KELLEY DRYE & WARREN LLP
A LIMITED LIABILITY PARTNERSHIP
1200 19TH STREET, N.W.
SUITE 500
WASHINGTON, D.C. 20036
(202) 955-9600

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

July 9, 2001

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Reply Comments of Competitive Telecommunications Association
In the Matter of Federal-State Board on Universal Service
CC Docket Nos. 96-45; 98-171; 90-571; 92-237; 99-200; 95-116

Dear Ms. Salas:

Enclosed please find an original and sixteen copies of the Reply Comments of Competitive Telecommunications Association in the above-referenced proceeding. Additional copies on diskette have been delivered to Sheryl Todd, Accounting Policy Division, and International Transcription Service, Inc.

Please acknowledge receipt by date-stamping the enclosed extra copy of this filing and returning it to me in the envelope provided. Please direct all questions regarding this filing to Robert Aamoth at (202) 955-9676 or Heather Wilson at (202) 887-1240.

Respectfully submitted,

Robert J. Aamoth, Esq.
Heather M. Wilson, Esq.
Counsel for Competitive Telecommunications Association

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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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 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 COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

The Competitive Telecommunications Association ("CompTel"), by its attorneys, hereby submits reply comments in the above-captioned proceeding. CompTel addresses some of the comments filed in this proceeding, especially in light of the Commission's stated goal of reforming and streamlining the Universal Service Fund ("USF") contribution and recovery methodology.[1]

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[1] *In the Matter of Federal-State Board on Universal Service*, Notice of Proposed Rulemaking, CC Docket No. 96-45; CC Docket No. 98-171; CC Docket No. 90-571; CC (continued...)

INTRODUCTION AND SUMMARY

CompTel is the premier industry association representing competitive telecommunications providers and their suppliers in the United States. CompTel has a direct interest in this proceeding as it affects USF regulations that impact each of its members, some of whom filed independent comments in this proceeding.[2] CompTel applauds the Commission's efforts to reform and streamline the USF reporting and collection process, which serves a very important function, but has become administratively burdensome and costly for carriers and their subscribers. CompTel thus urges the Commission to avoid proposals and additional regulations that may amplify the problems, rather than reform and streamline the USF methodology.

One of these proposals suggests placing restrictions on the way carriers recover their USF contributions from subscribers.[3] Not only does this proposal add unnecessary requirements to a system that is already regulated,[4] but it promises to add further administrative burdens and costs to carriers, in addition to the possibility of increased confusion to consumers. As such, the Commission should avoid further restricting carriers' flexibility with regard to recovering USF contribution charges from their subscribers, and should not mandate specific line-item language on customer bills.

(...continued)

Docket No. 92-237 (NSD File No. L-00-200); CC Docket No. 99-200; CC Docket No. 95-116; FCC 01-145 (rel. May 8, 2001) (the "*NPRM*").

2 Some CompTel members that filed initial comments in this proceeding include the AT&T Corp., EPIK Communications, Inc. ("EPIK"), Excel Communications, Inc. ("Excel"), WorldCom, Inc. ("WorldCom"), and Z-Tel Communications, Inc.

3 *NPRM* at ¶ 42.

4 The Commission has adopted specific requirements regulating how carriers bill customers for service. *See In the Matter of Truth-in-Billing Format*, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd. 7492 (1999) ("*Truth-in-Billing Order*").

Finally, the Commission should review the collection mechanism proposals with an eye to avoiding undue administrative burdens, such as excessive reporting requirements. CompTel is in the process of reviewing the various proposals and comments regarding collection mechanisms and is not prepared to provide reply comments on these issues at this time. Should CompTel adopt a position on these proposals in the future, it will present its position to the Commission at that time.

DISCUSSION

I. The Commission Should Not Limit a Carrier's Flexibility in Recovering USF Charges from Its Subscribers by Placing Unnecessary Restrictions on Carriers.

Several commenters express legitimate concern over the Commission's proposal to adopt further regulations regarding how carriers recover USF fees from their subscribers. CompTel joins these commenters in urging the Commission to avoid the adoption of unnecessary, costly and burdensome regulations that will fail to meet the recovery needs of carriers, or provide a simpler, less-complicated bill for consumers. There are several important reasons why carriers require the flexibility to determine how USF contributions are recovered from subscribers, including variable administrative costs,[5] existing federal and state regulations,[6] a carrier's ability to assess federal USF cost recovery solely on interstate services,[7] historical revenue information,[8] current market conditions,[9] and customer preferences.[10] Additionally, carriers are subject to increasing marketplace pressure and competition from other carriers,

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5 *See* Comments of Excel at 9.

6 *Id.*

7 *See* Comments of Nextel Communications, Inc. at 13.

8 *Id.*

9 *See* Comments of Vartec Telecom Inc. at 4.

