Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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

REPLY COMMENTS OF VERIZON WIRELESS

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Verizon Wireless submits these reply comments in response to the Commission's above-captioned Further Notice of Proposed Rulemaking (FNPRM)[1] regarding contribution methods 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).

I. SUMMARY

The FCC must reject the IXCs' connection-based proposal, along with similarly self-serving proposals from other segments of the communications industry which seek to shift USF contribution burdens onto other carriers in an inequitable and discriminatory manner. Instead it should retain the revenue-based approach and expand it to include a broader base of contributors.

Specifically, the Commission should reject the IXC per-connection proposal because:

- it violates the requirement under Section 254 of the Act that all carriers contribute to USF on an equitable and non-discriminatory basis;
- it violates the prohibition under Section 2 of the Act against assessments on intrastate revenues;
- it conflicts with Commission policy to encourage development of a competitively neutral telecommunications marketplace and undermines development of wireless technology and wireless alternatives for accessing high speed internet services.

The Commission should reject the SBC/BellSouth connection-based alternative proposal because:

- it also shifts a disproportionate contribution burden on the wireless industry in violation of Section 254;
- it is woefully unsupported by data to justify adopting an assessment on separate service offerings, particularly in the wireless context given the significant FCC precedent categorizing CMRS as a unified, integrated service.

The Commission should reject efforts by other industry sectors (payphone providers, ISPs, cable modem operators) to escape their USF contribution obligations because:

- the best way to ensure sustainable funding for USF is to <u>broaden</u> the base of contributors to encompass all competitors;

- exempting some competitors while at the same time increasing the contribution burden on others skews the marketplace in favor of exempted technologies or services.

The Commission should retain the revenue-based approach because:

- providers contribute fairly according to the money they make in providing interstate communication services;
- the system is self-adjusting, decreasing or increasing carrier contribution assessments as their interstate end-user revenues decrease or increase;
- with a broadened base and minor administrative changes, the revenue-based system offers the best option for meeting the Commission's "stability and sufficiency" objective.

The Commission should retain the safe harbor; it is an efficient and effective mechanism for calculating wireless assessments. If the Commission believes the wireless safe harbor level is too low, it should re-examine the level in a follow-up proceeding.

II. INTRODUCTION

Two common themes dominate the initial comments filed in this proceeding: (1) the IXCs' per connection proposal has little support due to its significant legal and policy infirmities, and (2) other segments of the industry have adopted the IXCs' tactic of offering proposals or adjustments that would dramatically reduce (and in some cases even eliminate) their obligation to support universal service by shifting obligations to other competitors (particularly to wireless carriers). The fact that LECs, payphone providers, ISPs and large business users all feel compelled to offer such transparent proposals to reduce their contribution obligations demonstrates the competitive sensitivity of USF assessments, even assessments that can be passed through to consumers. USF assessments increase the final price a customer must pay for service and, consequently, can affect customer choice between service providers, particularly if some service providers face larger USF obligations than others.

The competing proposals thus demonstrate just how critical it will be for the Commission to adopt an "equitable and non-discriminatory" contribution methodology that includes all providers of telecommunications. A revenue-based approach is the best option for ensuring fairness and competitive neutrality, because it links carriers' contributions to the amount of interstate telecommunications they provide and adjusts contributions as interstate end-user revenues rise and fall. As Verizon Wireless explained in its initial comments, the current revenue-based methodology is not broken (and certainly is not in a "death spiral" as alleged by the IXCs) -- rather, it needs relatively minor adjustments to keep up with economic and technological convergence in the telecommunications industry. By broadening the base of contributors and re-examining some of the administrative components of the revenue-based system, the Commission can ensure the on-going sustainability of the USF, while keeping true to the statutory mandates of equity and non-discrimination.

