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

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FEDERAL COMMUNICATIONS COMMISSION
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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 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 AT&T CORP.

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July 9, 2001

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REPLY COMMENTS OF AT&T CORP.

Pursuant to Section 1.415 of the Commission's rules, AT&T Corp. ("AT&T") hereby submits these reply comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM"), FCC 01-145, released May 8, 2001, published in 66 Fed. Reg. 28718 (May 24, 2001), in the above-captioned proceedings.

INTRODUCTION AND SUMMARY

There is widespread agreement among the commenters that recent changes in the telecommunications markets have rendered the current revenue-based universal service

assessment and contribution mechanism obsolete, competitively-biased and confusing to telecommunications consumers.

First, the comments demonstrate that the existing universal service mechanism results in wide variations among telecommunications carriers in the amount of line-item charges for universal service, and that these variations stem from the fact that each individual carrier faces a different risk of nonrecovery. The comments further demonstrate that these variations interfere with competitive neutrality and may be confusing to consumers. However, several commenters correctly point out that the Commission cannot legally eliminate these variations – *i.e.,* impose limits on carriers' flexibility to design recovery mechanisms – unless it first eliminates carriers' individual risk of nonrecovery. Thus, the comments support the elimination of carriers' risk of nonrecovery by making the *fund* rather than individual carriers account for any risk of nonrecovery, requiring carriers to remit to the fund only what they collect, and implementing a uniform, prescribed charge for universal service that ensures that those assessments are competitively neutral and easy to understand.

Second, there is a broad consensus among IXCs, LECs and wireless carriers that the USF lag that is embedded in the existing universal service mechanism is competitively-biased and therefore should be eliminated. The commenters propose basically two alternative mechanisms for eliminating the USF lag: one based on current data and the other on projected data. Under no circumstances should the Commission eliminate the USF lag by basing carriers' universal service assessments on projections. The costs to telecommunications carriers of developing those projections would be immense. And the corresponding necessity to implement some sort of true-up mechanism would inject additional unnecessary costs into the universal service system.

Third, several commenters recognize that telecommunications markets have changed since 1997, and that the emergence of new technologies and bundled service offerings are rapidly undermining the Commission's existing revenue-based assessment method. Indeed, the current universal service assessment and contribution methodologies are rapidly deteriorating into a competitively-biased hodge-podge of safe harbors and exceptions, creating endless opportunities for telecommunications carriers to game the system and shift the burden of funding the universal service system to established wireline telecommunications carriers. These developments, coupled with declining prices for interstate telecommunications services, undermine the stability of the existing universal service assessment mechanism. A per-line flat-rate universal service and contribution methodology, however, would easily account for new developments in the telecommunications industry, including revenue shifts, and therefore would eliminate the need for the confusing and competitively-biased patchwork of safe harbors and exemptions. Thus, there is widespread support among the commenters for a per-line (or other flat-rate) universal service assessment and contribution mechanism.

Finally, a per-line flat-rate would be simple to administer. As illustrated in Exhibit A (attached), given the current USF funding requirements, the Commission could immediately implement a per-line flat-rate of $1.00 for residential, single-line business, and wireless (where each assigned wireless telephone number would equal one line) services; $0.25 for paging services; and $3.04 for all other switched voice business services. And to the extent that the Commission finds it necessary to explore the competitive impact of moving to a capacity-based flat-fee for special access services, the Commission could still immediately transition to a per-line flat-fee for residential and single-line business ($1.00),

wireless ($1.00) and paging ($0.25) services and retain on an interim basis a 6.00 percent revenue-based assessment methodology for all business services.

I. THE COMMISSION SHOULD INSTITUTE A PRESCRIBED PASS-THROUGH AND ESTABLISH MECHANISMS TO ELIMINATE CARRIER RISK OF NONRECOVERY.

A number of IXCs, LECs, and wireless telecommunications carriers share the Commission's concerns relating to the wide variations in the amount of line-item surcharges imposed by different telecommunications carriers. *See, e.g.,* AT&T at 3; Nextel at 5; SBC at 6; Sprint at 3-4; WorldCom at 8; *see also* NPRM ¶¶ 19, 23, 26, 28, 43. Those carriers agree that the Commission should adopt a new universal service mechanism that eliminates the substantial customer confusion that results from those variations.

The source of the variations in universal service surcharges among telecommunications carriers stems from the fact that each individual telecommunications carrier bears all of the risk of not recovering its universal service obligations from its customers,[1] *see, e.g.,* AT&T at 3; WorldCom at 8, which forces carriers to "engage in complex calculations to account for such variables as uncollected revenues, credits and the need to recover universal service contributions from a declining revenue base." NPRM ¶ 23. And because each carrier faces a different risk of nonrecovery, these good faith efforts to fashion recovery mechanisms *inevitably* result in line-item charges of substantially varying amounts. *See, e.g.,* AT&T at 3; MCI at 8. Thus, by removing each individual carrier's risk of nonrecovery the need for varying line-item surcharges would evaporate.

