BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

| In the matter of: | |
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| 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<br>NSD File No.L-00-72 |
| Number Resource Optimization | CC Docket No.99-200 |
| Telephone Number Portability | CC Docket No.95-116 |
| Truth-in-Billing and Billing Format | CC Docket No.98-170 |

# COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION AND THE PEOPLE OF THE STATE OF CALIFORNIA

## I. EXECUTIVE SUMMARY

The California Public Utilities Commission and the People of the State of California (California or CPUC) hereby file these comments on the federal

universal service contribution mechanism. California believes that the proposed connection-based mechanism is unfair and inequitable to low usage interstate households. The proposal also conflicts with section 254 of the Telecommunications Act.

California continues to support the Commission's current universal service contribution mechanism based on interstate and international revenues. The current mechanism is equitable and nondiscriminatory and complies with statutory provisions for universal service.

## II. INTRODUCTION

California respectfully submits these comments in response to the Further Notice of Proposed Rulemaking (*FNPRM*)[1] issued by the Federal Communications Commission (FCC or Commission) on February 26, 2002 in the above-captioned proceedings. In the *FNPRM*, the Commission seeks comment on whether to assess federal universal service contributions based on the number and capacity of connections provided to a public network. The Commission has set forth a number of issues for comment in this *FNPRM* and the CPUC comments here only on some of these issues. Silence on the other issues connotes neither agreement nor disagreement with these proposals.

[1] *Further Notice of Proposed Rulemaking and Report and Order*, FCC 02-43.

The Commission currently maintains a system under which telecommunications providers contribute to federal universal service based on a percentage of the carrier's interstate and international end-user telecommunications revenues. (*FNRPM*, par. 6.) The Commission has not generally specified a particular method of recovery for carriers electing to recover their universal service contributions from their customers. Rather, the Commission has required that contributors neither discriminate nor shift more than an equitable share of their contributions to any customer or group of customers, and that carriers provide accurate, truthful, and complete information regarding the nature of the charge.

California's Universal Service Contribution System (USCS) is funded by intrastate carriers, with the amount determined based on a carrier's current month intrastate billings, minus an estimated uncollectible amount (based upon an approved and/or historical uncollectible factor), and multiplied by the applicable surcharge rate. The funding for each California USCS program is based upon a CPUC approved surcharge rate on intrastate billings for end-users. Carriers then recover, on a monthly basis, universal service contributions from their customers by collecting end-user surcharge payments, which corresponds to the prescribed percentage assessment established by the CPUC.

As we discussed in our Reply Comments[2] to the *2001 Notice*,[3] California supports and continues to support the Commission's current universal service contribution mechanism, with a modification of assessing carrier contributions based on collected (rather than gross-billed) interstate and international end-user telecommunications revenues. California continues to oppose any mechanism based on a flat-fee basis, such as the connection-based proposal in the instant *FNPRM*. Also, to the extent carriers choose to recover universal service contributions from their customers through line items, California believes the universal service line-item or "surcharge" must correspond to the prescribed percentage assessment established by the FCC based upon interstate and international revenues with no additional "mark-up." California urges the Commission not to adopt the connection-based proposal because it is unfair and inequitable to low usage interstate households; violates section 254(d) of the Telecommunications Act of 1996; and indirectly allows intrastate services to fund federal universal service.

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[2] CPUC Reply Comments, August 2, 2001.

[3] *See Federal-State Joint Board on Universal Service, 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, 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, Number Resource Optimization, Telephone Number Portability*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, Notice of Proposed Rulemaking, 16 FCC Rcd 9892 (2001) (*2001 Notice*).

## III. THE COMMISSION'S CONNECTION-BASED PROPOSAL IS UNFAIR AND INEQUITABLE. THIS PROPOSAL ALSO CONFLICTS WITH STATUTORY PROVISIONS FOR UNIVERSAL SERVICE.

