Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Appropriate Framework for Broadband Access to the Internet over Wireline Facilities	)	CC Docket No. 02-33
	)	
Universal Service Obligations of Broadband Providers	)	
	)	
Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements	)	CC Dockets Nos. 95-20, 98-10

COMMENTS OF VERIZON WIRELESS

In response to the Commission's request for comments in the above captioned proceeding, Verizon Wireless submits a copy of its recently filed comments in the related Universal Service NPRM relating to the contribution methodology.[1] As Verizon Wireless stated in those comments, the Commission should examine options for broadening the base of contributors to USF. All providers of access to the Internet (whether, for example, through cable modem, DSL, or wireless access) should contribute on a competitively neutral and equitable basis. Given the emerging role of wireless carriers in providing high-speed access to the Internet, it is critical that the Commission

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1 *See* Comments of Verizon Wireless in WC Docket 96-45 (April 22, 2002).

not sanction a regulatory framework that imposes disproportionate and anti-competitive Universal Service funding obligations on the wireless industry.

Respectfully submitted,

VERIZON WIRELESS

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May 3, 2002

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 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 Factor and Fund Size	)	CC Docket No. 92-237 NSD File No. L-00-72
	)	
Number Resource Optimization	)	CC Docket No. 99-200
	)	
	)	CC Docket No. 95-116
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170

COMMENTS OF VERIZON WIRELESS

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April 22, 2002

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	)	
	)	CC Docket No. 95-116
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170

COMMENTS OF VERIZON WIRELESS

Verizon Wireless submits these comments in response to the Commission's above-captioned Further Notice of Proposed Rulemaking[1] regarding contribution methodologies to support the federal Universal Service Fund (USF).

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[1] *In re Federal-State Joint Board on Universal Service, Further Notice of Proposed Rulemaking and Report and Order,* CC Dkt. No. 96-45, FCC 02-43 (rel. Feb. 26, 2002) ("FNPRM").

I. INTRODUCTION AND SUMMARY

The FNPRM proposes a connection-based contribution mechanism that would more than double wireless and local exchange carrier contributions and potentially triple paging provider assessments, in order to eliminate most of the contribution responsibility of IXCs. A proposal that shifts large financial burdens from IXCs to local exchange and wireless carriers, while excusing IXC competitors from contributing, cannot be squared with Section 254 of the Telecommunications Act. Verizon Wireless is amazed that the Commission could take an IXC industry proposal that should have been rejected out of hand and instead make it the centerpiece of a Commission proposal. Not only has the Commission previously rejected the same type of scheme as unworkable – the new proposal in fact exacerbates the flaws with that scheme.

The per-connection proposal is being sold as a "simple" solution to a complicated policy issue: how to maintain a stable source of funding for universal service in a time of technological convergence. Customers today have a wide array of choices when they want to communicate with a friend or business associate across the country: e-mail, short messaging, instant messaging, paging, voice over Internet, traditional long distance, or wireless calling. Responding to converging technologies is not simple. Congress wrote Section 254 before anyone envisioned that customers would have high-speed access to the Internet through their wireless handsets or cable service. Convergence in services should lead to convergence in the USF contribution system – in other words, the Commission should ensure that <u>all</u> providers participate. This is critical for two reasons: First, broadening the base of contributors will reduce the burden on any one contributor (and its customers); second, reaching all providers will minimize the market-skewing regulatory asymmetries that would otherwise flow from assessing some but not all entities. The FNPRM's proposal, however, <u>narrows</u> the base of contributors and <u>promotes</u> market distortion.

There are other reasons to reject the FNPRM's proposal. Due to the intensely competitive market for wireless services, wireless companies are responding to public demand by beginning to offer high-speed services and access to the Internet through third-generation wireless technologies. A policy that increases the assessment on the wireless providers to provide USF funding to landline and broadband service competitors, while allowing IXCs to avoid contributing altogether, will distort the market and cause unintended competitive and consumer welfare consequences. Any such overhaul of contribution burdens must be made by Congress, through a re-examination of Section 254. Under current law, however, the FCC is bound to assess all providers of interstate telecommunications services even-handedly. It also is authorized to assess other providers of interstate telecommunications to the extent the plan is equitable and non-discriminatory. What it clearly cannot do is cause a radical and discriminatory restructuring of the USF system, as the FNPRM would do.

