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 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 98-170

REPLY COMMENTS OF THE
AD HOC TELECOMMUNICATIONS USERS COMMITTEE

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REPLY COMMENTS OF THE AD HOC TELECOMMUNICATIONS USERS COMMITTEE

The Ad Hoc Telecommunications Users Committee ("Ad Hoc" or "the Committee") hereby submits its reply to comments filed in response to the Commission's February 26, 2002 *Further Notice of Proposed Rulemaking ("Further Notice")* in the above-captioned proceedings.[1]

[1] *Federal-State Joint Board on Universal Service*, FCC 02-43, 67 Fed. Reg. 11268 (March 13, 2002) ("*Further Notice*"). By *Order*, DA 02-783 (rel. April 8, 2002), the Commission has extended the reply comment deadline in this proceeding until May 13, 2002.

I. Introduction and Summary

In its comments, Ad Hoc expressed qualified support for the Coalition for Sustainable Universal Service's ("CoSUS's" or "the Coalition's") proposed reforms to the manner in which universal service fund contributions are assessed against providers of telecommunications services. The Committee reluctantly accepted a residual approach for initializing assessments. Ad Hoc would, however, vigorously oppose any plan or decision under which multi-line business customers are effectively liable for all future increases in the size of the universal service fund while residential, single-line business, and wireless customers are insulated from increases in their per connection fee. Without any evidence that residential customers cannot afford to supply an equitable share of the universal service funding requirements, requiring business customers to bankroll all future increases in the fund would be arbitrary and capricious, in violation of the Administrative Procedure Act, unreasonably discriminatory, in violation of Sections 201, 202, and 254 of the Communications Act, and an impermissible economic classification under the Equal Protection Clause.

Ad Hoc also noted that whether contributions are assessed on the basis of revenue or on the basis of network connections, carriers should not be permitted to mark–up the Commission-prescribed contribution factor to account for uncollectibles and administrative overhead, because such costs are not directly related to the universal service program. As such, any labeling of these mark-ups as universal service costs would violate the principles set forth in the Universal Service Orders and the Truth-in-Billing Rules.

In their opening comments, certain parties took issue with Ad Hoc's positions, arguing that low volume and residential customers must be insulated from any changes in universal service contribution burdens, that state governmental entities should not have to contribute to the universal service fund, and that an annual review is necessary to maintain the relative contribution burdens of various industry segments. Other parties stated that carriers must be permitted to mark–up the Commission-mandated contribution factor.

As described below, none of these arguments withstands scrutiny. Regarding the protection of low volume and residential users, there is no merit to the suggestion that the universal service subsidy program should be funded on a traffic-sensitive basis. Further, there is no sound equitable reason why business customers should contribute more on a per-connection basis to the universal service fund than non-low income residential customers. Economic theory also teaches that total economic welfare is harmed the least by raising the price of services with the lowest elasticity of demand, including residential service. The commenters who seek to shift even greater subsidy burdens to multi-line business installations also fail to provide any evidence that requiring residential customers to carry a fair share of the universal service funding burden will have any adverse impact on telephone service subscribership, and provide no reason for the Commission to exceed its mandate under Section 254 by ensuring that telecommunications services are *more* affordable for *relatively* low income consumers.

The record further reflects no basis for the Commission to waive or reduce the per-connection charge assessed on governmental entities. Such a governmental exemption would inevitably lead to a host of exemptions for similarly situated non-profit entities. As the number of exempt entities mounted, the contributions made by non-exempt entities, including multi-line business customers, would have to increase. Similarly, there is no reason for the Commission to expend the resources necessary to launch an annual review of the relative contribution burdens of each class of customer, and adjust those burdens to ensure that each class of customer contributes approximately the same relative percentage as it did when a per connection regime was initiated. Rather than attempting to freeze these contribution percentages as of an arbitrary date, the Commission should allow the per-connection charge for each class of customer to increase in direct proportion to the size of the universal service fund and in indirect proportion to the total number of connections.

Finally, no party has offered any persuasive arguments why, consistent with the Commission's Truth-in-Billing Rules and Universal Service Orders, carriers should be permitted to label mark-ups to the Commission-mandated per-connection charge as "universal service" charges. Because carriers cannot, in a truthful and non-misleading fashion, label such general overhead costs as universal service costs, they should not be permitted to do so.