The Commission seeks comment on a proposal that would require local exchange carriers, interexchange carriers, and CMRS providers to contribute to the universal service mechanisms based on the number and capacity of end-user connections they provide to a public network. Under this proposal, providers would contribute a standard assessment of $1 per month for each residential, single-line business, and mobile wireless connection to a public network, except for pagers, which would have a $.25 per connection assessment. The remaining universal service funding needs would be recovered through capacity-based assessments on multi-line business connections. (*FNPRM*, par. 31.) Multi-line business connection assessments would be based on the maximum available capacity, or bandwidth, of a connection. (*FNPRM*, par. 35.)

The Commission's connection-based proposal is unfair and inequitable because, among other things, low-usage households would be assessed a disproportionate amount.[4] A connection-based approach would shift more of the financial burden to low-usage residential end users, who typically receive the least benefit from the ability to make interstate calls or to be called by other customers, and who may be the least able to pay. Under this connection-based approach,

[4] See letter from W. Scott Randolph, Verizon Communications, to Magalie R. Salas, Federal Communications Commission, filed October 17, 2001 (*Verizon Ex Parte*).

residential users would be assessed the same for universal service regardless of whether they use the telephone network a little or extensively.

Subsidy programs such as universal service are designed to reduce the cost of telecommunications services for consumers in certain high cost areas and for low income consumers, increasing the feasibility and accessibility of these services. Boosting subscribership levels enhances the value of the nation's communications network because more individuals can be reached. In essence, all callers benefit from the universal service fund, but the callers who use the network the most (in addition to the recipients of the universal service fund) benefit the most. A usage-based approach assesses users' contributions in direct proportion to how much they use the network. Individuals who benefit more from the network should bear more of the burden of contributing to universal service.

In addition, the Commission's connection-based proposal runs afoul of its objectives to make telecommunications services more affordable for low-income customers. Although, not all low-income customers are low-volume users and not all low-volume users are low-income, there is considerable overlap between the two groups. The increased burden placed on low-income customers would not make services more affordable for low-income consumers, something which universal service is designed to do. While the Commission's proposal to exempt Lifeline customers would reduce the inequity, many relatively low-income and

low-usage residential end users are not Lifeline customers.[5] By assessing a disproportionate amount on individuals who may be least able to pay for interstate service, the Act and the Commission's commitment to ensure the affordability and availability of telecommunication services for all may be violated. (*FNPRM*, par. 6.) In addition, increasing the assessment to those individuals who may be least able to pay does not assist in increasing subscribership levels in low-income areas. A revenue-based system is a more fair and reasonable assessment approach because those who use the network more should contribute more to federal universal service support.

The connection-based approach also violates Section 254(d) of the Telecommunications Act of 1996. Section 254(d) of the Act provides that *every* telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to federal universal service. The connection-based proposal allows interexchange carriers the opportunity *not* to contribute to federal universal service. In fact, if an interexchange carrier only provides interexchange service and does not provide special access to business customers, that carrier would not have to contribute to federal universal service. Therefore, this proposal directly violates Section 254(d).

The Commission's connection-based proposal is bad public policy. Under this proposal, contributions and recovery to the federal universal service fund

[5] See letter from W. Scott Randolph, Verizon Communications, to Magalie R. Salas, Federal Communications Commission, filed October 17, 2001 (*Verizon Ex Parte*).

would not be directly related to interstate usage. Rather, it shifts the burden from interexchange carriers to local exchange carriers who provide the least discretionary or elastic service, and consequently, places an additional charge on local service. Furthermore, while the connection-based proposal is not directly tied to intrastate revenues, it is based indirectly on intrastate usage, since it would assess all connections to the network, including those that have no interstate usage. About three-quarters of telecommunication revenues due to connection to the public network are intrastate. As mentioned in the Commission's *FNPRM*, the Court of Appeals for the Fifth Circuit found that the Commission had exceeded its jurisdiction by assessing contributions for universal service support mechanisms for schools and libraries and rural health care providers based, in part, on the intrastate revenues of universal service contributors.[6] Similarly, a connection-based approach would indirectly and improperly lead to intrastate services funding federal universal service.