The FCC can best stabilize the USF by broadening the base of contributors and making relatively minor adjustments to the revenue-based contribution mechanism. Contrary to the cries of IXCs, the current system is not broken. Certain IXCs are seizing upon changes in market dynamics to seek an almost wholesale exemption from their USF obligations. The proposal in the FNPRM moves in precisely the wrong direction. Rather than concentrating the USF funding burden on fewer carriers, long-term stability for the federal USF requires a broadening of the base of contributors.

II. THE PROPOSED CONNECTION-BASED APPROACH IS UNLAWFUL.

The proposed connection-based assessment methodology[2] determines universal service contributions by the number and capacity of end-user connections that a contributor provides to a

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[2] A coalition of IXC providers ("the USF Coalition") are the architects of this methodology. *See e.g.,* ex parte letter from Patrick H. Merrick, AT&T to Magaile Roman Salas, FCC, CC Docket Nos. 96-45 et al., dated Dec. 4, 2001.

public network. Under the proposal, interstate telecommunications providers would contribute $1 per month for each residential, single-line business and mobile wireless connection to a public network, except for pagers, which would be charged $.25 per connection.[3] Because, as the Commission acknowledges, IXCs do not provide end-user connections to the network in most cases, IXCs could essentially eliminate USF assessments from their customers' long distance bills, while wireless customers would be hit with more than a 100% assessment increase. The proposal also would assess an undisclosed "residual" assessment based upon the capacity of connections used to serve multi-line businesses.

The connection-based proposal is unlawful because (1) it fails to assess every provider of interstate telecommunications service; (2) it assesses intrastate revenues and services; and (3) it unreasonably discriminates against wireless service providers.[4]

A. Every Provider of Interstate Telecommunications Must Contribute.

Section 254(d) of the Act requires that "every telecommunications carrier that provides interstate telecommunications services shall contribute" to universal service and that such contributions must be assessed on an "equitable and non-discriminatory" basis.

The proposed connection-based contribution methodology violates the requirement that <u>every</u> provider of interstate telecommunications services contribute, because it exempts IXCs from assessments except in the limited circumstances of private line and special access services. A carrier that provides interexchange service, and does not offer private line or special access services, would avoid contributing altogether.[5] Presently, IXC contributions constitute 63% of

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[3] FNPRM at ¶ 35.

[4] The proposal provides inadequate detail concerning how the residual would function over time. For example, if the size of the fund increases over time, will the residual increase or will the $1 per connection rate increase? Without such detail, it is impossible for carriers to fully assess and comment on the equities of the proposed system.

[5] FNPRM at ¶66.

the federal USF assessments, reflecting the fact that IXCs continue to be, by far, the largest providers of interstate telecommunications services.[6] By excluding the entire class of providers of pure interexchange service from the contribution base, the proposal conflicts with section 254(d).

B. Contributions Must Be Assessed on an Equitable and Non-discriminatory Basis.

Even if the proposal's exclusion of IXCs from the contribution base were lawful, the plan still fails to comply with Section 254 because it would place an inequitable and discriminatory burden on wireless providers and their customers by subjecting each wireless handset to a $1 per month assessment, and each pager to a $.25 per month assessment, while exempting IXCs from paying the same fee. Similar disparities would exist between local exchange carriers and IXCs.

The Fifth Circuit re-affirmed the importance of the non-discrimination requirement in *Texas Office of Public Utility Counsel v. FCC* (*"Texas Counsel"*).[7] In *Texas Counsel*, the Court struck down the Commission's original contribution methodology for funding the Schools and Libraries support program because it imposed disproportionate contribution burdens on similarly situated carriers. The Court found that application of the FCC's methodology (which assessed intrastate, interstate and international revenues) on a carrier that predominantly provided international services resulted in "heavy inequity" which "cannot simply be dismissed by the agency as a consequence of its administrative discretion."[8] The Court rejected the FCC's argument that its order recognized and justified the result that some providers would be treated

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6 FNPRM at ¶39.

7 *See Texas Office of Util. Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999).