[1] Carriers' risk of nonrecovery is not uniform, especially because, as explained in Section II, carriers with declining interstate and international revenues must have a higher line-item USF charge to recover their USF assessments based on historical revenues.

By contrast, there is virtually no support for the Commission's proposal, which would limit carriers' pricing flexibility without eliminating the risk of nonrecovery. Indeed, the Commission cannot legally eliminate the line-item surcharge variations by removing carriers' pricing flexibility while leaving the existing variations in carriers' risk of nonrecovery intact. *See, e.g.,* ASCENT at 8-9; CTIA at 11-13; Excel at 9-12; IDT at 5-7; Qwest at 11-13; VarTech at 5. As long as an individual carrier bears its own risk of nonrecovery, that carrier must be allowed to adjust its line-item charges for universal service to account for that risk. Otherwise, a carrier with a low individual risk of nonrecovery could fully recover its universal service obligations from the prescribed line-item charge, whereas a carrier with a high risk of nonrecovery could collect only a portion of its universal service obligations from the prescribed line-item surcharge and would be forced to collect the remaining balance through its basic rates. That result plainly is not competitively neutral. *See id.*

Moreover, by effectively forcing certain carriers to recover universal service obligations through rates, the Commission would be maintaining an implicit universal service subsidy in violation of § 254(e). 47 U.S.C. § 254(e).[2] Indeed, as AT&T (at 7) explained, the Fifth Circuit has held three times now that "the plain language of Section 254(e) does not permit the Commission to maintain any implicit subsidies." *COMSAT Corp.* v. *FCC*, No. 00-60044 (5th Cir. May 3, 2001) (Commission may not even permit the maintenance of

[2] *See, e.g.,* Excel at 9-10; IDT at 7; Qwest at 12.

implicit subsidies).[3] And to allow recovery of universal service contributions through basic service rates would unquestionably constitute an implicit subsidy.[4]

However, as several commenters point out, once the risk of nonrecovery is removed these concerns evaporate and the Commission can (and should) implement uniform, prescribed assessments that carriers are required to pass through to end-users.[5] As SBC points out, "[t]he current system – which . . . gives [certain] carriers virtually unlimited discretion regarding their cost recovery method – leads to customer confusion and creates the potential for competitive manipulation." SBC at 8. Indeed, a prescribed pass-through assessment would result in a single, uniform recovery mechanism employed by all carriers, which would address concerns about customer confusion expressed by some commenters. *See e.g.*, ACUTA at 3-4 (noting that the current system is "very difficult for consumers to determine what percentage of line item is allocated to the Federal universal service charge, and what percentage is attributable to other fees" and pointing out that a uniform charge "would make strides toward eliminating consumer confusion about the charge"); Iowa Utilities Board at 3 ("[r]equiring carriers to recover the contributions via an explicit, uniformly-described line

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[3] *See also Alenco Comm.* v. *FCC*, 201 F.3d 608, 623 (5th Cir. 2000); *Texas Office of Public Utility Counsel* v. *FCC*, 183 F.3d 393, 425 (5th Cir. 1999).

[4] *See Alenco*, 201 F.3d at 623 ("[w]e made clear in *TOPUC* that the implicit/explicit distinction turns on the distinction between direct subsidies from support funds and recovery through access charges and *rate structures*" (emphasis added)).

[5] *See, e.g.,* Nextel at 14 ("Nextel requests that the Commission specifically permit the type of uniform charge cost recovery Nextel has implemented"); Ad Hoc at 35 ("the Commission . . . should eliminate any carrier flexibility to mark up USF charges and should require service providers who pay a USF contribution to do so through a uniform line item no higher than the assessment established by the Commission"). The Commission should also allow carriers to retain a percentage of what they collect to offset their own administrative billing expenses for the USF. *See, e.g.,* Nextel n.13; Qwest at 11; WorldCom at 28. The Commission should set that percentage, which should not vary by carrier. AT&T at n.1.

item on the end user's bill should minimize customer confusion"); *see also* Brown University at 4; Home Telephone at 7-8.

For these reasons, the Commission should immediately adopt a universal service contribution mechanism that (1) *requires* carriers to pass their contributions through to end-users in a *uniform, prescribed* manner[6] and (2) makes the *fund* rather than individual carriers, account for any nonrecovery of those charges by requiring carriers to remit to the fund only what they collect. This methodology is both competitively neutral and eliminates the anomalies in the existing system where individual carriers must account for the risk of nonrecovery.

