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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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 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 Gearing and Speech Disabilities, and the Americans with Disability Act of 1990	CC Docket No. 90–571
Administration of 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
Truth–in–Billing and Billing Format	CC Docket No. 98–170

COMMENTS
of the
GENERAL SERVICES ADMINISTRATION

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April 22, 2002

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Summary

Declines in total interstate revenues spur the Commission to consider shifting from the revenue–based system for determining carriers' assessments to support universal service programs. However, GSA explains that "total revenues from end users" continues to be the most equitable comprehensive measure for determining carrier contributions. Using this approach, reductions in the revenue base can be offset by an increase in the assessment percentage with no net change in the aggregate amount that consumers must pay to fund universal service.

Instead of revenues, the Commission suggests basing universal service assessments on the number and type of connections to the public switched network. Carriers would pay a flat monthly charge for each residential, single line business and wireless connection, but assessments for business multi–lines would depend on bandwidth or some other measure of connection capacity.

GSA urges the Commission to reject this proposed assessment plan for a number of reasons. For example, carriers are allowed to pass–through universal service costs, and the shift to a capacity–based system will motivate them to use a similarly structured plan for recovering assessments from their customers. Moreover, the residual plan described in the Notice is inequitable for users of business multi–lines, who now pay far more than their share of interstate access costs. Also, the variety of measures for determining capacity demonstrates the difficulties of arriving at an "optimum" connection–based system, and the controversies that will likely ensue.

Although the present revenue–based assessment plan should be maintained, the Commission can take several steps concerning universal service funding procedures to benefit consumers. For example, the Commission should prohibit carriers from "marking–up" assessments for universal service programs. Also, the Commission can use previously designated funds to reduce the need for future carrier contributions to the schools and libraries program.

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COMMENTS
of the
GENERAL SERVICES ADMINISTRATION

The General Services Administration ("GSA") submits these Comments on behalf of the customer interests of all Federal Executive Agencies ("FEAs") in response to the Further Notice of Proposed Rulemaking ("Notice") in CC Docket Nos. 96–45, 98–171, 90–571, 92–237, 99–200, 95–116, and 98–170 released on February 26, 2002. The Notice seeks comments and replies on issues concerning procedures for funding universal service support mechanisms.

I. INTRODUCTION

Pursuant to Section 201(a)(4) of the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. 481(a)(4), GSA is vested with the responsibility to represent the customer interests of the FEAs before Federal and state regulatory agencies. From their perspective as end users, the FEAs have consistently supported the Commission's efforts to bring the benefits of competitive markets to consumers of all telecommunications services.

In the Telecommunications Act of 1996, Congress expanded the Commission's role in ensuring the availability and affordability of telecommunications services for all Americans.[1] Pursuant to this directive, the Commission established programs for support to schools, libraries, and rural health care providers, and also prescribed several changes in the universal service programs for high–cost areas and lower income households.[2] In addition, the Commission established new universal service funding procedures.[3] Under these procedures, which are still in place, carriers are assessed on the basis of their interstate and international end–user revenues, with a "contribution factor" calculated each quarter.[4] Also, carriers are allowed to recover the assessment from their own customers in "any equitable and non–discriminatory manner."[5]

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1 Telecommunications Act of 1996, Pub. L. No. 104–104, 110 Stat. 56, codified at 47 U.S.C. §§ 151 *et seq.* ("Telecommunications Act").

2 *Federal–State Joint Board on Universal Service*, CC Docket No. 96–45, Report and Order, 12 FCC Rcd 8776, 8797, as corrected by *Federal–State Joint Board on Universal Service*, Erratum, CC Docket No. 96–45, FCC 97–157 (rel. June 4, 1997), *aff'd in part, rev'd in part, remanded in part sub nom. Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999), *cert. denied* 2000 WL 684656 (U.S. Sup. Ct. May 30, 2000) ("Universal Service Procedures Order").

3 Notice, para. 6.

4 *Id.*, citing 47 C.F.R. § 54.709(a).