III. THE IXCs' CONNECTION-BASED PROPOSAL MUST BE REJECTED ON BOTH LEGAL AND POLICY GROUNDS

A. The Majority of Commenters Oppose the IXCs' Proposal

The majority of commenters join Verizon Wireless in vigorously opposing the IXC proposal, arguing against it by almost 2-to-1.[2] Importantly, most commenters recognize that Section 254(d) requires "every telecommunications carrier" providing interstate telecommunications service to contribute to USF on a "equitable and non-discriminatory basis" – a requirement that is not met by the IXC proposal because it virtually exempts the largest current USF contributors, IXCs, and shifts a disproportionate share of the

burden onto wireless carriers, small businesses, and residential users.[3] For example, Allied Personal Communications offered evidence that its member paging carriers' contributions would likely increase 275% under the IXC proposal – without the carriers experiencing a similar increase in interstate traffic.[4] Similarly, US Cellular estimated that its contributions to USF would roughly quadruple without a change in its subscribers' usage of interstate services.[5] Such significant increases in contributions from wireless carriers, in contrast to the marked reductions in contributions by IXCs, support only one conclusion: that the IXCs' per-connection plan is inequitable and discriminatory in violation of Section 254(d) of the Act.

Several commenters also raised valid public policy concerns regarding the effects of a per-connection charge on low-volume users and pre-paid wireless subscribers. As the CPUC correctly noted, the proposed per-connection assessment is in no way related to the percentage of interstate service provided by a carrier or the degree to which a customer uses the network, causing low-volume users to contribute a comparatively large and disproportionate amount.[6] Plus, typical residential households could incur dramatically higher charges under the IXC proposal, with charges rising considerably

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[2] The supporters of the connections-based proposal are limited to, by and large, IXCs and their large customers.

[3] *See*, *e.g.*, Comments of Verizon Communications at 21; Comments of the National Exchange Carrier Association ("NECA") at 6-9; Comments of the National Association of State Utility Consumer Advocates at 11-12; Comments of the National Telecommunications Cooperative Association ("NTCA") at 2-3; Comments of the California Public Utilities Commission ("CPUC") at 7; Comments of Virgin Mobile at 6-7.

[4] *See* Comments of Allied Personal Communications at 1, 5.

[5] *See* Comments of US Cellular at 8.

[6] Comments of CPUC at 5-7. *See also* Comments of Virgin Mobile at pages 15-16; NTCA at 2.

above the current $1.93, depending on the number of wireless handsets a family purchases.[7]

Many commenters also emphasized that the IXC proposal is equivalent to an illegal assessment on intrastate revenues under *Texas Office of Public Utility Council v. FCC*.[8] Because the proposed per-connection assessment mechanism would shift the burden from IXCs, whose services are almost entirely interstate, to CMRS and local exchange carriers, whose services are largely intrastate, the charges would not be commensurate with the relative levels of interstate traffic and would inevitably tax intrastate telecommunications revenues.[9] This significant legal infirmity would leave any such per-connection mechanism subject to summary reversal by the courts.[10]

A number of commenters also join Verizon Wireless in advocating retention of the revenue-based system and expansion of the base of USF contributors beyond the pool of traditional telecommunications carriers in order to sustain the USF.[11] An expansion of

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[7] *See* Comments of Nextel Communications at 14, noting that a residential family with two landline connections and a family wireless plan of four handsets would be assessed $6 per month to support USF. *See id*. Moreover, there is no guarantee that customers will benefit from the IXC relief, as IXCs could take the opportunity to impose an invisible increase in long distance rates on their residential customers.

[8] *See Texas Office of Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999). *See*, *e.g.*, Comments of the CPUC at 7-8, Comments of US Cellular at 6-9; Comments of Allied Personal Communications at 6-7; Comments of AT&T Wireless at 3-5; Verizon Communications at 21. According to the CPUC, approximately three-quarters of the telecommunications revenues in that state are jurisdictionally intrastate. *See* Comments of CPUC at 8.

[9] *See*, *e.g.*, Comments of US Cellular at 8-9; AT&T Wireless at 4-5; CPUC at 8.

[10] *See* Comments of US Cellular at 9.

[11] *See* Comments of NTCA at 5; Comments of NRTA and OPASTCO at 12-17; Comments of the Alaska Telephone Association at 3; Comments of Verizon Communications at 23-25 (arguing that the "Commission should require *all* broadband service providers to contribute to the school and libraries fund on an equal basis, and to contribute *only* to the schools and libraries fund").

the base of contributors is consistent with the plain language of the statute and offers the most equitable approach for sustaining universal service funding.[12] As NRTA and OPASTCO argue, requiring all facilities-based broadband Internet access providers to contribute would widen the contribution base significantly and lessen the contribution burden on every service provider.[13] Further, as an increasing amount of interstate traffic is migrating to broadband platforms and IP networks, broadband service would provide a growing source of universal service funding.[14] Requiring all broadband providers to contribute equally also would advance the regulatory mandate of "competitive neutrality."[15]

