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FEDERAL COMMUNICATIONS COMMISSION
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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 THE
UNITED STATES TELECOM ASSOCIATION

The United States Telecom Association ("USTA") hereby submits its reply comments to the comments submitted on the issues raised in the *Notice of Proposed Rulemaking* in the above-captioned proceedings.[1] In the *Notice*, the Commission sought comments on whether and how to streamline and reform both the manner in which the Commission assesses carrier contributions

[1] FCC 01-145, 66 Fed. Reg. 28,718 (2001) ("*Notice*").

to the universal service fund and the manner in which carriers may recover those costs from their customers.

In its comments, USTA urged the Commission to conclude other outstanding proceedings affecting expenses of telecommunications carriers and the size of the federal universal service fund before it resolves the issues raised in this *Notice*, which affect carriers' revenues and related obligations under the universal service program. However, should the Commission proceed with the issues raised in the *Notice*, USTA advocated that, under current policies, assessment of carriers' universal service contribution should be made annually and on the basis of a carrier's interstate and international retail revenues. USTA specifically maintained that flat fee assessments are *per se* unlawful. USTA also supported retention of the current *de minimis* carrier exemption and lifeline exception. USTA argued for mandatory contribution to the universal service fund by cable television operators or their affiliates that offer cable broadband transmission service. Finally, USTA advocated the replacement of burdensome quarterly carrier reporting and resultant rate changes for recovery with an annual factor and recovery mechanism that could correspond to carriers' annual interstate access tariff filings based on a July 1-June 30 period.

USTA believes that other parties' comments provide sufficient and persuasive support for the positions it advanced in the comments and urges the Commission to adopt those policies. USTA responds to some specific parties' comments below.

I. ASSESSMENT OF UNIVERSAL SERVICE CONTRIBUTION

A. Assessment Base

USTA strongly argued in its comments that a flat charge either on a per-line, per-account or any other flat rate method is *per se* unlawful and should not even been raised or seriously

considered by the Commission in this proceeding, and therefore must be rejected. A significant number of parties similarly advocated that the FCC reject a flat fee assessment basis.[2] Many of those parties supported their position with the following arguments that a flat rate methodology: (1) does not comport with the provisions of the Telecommunications Act of 1996; (2) violates the disallowance in the Fifth Circuit decision in *Texas Office of Public Utility Counsel v. FCC*;[3] (3) would likely place more of an administrative burden on carriers offering high-end product; (4) would inequitably shift the universal service burden from carriers providing a larger amount of interstate services to carriers with the most lines or accounts; and (5) could increase complexity and lead to interpretations and disputes.

Even the Ad Hoc Telecommunications Users Committee ("Ad Hoc"), a supporter of a flat rate methodology, stated that "a per line charge can be applied regardless of the service for which a particular line is used."[4] This is an example of the problem with the flat rate methodology. Under Ad Hoc's proposal, the methodology would be contaminated with payments based on revenues from both interstate and intrastate services into the federal universal service fund.

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[2] *See* Comments of American Public Communications Council ("APCC") at 3; Comments of Arch Wireless, Inc. ("Arch") at 5; Comments of BellSouth Corporation ("BellSouth") at 3; Comments of BT North America Inc. ("BT") at 7; Comments of Cingular Wireless LLC ("Cingular") at 6; Comments of Excel Communications, Inc. ("Excel") at 3; Comments of Home Telephone Company, Inc. ("Home") at 3-6; Comments of IDT Corporation ("IDT") at 4; Comments of Iowa Utilities Board ("Iowa") at 2; Comments of National Telephone Cooperative Association ("NTCA") at 2; Comments of Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO") at 5; Comments of Qwest Communications International Inc. ("Qwest") at 8; Comments of Rural Cellular Association ("RCA") at 6; Comments of SBC Communications, Inc. ("SBC") at 13; and Comments of Verizon Communications Corp. ("Verizon") at 2.

[3] 183 F.3d 393 (5th Cir. 1999).

[4] Comments of Ad Hoc at 33.

A number of proposals have been made in the comments to assess contributions to the universal service fund on a flat fee basis.[5] These proposals all suffer from an overriding fatal flaw – they are unlawful. As USTA and other parties stated in their comments, the Fifth Circuit made it clear in *Texas Office of Public Utility Counsel v. FCC* that the Commission is jurisdictionally barred from assessing intrastate telecommunications revenues to support the interstate universal service fund. Clearly, an assessment based on the number of connections and capacity each carrier provides to its end-user is simply another surrogate for assessment on a much broader revenue base than the interstate revenue allowed by the court.