8 *Id.* at 434.

differently than others, stating that "this recognition of discrimination hardly saves the agency from the statutory requirement that contributions are collected on a non-discriminatory basis."[9]

Another inequitable and competitively disparate aspect of the connection-based proposal is the assessment of $1 on every activated wireless handset, and $.25 for every activated pager, regardless of the amount of revenue generated from such handsets. Landline customers would be assessed only $1 per month regardless of whether they had one landline phone in their houses or five, while the same customers would be charged $5 per month if they were to substitute each landline phone in their homes with a wireless handset.

This differential treatment cannot be justified by the fact that each wireless phone could dial the public switched network independently. There is no legal or factual nexus between a carrier's or a customer's connections to the PSTN and universal service contribution obligations. The USF is designed to ensure the ubiquity and affordability of the network, not its ability to perform at a given peak capacity.[10] Moreover, Section 254(d) requires neutrality among and between carriers, not number of connections or lines. This is precisely why the Commission itself previously rejected a connection-based charge.[11] Even if connection to the PSTN were legally relevant, there is no reason to believe that overall use of the PSTN would be greater from those five wireless phone connections than from one landline connection in a household. For example, a landline user could place a local call to her ISP and surf the Internet for 24 hours during a weekday, using more PSTN capacity in one day than all five wireless phones might in one month, depending upon a customer's calling plan. It is inequitable and discriminatory to

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9 *Id.* at 434.

10 *See* 47 USC § 254(b)(1)-(3). *See also Federal-State Joint Board on Universal Service*, Report & Order, 12 FCC Rcd 8776, 8780 (1997).

11 47 U.S.C. § 254(d).

assess some communications users more than others based upon the technology they choose to use to connect to the PSTN.

The inequity of the proposed methodology is even greater for paging carriers. Paging carriers would pay $.25 per pager under the proposal, which is a three-fold increase over their current average $.07 per pager assessment.[12] Particularly given that the Commission's objective in proposing the per-connection assessment methodology is to relieve pressure on an industry segment (IXCs) that is being affected by intermodal competition, it would be especially discriminatory to place a significant share of the burden the IXCs formerly bore on the paging industry, which is also struggling in the face of intermodal competition.

C. The Connection-based Plan Impermissibly Assesses Intrastate Revenues.

The proposed connection-based assessment is an illegal assessment on intrastate revenues. *Texas Counsel* confirms that the FCC is prohibited under Section 2 of the Telecommunications Act from assessing intrastate revenues. Section 2(b) states:

> [N]othing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier.[13]

The Court in *Texas Counsel* concluded that "inclusion of intrastate revenues in the calculation of universal service contributions constitutes a 'charge. . . in connection with intrastate communication service.'" Therefore, the Court found that a federal USF assessment based on intrastate revenues violated Section 2(b).[14] The Court also recognized that allowing the FCC to assess contributions based on intrastate revenues "could affect carriers' business

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12 FNPRM at ¶59.

13 47 U.S.C. § 152(b).

14 *Texax Counsel,* 183 F. 3d at 447.

decisions on how much intrastate service to provide or what kind it can afford to provide" and concluded that "this type of federal influence over intrastate services is precisely the type of intervention that [section] 2(b) [of the Act] is designed to prevent."[15]

The FNPRM suggests that the proposed connection-based assessment might meet the statute's requirement that "providers of '*interstate* telecommunications services' contribute to universal service"[16] because there may be an interstate component to LECs', IXCs', and CMRS carriers' connections. The FNPRM misses the point. While this might make it appropriate for the Commission to assess all three classes of carriers, it does not resolve the legal problem that still remains: such a flat-rate assessment would represent an impermissible assessment on *intrastate revenues*. Moreover, in reviewing the propriety of universal service assessments, the Fifth Circuit addressed whether the Commission's inclusion of intrastate revenues would increase some carriers' contribution amounts and could affect carriers' business decisions regarding the offering of intrastate services.[17] In this case, the proposed connection-based methodology would improperly assess contributions on the revenues generated by all wireless handsets and landline phone connections, <u>whether or not they generate interstate revenue</u>. The fact that such connections may have an interstate component does not affect the Commission's obligation to avoid affecting intrastate rates.[18] Nor are the large IXC commenters correct when they argue that such an approach avoids *Texas Counsel* altogether by not assessing revenues at

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15 *Id.* at 447 n.101.