B. The IXCs Paint a Distorted Factual Picture of the Extent of the USF Funding Problems and the Potential Effect of the Connection-based Proposal on Competitors and Customers

Through the "Coalition for Sustainable Universal Service" ("Coalition"), IXCs and large business users paint a "sky is falling" picture that is belied by recent data and basic mathematics. First, even though the overall economy has been in decline for over one year, there has been no sustained decline in retail interstate revenues. In fact, end-user revenues increased considerably between the second and third quarters of 2001.[16] Given the general economic climate today (and particularly, the challenges facing the

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[12] Section 254(d) requires that, "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute on an equitable and nondiscriminatory basis to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service."

[13] *See* Comments of NRTA and OPASTCO at 15.

[14] *See id*. at 15 -16.

[15] *See* Comments of Verizon Communications at 24.

[16] *See Proposed Fourth Quarter Universal Service Contribution Factor*, 16 FCC Rcd. 16281 (Sept. 12, 2001) and *Proposed First Quarter 2002 Universal Contribution Factor*, 16 FCC Rcd. 21334, (Dec 7, 2001).

entire telecommunications industry), short-term fluctuations in end-user revenues are not a sufficient basis to discard the revenue-based contribution system. The only signal the Commission should take from recent revenue decreases is that it is more difficult now for competitive carriers to fund an ever-increasing USF, regardless of whether the assessments take the form of a percentage rate or a flat fee. During difficult economic times, consumption of consumer services decreases, particularly when prices are increased artificially through taxation and regulatory fees.

The IXCs ignore simple mathematics by asserting that the current USF revenue-based contribution system is in a "death spiral." If IXC revenues decline, their contribution obligations will decline as well. Indeed, even if total end-user interstate revenues decline in the future (due for example, to substitution into lower-priced, and lower-revenue producing services), a shift to a per-connection assessment will not shelter consumers from the increase in the amount they are required to pay or the share of their final bill that it represents. The difference is that certain customers will pay a disproportionate share of the fund, depending on the type of service they use (IXC v. wireless). What the IXCs are trying to obfuscate through their "death spiral" hyperbole is their effort to decrease their own payments by shifting payments onto other carriers.

The IXCs also overstate the degree of their present suffering (and their financial ability to contribute to USF) by ignoring the wholesale revenue they enjoy that is exempt from USF assessment.[17] To the extent substitution of wireless service for wireline long

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[17] The IXCs' claims of competitive pressure should also be scrutinized carefully in light of WorldCom's recent decision to increase the price of MCI's residential long distance service. MCI is doubling its Sunday per minute rate from 10 cents to 20 cents

distance is occurring, many IXCs benefit directly through an increase in carrier-to-carrier revenue. CMRS carriers do not self-provision most of their long distance traffic; instead, they have contracts with IXCs to carry the traffic their CMRS customers originate. Carriage of this traffic generates significant interstate revenue for IXCs that escapes universal service assessment, even though the Act does not proscribe assessment on total interstate revenue.

The IXCs also justify exempting themselves from universal service by overstating the economic findings of economists Jerry Hausman and Howard Shelanski in a 1999 article relating to the economic inefficiency of USF assessments.[18] The core of the Hausman/ Shelanski argument is that it is more economically efficient to tax services with lower elasticities of demand than services with higher elasticities of demand,[19] although they recognize that there are "often sound policy and equity reasons to depart from inverse elasticity principles" in making for public policy determinations.[20] However, if elasticity is considered an important factor, the answer will not be to shift an even much larger portion of the burden onto the wireless services, the demand for which is also price-sensitive.[21]

The IXCs are seeking to take advantage of bad economic times, which are affecting the entire telecommunications industry, to escape a social obligation that

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and raising directory assistance requests to $2.49 per call. *See Daily Briefing, Telecoms: MCI increases long distance rates,* Atlanta Journal Constitution, May 3, 2002 at F2.

[18] *See* Coalition comments at 46, n.110, citing J. Hausman and H. Shelanski, *Economic Welfare and Telecommunications Regulation*: *The E-Rate Policy for Universal Service Subsidiaries,* 16 Yale J. Reg. 19,43 (1999) ("Hausman/Shelanski").