Nor can there any doubt that the Commission has the statutory authority to establish by rule a prescribed, line-item amount that all carriers are required to pass through to their end-users. Section 254 grants the Commission broad authority to design and implement universal service mechanisms that are "equitable," "nondiscriminatory," "predictable," and competitively neutral.[7] The Commission's current system, in which each carrier bears its own risk of nonrecovery, is at odds with those goals, because it results in disruptive variations in different carriers' recovery mechanisms that are inequitable, unpredictable, and interfere with competitive neutrality. The Commission has ample authority to eradicate those irregularities by prescribing a nationally uniform pass-through, which will guarantee predictability and competitive neutrality. In that regard, such universal service recovery mechanisms are not

[6] The Commission should also make clear that carriers are required to pass the prescribed contribution through to *all* of their customers, and that repeated failure to pay would ultimately be grounds for cancellation of service.

[7] *See, e.g.*, AT&T at 5; VarTech at 4-6; WorldCom at 17-21; Z-Tel at 5-6.

"rates" for interstate services that would be governed by Section 201. To the contrary, such recovery mechanisms are purely creatures of Section 254, and the Commission has plenary authority under that section to dictate the amount of a nationally uniform line-item pass-through (provided that it also removes the carrier's risk of nonrecovery).[8]

II. THE COMMISSION SHOULD ELIMINATE THE "USF LAG" AND MAKE UNIVERSAL SERVICE ASSESSMENTS BASED ON CURRENT DATA.

Numerous commenters, including SBC, recognize that the existing USF lag is *not* competitively neutral and urge the Commission to immediately eliminate the lag. *See, e.g.,* Excel at 6 ("Changes in the industry . . . make a historical revenue mechanism inaccurate and anti-competitive"); *see also* Ad Hoc at 16-19; APCC at 2-3; ASCENT at 4; AT&T at 9-11; SBC at 5-6. In particular, the USF lag creates an artificial competitive advantage for telecommunications carriers with increasing interstate or international revenues because those carriers – unlike established long distance carriers – are not obligated to contribute to the universal service fund for six months – when they will be able to spread the recovery of those contributions over a larger revenue base. *See id.* By contrast, carriers with declining interstate and intrastate revenue accrue large assessments, which then must be spread over a smaller revenue base. *See id.* For instance, SBC notes that because it "is losing access lines, SBC has been put in the position of under-recovering its universal service contributions because such contributions are tied to historical revenue data." SBC at 5; *see also* Ad Hoc at 16-19; APCC at 2-3; ASCENT at 4; AT&T at 9-11; Excel at 6-8; SBC at 5-6.

[8] NASUCA (at 7-10) and the West Virginia Consumer Advocate (at 4-5) oppose a prescribed pass-through suggesting that it would limit carriers' ability to compete away the universal service contribution cost. Their contention is wrong. Universal service contributions are an externally-imposed cost, outside of carriers' control, that can no more be competed away than a tax levy.

The commenters propose basically two alternative methods for eliminating the USF lag. The most efficient and effective method is to base USF assessments on current data under a collect and remit mechanism. *See, e.g.,* AT&T at 9-11; IDT at 2; SBC at 7; Sprint at 3-4; WorldCom at 28. However, a handful of carriers support eliminating the USF lag by basing universal service assessments on *projected* revenues. *See* ASCENT at 4; Excel at 6-8; Iowa Utilities Board at 2. Under no circumstances should the Commission adopt an assessment mechanism based on projections.

The carriers that support a projected revenue methodology to fix the USF lag completely ignore the extraordinary administrative burdens that would be incurred by the telecommunications carriers in developing those projections and the overarching incentive for carriers to underforecast demand.[9] Indeed, as IDT demonstrates, a projected revenue methodology would force carriers to make "costly calculations to determine future revenues and [possibly even] future uncollected revenue." IDT at 3; *see also* Qwest at 6-7; West Virginia Consumer Advocate at 4. Moreover, as the proponents of a projected revenue system concede, the Commission also would have to implement some sort of true-up mechanism to account for errors in carriers' projections. *See* ASCENT at 4; Excel at 6-8; Iowa Utilities Board at 2; West Virginia Consumer Advocate at 4. Auditing the true-ups would impose an unnecessary cost burden on both USAC and carriers. Given that basing the USF assessment on current data would be more accurate, efficient and far less costly

[9] For this reason, the Commission has repeatedly rejected the use of forecasted demand in other contexts, for example, price cap regulation. *See Policy and Rules Concerning Rates for Dominant Carriers,* 3 FCC Rcd 3195, ¶ 445 (1988); 4 FCC Rcd 2873, ¶¶ 315-318 (1989).

mechanisms for eliminating the USF lag, the Commission should reject any proposal based on projected revenues.[10]