II. The Coalition Proposal Is Economically Sound, Fair to Low Volume and Residential Customers, and Does Not Raise Legitimate Affordability Concerns

A few parties argued that a connections-based methodology would impose an unfair and inequitable burden on low volume and residential users. Specifically, these commenters posit that because high volume users allegedly derive more benefit from the existence of the public telecommunications network, these high volume users should shoulder more of the universal service subsidy burden.[2] One commenter argued that the FCC should freeze residential per-line charges and allow other classes of customers to pay for any universal service funding needs in excess of that provided for by the frozen residential charge.[3]

The Commission should dismiss these attempts to revive an outmoded system of high volume users subsidizing low volume users as contrary to sound principles of economic and public policy. First, economic theory dictates that the universal service fund should not be funded through traffic sensitive charges associated with services with higher demand elasticities. One of the main goals of the universal service fund is facilitating connection of low income persons and individuals in high-cost areas of the United States to local and long distance service. Connectivity is as important to the customer that makes one 911 call and receives one long distance call from a relative wishing her a happy birthday in a given month as it is to the customer that makes hundreds of minutes of local and long distance calls in a given month. Therefore it is entirely appropriate to

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[2] National Association of State Utility Consumer Advocates ("NASUCA") Comments at 14; California Public Utility Commission Comments at 6; Consumers Union *et al.*, Comments at 16.

[3] NASUCA Comments at 15 & n.19.

fund the universal service program through a non-traffic sensitive, per-connection charge.

Economic theory indicates that universal service subsidies should be recovered from services for which the elasticity of demand is the lowest, including local residential service. As pointed out by Professors Hausman and Shelanski, "the lower the elasticity of demand for a service, generally the less the harm to total economic welfare from raising the price of that service."[4] The same article notes that the elasticity of demand for local service is very low: "The elasticity of local phone service demand with respect to the basic access price [is approximately] -0.005."[5] Thus, contrary to the claims of the aforementioned commenters, overall societal welfare will be maximized if residential subscribers to local service pay their fair share of universal service contributions. The aforementioned commenters completely ignore the sound economics reflected in the Hausman/Shelanski article.

Second, while these commenters couch their arguments in terms of fairness, they never address why it would be *fair* for business customers to pay ever increasing amounts to support carrier payments to the USF while residential customers (*i.e.,* a non-Lifeline customer) would experience no increases. In fact, each customer who enjoys the same level of functional connection to the network should see their per-line charges increase in direct proportion to increases in

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[4] Jerry Hausman and Howard Shelanski, *Economic Welfare and Telecommunications Regulation: The E-Rate Policy for Telecommunications Subsidies*, 16 Yale J. on Reg. 19, 44 (Winter 1999).

[5] *Id.* at 38 n.85 (citing Jerry Hausman, *et al.*, *The Effects of the Breakup of AT&T on Telephone Penetration in the United States*, 83 Am. Econ. Rev. 178 (1993)).

funding requirements, and in indirect proportion to the number of connections, as described in the CoSUS Plan. To the extent that business users have a higher level of functional connectivity, the capacity-based charges account for the higher level of functional connectivity. The CoSUS approach is fair to all classes of customers.

Nor do the aforementioned commenters provide any evidence that requiring residential customers to make equitable contributions to the universal service program will have any adverse impact at all on telephone penetration. In fact, as made clear in the CoSUS Comments, the impact of a per-line charge on subscribership will be minimal to none.[6] Critically, the CoSUS Plan, unlike revenue-based plans, exempts Lifeline customers from making any contributions to the universal service fund based on their landline phones. Therefore, the truly indigent are protected.