5 *Id.*

Since 1997, interstate telecommunications markets have changed greatly, with new technologies, increased competition, migration to new products and services, and greater bundling of service offerings to end users.[6] In view of these developments, the Commission started a proceeding to revisit its universal service contribution methodology early last year, and several parties have submitted proposals for changes in the current system.[7]

Through the proceeding instituted by the current Notice, the Commission seeks to address proposals for funding universal service initiatives.[8] Particularly, the Commission seeks views on a recommendation to abandon the present revenue–based assessment procedure in favor of a procedure based on the number and type of network connections for each carrier.[9]

II. DECLINES IN TOTAL INTERSTATE REVENUES DO NOT JUSTIFY ABANDONING THE REVENUE–BASED CONTRIBUTION SYSTEM.

Among the major changes in telecommunications markets are shifts in interstate revenue trends since the Commission prescribed the present procedures for assessing the costs of universal service programs on carriers. Prior to 1997, total interstate revenues were increasing considerably each year, but soon after 1997 this trend slowed sharply.[10] In fact, interstate revenues from end users declined in 2000, the first time since these data were compiled.[11]

6 Notice, para. 1.

7 Notice of Proposed Rulemaking, 16 FCC Rcd 9892 (2001).

8 *Id.*

9 *Id.*, paras. 1–2.

10 Industry Analysis Division, *Telecommunications Industry Revenue Report for 2001*, released January 2002, Table 14.

11 *Id.*

The Commission suggests several causes for the declines in the interstate revenue base. First, vigorous competition is leading to price reductions through rate changes, bundling and various promotional plans.[12] Second, there is a significant "migration" of interstate telecommunications use from wireline to mobile wireless providers, who do not contribute to the universal service programs[13] Third, there is more use of the Internet for voice and data messages previously handled by the public switched network.[14].

In addition to the decline in total revenues, the relative importance of various segments of the industry in contributing to the universal service revenue base has shifted in the last few years. For example, the share of interstate revenues by traditional interexchange carriers has declined. Regional Bell Operating Companies ("RBOCs") have obtained approval to provide in–region interLATA services in nine states, and they have an estimated 25 percent market share for these services in New York and Texas.[15]

Unquestionably, there have been major changes in the magnitude and composition of interstate revenues. However, from GSA's perspective, these changes do not justify abandoning the revenue–based system of universal service support, as the Notice tentatively suggests.[16]

For any level of universal service support, reductions in the revenue base can be offset by an increase in the assessment percentage. Although an increase in the assessment factor may appear "painful" for carriers and consumers, in the aggregate it

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12 *Id.*, paras. 10, and 12.

13 *Id.*, para. 11.

14 *Id.*

15 Notice, para. 9.

16 *Id.*, para. 30–31.

is no more burdensome than collection of the <u>same</u> total amount of funds by means of a different type of contribution factor.

The effect of changing to another contribution basis is simply to redistribute the burden among carriers — with some carriers "gaining" and some "losing" in the process. Moreover, the change will impact fees that are passed on to end users in a way that has not been specified or determined at this time.

The Notice suggests that a connection–based assessment procedure could potentially "simplify" the assessment process and "reduce administrative burdens" on contributing carriers.[17] From GSA's perspective, it seems unlikely that such benefits will be realized because any procedure that requires carriers to classify and tabulate different types of end user connections must be complex in order to accommodate the wide variety of access configurations and technologies that are deployed by end users of all types and sizes.

Significantly, there is no evidence that a contribution basis other than the carrier's total revenues from end users will distribute the "costs" of universal service among carriers or their subscribers more equitably. When the present assessment system was established in 1997, the Commission found that "total revenues from end–users" is the most equitable and comprehensive gauge.[18] There is no reason to reverse this conclusion at the present time.