Consequently, California supports the current universal service contribution mechanism, with a modification of assessing carrier contributions based on collected (rather than gross-billed) interstate and international end-user telecommunications revenues. Basing carrier contributions on revenues is both equitable and non-discriminatory because the carrier's cost would be tied directly to the interstate usage of the phone. It also complies with the statutory provisions

[6] *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 at 448 (Fifth Cir.1999).

of universal service because every telecommunications carrier that provides interstate service contributes to universal service and only interstate revenues are used to contribute to universal service. In addition, as mentioned in our Reply Comments to the *2001 Notice*, California suggested that basing carrier contributions on "collected" rather than "gross-billed" revenues would eliminate carriers' need 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. In addition, carriers would not have to recover from its customers any difference between the amount assessed by the Commission and the amount collected, nor would carriers have to boost the Commission's contribution factor for universal service in order to account for "uncollectible" revenue and other variables. Also, California believes that collected revenues would reduce the interval between the reporting of revenues and the assessment of contributions, simplifying the assessment and recovery of universal service contributions for carriers and consumers and not place carriers with declining interstate end-user telecommunications revenues at a competitive disadvantage to carriers with increasing revenues. Moreover, California believes that collected revenues are easy to administer and to audit by external auditors because no estimating or forecasting is involved.

California believes that any perceived problems with the current revenue-based method are less than the potential problems identified with a connection-based method. One argument raised against the continuation of a revenue-based

approach is that interstate revenues may be hard to assess. Currently, the Commission's existing approach is to provide a "safe harbor" where interstate revenues are difficult to assess (e.g., CMRS providers may report a fixed percentage of revenues for interstate usage). Also, the Commission developed a safe harbor for the reporting of telecommunications revenues when bundling telecommunications services with customer premises equipment or information services. These approaches may be adequate or could be modified if needed to improve recovery from interstate telecommunications.

Moreover, other programs that fund the Telecommunications Relay Service, the North American Numbering Plan, and Local Number Portability are currently usage-based programs. The Commission has not identified any problems with the usage-based funding methods for these programs that justify switching universal service funding to a connection-based method. Furthermore, the *FNPRM* did not identify or provide necessary information regarding the impact and and/or feasibility of switching all of the programs to a connection-based assessment approach. In addition, while the $1 amount appears simple for residential users, the approach for business customers is more complex, as discussed below.

### A. THE COMMISSION'S MULTI-LINE BUSINESS PROPOSAL APPEARS VAGUE AND OPEN-ENDED. THIS PROPOSAL ALSO CREATES ADMINISTRATIVE PROBLEMS AND ARBITRAGE OPPORTUNITIES.

The Commission seeks comment on whether and how to calculate assessments for multi-line connections based on the capacity of those connections. (*FNPRM*, par. 50.) The Commission proposes that multi-line business connection assessments should be based on the maximum available capacity, or bandwidth, of a connection. Contributions for multi-line business connections would be a residual amount calculated to meet the remaining universal service funding needs not met by contributions for residential, single-line business, and mobile connections. The FCC seeks comment on calculating the assessment based on three tiers of capacity. (*FNRPM*, par. 52.) The Commission invites comment on whether it should, alternatively, assess all residential, single-line business, mobile, and multi-line business connections the same amount, regardless of the capacity of the connection. (*FNPRM*, par. 50.)

While California believes that to be equitable, any contribution amount for a multi-line business would have to be adjusted for capacity if a connection-based approach is used, the Commission's multi-line business proposal presents many difficulties. By not identifying the specific amount that will be contributed by multi-line businesses, the multi-line business proposal appears vague and open-ended. Specifically, the *FNPRM* does not identify the likely base amount, which would allow comparison to the $1 per connection amount to be assessed on

residential customers. Moreover, given the uncertainty in future universal service funding requirements, it is not clear how or when the $1 amount would need to be updated.

The tiered approach for multi-line business customers also creates administrative problems and arbitrage opportunities, and likely would skew purchase decisions. For example, connections may be configured just below any tier cut-off that the Commission chooses, such as below the 45 Mbps as noted in the *FNPRM*. A capacity-based assessment also could suppress the usage of capacity-on-demand alternatives. The large capacity of fiber installations may be underutilized because customers may not want to pay the universal service assessments for capacity that is not used often. Alternatively, some customers may purchase a single high-capacity connection if that would minimize their universal service assessments, even though multiple smaller capacity connections may otherwise suit their needs better. Additionally, it is unclear how a carrier would determine the number of connections to assess PBX customers based on "trunk side" information, as suggested in the *FNPRM*.