10 *See* Comments of Excel at 10.

which keeps recovery charges at a necessary minimum. In CompTel's view, it is appropriate and much more expedient for the Commission to address abuses by individual carriers by exercising its enforcement powers rather than prescribe recovery mechanisms and language whose extraordinary costs of implementation most certainly would outweigh any possible benefit.

CompTel agrees with several commenters[11] that justifiably are concerned that a prescribed recovery amount or percentage would not encompass important administrative and associated costs such as uncollectibles, credits, product margins, and differing revenue and customer base projections. Indeed, ASCENT argues that, "regardless of the assessment methodology, a carrier which must comply with reporting and payment obligations will incur costs in so doing."[12] ASCENT properly points out that the Commission's USF proceedings are "replete with examples from carriers that they are simply not able to absorb their universal service costs."[13] CompTel cannot support any proposal that mandates a specific recovery mechanism limiting the flexibility and discretion that carriers require in order to recover the entire cost of compliance with USF contribution requirements.

Rather than achieving consumer bills that are "simpler and easier to understand,"[14] a mandated recovery assessment and language will result in the contrary – consumer bills that are more confusing because of overlapping layers of regulation and a changing USF charge that is dependent upon the customer's service preferences and the

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11 *See generally*, Comments of the Association of Communications Enterprises ("ASCENT"); Comments of WorldCom; Comments of AT&T Wireless; and Comments of Telstar International, Inc.

12 *See* Comments of ASCENT at 8.

13 *Id.*

14 *NPRM* at ¶ 43.

Commission's adoption of a flat fee or percentage based contribution mechanism.[15]

CompTel wholeheartedly agrees with commenters that argue that the marketplace is the best regulator of the way carriers recover their USF fees from subscribers.[16] Not only is this approach consistent with the Telecommunications Act of 1996, and Commission policy, but the market does a much better job of efficiently regulating those carriers that choose to exceed reasonable USF recovery rates.[17] Excessive or unnecessary charges will put a carrier at a competitive disadvantage because consumers compare USF charges, as well as retail rates, when choosing a carrier. As WorldCom correctly points out, "[non-dominant] carriers, by definition, lack market power; their prices and practices are constrained by the competitive discipline of the marketplace."[18] CompTel agrees with Verizon Wireless, IDT Corporation and Qwest Communications that the Commission should address any abuse of Sections 201 and 202 of the Communications Act[19] by individual carriers on a case by case basis through enforcement

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15 *See* Comments of Verizon Wireless at 11, noting that the resulting USF line-item will (i) vary from subscriber to subscriber each billing period, (ii) vary from month to month for each subscriber, (iii) [might] be based on a Commission contribution percentage that will itself fluctuate from quarter to quarter. *See also*, Comments of Excel at 10, noting that carriers must already comply with state regulations that may be additional to, or inconsistent with, the proposed federal regulations, making it more difficult for subscribers to understand.

16 *See* Comments of Verizon at 8 ("market forces and the ability of customers to seek alternatives and compare carrier offerings provide sufficient protection for the consumer against unreasonable charges"); Comments of WorldCom at 27-28 ("In highly competitive markets, such as the long distance market, carriers that charge excessive fees or do not adequately explain the fees will lose customers to alternative providers and suffer in the marketplace"); and Comments of the Cellular Telecommunications and Internet Association ("CTIA") at 12 ("[c]ompanies that are concerned with long term revenues and retaining customers recognize that the reputational effects of misusing a cost recovery mechanism will affect profits and the customer base over the long term").

17 *See* Comments of IDT Corp. at 6-7.

18 *See* Comments of WorldCom at 27.

19 47 U.S.C. §§ 201 and 202, ("[a]ll charges, practices, classifications, and regulations ... shall be just and reasonable").

proceedings rather than excessive regulation of recovery mechanisms.[20] Indeed, "the marketplace, along with the Commission's existing rules and enforcement powers, adequately protects consumer interests."[21]

In addition to opposing specific recovery mechanisms, CompTel does not support the adoption of any specific language to identify USF recovery fees on subscriber bills. Such a specific mandate would be excessively costly[22] and, as many commenters point out, would violate carriers' commercial speech rights under the First Amendment.[23]

II. The Commission Should Continue to Streamline and Reform the Universal Service Fund Contribution Mechanism by Avoiding Proposals that Impose Excessive Reporting Requirements and Other Undue Burdens on Carriers.

CompTel agrees with several commenters that urge the Commission to reduce the administrative burdens associated with USF filing requirements, and avoid adoption of any proposals that would significantly add to these burdens.[24] Some of these commenters suggest switching to an annual,[25] or semi-annual reporting requirement to allow for sufficient adjustment

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20 *See* Comments of Verizon Wireless at 10; Comments of IDT Corp. at 6-7; and Comments of Qwest Communications International, Inc. at 12.

21 *See* Comments of WorldCom at 28.