Perhaps sensing the dearth of facts to support the proposition that a per-connection charge will have any impact on the "affordability" of local service for "low income" customers, the California Public Utility Commission ("CPUC") states that the FCC's objective should be to make telecommunications "services *more affordable* for *relatively* low-income customers," who are not Lifeline customers and "*may* be least able to pay for interstate service.[7] The Commission should not accept the CPUC's invitation to go beyond the express language of Section 254, which states that "quality services should be available at just, reasonable, and *affordable* rates," and "consumers in all regions of the Nation, including *low-*

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[6] CoSUS Comments at 66-75.

income consumers … should have access to telecommunications and information services ….”[8] As noted in CoCUS’s Comments, because it will not lead to a decline in subscribership, the proposed per-line charge preserves the “affordability” of telephone service, while assuring sufficient universal service funding.[9] In addition, the Lifeline exemption protects the interests of genuinely “low income” subscribers. The Commission should not launch a universal service program that, rather than maintaining affordable residential service, keeps the price of such service artificially low by requiring business customers to subsidize services used by residential customers.

Against this background, it is important to re-iterate that Ad Hoc’s support for the Coalition Proposal is conditioned upon the FCC not materially tampering with the proposal. As pointed out in its opening round comments, while the residual approach is imperfect because it does not assess the same per-connection charge on equivalent connections (*i.e.*, multi-line business connections are assessed at a higher rate), CoSUS’s use of this approach would produce acceptable initial connection charges. If the FCC accedes to the wishes of the aforementioned commenters and requires multi-line business users to subsidize an even greater portion of the universal service program, while residential customers, regardless of bona fide affordability concerns, see their contribution burden unreasonably decreased, Ad Hoc no longer should be considered as supporting the Coalition Proposal.

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[7] California Public Utilities Commission Comments at 6-7.

[8] 47 U.S.C. §§ 254(b)(1), (b)(3) (emphasis added).

[9] CoSUS Comments at 66-75.

III. The Coalition Proposal Is Fair to All Classes of Users, Including State Governments

The Coalition Proposal treats all classes of users fairly. In particular, under the Coalition Proposal, residential customers, single-line businesses, and wireless customers (excluding paging customers) would initially contribute $1.00 per line or $1.00 per activated handset. Multi-line business customers would initially pay for the residual amount required to satisfy the universal service funding requirements by paying a capacity-based charge. Once initialized, the contribution amounts for each class of customer would change in direct proportion to the monetary requirements of universal service fund and in indirect proportion to the number of connections to the network. Thus, under the Coalition Proposal, each class pays a class and capacity-based initial fee and will see these fees equitably increase or decrease as the funding requirements and number of connections change.

As noted above, there are no sound legal or policy reasons for the Commission to make any changes to this equitable funding mechanism in order to provide residential customers with special treatment. Similarly, because they would impermissibly favor certain classes of users, the Commission should reject: (1) the State of Texas's request that the Commission waive or reduce the per-line assessment for governmental entities; and (2) the Information Technology of America's ("ITAA's") request that the contribution requirements be adjusted annually to maintain each class of contributor's initial proportional funding burden.

The State of Texas asks the Commission to "exempt governmental entities" from contributing to the universal service fund, or, in the alternative, to "treat governmental institutions just as single line businesses are to be treated, and assess them $1 per connection."[10] Neither Section 254 in particular, nor the Communications Act in general, provides a statutory basis for this proposed governmental exemption or reduction in charges. Therefore, the Commission is barred from granting the State of Texas the special treatment it seeks. Even if such a governmental exemption were statutorily permissible, it would still represent bad public policy because if the Commission were to exempt governmental entities or reduce their contribution burden, other non-profit entities would seek the same treatment, and the Commission would be hard put to find a reasoned basis for denying these non-profits similar treatment. In addition, if the Commission grants governmental entities a full or partial exemption from their universal service contribution obligations, other contributors—including multi-line businesses—will be required to pick up the slack and increase their level of contributions. Given that multi-line business customers are already required to carry a heavy funding burden under the residual plan, Ad Hoc will oppose any plan that looks to impose an even greater share of the funding obligations on multi-line business customers.

The Commission should also deny ITAA's request for a "two-step annual review and adjustment procedure that would preserve the balance between the portion of USF contributions generated from the provision of telecommunications

[10] State of Texas Comments at 2, 4.

services to multi-line business customers and the portion of USF contributions generated from the provision of telecommunications services to other customers."[11] There is no sound policy reason to freeze the relative contribution burdens of each class of customer as they exist on the effective date of the order implementing a per-connection assessment methodology. In fact, any attempt to do so would unfairly discriminate in favor of the classes of customers that shouldered a smaller portion of the funding burden upon the program's initialization. The Coalition Proposal is more rational and more equitable in that once initialized, each class of customers will see their per-connection contribution obligations rise and fall with the monetary requirements of the universal service fund and the overall number of connections to the network. Finally, the administrative resources required to undertake the annual reviews requested by ITAA will not be trivial. Because ITAA has not demonstrated a sound basis for its discriminatory proposal, the Commission should not make such an unnecessary commitment of resources.