16 FNPRM at ¶65 (quoting 47 USC § 254(d)).

17 *Texas Counsel,* 183 F.3d at 447 n.101.

18 This is particularly true for carriers, such as landline carriers, that operate in a regulatory environment with clear jurisdictional divisions. *See* FNPRM at ¶65, n.177. Although the Commission may have greater jurisdiction over CMRS carriers, *see* 47 U.S.C. § 332, the Commission may not discriminate among contributors. 47 U.S.C. § 245(d).

all.[19] Just like the assessment in the Fifth Circuit case, the proposed connection-based assessment will affect the amount of, for example, ILEC customers' intrastate bills and could possibly dampen customer demand for intrastate services (such as caller ID) by decreasing customer willingness to pay more for monthly phone-related services.

The IXCs' argument that it is possible to divorce assessment completely from interstate revenues is wrong.[20] Their own proposal to assess a lower amount (in this case, $.25) for paging connections demonstrates the nexus between section 2(b)'s jurisdictional requirement and section 254's equitability and non-discrimination requirements. Had the IXCs proposed to assess paging carriers $1 per month, even though their average revenue per subscriber is only 20% of voice providers, it would have been all the more obvious that the proposal was inequitable. The link between revenues and the legal mandate of carrier-neutral assessments cannot be broken. The proposed connection-based methodology assesses intrastate revenue and affects the provision of intrastate services, in violation of *Texas Counsel.*

D. It Would be Unlawful for the FCC to Reverse Course and Adopt a Per Line Mechanism When It Has Rejected that Approach for Sound Reasons.

Both the Joint Board and the Commission have consistently (and repeatedly) rejected a connection-based universal service assessment methodology. The Commission cannot now reverse course without a reasoned basis. The D.C. Circuit recently reiterated this central principle of administrative law in *Fox Television Stations, Inc. v. FCC,* [21] finding an FCC decision that was inconsistent with recent Commission decisions to be arbitrary and capricious

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19 *See, e.g.,* AT&T reply comments at 12; WorldCom reply comments at 8-9.

20 *See, e.g.,* AT&T reply comments at 12; WorldCom reply comments at 8-9.

21 280 F. 3d 1027 (D.C. Cir. 2002). *See also Wisconsin Valley Improvement Co. v. FERC,* 236 F.3d 738, 748 (D.C. Cir. 2001) (concluding that an agency's decision would be vacated as arbitrary and capricious if the agency "abruptly departs from a position it previously held without satisfactorily explaining reasons for doing so.")

because it failed to provide a reasoned basis for the change. Moreover, the Supreme Court has reiterated that "an agency interpretation of a relevant provision which conflicts with the agency's earlier interpretation is entitled to considerably less deference than a consistently held agency view."[22]

A connection-based assessment mechanism cannot be squared with the logic and results of prior Commission decisions. The Commission identified "contributions based on per-line or per-minute units" as one option in the original notice of proposed rulemaking in this proceeding,[23] but observed that these approaches "would require the Commission to adopt and administer 'equivalency ratios' for calculating the contributions owed by providers of services that were not sold on a per-line or per-minute basis into their respective per-line or per-minute units."[24] The Commission also observed that "these approaches may favor certain services or service providers over others."[25] The same flaw exists with the IXC proposal.

The Joint Board recognized that some commenters on the original notice in this proceeding had proposed a connection-based assessment methodology, but the Board rejected that methodology for the same reasons that the Commission had cited in the original notice – the need to adopt equivalency ratios for carriers that do not otherwise sell services on a per-connection basis and the problem of favoring certain service providers over others.[26]

In the *First Report & Order*, the Commission adopted the Joint Board's reasoning, rejecting per-line or per-minute assessments because the calculation of equivalency ratios would

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22 *INS v. Cardozo-Fonseca*, 480 U.S. 421, 446 (1987).

23 *Federal-State Board on Universal Service*, Notice of Proposed Rulemaking and Order Establishing Joint Board, 11 FCC Rcd 18092, 18148 at ¶124 (1996).