Furthermore, it appears that a common tenet of all these per-line methodologies is that only carriers that have access lines would be paying into the universal service fund. Such proposals are contrary to Section 254(b)(4) and (d) of the Communications Act of 1934, as amended, ("the Act"),[6] which requires that all providers of telecommunications services make an equitable and nondiscriminatory contribution to universal service. In addition, all providers of telecommunications services, including the interexchange carriers ("IXCs"), derive a benefit from universal connectivity.

Beyond the obvious illegality of the proposed per-line methodologies, they are also administratively cumbersome and more burdensome than the current revenue based methodology.

Sprint offered several unacceptable proposals to reform the universal service funding methodology.[7] One was a plan that "divides carriers into distinct market segments and then uses

[5] *See* Comments of WorldCom, Inc. ("WorldCom") at 16; Comments of Sprint Corporation ("Sprint") at 8; and Comments of AT&T Corp. ("AT&T") at 4-5.

[6] 47 U.S.C. § 254(b)(4) and (d).

[7] Comments of Sprint at 8-10.

an allocation method to determine interstate revenues for each segment, thus greatly simplifying the process."[8] However, a standard for measurement of interstate revenue for each company already exists, and any industry averaging process would be a poor and inadequate substitute for a direct measure of the interstate revenues billed by carriers for each type of service. Sprint further proposed that LECs collect from wireline customers on behalf of local exchange carriers ("LECs") and IXCs.[9] Beyond being contrary to Section 254(b)(4) and (d) of the Act, it is a backward thinking proposal, more suitable in a pre-divestiture environment. Today, in a competitive environment, companies are totally responsible for their own billing and collection functions and should not be unduly burdened by collecting a universal service charge on behalf of other carriers.

Assessing payments into the federal universal service fund on a different base than was used to compute the factor will distort the recovery results. AT&T advanced a proposal that, although unduly complex, would clearly result in a drastic reduction in payments by the IXCs. Its proposed methodology would use a factor computed quarterly, as it is currently, but would apply it to an unpredictable base, *i.e.*, current revenues.[10] That plan would drive unpredictable results. If each contributor would be paying into the fund calculated on a fluctuating base, this would drive unnecessary uncertainty into the process for all concerned – payers as well as the fund administrator. AT&T offered no proposal as to how the Universal Service Administrative Company ("USAC") will make up the difference if there is a shortfall. This process would render the fund unpredictable because the assessment factor is computed on a different base than payment is made.

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[8] *Id.* at 8.

[9] *Id.* at 14-16.

AT&T's current revenue approach could increase reporting requirements from five reports annually to 17 or more. In addition to the quarterly reporting needed to set the factor and the current annual reporting, AT&T's proposal could add 12 more reports. AT&T argued that contributors currently pay a monthly invoice anyway. However, the payment is one which USAC assesses through an invoice requiring no additional reporting from contributors. AT&T's proposal could require 12 additional FCC Form 499-type revenue reports based on data barely closed and certainly not audited. This could drive excessive errors in reporting and true-ups into the next payment period, which causes even more unpredictability.

AT&T exaggerated the "lag time" in its argument for payment based on "current revenues." The "lag time" is really three months (one quarter) from the end of the contribution revenue base period and the time payments actually begin based on that period. For example, under current rules, contributors must submit billed revenue data for the first quarter (January – March) by May 1.[11] The July assessment factor and payment amount due are based on the revenues reported for the first quarter. Contributors pay into the fund based on the revenue reported for the first quarter starting with the beginning month of the third quarter. The actual "lag time" between period of payment and assessment base is only three months. When the Commission adopted the current assessment rules, it also prescribed a "true-up process" to transition the second quarter of 2001 onto the new one-quarter lag time, which the Commission described as an "average six-month" lag time.[12] The "assessment base" period is separated from the beginning of the "payment period" only three months. The three-month period provides

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[10] Comments of AT&T at 5.

[11] Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report and Order and Order on Reconsideration*, FCC 01-85, released March 14, 2001, ¶ 11 ("*Reconsideration Order*").

[12] *Id.* at ¶ 16.

time for contributors, USAC and the Commission to take care of administrative details in a "timely and accurate" manner. This shortened "lag time" is competitively neutral, predictable, and helps insure better accuracy of reporting for all concerned, thereby assuring the adequacy of the fund.

AT&T's argument of so-called "competitive disparities" due to Regional Bell Operating Companies ("RBOCs") entering or re-entering the long distance market is dwarfed by competitive losses which the RBOC must have in order to enter the long distance market in the first place. RBOCs are losing lines to competitors at the same time that they may be showing growth from long distance revenues. In meeting the checklist to get into long distance, an RBOC must prove that its "bottleneck" market is completely open to competition and the best proof, after all is shown, is the actual loss of local access market share.