IV. The Commission Should Not Permit Carriers To Denominate Any Amount Other Than The Commission-Prescribed Contribution Amount As A Universal Service Charge

The Commission should deny carriers the ability to label as universal service charges any amount in excess of the FCC-mandated per-connection assessment. In particular, carriers, while stating that a "collect and remit" system would reduce the administrative costs associated with the universal service program (including those related to bad debt), allege that they still must be

[11] ITAA Comments at 10.

permitted to mark-up the Commission-prescribed contribution amount to recover these costs.[12] While carriers clearly must recover their costs of doing business (including those associated with the universal service program) from their customers, the FCC cannot, consistent with the principles set forth in the Truth-in-Billing Rules and the Universal Service Orders, permit carriers to label any mark-ups to the Commission-prescribed contribution as "universal service" costs.

Specifically, carriers should recover costs associated with collecting universal service contributions, including those related to bad debt, in the same manner in which they recover other overhead costs (*e.g.*, legal costs, insurance costs, state and federal income taxes)—through flat fees or usage sensitive fees. Carriers cannot, however, label these costs as "universal service costs" on their customer bills because, pursuant to the principles set forth in the Truth-in-Billing Rules and the Universal Service Orders, a carrier's description of its charges must be accurate and non-misleading.[13]

Against this background, the carriers have not set forth any evidence that their administrative overhead, including bad debt, associated with collecting universal service fees from their customers can accurately and non-misleadingly be described as "universal service costs." Nor can the carriers do so, given that carriers must create billing and collection systems to collect many fees, including the price of the contracted-for service as well as federal, state, and local taxes.

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[12] *See, e.g.,* Nextel Comments at 29; AT&T Wireless Services Comments at 7 n.12; AT&T Comments at 6-8; WorldCom Comments at 8.

[13] *See* 47 C.F.R. § 64.2401(b); *Universal Service Order*, 12 FCC Rcd 8776, ¶ 855 (1997).

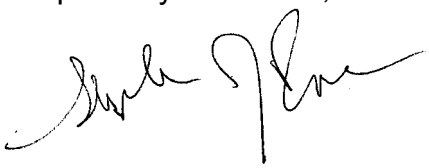
Thus, the universal service fund cannot truthfully be said to have its own, unique administrative overhead.

If the carriers' logic is extended beyond the universal service context, a carrier would be permitted to label a five percent recovery of the three percent federal excise tax on communications as "federal excise tax" because there is administrative overhead associated with collecting this excise tax. The Commission would plainly not consider such a billing practice to be accurate and non-misleading. Similarly, the FCC should ensure that carriers do not mislead customers about the costs of funding universal service.

V. Conclusion

The record in this proceeding indicates that the Commission should accept the CoSUS Proposal in is entirety. There is no record evidence that the public interest would be advanced, or the requirements of the Communications Act met, by modifying the plan to carve out special deals for residential customers, governmental entities, or any other class of customers. In fact, such special treatment for discrete classes of customers would destroy the equitable and non-discriminatory nature of the plan. Finally, because the record reflects no legally sufficient reasons why carriers should be permitted to denominate mark-ups to the Commission's per-connection contribution factor as "universal service" charges, carriers should be forbidden from engaging in this practice.

Respectfully submitted,



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May 13, 2002

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Certificate of Service

I, Michaeleen I. Williams, hereby certify that true and correct copies of the preceding Reply Comments of the Ad Hoc Telecommunications Users Committee was served this 13th day of May, 2002 via the FCC's ECFS system, and by first class mail upon the following:

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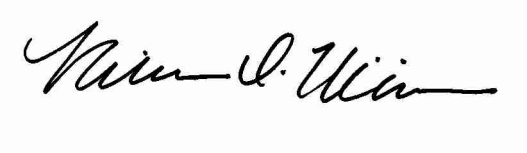

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May 13, 2002