III. A PER-LINE FLAT-RATE ASSESSMENT AND RECOVERY MECHANISM IS SUPERIOR TO THE EXISTING REVENUE-BASED APPROACH.

Many commenters agree that the Commission should shift from revenue-based assessments to flat-rated, per-line assessments. While a revenue-based approach may have been reasonable in 1997 when it was first adopted, the telecommunications market has changed dramatically since then, and the emergence of new technologies and bundled service offerings are rapidly undermining the Commission's existing assessment method. *See, e.g.,* Ad Hoc at 7-10; Nextel at 6-7; Sprint at 3-4; WorldCom at 13. Moreover, the Commission has further complicated the current revenue-based assessment method with an increasingly complex patchwork of "safe harbors" that introduce additional competitive inequities into the universal service system. *See, e.g.,* AT&T at 11-13; WorldCom at 13-15. Together, these factors have contributed to the volatility and decline of interstate telecommunications revenues, thereby making a revenue-based mechanism unsustainable in the long run.

Predictably, several commenters – mostly those that benefit from the competitive inequities under the existing approach – urge the Commission not to change to a

[10] USAC suggests that once carriers submit their projected revenues, USAC could easily compute each carriers' universal service contribution based on those projections and could also implement a true-up mechanism to the extent that there are errors in those projections. *See* USAC at 12-14. USAC seriously underestimates the burden of auditing and correcting forecasting errors. Unless there is a penalty for underforecasting, all carriers would have a strong incentive to minimize their demand estimates. But fair enforcement of a penalty mechanism would be no simple task. For example, USAC would have to determine whether a carrier's underforecast was the result of a reasonable, good-faith assumed decrease in market share that then failed to materialize or whether it was an intentional low-ball estimate of demand so that the carrier could keep the float between the USF payment and the true-up date.

per-line approach. *See generally, e.g.,* BellSouth; SBC; Time Warner; Verizon. They mount a series of policy challenges to a flat, per-line system, none of which has merit. The Commission therefore should ignore those specious claims and promptly implement a flat-fee universal service assessment methodology. *See generally* Ad Hoc; AT&T; Sprint; Telstar; WorldCom; Z-Tel.

A. The Commission Has Ample Authority To Adopt A Flat-Rate Assessment and Recovery Mechanism.

Under AT&T's proposal, the Commission would prescribe a per-line assessment on each line with a SLC or IXC-billed PICC, and carriers would be required to pass that assessment onto their end-users in a prescribed line-item on the bill.[11] Carriers would remit to the USF only what they collect. In other words, the administrative burdens associated with the existing revenue-based system, *i.e.* the "complex calculations [that carriers must make] to account for such variables as uncollected revenues, credits, and the need to collect universal service contributions from a declining revenue base," NPRM ¶ 23, would be eliminated. The prescribed per-line charge would be sized to account for uncollected revenues. *See also* Ad Hoc at 30.

Some commenters claim that the Commission lacks legal authority to adopt such a per-line assessment. *See, e.g.*, BellSouth at 3; USTA at 5; Verizon at 2-4. Those claims are baseless. These commenters rely solely on *Texas Office of Public Utility Counsel* v. *FCC*, 183 F.3d 393 (5th Cir. 1999) ("*TOPUC*"), in which the court held that Section 254 did not provide an unambiguous grant of authority to assess intrastate revenues in the context

[11] Wireless services would be assessed based on assigned telephone numbers, and paging services would be assessed based on subscribers.

of a revenue-based assessment scheme, and that such an assessment was therefore barred by Section 2(b) of the Act. *Id.* at 448; 47 U.S.C. § 152(b). But *TOPUC* has no application here because under AT&T's proposal, the assessment is based on lines, not revenues. An assessment that applies to lines providing interstate telecommunications cannot conceivably be deemed a "charge . . . in connection with intrastate communications service," and therefore such an assessment would not run afoul of Section 2(b).[12]

Indeed, these commenters seem to be suggesting that the only legal method for the Commission to fund the universal service mechanism is direct assessment of interstate revenues. But the plain language of Section 254(d) is not so limited. Section 254(d) simply states that "[e]very telecommunications carriers that provides interstate service shall contribute, on an equitable and nondiscriminatory basis," to the mechanisms the Commission establishes. The Fifth Circuit itself noted that "the text of the statute does not impose any limitation on how universal service will be funded." *TOPUC*, 183 F.3d at 447. An assessment method is foreclosed only if it can be shown that it constitutes a "charge" in connection with intrastate service under Section 2(b) – which these commenters have not, and cannot, show.