[19] Hausman/Shelanski at 35.

[20] *Id.* at 36 (noting that "[b]lindness to distributional consequences may compromise important social values.")

Congress has placed on all providers. If, in fact, IXC revenues are declining, there is no fairer system than a revenue-based system which decreases IXC contribution obligations as their end-user revenues decline. This will be made up proportionally by others in the industry, since the revenue based system will shift the burden automatically. For example, Verizon Wireless reported an over 10% increase in interstate revenue with its most recent 1st Quarter 2002 filing compared to its quarterly average reported during 2001. The burden also will be picked up automatically by LECs now providing long distance.

IV. LIKE THE IXC PROPOSAL, THE SBC/BELLSOUTH CONNECTION – BASED PROPOSAL MUST BE REJECTED

A. The SBC/BellSouth Proposal Unfairly And Illegally Shifts Responsibility for Contributing to Universal Service Onto Wireless Carriers

SBC and BellSouth properly oppose the IXC proposal because it would fail to meet the FCC's duty to "establish a fair and equitable universal service mechanism that is technologically and competitively neutral."[22] While correcting the obvious flaw of the IXC proposal by including all providers of telecommunications (*i.e.,* IXCs, cable modem operators, ISPs, CLECs, LECs, CMRS carriers), the SBC/BellSouth proposal fails to satisfy the equally important statutory requirement that these various providers of interstate telecommunications services contribute on an "equitable and nondiscriminatory" basis.[23]

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21 Nextel Comments at 26.

22 *See* SBC/BellSouth proposal at 4.

23 47 U.S.C. § 254(d).

Through their Qualifying Service Connection ("QSC") proposal, SBC and BellSouth seek to reduce their own USF contribution responsibilities by tying contribution obligations to carrier service relationships with end users. There is no statutory justification or requirement for this connection. To the contrary, the statute requires that *carriers*, rather than end users, shall contribute.[24] Like the IXC proposal, the SBC/BellSouth proposal violates the statutory requirement that the contribution mechanism be equitable and non-discriminatory as between carriers.[25]

Because the SBC/BellSouth proposal is based on the number and capacity of interstate connections, each of which generates an independent contribution obligation, a single provider may be assessed multiple contributions for an integrated service offering, forcing some providers (particularly CMRS providers) to bear a much larger share of the contribution burden regardless of the interstate revenues they earn through such services. By defining wireless service to include both access and interstate transport connections, the SBC/BellSouth proposal would assess two contribution units automatically on each wireless handset under this system. In addition, a wireless carrier providing Internet access would be assessed a third contribution (and possibly a fourth contribution depending on the data speed). In contrast, a LEC or an IXC could be charged for just one contribution.[26] Besides ignoring the impossibility of "parsing" CMRS service in this

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[24] *See* 47 U.S.C. §§ 254(b)(4), (d). Section 254(b)(4) directs that "all *providers* of telecommunications services" should contribute to the universal service fund, and § 254(d) explicitly requires that "every telecommunications *carrier* that provides interstate telecommunications services *shall* contribute." *Id*. §§ 254(b)(4), (d). (Emphasis added.)

[25] *See* Verizon Wireless Comments at 2.

[26] *See* SBC/BellSouth proposal at 10. However, a LEC that serves as the customer's IXC would be assessed twice.

manner,[27] this result is inequitable and discriminatory, unfairly disfavors wireless technology and unnecessarily may distort the telecommunications marketplace.[28] Moreover, it suffers from the same administrative difficulties as the IXC proposal in measuring, billing and auditing carrier contributions.

While SBC recognizes that "[u]nder no circumstances should end users make decisions about their choice of interstate telecommunications provider based on the amount of the carrier's universal service recovery charge," the SBC/BellSouth proposal threatens to bring about just this result as end users seek to avoid multiple universal service charges.[29] Forced with additional fees, consumers may decrease their comparative usage of wireless service or substitute other services for wireless service by, for example, foregoing the purchase of an additional wireless handset for family members. This shifted burden also could harm wireless carriers' customer relationships due to a misperception that wireless carriers have elected to impose large new charges on their customers while other carriers have not. Burdening wireless service with multiple charges could reduce its attractiveness as a competitive alternative to traditional landline service, as well as impair consumer acceptance of emerging (and competitive) wireless Internet access services.