III. THE COMMISSION SHOULD NOT ADOPT THE CAPACITY–BASED ASSESSMENT PLAN DESCRIBED IN THE NOTICE.

Instead of total end–user revenues, the Commission's suggests basing assessments on the number and type of connections provided to the public switched

17 Notice, para. 63.

18 *Universal Service Procedures Order*, paras. 39–40.

network.[19] Under this plan, assessments would be $1.00 monthly for residential, single–line business, and wireless connections except pagers.[20] Each pager connection would be assessed $0.25 a month.[21]

Under the proposed plan, all remaining universal service funding needs would be met through capacity–based assessments on business multi–line connections.[22] The Notice acknowledges that there are many possible criteria for determining the business multi–line assessment, including the bandwidth of the connection.[23] Moreover, the Notice acknowledges that there are alternative procedures for measuring bandwidth, including the "contracted capacity" of the system and the amount actually "used" by the subscriber at the present time.[24]

GSA urges the Commission to reject this assessment plan. In the first place, the variety of measures for determining the capacity of connections to business multi–line users demonstrates the complexities of a connection–based system, and also signals that intractable controversies can be anticipated if the plan is employed.

There have been no quantitative estimates to date, but the shift to a capacity–based procedure for business multi–lines will probably have a major impact on many carriers. Carriers are permitted (but not required) to pass through universal service assessments, and most have followed this practice. Indeed, the shift to a capacity–based assessment plan will likely motivate many carriers to employ a similarly structured plan for recovering the costs of assessments from their customers.

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19 Notice, para. 31.

20 *Id.*

21 *Id.*

22 *Id.*

23 *Id.*, para. 55.

24 *Id.*

Recovery of a substantial part of universal service costs from business multi–line users on a residual basis is particularly unfair. Business multi–line users are already bearing a disproportionate share of the interstate access costs. Pursuant to the *CALLS Order*, the maximum subscriber line charge ("SLC") is $5.00 monthly for primary residential and single business lines, and an increase to $6.00 monthly is being considered for the present year.[25] On the other hand, the SLC cap for business multi–lines is now $9.00 monthly — exactly 50 percent above the value projected next year for the majority of access facilities.[26]

Moreover, business multi–lines are assessed for an additional part of interstate access revenue requirements by carrier pass–throughs of Presubscribed Interexchange Carrier Charges ("PICCs"). In the *CALLS Order*, the Commission abolished the PICC for primary residential and single business lines, but retained this charge for business multi–line access.[27] The business multi–line PICC is now capped at $4.31 monthly.[28] Therefore, the combined maximum SLC and PICC for business multi–lines is now $13.31 monthly — more than twice the $6.00 monthly SLC proposed for primary residential and single–line business access in July 2002.

In summary, business multi–line users pay universal service costs through carrier pass–through of revenue–based assessments. Moreover, these government and business users are already covering a disproportionate share of interstate access

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25 *In the Matter of Access Charge Reform and Price Cap Performance Review for Local Exchange Carriers*, CC Docket Nos. 96–262 and 94–1, Sixth Report and Order, *Low–Volume Long–Distance Users*, CC Docket No. 99–249, Report and Order, *Federal–State Joint Board on Universal Service*, CC Docket No. 96–45, Eleventh Report and Order, 15 FCC Rcd 12962 ("*CALLS Order*"), *aff'd in part, rev'd in part, and remanded in part, Texas Office of Public Util. Counsel et al. v. FCC*, 5th Cir. Nos. 00–60434 (5th Cir. September 10, 2001).

26 *CALLS Order*, para. 105.

27 *Id.*, para. 30.

28 *Id.*, para. 105.

costs. GSA urges the Commission to avoid a residual plan for universal service assessments that is likely to further increase charges for business multi–line consumers.

IV. SOME STEPS TO MODIFY RULES FOR FUNDING UNIVERSAL SERVICE PROGRAMS WILL BENEFIT CONSUMERS.

A. The Commission should prohibit carriers from "marking–up" assessments for universal service programs.

For a constant total universal service program cost, a shift from the present revenue–based assessment plan will neither reduce payments by consumers in the aggregate, nor lead to more competition for telecommunications services. However, the Commission can take several steps concerning universal service funding procedures to benefit consumers.