## IV. RECOVERY OF UNIVERSAL SERVICE CONTRIBUTIONS FROM END USERS SHOULD CORRESPOND TO THE PRESCRIBED PERCENTAGE OF INTERSTATE AND INTERNATIONAL REVENUES ASSESSMENT ESTABLISHED BY THE COMMISSION.

The Commission also asks for comment on whether to require carriers that elect to recover contributions through a separate line item to make that line-item amount or percentage rate uniform for all customers. (*FNPRM*, par. 95.) As

discussed in our Reply Comments to the *2001 Notice*, to the extent carriers choose to recover universal service contributions from their customers through line items, California believes that the universal service line-item or "surcharge" must correspond to the prescribed percentage of interstate and international revenues assessment established by the Commission. Basing the surcharge on a percentage of the customer's usage is consistent with the Commission's directive that contributors not shift more than an equitable share of their contributions to any customer or group of customers. Furthermore, as discussed in our Reply Comments, any non-revenue based surcharge on end-users would be inequitable because, among other things, it would discriminate against low-volume users who would pay a higher proportionate amount than high-volume users.[7] Also, California believes it is unreasonable to allow a carrier to discriminate among groups of customers in assessing line-item charges, so the percentage charge should not vary between residential and business customers, or among calling plans.

The Commission also seeks comment on requiring carriers that recover contributions through a separate line item to make "mark-up" percentages uniform across all customers and classes of customers. (*FNPRM*, par. 95.) The uniform mark up would be a percentage amount applied by the carrier to all universal service contribution amounts that appear as line items on customer bills.

[7] See letter from W. Scott Randolph, Verizon Communications, to Magalie R. Salas, Federal Communications Commission, filed October 17, 2001 (*Verizon Ex Parte*).

(*FNPRM*, par. 98.) California opposes any "mark-up" percentage in recovering universal service costs. California's universal service program (USCS) does not allow carriers to include a "mark-up" in the surcharge to end-users to reflect administrative costs or any other costs. California believes any administrative costs due to collecting a surcharge payment are minimal and a cost of doing business in California. Secondly, because administrative costs vary amongst carriers, any uniform "mark-up" per line item would allow some carriers to profit. Carriers should not be allowed to make a profit under the guise of federal universal service funding. And as mentioned by the Commission in the *FNPRM*, universal service line items often significantly exceed the amount of the contribution factor. (*FNPRM*, par. 18.) We are unaware of any evidence that the marketplace has prevented carriers from overcharging customers in these line items. When customers shop around for long distance services, they are usually unaware of the carrier's federal universal service line item charge. These are not charges that the carriers advertise. For these reasons, the Commission should not allow carriers to "mark-up" this line-item charge.

The FCC further seeks comment on whether to require carriers that elect to impose a separate line-item charge on customer bills to recover their contribution costs to describe the line item as the "Federal Universal Service Fee." (*FNPRM*, par. 103.) California believes that carriers should be required to identify any line item charge for federal universal service as the "Federal Universal Service Fee." We believe that describing the recovery of federal universal service contributions

as the "Federal Universal Service Fee" is more understandable for customers and ensures consistency. In addition, this requirement should be extended to CMRS and any other carrier assessing line item universal service charges. Moreover, any FCC rules on recovery from carriers should apply to all interstate carriers, not just "dominant" ones. And, although many carriers do not file interstate tariffs, the FCC's rules on recovery from carriers can be enforced through complaint or other proceedings.

## V. CONCLUSION

For the reasons stated above, the CPUC recommends that the Commission maintain the current revenue based system for assessing universal service contributions with the modification that the current revenue based system be based on collected revenues instead of gross-billed revenues. Similarly, any line-item charge to end users should only be a uniform percentage charge and should be identified as a "Federal Universal Service Fee."

Respectfully submitted,

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Dated: April 22, 2002