[12] This conclusion is reinforced by the Fifth Circuit's reasoning in *TOPUC*. As the Court explained, inclusion of intrastate revenues in the assessment base "could certainly affect carriers' business decisions on how much intrastate service to provide or what kind it can afford to provide," and would thus permit the FCC to exercise prohibited "influence" over intrastate services. *TOPUC*, 183 F.3d at 447 n.101. Under a flat-rated assessment on lines capable of providing interstate services, however, a carrier's provision of intrastate service is irrelevant; the only "business decisions" affected would be those relating to provision of interstate lines. *See also Celpage, Inc.* v. *FCC*, Nos. 99-1072, 99-1244 and 99-1249, Brief for the Federal Communications Commission in Opposition at 29 (S.Ct. March 2000) (suggesting that, in the FCC's view, *TOPUC* may not even prohibit the FCC from including intrastate revenues in the assessment base for the high cost fund).

These commenters' only argument to the contrary is that a flat-rated, per-line charge would allegedly rebalance the burden of universal service funding in a way that resembles a total revenue approach. That is both irrelevant and, under AT&T's proposal, mistaken. First, any such rebalancing would be irrelevant under *TOPUC*; as long as the assessment is directed to lines that provide interstate telecommunications services any rebalancing would be related to services under the Commission's jurisdiction.

In all events, AT&T's proposal would not have the effect the commenters allege. Each *line* would carry with it the same prescribed assessment, which carriers would be required to pass through, and each carrier would remit to the USF only what it collected. The Commission could establish either the LEC or the presubscribed IXC as the entity designated to recover the USF contribution on behalf of *all* carriers whose services are provided over that line. Under this system, the universal service charge would become truly exogenous and competitively neutral, and any "rebalancing" of burdens would have no adverse competitive effect.

The proposal advanced by several commenters that LECs perform the billing for the entire universal service charge on behalf of themselves and the interexchange carriers is also consistent with the statute. *See, e.g.,* Ad Hoc at 29-31; Sprint at 10; *accord* AT&T at 14. Under that approach, each interstate carrier providing service over a line shares an assessment for that line. For example, assuming a $1.00 per-line assessment, if a LEC is both the local and presubscribed interexchange carrier for a residential line (or there is no presubscribed IXC), the LEC would be assessed $1.00, and would bill the end-user $1.00. If a LEC is the local provider and an unaffiliated presubscribed IXC provides long distance service, the two carriers would be assessed a total of $1.00, with the LEC billing the end-user

$1.00 on behalf of both carriers. Under these circumstances, the statute does not require the Commission to force each carrier to bill the end-user separately for its partial assessment; for purposes of administrative efficiency, the Commission can designate either the LEC or the IXC to bill the entire contribution on behalf of both.

Clearly, however, the LECs are in the best position to recover the contribution amounts at least cost. The LECs already have the billing information within their systems, whereas IXCs would have to engage in an administratively burdensome process to obtain that information from the LECs. In addition, making LECs responsible for recovery would permit the Commission to capture dial-around and prepaid card services in the universal service system because all such services are provided over a "line." Moreover, it would moot the inordinate difficulty that IXCs would encounter in attempting to bill and collect a universal service charge to a customer with zero long distance usage in a given month. Indeed, with IXC billing of universal service recovery, the amount of uncollectibles would inevitably increase significantly, ultimately driving up the prescribed USF line-item charge.

B. Moving To A Flat-Rate Assessment And Recovery Mechanism Is Necessary To Maintain Equity And Competitive Neutrality In The Face Of Prevailing Trends In Telecommunications Pricing.

Numerous commenters emphasize that trends in telecommunications markets are rapidly undermining the viability of the Commission's original, revenue-based assessment method. *See* Ad Hoc at 7-26; AT&T at 11-14; Sprint at 4-6; WorldCom at 12-15. Indeed, carriers now bundle services together and offer flat-rate packages that include both interstate and intrastate telecommunications and non-telecommunications products and services, and wireless carriers have significantly expanded and now provide customers with interstate services as part of a flat-rated package. *See* NPRM ¶ 3.

The increasing prevalence of bundled services is rapidly undermining the revenue-based assessment method. Indeed, any proposed method of identifying interstate telecommunications revenues within a bundled package is arbitrary and administratively unworkable. For example, under the Commission's safe harbors, a carrier is permitted to look at the highest stand-alone rate for the interstate telecommunications service,[13] while Home Telephone (at 9) proposes to look at the lowest stand-alone rate. But under either system, it can be difficult to identify the appropriate stand-alone rate at all. Often, there may be multiple stand-alone rates that could serve as potentially appropriate points of reference for the bundled service, and determining which of these offerings is the most appropriate analogue often has no easy answer. That is true even when services are tariffed; in a detariffed environment, determining the appropriate cross-reference is almost impossible. Maintaining the revenue-based approach will increasingly place the Commission in the role of "rate police," passing judgment on the inherently arbitrary process of choosing the proper analogue for services within a bundle.[14] *See* AT&T at 12; WorldCom at 18-20.