For example, the Commission should explicitly prohibit carriers from "marking–up" assessments for universal service programs. Previous comments by the Ad Hoc Telecommunications Users Committee ("Ad Hoc") in this proceeding demonstrate the severity of this problem.[29] In its comments, Ad Hoc explained that, when carriers were subject to a contribution factor of 5.67 percent in the fourth quarter of 2000, some were turning universal service assessments into a "profit center" by employing surcharges on end users as great as 8.6 percent.[30] In fact, for the first quarter of the next year, when the contribution factor increased to 6.68 percent, one carrier increased its surcharge to 9.9 percent.[31]

As GSA has previously noted in its Comments to the Commission, monthly invoices to end users with charges purportedly reflecting universal service

29 CC Docket No. 96–45, Comments of Ad Hoc, June 25, 2001.

30 *Id.*, p. 34.

31 *Id.*

contributions rarely contain a description that permits users to understand the purpose of the assessment.[32] Often the wording is vague, employing non–specific terms such as "universal service fee" or "connectivity charge."

By the wording and context, many consumers undoubtedly conclude that the stated charge is mandated and uniform among all carriers. Consumers may also be misled to believe that the entirety of the indicated charge goes to support the beneficiaries of universal service support.

However, unlike SLCs and PICCs, the structure of universal assessments is not prescribed by the Commission's rules. Implications to the contrary are particularly troubling because part of the assessment — a "mark–up" by the carrier — may be unrelated to the payments for universal service initiatives, but simply a means of funding the carrier's regular business activities.

GSA urges the Commission to require carriers to stop this practice. If a line item charge is employed to recover the costs of universal service contributions, the amount of the charge should not exceed the corresponding contribution. Moreover, carriers should be required to state unambiguously that such "surcharges" are not mandated and not uniform among all carriers that an end user may designate as a service provider.

B. The Commission should adopt accounting rules that reduce the magnitude of future assessments for the schools and libraries program.

The Commission developed the support program for schools and libraries to meet the requirements in the Telecommunications Act that carriers provide services to elementary schools, secondary schools, and libraries at rates less than the amounts

32 CC Docket No. 96–45, Comments of GSA, November 5, 2001, pp. 7–9.

charged for similar services to other parties."[33] The schools and libraries program represents a significant part of total universal service funding requirements. In the first half of 2001, the total costs of all universal service programs — including high–cost areas, lower income households, rural health care, and schools and libraries — was $2.75 billion.[34] The schools and libraries part of the assessment was $1.07 billion, or nearly 40 percent of the total.[35]

The present cap for the schools and libraries program is $2.25 billion each year.[36] However, in each program year a major portion of the available funds have not been deployed, principally because applicants do not fully use the funds committed to them.[37] For example, in the first funding year, the Universal Service Administrative Company disbursed approximately 82 percent of committed funds.[38] In the second year, this fraction declined to 71 percent, and a similar ratio is expected in the current year.[39]

The Commission has no set rule concerning what should be done with unused funds in future years.[40] GSA urges the Commission to require that these funds be credited back to carriers. This requirement will reduce costs to carriers through a cut in the contribution factor. Also, the requirement will reduce costs to consumers, particularly if carriers are prohibited from charging end users more than their own

33 Telecommunications Act, section 254(h)(1)(B).

34 *Universal Service Monitoring Report*, CC Docket No. 98–202, released October 2001, Table 1.2b.

35 *Id.*

36 *In the Matter of the Schools and Libraries Universal Service Support Program,* CC Docket No. 02–6, Notice of Proposed Rulemaking, released January 25, 2002, para. 63.

37 *Id.*

38 *Id.*, para. 64.

39 *Id.*

40 *Id.*, para. 69.

contributions, as GSA recommends in these Comments. Finally, GSA urges the Commission to view this step as only one of many potential actions to better target the schools and libraries program, as well as the other universal service initiatives, in order to ensure acceptable limits on costs to telecommunication users.

V. CONCLUSION

As a major user of telecommunications services, GSA urges the Commission to implement the recommendations set forth in these Comments.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, MICHAEL J. ETTNER, do hereby certify that copies of the foregoing "Comments of the General Services Administration" were served this 22nd day of April 2002, by hand delivery or postage paid to the following parties.

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