24 *Id.*

25 *Id.*

26 *Federal-State Joint Board on Universal Service*, Recommended Decision, 12 FCC Rcd 87, 496 at ¶812 (Jt. Bd. 1996).

be too difficult. In addition, the Commission expressly found that such a system would not be competitively neutral.[27]

In the FNPRM, the Commission does not justify its proposed departure from these prior decisions. Instead, the Commission attempts to argue that the connection-based proposal is somehow different from the "per-line" assessments considered earlier. The Commission states that, in contrast to a per-line assessment, "a connection-based approach may not require the use of equivalency ratios, because the determinative factor would be whether a customer has access to a public network."[28] This is not correct.

The only reason the proposed connection-based assessment would not require the calculation of equivalency ratios is that the Commission is now proposing to exclude the major class of carriers (IXCs) that do not sell their services on a per-line basis. But this distinction exacerbates rather than resolves the legal infirmity of the proposed system. Even with this fatal exclusion, the proposal still requires the computation (through equivalency ratios) of multi-line business users' contributions based on the capacity of their connections as a dollar multiple of the single-line $1 contribution. The proposal in fact depends upon the establishment of administratively difficult equivalency ratios. That dependence cannot be ignored to justify a reversal of the Commission's earlier conclusion.

Moreover, the FNPRM does not even acknowledge (let alone attempt to resolve) the Commission's own earlier findings about the lack of competitive neutrality – that is, the potential discriminatory effect – of a non-revenue-based approach. But, as the Commission correctly acknowledged in its earlier decisions, Section 254(d) clearly requires any contribution

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27 *First Report & Order*, 12 FCC Rcd at 9210 at ¶852.

28 FNPRM at ¶46.

mechanism to be "competitively neutral." The FNPRM's proposal, by excluding IXCs from the per-connection charge, cannot pass muster under Section 254(d).

III. AS A MATTER OF POLICY WIRELESS CARRIERS SHOULD NOT BE REQUIRED TO BEAR AN INCREASED, DISPROPORTIONATE USF CONTRIBUTION BURDEN.

Important public policy considerations also militate against adoption of the proposed connection-based methodology and the disproportionate USF burden it would impose on the wireless industry. Most significantly, the proposal undermines important Commission policy objectives to facilitate a competitive telecommunications market and high-speed access to the Internet. For many rural customers who are out of reach of cable modem service and whose loops are too long to provide DSL service, wireless may be the best option for high speed Internet access. Now is not the time for the FCC to undermine these competitive offerings by gerrymandering the assessment methodology to provide a free ride to IXCs and competing providers of access to the Internet.

Emerging mobile wireless services are increasingly similar to emerging broadband services. Imposing a connection-based fee on wireless carriers, while at the same time exempting cable and certain other Internet access providers altogether, is patently anti-competitive and at odds with the Commission's stated objective to "avoid policies that may skew the marketplace or overburden new service providers, so that they continue to innovate and have incentives to deploy broadband infrastructure."[29]

A. The Mobile Internet

Verizon Wireless began offering high-speed services in January of this year with its initial roll-out of the Express Network; a high-speed Internet access service provided via its 1XRTT network. Through use of the Internet Protocol ("IP"), the 1XRTT network provides

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[29] Wireline Broadband NPRM at ¶66.

significantly higher data transmission speeds when compared to the speeds currently attainable over the CDMA network or the Cellular Digital Packet Data ("CDPD") network.[30] The 1XRTT network also will serve as the foundation for the deployment of future 3rd Generation capabilities, which will enable even higher data transmission speeds, possibly up to 2.4 megabits per second, and further improvements in spectral efficiency.

The Express Network (like other wireless services) holds potential to reach customers in many locations who live too far away from central offices for DSL facilities and are not served by cable. It enables subscribers to access the Internet wirelessly from certain Personal Digital Assistants ("PDAs") or laptops, without the need for a separate account with an Internet Service Provider ("ISP"), at speeds comparable to those attainable via DSL services. It also is possible to send and receipt of large files, including File Transfer Protocol downloads and video images.

The Express Network and other high-speed wireless services being deployed are no less important or beneficial to the public than is the deployment of land-based high-speed Internet access services (including cable modem access). Consequently, to ensure competitive neutrality, the FCC must not overload wireless services with discriminatory and disproportionate USF assessments by adopting a connection-based fee.