A flat-rate system would also eliminate the need for a "safe harbor" for wireless telecommunications carriers. *See* AT&T at 13; WorldCom at 12-15. Several commenters, including a wireless carrier, Nextel, recognize that the existing wireless safe harbor significantly understates the amount of interstate revenues earned by wireless telecommunications providers, thereby unfairly shifting the burden of funding the universal

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[13] *See Policy and Rules Concerning the Interstate, Interexchange Marketplace, et al.*, CC Docket No. 96-81 *et al.*, Report and Order, FCC 01-98, ¶¶ 49-53 (rel. March 30, 2001) ("*Bundling Order*").

[14] A per-line assessment would also obviate the need for the complex factors proposed by Sprint, which would not be stable over time. *See* Sprint at 10-16.

service system to wireline carriers. *See* Nextel at 11; AT&T at 13; WorldCom at 12-15; *but see* CTIA at 6 (arguing for expansion of safe harbor). By adopting a flat-rate universal service assessment and contribution approach, however, the Commission can eliminate the safe harbor altogether. *See* Nextel at 10-11; AT&T at 13; WorldCom at 12-15. Under AT&T's approach, for instance, the universal service contributions for which wireless carriers would be liable would be assessed on a per-line basis (*i.e.* on each assigned telephone number served by that wireless carrier), eliminating the need to untangle and attribute a wireless carrier's revenues to intrastate and interstate telecommunications services.

Similarly, a flat-rate universal service assessment and contribution mechanism would allow the Commission to eliminate the arbitrary "international exemption." *See, e.g.,* AT&T at 13; Telstar at 2-5. That exemption is not competitively neutral, and a flat-rate per-line system would render it unnecessary, and a fixed-rate approach to universal assessment and contribution would avoid setting such arbitrary safe harbors that effectively reduce telecommunications providers' incentives to increase their interstate service offerings. *See, e.g.,* AT&T at 13; WorldCom at 12-15.[15] The prescribed flat-rate assessment would also render the "de minimis" exception unnecessary and thereby expand the universal service contribution base to include all interstate telecommunications providers. *See, e.g.,* AT&T at 13; Iowa Utilities Board at 3; Telstar at 9.

Finally, a number of commenters explain that the decline in overall interstate telecommunications revenues is also undermining the revenue-based approach, particularly to the extent that the funds required for universal service support programs appear to be

[15] This exemption is already quite generous and certainly should not be increased. *See, e.g.,* AT&T at 13.

expanding. *See, e.g.,* Telstar at 7; WorldCom at 9-12. As one commenter explained, "in a world of declining interexchange carrier revenues the current system inevitably will lead to a USF 'death spiral,' where increasing universal service demands chase fewer interstate dollars." WorldCom at 11; *see also* Telstar at 7. AT&T concurs that the precipitous decline in pricing for voice long distance services and private line data services, coupled with an ever-increasing demand for universal service funding, will send a revenue-based assessment factor to unpalatable heights and make the collection base unstable. Thus, the need for universal service reform is critical if the universal service system is to be effective in the future.

C. The Generalized Arguments Advanced By Certain Commenters Against A Flat-Rate Approach Are Baseless.

Some commenters argue that a per-line assessment would be either unfair or difficult to administer, but none of these claims have merit.

For example, some commenters claim that a per-line assessment would be unfair because low-volume end-users would bear a higher relative burden of funding the universal service system than high-volume end-users. *See, e.g.,* BellSouth at 3; IDT at 4-5; Iowa Utilities Board at 2; OPASTCO at 5-6; Verizon at 5-6. First, and most obviously, low-income users are shielded from universal service payments by the Lifeline program. *See* NPRM ¶ 45 ("Under current rules, price cap LECs may not recover universal service contributions from Lifeline customers" and under the current proposal "all carriers would be prohibited from recovering universal service contributions from low-income consumers

recovering Lifeline discounts"). Furthermore, the Joint Consumer Commenters'[16] preference for universal service assessments buried in rates is puzzling. A nationally uniform, per-line charge would promote transparency and reduce customer confusion. By contrast, the Joint Consumer Commenters' insistence that universal service contributions should be subject to competitive forces is nonsensical; universal service assessments are an exogenous regulatory requirement that cannot be "competed away."

Moreover, as Ad Hoc explains (at 28-29), a flat-rate per-line assessment for recovering non-traffic sensitive telecommunications fees is economically superior to the revenue-based approach, because the current assessment method is essentially a traffic-sensitive charge to recover non-traffic-sensitive costs. Indeed, in the context of phasing out the common line carrier charge, the Commission rejected arguments that high-volume users should be required to contribute more towards loop costs than low-volume users.[17] As Ad Hoc correctly points out, the Commission in that proceeding recognized that "[a] subscriber who does not make local calls would normally pay a flat fee for the exchange

[16] The "Joint Consumer Commenters" are the Texas Office of Public Utility Counsel, Consumer Federation of America and Consumers Union.

