comments (at 7) that wireless carriers today typically do not differentiate between their residential and business customers, and therefore currently may not be able to distinguish between multi-line residential and multi-line business customers. WorldCom takes note of this, but avers that it would be far simpler for Cingular and other wireless carriers to develop the simple systems needed to distinguish between residential and business customers – after all this would only require a single notation in a database – than it would be for these same wireless companies to make the distinction between interstate and intrastate revenues needed to make a revenue-based contribution system equitable and competitively neutral.

market relationships as well as exisitng equivalency ratios employed by ILECs and the Commission.

IDT raises concerns about what is the correct "addressable" unit for recovery, given that there are hundreds, and perhaps thousands, of different types of service offerings.[55] But that is the beauty of the WorldCom proposal – instead of focusing on individual service offerings, which cross jurisdictional and market boundaries, the connection- and capacity-based approach requires only the identification of broad capacity levels. There is a long history of both the industry and the Commission recognizing broad capacity levels and making pricing and assessment decisions accordingly. In a market environment characterized by the bundling of interstate telecommunications services with intrastate telecommunications service, enhanced services, and customer premises equipment, the potential for carriers to game a connection- and capacity-based contribution system is far lower than the potential to game a revenue-based system. As discussed below, the wireless carriers themselves argue most strenuously that there is no way to identify the interstate telecommunications revenues generated by a bundled wireless service offering.

The third area of concern voiced in the comments relate to the administrative costs associated with implementing a flat fee-based assessment. WorldCom is just as concerned about this as any other carrier. But careful review of the problem leads to the conclusion that whatever initial costs there may be, they pale in comparison to the on-going costs of a revenue-based system. The administrative tasks associated with implementing a connection- and capacity-based system can be handled without disruption to on-going business activity if

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[55] IDT Comments at 5.

carriers and USAC are given one year to develop the systems needed for business connections other than single-line connections.

Several organizations representing small ILECs claim that a connection-based system will increase their administrative costs because today they only collect revenue-based data. But these companies already send bills to their end-user customers, most of whom are residential and single-line business customers. Given the relatively small number of multi-line business and special access customers in rural areas, requiring rural ILECs to collect connection and capacity data should not be very burdensome. WorldCom's proposal for a one year transition period to prepare for the new data collection and the simple three-level system also should give USAC enough time to implement its systems requirement without affecting its on-going activities.

In sum, many parties correctly identified potential areas of concern about how a flat fee-based assessment would be implemented, but these concerns already are addressed by the connection- and capacity-based assessment proposal presented in WorldCom's Comments.

V. THE COMMENTS OF THE WIRELESS CARRIERS ABOUT THEIR INABILITY TO MEASURE INTERSTATE WIRELESS REVENUES DEMONSTRATE THAT THE CURRENT REVENUE-BASED CONTRIBUTION SYSTEM MUST BE REPLACED

In the Notice, the Commission referred to national and regional wireless offerings of buckets of minutes that likely have increased the proportion of usage – and hence revenues generated – that is interstate rather than intrastate. It therefore sought data that would shed light on whether the current 15 percent safe harbor for wireless carriers should be modified. Although all the wireless carriers argued that the 15 percent safe harbor either should be