B. *De Minimis* Carrier Exemption

USTA's position that the current *de minimis* exemption to the universal service contribution requirements contained in Section 254 (b)(4) and (d) of the Act and codified in Section 54.798 of the Commission's rules[13] should be retained was reinforced by other parties' comments in this proceeding.[14] USAC estimated that its additional administrative expenditures associated with processing and collecting universal service contribution from carriers that are currently *de minimis* would exceed $500,000 annually at a minimum, and could be substantially higher.[15] This annual cost does not include any cost burden on the current *de minimis* carriers.[16]

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[13] 47 C.F.R. § 54.798.

[14] *See* Comments of American Mobile Telecommunications Association, Inc. ("AMTA") at 3; Comments of APCC at 5; Comments of Association of Communications Enterprises ("ASCENT") at 7; Comments of National Exchange Carrier Association, Inc. ("NECA") at 8; Comments of NTCA at 3; Comments of OPASTCO at 7; Comments of Small Paging Carrier Alliance ("SPCA") at 9; and Joint Comments of 26 Concerned "De Minimis" Carriers at 2.

[15] Comments of USAC at 18.

Sufficient evidence exists in the record of this proceeding for the Commission not to modify or make any changes to the current *de minimis* exemption embodied in Section 54.798 of the rules and under authority of Section 254 (b)(4) and (d) of the Act. Therefore, USTA continues to urge the Commission to retain the *de minimis* exemption.

II. RECOVERY OF UNIVERSAL SERVICE CONTRIBUTION

Various consumer groups filed comments that call attention to some fundamental misperceptions regarding the cost recovery of universal service. The vast majority of commenting parties agreed generally with the Commission that the lack of uniformity of recovery mechanisms increases the likelihood of consumer confusion as to the ultimate nature and purpose of the recovery surcharge. However, certain consumer groups suggested that the most effective way to minimize consumer confusion is to eliminate the recovery surcharge altogether.[17] Such positions were based on an argument that universal service contributions are "just another cost of business" that does not warrant being singled out in a discrete line item.[18]

USTA believes it is crucial to correct a misperception regarding the universal service fund. The cost of universal service is **NOT** "just another cost of doing business," as some groups may suggest. Rather, the cost of universal service is a cost obligation calculated and assigned by an administrative agency to private industry in order to further a federal public policy mandate. Congress, by virtue of adopting the Telecommunications Act of 1996, has determined that the underlying public policy goals of the universal service fund are not only

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[16] *Id.*

[17] *See* Comments of National Association of State Utility Consumer Advocates ("NASUCA"); and Comments of Texas Office of Public Utility Counsel (Texas OPC").

[18] *See* Texas OPC at 2-4.

important, but crucial enough that federal law requires interstate telecommunications carriers to provide financial support to further them.

Although the merits of the universal service mandate of the Telecommunications Act of 1996 can be debated, such debate would be immaterial because Congress has already decided that these goals are worthwhile and are to be served, acknowledging that costs are involved. However, what cannot be disputed and ought not be obscured is the fact that these are not costs of doing business. Costs of doing business are generally capable of being competed away or reduced as a result of increased efficiencies or economies of scale. Under the current system, universal service obligations only increase as revenues increase. As such, it is more appropriate to describe universal service costs as tax-like, rather than as a "cost of doing business." To the extent that some parties believe that it is necessary or beneficial to obscure or hide the true nature of these tax-like costs, such arguments only serve to discredit the legitimacy of the universal service mandate. If universal service advocates truly believe in the merits of this public policy mandate, they should be comfortable with the decision to fund universal service through an explicit subsidy. As such, if this public policy mandate is a worthwhile one, it will stand on its own merit as all universal service costs are considered alongside the benefits.

III. CONCLUSION

USTA continues to advocate that the Commission should conclude other outstanding proceedings affecting expenses of telecommunications carriers and the size of the federal universal service fund before it resolves the issues raised in this *Notice* affecting carriers' revenues and related obligations under the universal service program. However, should the Commission proceed, USTA continues to advocate that, under current policies, assessment of carriers' universal service contribution should be made annually and on the basis of a carrier's

interstate and international retail revenues. Other proposals, such as those based on flat, per-line assessments, should be rejected as unlawful. In addition, USTA supports retention of the current *de minimis* carrier exemption and the lifeline exception, and that cable television operators or their affiliates offering cable broadband transmission service be required to contribute to the universal service fund.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION

By _____

Its Attorneys:

Lawrence E. Sarjeant
Linda L. Kent
Keith Townsend
John W. Hunter
Julie E. Rones

1401 H Street, N.W.
Suite 600
Washington, D.C. 20005
(202) 326-7375

July 9, 2001

CERTIFICATE OF SERVICE

I, Meena Joshi, do certify that on July 9, 2001, Reply Comments of The United States Telecom Association was either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the attached service list.

Meena Joshi