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

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
1998 Biennial Regulatory Review - Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, 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
	)	
Truth-in-Billing Format	)	CC Docket No. 98-170

COMMENTS OF THE RURAL CELLULAR ASSOCIATION

The Rural Cellular Association ("RCA"),[1] by counsel, hereby responds to the Commission's proposal to replace its current revenue-based method of assessing

[1] RCA is an association representing the interests of small and rural wireless licensees providing commercial services to subscribers throughout the nation. Its member companies provide service in more than 135 rural and small metropolitan markets where approximately 14.6 million people reside. Formed in 1993 initially to address the distinctive issues facing rural cellular service providers, the membership of RCA is concerned with advancing policies that foster the implementation of wireless services in the nation's rural and smaller market areas.

contributions to universal service with a methodology based on the number and capacity of connections provided to a public network.[2]

RCA is already on the record in this proceeding advocating that the Commission retain its current revenue-based methodology for assessing contributions to universal service with certain modifications.[3] The current methodology is consistent with Section 254(d) of the Communications Act of 1934, as amended (the "Act") and with cost-causation principles. The current methodology is competitively neutral, and easy to administer. In contrast, the Commission's proposed flat-fee approach is inequitable, discriminatory and would cause economic distortions by disassociating cost from cost causation. Accordingly, the proposal should be abandoned.

I. The Act Requires that the Universal Service Contribution System be Fair and Equitable

Section 254(d) of the Act requires every telecommunications carrier that provides interstate telecommunications service to contribute to universal service "on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service."[4] Based upon this statutory directive, the Commission has determined that contributions must be

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2 *In the Matter of Federal-State Joint Board on Universal Service, et al.,* Further Notice of Proposed Rulemaking and Report and Order, FCC 02-43, (rel. Feb. 26, 2002), 67 FR 11268 (March 13, 2002) ("Further Notice").

3 *See* Comments of RCA, CC Docket No. 96-45, filed June 25, 2001. In its comments, RCA recommended that the Commission modify its current revenue-based assessment methodology to reflect collected, rather than billed, revenues.

4 47 U.S.C. § 254(d).

assessed in a manner that is competitively neutral and easy to administer.[5] After a thorough evaluation of various methodologies, the Commission determined that the methodology which best satisfies both of these criteria was one which assessed contributions based on interstate telecommunications revenues derived from end users.[6] The Commission further determined that this methodology eliminated potential economic distortions.[7] There is no evidence that these findings have changed in the past five years.

II. The Proposed Flat-Fee Approach Would Create Severe Inequities and Distortions and Therefore Must Be Rejected

Despite the absence of systemic flaws, the Commission now proposes to replace this statutorily-based methodology with a flat-fee approach in an attempt to "ensure the stability and sufficiency of the universal service fund."[8] Citing diminishing revenues of IXCs, the group that historically contributed the lion's share to the fund because they provide the majority of interstate services, the Commission proposes a methodology that bases contributions on the number and capacity of the connections a contributor provides to the public network, rather than on the contributor's interstate revenues. This proposed methodology, however, fails to assess contributors in an equitable and nondiscriminatory

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5 *See In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 9206 (1997) ("Report and Order").

6 *Id.*

7 *Id.* at 9209. The Commission found that basing contributions on end-user revenues eliminates potential economic distortions because contributors "will not have more of an incentive to build their own facilities or purchase services for resale in order to reduce their contributions because, regardless of how the services are provided, their contributions will be assessed only on revenues derived from end users." *Id.*

8 Notice at para. 15.

manner, and disassociates costs from cost causation. Moreover, there is no indication that enactment of the proposal will accomplish the stated goals of stability and sufficiency. Accordingly, the proposal must be rejected.

Section 254(d) of the Act requires "every telecommunications carrier that provides interstate telecommunications services" to contribute to universal service. Based upon this Congressional directive, Commission Rules currently, and correctly, require all entities that provide "interstate telecommunications to the public, or to such classes of users as to be effectively available to the public, for a fee" to contribute to the universal service support programs. [9]

The Commission's proposal to assess contributions based on the number and capacity of connections provided to a public network is inconsistent with the statutory mandate. Providing "connections" to the public network is not equivalent to providing the interstate telecommunications "services" upon which revenues are based. Utilization of a surrogate for "service" is neither required nor warranted; abandonment of the direct relationship between interstate services revenues resulting from utilization, and the resulting responsibility for contribution, will result in the subsidization of high-volume interstate usage by the lower volume users.

In addition, it is clear that the class of carriers providing interstate "services" is broader than the class of carriers providing "connections."[10] Adoption of the false

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[9] 47 C.F.R. § 54.706(a).

[10] The Commission has proposed that a "connection" be defined as "a facility that provides an end user with independent access to a public network, regardless of whether that connection is circuit-switched, packet-switched, or a leased line." Notice at para. 41.

assumption of the equivalency between "services" and "connections" will violate the statutory directive that every telecommunications carrier be required to contribute to universal service funding. Moreover, the arbitrary exclusion of entities clearly falling within the statutory definition of a "telecommunications carrier that provides interstate telecommunications service" would be inequitable and unreasonably discriminatory to both carriers and their customers.[11]

Section 254(d) of the Act requires every telecommunications carrier providing interstate telecommunications to contribute to universal service "on an equitable and nondiscriminatory basis."[12] In contravention of this clear language, however, the Commission's proposed flat-rate approach would require carriers providing a "connection" to the public switched network, to contribute the same amount per "connection," regardless of the volume (if any) of interstate service provided to or utilized by subscribers through that connection. Ignoring the statutory focus on "service" produces an inequitable and discriminatory result which would violate the Act.