Ironically, SBC notes that "proposals that exempt classes of interstate telecommunications providers from contributing to universal service or that permit regulatory arbitrage will distort the market and result in an inequitable shifting of the

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[27] *See* infra § II.B.

[28] *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, ¶47-48 (1997).

[29] *See* SBC/BellSouth proposal at 4-5.

universal service contribution burden to those providers that are left holding the bag."[30] That distortion, however, is precisely what their own proposal would cause. Moreover, SBC admonishes the FCC not to adopt "AT&T and WorldCom's self-serving universal service contribution mechanism, which would *virtually eliminate* their own universal service contribution obligations," because eliminating an entire class of interstate telecommunications providers as contributors to the universal service fund would be *per se* unlawful.[31] SBC is correct; Section 254(d) requires "every telecommunications carrier" to contribute on an "equitable and nondiscriminatory basis" – but their own proposal fails to meet this statutory requirement by unjustly shifting some of its contribution burden onto the wireless industry.

B. The SBC/BellSouth Proposal Ignores the Commission's Treatment of CMRS as a Single, Integrated, End-to-End Service Offering

The SBC/BellSouth proposal fails to recognize that CMRS service is a unified service. In an effort to shift more of the contribution burden onto the wireless industry, BellSouth and SBC are proposing to assess CMRS carriers with at least two (and as any as four) contribution unit obligations for each wireless handset by asserting that different aspects of CMRS service constitute separate QSCs subject to individual contribution obligations. For example, SBC states that "both an Access QSC and an Interstate Transport QSC will apply to wireless mobile service that has an interstate transmission capability."[32] CMRS carriers would be assessed on additional service units if customers are provided the capability to access the Internet through their handsets (even for

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30 *Id.* at 14.
31 *Id.* at 18 (emphasis added).
32 SBC Comments, Appendix 2.

customers who never take advantage of that feature). This attempt to parse CMRS service to achieve cumulative contribution obligations is contrary to years of Commission treatment of CMRS service as a single, integrated, end-to-end service offering.

For example, the Commission relied upon the fact that CMRS carriers' provision of interstate service is part of an integrated CMRS offering when it detariffed these services in 1994. Prior to the passage of the Omnibus Budget Reconciliation Act of 1993 ("Budget Act"), the Commission lacked the jurisdiction to forbear from requiring common carriers, including CMRS carriers, to file the tariffs required by section 203 of the Act.[33] The Budget Act reiterated that CMRS services would be regulated as common carrier services under Title II, but gave the Commission the authority to forbear from certain aspects of Title II regulation for CMRS services, subject to making certain findings.[34] The forbearance provision of the Budget Act limited the Commission's forbearance authority to providers of CMRS service, "insofar as such person[s are] so engaged."[35] On the authority of this statutory provision, the Commission forbore from permitting the filing of tariffs under section 203 for interstate services offered by CMRS carriers.[36] Had the interstate services that CMRS carriers offered been considered a separate service for regulatory purposes, the Commission would have lacked the

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[33] *Implementation of §§ 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services,* 9 FCC Rcd 1411, 1416-17 ¶ 10 (1994) (*"CMRS Detariffing Order")* (*citing ATT v. FCC*, 978 F.2d 727 (D.C. Cir. 1992), *rehearing en banc denied,* Jan. 21, 1993, *cert. denied,* 113 S.Ct. 3020 (1993)). As this decision notes, the Commission had detariffed CMRS carriers previously, but this action was held unlawful by the Court. *Id.* at 1416-1417 ¶¶8-11.

[34] 47 USC § 332(c)(1).

[35] 47 USC § 332(c)(1).

[36] *CMRS Detariffing Order,* 9 FCC Rcd at 1480 ¶179.

authority to require detariffing. SBC/BellSouth, however, base their proposal on separate "CMRS" and "long distance" services.