B. All Providers of Access to the Internet Should Contribute On A Neutral And Equitable Basis.

Section 254(d) grants the FCC permissive authority to require "[a]ny provider of interstate telecommunications" to contribute to universal service if such contributions are required by the public interest.[31] The FCC should broaden the base of USF contributors by

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30 IP is part of a family of protocols that serve as the foundation of the Internet by allowing for the delivery and receipt of packetized data. IP-based networks, like the 1XRTT network, use software that tracks the Internet addresses of nodes, routes outgoing data packets and recognizes and reassembles incoming data packets at the terminating Internet addresses.

31 47 U.S.C. § 151 *et seq.*; 47 U.S.C. § 254(d).

clarifying that interstate revenues from the provision of access to the Internet are subject to universal service assessment.

Broadening the base is an important step regardless of the contribution methodology because first, broadening the base of contributors will reduce the burden on any one contributor (and its customers); and, second, reaching all providers will minimize the market-skewing regulatory asymmetries that would otherwise flow from assessing some but not all entities. Because customers can access wireless data services through the same wireless phones they use to make voice calls, a per-connection assessment on each wireless phone would in effect tax wireless access to the Internet. If wireless handsets are going to be assessed a connection charge, all other facilities-based connections to the Internet (whether provided by a LEC, a cable operator or an ISP) should be assessed a connection fee as well. Moreover, if a portion of wireless revenue is assessed for providing access to the Internet, then a connection-related portion of revenue from all Internet access providers should be assessed for USF.

Broadening the base of contributors to include broadband and other Internet access providers is consistent with sustaining funding for the USF. While the Commission has suggested that wireless carriers may be capturing IXC interstate traffic, it is clear that Internet-based services are capturing an increasing share of the interstate communications market as well.[32] Internet telephony also promises to grow in use as the technology improves and Internet penetration increases. By broadening the base of contributors to include all providers of access

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[32] According to a recent Yankee Group consumer survey email and instant messaging captured 6 billion interstate minutes from IXCs in 2001. Such substitution will continue to increase as Internet penetration increases, especially since e-mail and instant messaging are perceived to be free by end users once they are on-line. *See* Communications Daily, March 15, 2002 at 8; *see also* Lev Grossman, "On the Internet, Talk Is Cheap," *Time Magazine,* April 15, 2002.

to the Internet, the FCC will facilitate competitive equity while improving the financial stability of the USF.

IV. THE FCC SHOULD EXPAND THE BASE OF CONTRIBUTORS TO SUSTAIN THE REVENUE BASED SYSTEM UNTIL SUCH TIME AS CONGRESS DETERMINES TO MAKE SYSTEMATIC CHANGES TO SECTION 254.

As explained above, the proposed connection-based plan is not authorized under Section 254 because it essentially exempts an entire class of interstate telecommunications providers and inequitably shifts the funding responsibility onto competing classes of carriers. Consequently, the FCC should work within the legal boundaries of the Telecommunications Act and bolster the existing revenue-based system by broadening the class of contributors. If broadening the base of contributors does not stabilize the USF and the assessments being passed onto customers, then it may be time for Congress to re-examine Section 254 and consider more systematic changes for funding universal service.

The revenue-based system is not in as dire shape today as portrayed by the IXCs. The IXCs are facing competition and may be losing some of their minutes to lower-cost, more efficient providers, including wireless carriers and Internet-based service providers. To the extent IXC revenues are decreasing, so are their USF assessments. The FCC has already adjusted the lag time issue raised by IXC. However, IXCs, by far, still provide the greatest share of interstate service, and consequently, any sustainable USF funding system (consistent with Section 254) must include proportionate contributions by IXCs.

With a broader base of interstate revenues, the rate assessed by the USAC on each carrier should decline, taking some of the pressure off of IXCs, which can then reduce assessments applied to end-user customers. Only after broadening the base of contributors, and determining the amount of increased revenue that will be available for assessment, should the FCC consider adjustments to the mechanics of the revenue-based system (including procedures for collecting

assessments from customers, recovering administrative costs, further reducing the lag between reporting revenues and assessing customers and adjusting any necessary safe harbors). The need and efficacy of such adjustments will vary depending upon the base of contributors. For example, if ISPs and cable modem providers are included in the base, a safe harbor may be necessary to segregate revenues eligible for assessment. It may be appropriate at that time to examine the safe harbor as presently applied to wireless carriers for purposes of segregating revenues subject to assessment.