Under the Commission's proposed flat-rate approach, interstate telecommunications providers would contribute a standard $1.00 per month for each residential, single-line business, and mobile wireless connection to a public network.[13]

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[11] The Commission itself recognizes that not all telecommunications carriers providing interstate service also provide connections to the public network. Notice at para. 66 (the Commission states that "the vast" majority" of telecommunications carriers that provide interstate telecommunications service also provide connections to the public network.).

[12] 47 U.S.C. § 254(d).

[13] Notice at para. 35. Mobile wireless providers would contribute $1.00 per month for each activated handset. *Id.*

According to the Commission, this amount is justifiable for wireless carriers because of the increased use of nationwide calling plans ("one-rate plans") by the large wireless carriers.[14] In addition to the intrinsic inequity that will result from abandoning the current revenue-based methodology, the suggestion that all wireless carriers provide nationwide calling plans is simply inaccurate.

Most small and rural carriers do not offer nation-wide one-rate plans because their licensed service area is relatively small. In most cases, the networks of smaller carriers cover only portions of a state or small region. Accordingly, to provide calling plans that offer "free" service extending beyond their licensed service areas, small carriers themselves absorb associated costs. Rather than offering nation-wide one-rate plans, many smaller and rural carriers choose to distinguish their service offerings in the market by developing specific plans designed to meet local subscriber requirements and preferences.[15]

Assuming, *arguendo,* there is any basis for the adoption of a flat-rated contribution mechanism, it would be irrational to apply this mechanism to small and rural carriers. The Commission observed in its initial evaluation of contribution methodologies, non-revenue based measures are not competitively neutral because they

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[14] Notice at para. 12.

[15] For example, rather than seeking to compete with the nationwide calling plans offered by its competitors, one RCA member has chosen to provide an unlimited amount of local minutes for $39.95 per month with free long distance to its subscribers only in their home area. Although its interstate service offerings would not change, this carrier estimates that its contribution to universal service would increase three-fold if the Commission's instant proposal is adopted.

may "inadvertently favor certain services or providers over others . . ."[16] Competitive neutrality will be compromised if small and rural wireless carriers are subjected the same flat-rated contribution obligations as the large carriers, despite the fact that the rationale for imposition of this obligation – the provision of nation-wide one-rate service – is not even applicable to these carriers.[17]

Finally, the Commission's suggestion that its proposed solution simplifies the collection of universal service contributions confuses the impact of the appropriate principals of collection with the impact of the bewildering methods used by some carriers, notably IXCs, to recoup their own costs of contribution. The confusion many carriers have caused in their own subscriber base in attempting to recoup universal service contributions is no basis for wholesale abandonment of a rational and fair contribution system. Carriers should not be rewarded for having failed to make their billings consumer friendly.

III. Conclusion

The current methodology for assessing universal service contributions is consistent with the Section 254(d) of the Act and cost-causation principles. This

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[16] Report and Order, 12 FCC Rcd at 9210. One of the non-revenues-based measures that the Commission considered to be inequitable was a methodology recommended by Sprint PCS that would assess contributions based on the number of subscribers served. *Id.* at note 2133. This rejected methodology is virtually identical to the Commission's instant proposal that mobile wireless providers be assessed for each activated handset.

[17] If the Commission maintains its current revenue-based methodology, it must not increase the current wireless safe harbor percentage uniformly since this would cause wireless carriers not offering such plans to subsidize the interstate usage of those customers subscribing to such plans. *See* Comments of RCA, CC Docket 96-45 filed June 25, 2001 at 6.

methodology is competitively neutral, easy to administer, and does not create economic distortions. Any other methodology that is considered by the Commission must also meet these criteria. As demonstrated herein, the flat-rate methodology proposed by the Commission fails to meet these criteria. Furthermore, to the extent that the flat-rate methodology is appropriate in any circumstance, it nevertheless cannot be fairly utilized with respect to smaller and rural wireless carriers, which do not offer nation-wide one-rate calling plans. Accordingly, the proposal should be abandoned as inconsistent with the Act.

Respectfully submitted,

RURAL CELLULAR ASSOCIATION

By: _____
Sylvia Lesse
John Kuykendall

Its Attorneys

Kraskin, Lesse & Cosson, LLP
2120 L Street, N.W.
Suite 520
Washington, D.C. 20037
(202) 296-8890

April 22, 2002

CERTIFICATE OF SERVICE

I, Naomi Adams, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that a copy of the foregoing "Comments of the Rural Cellular Association" was served on this 22nd day of April 2002, via hand delivery to the following parties:

Naomi Adams

Chairman Michael Powell
Federal Communications Commission
445 12th Street, SW, Room 8-B201
Washington, DC 20554

Commissioner Michael J. Copps
Federal Communications Commission
445 12th Street, SW, Room 8-A302
Washington, DC 20554

Commissioner Kathleen Abernathy
Federal Communications Commission
445 12th Street, SW, Room 8-A204
Washington, DC 20554

Commissioner Kevin Martin
Federal Communications Commission
445 12th Street, SW, Room 8-C302
Washington, DC 20554

Thomas J. Sugrue, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Sheryl Todd
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554
(diskette)

Qualex International
445 12th Street, SW
Room CY-B402
Washington, DC 20554
(diskette)