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 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 and Billing Format	)	

REPLY COMMENTS
Of
UNITED STATES CELLULAR CORPORATION

United States Cellular Corporation hereby files its Reply Comments in the above-captioned proceeding.

In our comments, USCC argued that the FCC cannot and should not adopt a connection-based system for funding the Universal Service Fund ("USF"). We

demonstrated that unlike the present interstate revenue-based system, which offers certainty, predictability, and relative ease of administration, a connection-based system would be very difficult to administer and would produce incentives to classify services so as to avoid or minimize USF payments. It would also essentially remove from the system the interexchange carriers which now provide a majority of USF funding, which would result in huge and disproportionate increases in assessments on the remaining contributors.

USCC reaffirms those arguments as well as the additional proposals put forward in our Comments concerning how the present revenue-based system could be reformed to preserve the USF.

However, in these brief Reply Comments, USCC will emphasize what we consider to be the central issue at stake in this proceeding, namely that under a 1999 U.S. Court of Appeals decision any connection-based USF funding system would be unlawful.

I. The Texas Public Utility Counsel Case Precludes Any Connection-Based USF Funding System

In our Comments (pp 7-8), USCC noted that in 1999 the U.S. Court of Appeals for the Fifth Circuit had struck down the FCC's then-existing requirement that the "schools and libraries" and rural health care USF mechanisms be funded, in part by using intrastate revenues.[1]

The Court found that nothing in Section 254 of the Communications Act which had created the USF, had authorized the FCC to override Section 2(b)'s

[1] See Texas Office of Public Utility Counsel v. FCC, 183 F.3d 393 448 (1999) ("TOPUC").

explicit reservation of authority to the states over intrastate service. As the Court held:

> "while the text of the statute does not impose any limitation on how universal service will be funded, it also does not explicitly state that the FCC has the responsibility to fund intrastate universal services. The agency seeks authority in the 'broad language of the statute,' but we do not find the meaning of the section so ambiguous or broad as to override the command of Section 152(b)[2(b)].' See Iowa Utilities, 119 S. Ct., at 731 (quoting Louisiana PSC, 476 U.S. at 377.
>
> Without a finding that Section 254 applies, the FCC has no other basis to assert jurisdiction, because Iowa Utilities explicitly prohibits FCC jurisdiction over intrastate matters stemming from the agency's plenary powers. See id. Therefore we reverse that portion of the Order that includes intrastate revenues in the calculation of universal service contributions."

183 F.3d, at 448.

The FCC, in the Further Notice of Proposed Rulemaking and Report and Order[2] in this proceeding does not refer to the TOPUC case, but notes, in support of a connection-based approach to USF funding, that all "connections to the public switched network have an interstate component."

However, this analysis is plainly inadequate for the reason given in our Comments, namely that it ignores the requirement established by the TOPUC case, that there must be a nexus between the federal USF and the revenues derived from interstate service.

Most commenter/proponents of a connection-based USF system, such as AT&T and Worldcom, ignore TOPUC, perhaps because it presents their arguments with an insurmountable jurisdictional obstacle.

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[2] See Further Notice of Proposed Rulemaking and Report and Order ("FNPRM") FCC 02-43, released February 26, 2002.

One "connection" proponent, the "Coalition For Sustainable Universal Service," does offer an attempt to distinguish TOPUC (Coalition Comments, pp 93-97).

The Coalition argues that a connection based system would be based on "lines, not revenues." Ergo, a line-based assessment cannot be a "charge…in connection with an intrastate communications service" and thus "does not run afoul of Section 2(b)."[3] However, that reasoning, while superficially clever, is sophistical.

By imposing a charge on "connections" the FCC seeks to do exactly what the court said it could not do in TOPUC, namely reach all the revenues of the carriers it assesses, since "connection-based" charges can only be paid out of revenues which are not differentiated by source.

If adopted, a connection based system would have exactly the effect of the rule overturned in TOPUC. Indeed, the effect would be far more pronounced, as the whole purpose of a connection-based system would be to shift the USF burden from the providers of interstate service, that is, interexchange carriers, to the providers of local telephone and wireless service.

Obviously, such huge increases in assessments on the carriers providing mostly intrastate service would affect the local "rates" of wireless and wireline carriers, precisely as is proscribed by Section 2(b). How could they not?

Again, no matter how the FCC may characterize or label such action, Section 2(b) precludes any FCC action which would result in large increases in local rates for federal purposes. That is especially the case where such rate increases would

[3] Coalition Comments, p. 94.

not be an incidental effect of regulations with other purposes but rather would be the intended effect and natural consequence of the FCC action.

If the FCC can do this, it can eviscerate Section 2(b) simply by not mentioning the words "intrastate" or "interstate" in any rule or order which would have a similar effect on intrastate rates.

Conclusion

For the foregoing reasons and those given in our Comments the FCC should not adopt a "connection-based" USF funding system.

Respectfully submitted,

UNITED STATES CELLULAR CORPORATION

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