The Commission also identified CMRS as a service category that provides an integrated, end-to-end service in the Customer Proprietary Network Information (CPNI) proceeding. In that proceeding, the Commission considered carriers' right, under Section 222 of the Act, to use CPNI derived from providing a customer with one service to market to that customer regarding another service.[37] In performing this analysis, the Commission divided telecommunications service offerings into three categories: local, interexchange, and CMRS.[38] The definition of CMRS as a service category separate from local and interexchange service demonstrates its status as a single, integrated service offering. Moreover, in describing the "total service approach" that it adopted for analyzing these questions, the Commission stated that "a carrier whose customer subscribes to service that includes a combination of local and CMRS would be able to use CPNI derived from this entire service to market to that customer all related offerings, but not to market landline long distance service to that customer, *because the customer's service excludes any long distance component*."[39] If a service package that includes CMRS service "excludes any long distance component," then CMRS service must be a separate and integrated category of service apart from interstate or interexchange service.

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[37] *Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information,* Second Report & Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061 (1998).

[38] *Id.* at 8081-85 ¶¶ 27-32.

[39] *Id.* at 8083-84 ¶ 30 (emphasis added). *See also id.* at 8084 ¶ 31 (adopting the total service approach).

Central to the FCC's decision in the CPNI docket to treat CMRS as an integrated service comprised of both local and long-distance traffic was its conclusion that wireless subscribers themselves viewed CMRS as encompassing and blending together both services -- in contrast to landline, where local and long distance were viewed by customers as discrete offerings. On reconsideration, the Commission spoke again to the integrated nature of CMRS. It found that customers understood wireless service to be even broader than just long distance and local telecommunications and also to encompass the sale of CPE and "information services." It held: "Information services and CPE offered in connection with CMRS are directly associated and developed together with the service itself. We are persuaded by the record and our observations of the development of the CMRS market generally that the information services and CPE associated with CMRS are reasonably understood by customers as within the existing service relationship with the CMRS provider. Customers expect to have CPE and information services marketed to them along with their CMRS service by their CMRS provider."[40] Internet access, voice mail, long distance, other information services -- the law establishes that all are fully integrated for CMRS. SBC/BellSouth's proposal goes in precisely the opposite tack, by severing rather than integrating the various offerings CMRS providers make and charging a separate USF charge for each discrete service.

In addition, the Commission has approached CMRS as an integrated, end-to-end service with respect to the separate affiliate requirements that apply to Bell Operating

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[40] *Telecommunications Carriers' Use of Customer Propriety Network Information and Other Customer Information,* Order on Reconsideration and Petitions for Forbearance, FCC 99-223, at ¶ 43 (1999).

Companies' ("BOCs'") provision of interLATA services.[41] In that context, BellSouth had argued that, "[t]o the extent that a CMRS provider offers interexchange services in conjunction with its provision of CMRS, *the interexchange service is itself incidental CMRS*, and thus exempt from section 272 separate affiliate requirements."[42]

The Commission has been reversed by the D.C. Circuit before for attempting to shoehorn landline concepts of "exchange" and "interexchange" services on to the different wireless industry where customers purchase integrated local and long distance service - precisely what SBC/BellSouth propose here. Following enactment of the 1996 Act, the FCC declared that the "rate integration" provisions of Section 254(g) must apply to CMRS, contending that CMRS provided discrete "interexchange" and "exchange" services. The agency ignored the CMRS industry's argument that CMRS was an integrated, end-to-end service that the Act did not divide into local and long distance offerings so that the long distance portion of carriers' rates should be regulated under Section 254(g). The Court agreed with the industry, squarely reversed the Commission, and vacated its rate integration rule.[43]

These regulatory actions make clear that, in the Commission's view, the interstate portion of CMRS service has always been but one component of a single, integrated service offering under both the statute and the Commission's rules. Adoption of the SBC/BellSouth proposal – which would subdivide the CMRS offering into a number of

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[41] *Bell Operating Company Provision of Out-of-Region Interstate Interexchange Services,* 11 FCC Rcd 18564 (1996).

[42] *Id.* at 18251 ¶ 42 (emphasis added). *See also* 47 USC §§ 272(a)(2)(B)(i); 271(g)(3).

[43] *GTE Service Corp., et al. v. FCC,* No. 97-1538 (D.C. Cir. 2000).

discrete connections or QSCs – would be flatly at odds with the long line of authority, cited above, in which the Commission acknowledged, for regulatory purposes, the CMRS offering as an integrated service. Recognition of this fact dictates that CMRS carriers should face but a single assessment basis for their CMRS offerings.