A. The Wireless Safe Harbor Should Be Retained.

Until the impact of expanding the base of USF contributors can be determined, the Commission should retain the safe harbor mechanism for wireless carriers and maintain the existing 15% level for wireless telephony and 12% for paging. Although the revenue-based methodology is the most fair, equitable, and simple assessment mechanism, the Commission previously concluded that wireless carriers need a simplifying mechanism to determine their share of interstate revenues.[33] The current safe harbors have functioned well during the last three years, and have yielded significant contributions by wireless carriers to the USF (while wireless carriers have taken virtually no support out of the fund). Although wireless telephony providers' bundling of long distance minutes may have increased some wireless customers' long distance usage, wireless usage overall has increased significantly, including intrastate usage[34], while revenues per minute for interstate wireless calls have declined. Because of the growth in flat rate plans, an increase in the percentage of interstate minutes does not equate to an increase in

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[33] For detailed discussion of technological and administrative efficiency reasons for retaining the safe harbor, *see Comments of Verizon Wireless,* June 25, 2001.

[34] For example, total wireless minutes of use rose 38% between the end of 1999 and the end of 2000. *Sixth CMRS Competition Report*, FCC 01-192, 16 FCC Rcd 13350, 13371 (2001).

interstate revenues.[35] Moreover, wireless carriers are not the only source of IXC service substitution. As discussed above, customers are also turning to Internet-based services, including voice over Internet, instant messaging, and e-mail, to reduce the price they pay for long distance communications. The Commission should first determine whether and how other providers, which are also displacing IXC services, will contribute to USF before reviewing the safe harbor percentage for wireless carriers.

There is another reason why changing the 15% safe harbor is not warranted. Prior to its adoption, many CMRS providers argued that the interstate safe harbor percentage for CMRS should be *below* 10%,[36] yet the Commission set a higher number based on a jurisdictional analysis of wireline calls.[37] The 12% safe harbor for paging was set based on actual paging carrier data, and there is no indication that paging carriers' interstate revenues or usage has changed.[38] Given this cushion, the Commission should defer evaluating the current safe harbor until the impact of broadening the base of contributors can be determined, along with an accurate analysis of the causes and effect of IXC service displacement.

V. CONCLUSION

Wireless carriers are making a significant contribution to universal service today. Under the current system, wireless carrier contributions account for approximately 14% of USF

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[35] This analysis is consistent with the Commission's own assessment of the effect of national one-rate plans in the 1998 *Safe Harbor Order*. There, the Commission indicated that AT&T's "one-rate" plan for wireline long distance service, which did not impose different rates for interstate service, would likely *lower* its percentage of interstate revenue. *Federal-State Joint Board on Universal Service*, Memorandum Opinion & Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 21252, 21258 at ¶13 n.26 (1998) *("Safe Harbor Order")*.

[36] *See* Comments of Bell Atlantic on Further Notice of Proposed Rulemaking, CC Docket No. 96-45, at 4-5 (Jan. 11, 1999); Comments of GTE, CC Docket No. 96-45, at 7-9 (Jan. 11, 1999).

[37] *Safe Harbor Order* at ¶13.

[38] Paging carriers do not offer long distance services and are not bundling local and interstate services any differently today than when the safe harbor was adopted.

assessments,[39] a substantial portion, given that few wireless carriers compete for or receive USF subsidies, and that paging carriers are ineligible for funding altogether. Wireless service is within reach of more Americans today than ever before due to declining prices and generous bundles of service offerings. Even more exciting is the emergence of high speed Internet access through wireless handsets. This is not the time for the FCC to dampen such innovation and undercut wireless affordability by imposing disproportionate USF funding responsibility on the competitive wireless sector through a connection-based assessment system. The FCC should retain the revenue-based contribution system and maintain its viability and competitive neutrality by broadening the base of contributors.

Respectfully submitted,

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[39] NPRM at ¶59.