[17] *See MTS and WATS Market-Structure*, Phase I, 93 F.C.C.2d 241, ¶ 12 n.17 (1983).

portion of such costs." *Id.* Likewise, an end-user that does not make a substantial amount of interstate calls would normally pay a flat fee for the interstate portion of that service, which should include a non-traffic sensitive flat-fee for universal service.[18]

Similarly, the claims of a few commenters that a flat-rate universal service assessment methodology would shift the burden of funding universal service away from IXCs and onto local exchange carriers is also meritless. *See, e.g.,* BellSouth at 3; OPASTCO at 3-4, 7; Verizon at 4. These commenters claim that a flat-rate assessment mechanism would increase both the *administrative* burdens of complying with universal service obligations and shift the burden of *funding* the universal system away from IXCs and onto other carriers. Neither of these concerns is warranted.

To be sure, all carriers would incur the minimal additional costs of reporting the number of lines on a monthly basis rather than on a quarterly basis as they do now, but that is hardly an administrative burden that could offset the administrative benefits discussed above. Indeed, line counts are relatively stable and could easily be reported with the monthly USF payments that carriers *already* submit. Put simply, the flat-fee assessment methodology proposed by AT&T would likely decrease, not increase, the administrative burdens imposed on carriers to comply with their universal service obligations.

[18] In addition, the Commission should give no weight to the Joint Consumer Commenters' claims that low-volume users are more likely to be low-income users. *See Low-Volume Long-Distance Users,* CC Docket No. 99-249, Notice of Inquiry, FCC 99-168, Separate Statement of Commissioner Michael K. Powell, Concurring, at 1 (rel. July 20, 1999) ("One might be misled to believe that low volume consumers are poor, elderly or rural individuals. In some cases yes, but by no means does low volume necessarily correlate with these groupings"). Even if (contrary to fact), low-volume users are more likely to be low-income users, those users are protected by the Lifeline exception to the universal service assessment methodology.

Likewise, the assertion that AT&T's flat-rate assessment methodology would shift the burden of funding universal service away from IXCs to other carriers is also wrong. *See, e.g.,* BellSouth at 3; OPASTCO at 3-4, 7; Verizon at 4. As noted above, AT&T's flat-fee universal service assessment would be collected through a required pass-through to end-users via a line-item charge on telephone bills, and each carrier would be responsible *only for those fees that are actually collected from its end-users*. *See* AT&T at 3. Accordingly, no carrier would be required to submit more to universal service than it actually collects from its end-users. *See id.* Thus, as explained above, universal service recovery would become, for the first time, truly exogenous and competitively neutral.

A few commenters claim that a per-line universal service assessment approach would be unworkable, because it would be difficult to define a "line" or to determine whether two different types of lines are "functionally equivalent" and therefore subject to the same per-line fee. *See, e.g.,* Qwest at 9; SBC at 14-16; Time Warner at 3-5. These are issues related to special access services. AT&T at 15. Neither of these arguments, however, applies to the per-line assessment methodology proposed by AT&T, which would apply to switched voice lines. Under AT&T's proposal, an assessment would be imposed on any line with a SLC or IXC-billed PICC; wireless lines would be assessed according to assigned telephone number. This definition of "line" is not difficult to administer. With respect to residential, single-line business, wireless and other switched voice business lines, the issues raised by

these commenters relating to the definition of "line" and identifying "functionally equivalent" lines are moot.[19]

IV. THE COMMISSION SHOULD TRANSITION IMMEDIATELY TO A PRESCRIBED PER-LINE FLAT ASSESSMENT METHODOLOGY.

Given the inequities and difficulties of the existing revenue-based universal service mechanism, the Commission should transition immediately to the per-line flat-rate assessment and contribution methodology proposed by AT&T and supported by other commenters. To be sure, it may be necessary for the Commission to examine and assess the appropriate methodology for ensuring a competitively neutral and effective flat-rate for mechanism for special access services. But that is no reason to delay transitioning all residential, single-line business, wireless and other switched voice business lines to a flat-rate system.

As illustrated in Exhibit A attached (which is based on publicly available line count data), given the current USF funding requirements, the Commission can immediately implement a per-line flat-rate of $1.00 for residential, single-line business, wireless (where each assigned wireless telephone number would equal one line) services, $0.25 for paging services, and $3.04 for other switched voice business services. The effect of this mechanism is to exclude special access services from universal service assessments. To the extent that the Commission decides that special access should not be excluded from the universal service assessment, and yet it is not prepared to adopt a capacity-based assessment at this time, it

[19] While AT&T's proposal for switched voice lines can be readily implemented, in the long term, the Commission should examine the efficacy of a capacity-based charge which would include special access services. AT&T at 15; WorldCom at 20-21.

should retain *on an interim basis* a lower 6.00 percent revenue-based assessment for *all* business services.[20]

CONCLUSION

For the foregoing reasons, and those set out in AT&T's initial comments, the Commission should modify its rules concerning contributions to the Universal Service Fund as described above.