22 *See* Comments of Verizon Wireless at 12; Comments of Cingular Wireless at 10; and Comments of WorldCom at 31. These commenters detail the considerable cost, in terms of modification to current billing systems, that would be necessary if carriers were required to identify a 32-character charge in the description field.

23 *See* Comments of WorldCom at 31, and Comments of CTIA at 13, citing the First Amendment concerns identified in the Commission's *Truth-in-Billing* Order. *See also*, Comments of Verizon Wireless at 13, note 15, noting that just two years ago, the Commission's rules restricting the use and disclosure of customer proprietary network information ("CPNI") were struck down on First Amendment grounds.

24 *See generally*, Comments of CTIA; Comments of United States Telecom Association ("USTA"); Comments of ASCENT; Comments of EPIK; Comments of Time Warner Telecom; and Comments of AT&T Corp.

25 *See* Comments of USTA at 8, noting that it has filed a *Reconsideration Petition* seeking a change in the carrier reporting requirement to allow carriers to file annual retail revenue reports with the Universal Service Administration Corporation ("USAC"). *See also*, Comments of Cingular Wireless LLC at 8. (Cingular Wireless recommends a reduction in (continued...)

of contribution factors without overly taxing the resources of reporting carriers generally, and smaller carriers in particular.[26] The adverse competitive effects to smaller or start-up carriers are clearly illustrated in the Comments of EPIK Communications and Time Warner Telecom. Both commenters note that carriers currently are subject to a plethora of reporting requirements every year, including five USF contribution reports (one annual 499-A and four quarterly 499-Qs), slamming reports, numbering resource utilization/forecast reports, local competition and broadband reports, various common carrier reports, international reports, and regulatory fees.[27] Although these requirements affect all carriers, they disproportionately burden smaller carriers that usually have limited budgets and personnel to address these obligations.[28] As a result, limited resources must be diverted away from providing competitive services at competitive prices and redirected to developing internal systems that compile and verify data for submission to the Commission.[29]

Such a diversion of resources harms not only carriers, but their subscribers as well. If small and start-up carriers cannot compete in terms of resources, consumers are left without a viable choice in telecommunications providers. Furthermore, subscribers of small and start-up carriers may face a decline in customer service due to personnel that must be reassigned in order to comply with reporting obligations.

(...continued)
the frequency of reporting to once per year, and suggests that carriers that wish to file more frequently may do so as often as four times a year.)

26 *See* Comments of ASCENT at 7.

27 *See* Comments of Time Warner Telecom at 3, note 3; and Comments of EPIK at 5.

28 *See* Comments of EPIK at 5.

29 *See* Comments of Time Warner Telecom at 3.

Because of the adverse effects to its members, particularly CompTel's small and start-up carrier members, CompTel cannot support any proposal that would place significant additional reporting and other administrative burdens on carriers. As such, CompTel urges the Commission to carefully evaluate the proposals made in the proceeding with an eye to avoiding unnecessary and undue burdens to carriers, and the subsequent loss of competitive services for consumers.

CONCLUSION

For the reasons stated herein, CompTel respectfully requests that the Commission avoid undue and costly regulations that burden carriers' abilities to fairly and efficiently comply with USF requirements. The Commission should consider how each proposal in this proceeding will further the Commission's stated goals of streamlining and reforming the current USF contribution methodology before adopting any specific proposal.

DATED: July 9, 2001

Respectfully submitted,

Robert J. Aamoth, Esq.
Heather M. Wilson, Esq.
KELLEY DRYE & WARREN LLP
1200 19th Street, N.W., Suite 500
Washington, DC 20036
(202) 955-9600
Attorneys for CompTel

Carol Ann Bischoff
Executive Vice President and
General Counsel
Maureen Flood
Director, Regulatory & State Affairs
COMPETITIVE TELECOMMUNICATIONS ASSOCIATION
1900 M Street, N.W.
Suite 800
Washington, DC 20036
(202) 296-6650

CERTIFICATE OF SERVICE

I, Robert J. Aamoth, counsel for Competitive Telecommunications Association, hereby certify that a true and correct copy of the foregoing Reply Comments of CompTel were sent this 9th day of July, 2001, by first class mail, postage prepaid to the following:

Dorothy Attwood
Chief, Common Carrier Bureau
FEDERAL COMMUNICATIONS COMMISSION
445 12th Street, S.W.
Washington, D.C. 20554

Jane E. Jackson
Chief, Competitive Pricing Division
Common Carrier Bureau
FEDERAL COMMUNICATIONS COMMISSION
445 12th Street, S.W.
Washington, D.C. 20554

Rich Lerner
Deputy Chief, Competitive Pricing Division
Common Carrier Bureau
FEDERAL COMMUNICATIONS COMMISSION
445 12th Street, S.W.
Washington, D.C. 20554

International Transcription Service, Inc.
1231 20th Street, N.W.
Washington, DC 20037

Sheryl Todd
Accounting Policy Division
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Robert J. Aamoth, Esq.