C. Both the IXC and SBC/BellSouth Proposals Are Based Upon Unsupported Equivalency Ratios that Place an Unfair Burden on Other Carrier Groups

Both the IXC and the SBC/BellSouth proposals substantially shift an inequitable and discriminatory share of the universal service burden onto wireless carriers through the use of arbitrary equivalency ratios and service distinctions. As the FCC and Joint Board have recognized, equivalency ratios inherently and impermissibly "favor certain service providers over others."[44] Through the use of these ratios, carriers can game the system to avoid payment obligations, leaving a greater share for other carriers, particularly wireless carriers.

The SBC/BellSouth proposal establishes eight "capacity unit" tiers such that the contribution amount increases with the capacity of the QSC. The capacity units range from a low of 1/9 for Centrex services to a high of 40 for services with transmission speeds greater than or equal to 45 Mbps. One-way paging service is assigned ½ a capacity unit. While paging and Centrex services arguably use relatively less of the PSTN than do other services, there is no explanation provided as to why Centrex service

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[44] *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 9210, ¶ 852 (1997); *Federal-State Joint Board on Universal Service*, Recommended Decision, 12 FCC Rcd 87, 496, ¶ 812 (1996); *Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking and Order Establishing Joint Board, 11 FCC Rcd 18092, 18147-48, ¶ 124 (1996). *See also* Verizon Wireless Comments at 10-11.

provision should be assessed at so much lower of a rate than one-way paging service provision, or for that matter, than two-way CMRS-to-CMRS service provision, which also bypasses some of the PSTN. This proposal would reduce the universal service burden placed on SBC and BellSouth by assigning significantly larger "capacity unit" factors to services provided by other classes of carriers.

Similarly, the IXCs have failed to provide any evidence to support the proposed charge of $1.00 per connection for fixed and wireless carriers and its charge of $0.25 for paging carriers. Because there is no factual support in either the IXC or the BellSouth/SBC proposals for the respective equivalency ratios, the FCC cannot make a reasoned determination that the factors are equitable, non-discriminatory, and competitively neutral.[45] The most likely explanation for the structures of the IXC and SBC/BellSouth proposals is that the selected equivalency ratios are designed to dramatically reduce or even eliminate their respective contributions, yielding an inequitable and discriminatory burden on all other classes of carriers.

D. The FCC Should Reject Efforts of Other Providers to Jump on the IXCs' Bandwagon of Avoiding USF Contribution Responsibility

Following in the footsteps of the IXCs and SBC/BellSouth, other providers have proffered creative rationales to avoid or significantly limit their USF contribution obligations. For example, Internet service providers ("ISPs") are already jockeying to ensure that a connection-based mechanism would not assess contributions for telecommunications services that they purchase in large quantities,[46] or would not burden

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[45] *See* SBC/BellSouth proposal at 10-11.

[46] AOL Time Warner Comments at 7-8.

ISPs that are unaffiliated with a carrier.[47] Internet-protocol (IP) telephony providers argue that uncertainties about the regulatory status of their service, and its relative lack of marketplace success, militate against including them in the contribution base.[48] Similarly, payphone providers urge that the service they provide to low-income consumers justifies excusing them from a contribution obligation.[49]

The FCC should reject such efforts and, instead, follow Section 254 and include *all* providers of interstate telecommunications. To the extent that ISPs provide interstate telecommunications, they should contribute to USF. Payphone providers, too, should contribute to USF. Although the public receives benefits from the availability of payphones, the public also benefits from the declining price of wireless service. Job-seekers without fixed residences, for example, can benefit from the mobile quality and vertical features (such as voicemail) that wireless service provides. There is no conceivable basis to exempt payphone providers while assessing wireless carriers.

Moreover, these efforts to avoid contribution obligations are the greatest obstacle to the Commission's goal of long-term sustainability of the universal service support mechanisms. They efforts also demonstrate the administrative difficulties the Commission will face if it adopts a connection-based assessment mechanism. There is no basis to believe that a connection-based system would be administratively simpler or less subject to gaming. The key to sustainability is to broaden the contribution base so that all providers contribute on an equitable basis. Beyond undermining the Commission's

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47 ITAA Comments at 12-14

48 Time Warner Telecom et al. Comments at 21-22.

49 American Public Communications Council Comments at 2, 16-18.

sustainability objective, narrowing the contribution base as these commenters suggest would leave a larger, market-skewing share of the contribution burden to other carriers, such as wireless carriers. The most equitable means of assessing contributions is upon each provider's telecommunications revenues.