Respectfully submitted,

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[20] Because of the difficulty of distinguishing revenues derived from single-line business services versus from all other business services, if the Commission retains an interim revenue-based assessment for special access services, it should apply that revenue-based methodology to all business services.

Exhibit A

SUMMARY TABLE

USF Assessment Rates From Different Options Evaluated

Alternative Scenarios:	Wireline Residential & Wireless	Pagers	Single-Line Business (Wireline)	All Other Businesses (Wireline)
Current (3rd Quarter, 2001)	**6.89%**	**6.89%**	**6.89%**	**6.89%**
Per Line for Residential, Wireless, Pagers, and Switched Voice Business	$1.00	$0.25	$1.00	$3.04
Hybrid -- Per Line for Residential, Wireless, and Pagers. Percent-of-Revenues for Business	$1.00	$0.25	6.00%	6.00%

Input Table: Access Lines, Households, etc.

		Year 2000	Data Source/ Comments:
Residential Access Lines:		(Numbers in Thousands)	
Primary Lines		101,955	*TABLE 4-12 Total Access Lines in the United States; Source: Public Telecommunications Services North America Market Share and Forecast, 2000, Market Statistics, Gartner Group, Inc. Publication Date: May 1, 2000.NOTE: For All Lines In This Section, A Line Reported In The Gartner Group Report Is Treated As A Line For Assessment Purposes .*
Add'l Lines		27,252	
ISDN (BRI)		1,145	
Lifeline		5,729	*ARMIS Data (Form 4301) for reporting LECs inflated to the Industry level assuming Reporting LECs have 98% share of the Industry Lines. Source: FCC ARMIS Homepage at http://www.fcc.gov/ccb/armis*
Sub-Total w/o Lifeline		124,623	*NOTE: For Assessment Purpses LIFELINEs Are Subtracted From The Total Residential Line Count Reported Above.*
Total Number of Household		106,100	*TABLE 17.1 of Telephone Trend Report published 12-21-2000 by FCC's Internal Analysis Division*
Household with Telephones		100,200	
Business Access Lines:			
Single Line Business		4,347	*ARMIS Data (Form 4301) for reporting LECs inflated to the Industry level assuming Reporting LECs have 98% share of the Industry Line. Source: FCC ARMIS Homepage at http://www.fcc.gov/ccb/armis*
Multi-Line Business (BASIC)		45,316	*TABLE 4-12 Total Access Lines in the United States; Source: Public Telecommunications Services North America Market Share and Forecast, 2000, Market Statistics, Gartner Group, Inc. Publication Date: May 1, 2000. NOTE: Mult-Line Business is derived by subtracting Single Line Business of the ARMIS from the "Business Access Lines - Basic Lines" reported by the Gartner Group. NOTE: For All Other Business Lines In This Section, A Line Reported In The Gartner Group Report Is Treated As A Line For Assessment Purposes.*
PBX Trunks		5,668	
CENTREX Lines		14,230	
ISDN (BRI + PRI)		1,886	
Sub-Total w/o Single Line		67,100	
Public Access Lines:			
Sub-Total		1,725	*TABLE 4-12 Total Access Lines in the United States; Source: Public Telecommunications Services North America Market Share and Forecast, 2000, Market Statistics, Gartner Group, Inc.*
Special Access Lines:			
Sub-Total (VGE)		65,036	*TABLE 4-12 Total Access Lines in the United States; Source: Public Telecommunications Services North America Market Share and Forecast, 2000, Market Statistics, Gartner Group, Inc.*
Cellular Subscribers:			
Cellular, ESMR, and PCS		109,478	*The Cellular Telecommunications & Internet Association's [CTIA] Annualized Wireless Industry Survey Results, June 1985 to December 2000. [http://www.wow-com.com/industry/stats/surveys/articles.cfm?ID=228] NOTE: For Assessment Purposes A Subscriber Is Treated As A Line.*
Paging Subscribers:			
Numeric/ Alphanumeric		43,406	*TABLE 19, U.S. Consumer and Business Paging Subscribers, Source: U.S. Wireless Services and Devices Market Assessment, 1999-2004, IDC, 2000. Document # 22214; Publication date: May 2000. http:/www.idc.com.NOTE: For Assessment Purposes A Subscriber Is Treated As A Line.*

CERTIFICATE OF SERVICE

I, Tracy L. Rudnicki, do hereby certify that on this 9th day of July, 2001, a copy of the foregoing " Reply Comments of AT&T Corp." was served by U.S. first class mail, postage prepaid, on the parties named on the attached Service List.

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