V. UNDER THE REVENUE-BASED SYSTEM, THE WIRELESS INDUSTRY IS MAKING A FAIR AND INCREASING CONTRIBUTION TO USF

A. Continued Use of a Wireless Safe Harbor is Justified

In the FNPRM, as well as in comments in this proceeding, there have been numerous suggestions, explicit and implicit, that a "problem" with the current, revenue-based universal service funding mechanism is that wireless carriers are not contributing their fair share. For example, the FNPRM asserts that "the growth of [CMRS] appears to be causing a significant migration of interstate telecommunications revenues from wireline to mobile wireless providers,"[50] and identifies this and other market "trends" as among the reasons the Commission has "recognized the need to review the current system for assessing universal service contributions."[51] SBC states that "wireless carriers are allowed to report a 'safe harbor' amount that may be more (or significantly less) than their actual interstate revenues."[52] AT&T describes the "outmoded wireless safe harbor" as introducing "competitive inequities" and contributing to "making a revenue-based mechanism unsustainable in the long run."[53]

Other than anecdotes and inference, however, there is no evidence that wireless carriers currently are contributing less than their fair share to the USF. Wireless carriers

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50 FNPRM at ¶ 11.
51 FNPRM at ¶ 14.
52 SBC comments at 16.

are significant contributors under the existing mechanism, contributing 14% of current USF funding.[54] Some parties assert that wireless carriers' interstate usage has grown beyond the 15% safe harbor, but offer no evidence of this. Overall, wireless minutes of use have grown substantially, reflecting increases in both interstate and intrastate usage, but not necessarily a significant change in the proportions of interstate and intrastate usage or revenues.[55] Moreover, as wireless carriers' total revenues have grown, so have their USF contribution obligations under the safe harbor. At the same time, as IXCs' revenues have declined, so too have their contribution obligations. This self-correcting quality is one of the greatest advantages of the revenue-based assessment mechanism.[56]

Verizon Wireless shares the Commission's goals of assuring a sustainable USF for the long term. Contrary to many parties' self-serving assertions, the revenue-based assessment mechanism remains the most equitable, non-discriminatory, and sustainable basis for assessing universal service contributions.

As discussed above, under a safe harbor system, wireless carriers' contributions to USF increase as wireless carrier total end-user revenues increase. Indisputably, the safe harbor mechanism provides an efficient approach for assessing wireless revenues, which are not tracked regularly or categorized along interstate or intrastate lines. The real issue is whether there is a need to adjust the level of the safe harbor to reflect a change in the

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[53] AT&T comments at 2-3.

[54] FNPRM at ¶ 59.

[55] Verizon Wireless Comments at 17 (citing *Sixth CMRS Competition Report,* 16 FCC Rcd 13350, 13371 (2001)).

[56] Also, as wireless carriers' contributions have grown, they have remained insignificant recipients of support, in large part because the requirements for funding are constructed completely around a wireline paradigm.

relative make-up of wireless revenues. While Verizon Wireless believes that the attacks on the accuracy of the current wireless safe harbor are overstated by other carrier groups seeking to justify a significant shift in responsibility to the wireless industry, Verizon Wireless is open to a re-assessment of the appropriate level of a safe harbor. If, indeed, wireless end-user interstate revenues have increased as a proportion of total wireless end-user revenues, the safe harbor percentage can be adjusted accordingly.

Based on the record in this proceeding, the Commission must retain the revenue-based contribution approach, and should seek to improve its sustainability and competitive neutrality by broadening the base of contributors and making administrative adjustments. While an examination of the level of the safe harbor may be warranted, it is essential that a safe harbor mechanism be retained for assessing wireless carriers end-user interstate revenues. As the Commission itself has found,[57] a safe harbor is justified due to the particular difficulty in tracking wireless interstate vs. intrastate revenues when calls originate at a location that is not the subscriber's billing address and may cross state lines during the duration of the call. It is not impossible for carriers to make good-faith determinations about the interstate/intrastate revenue allocation, as some already do in their filings. However, doing so is expensive and burdensome, and depending on the assumptions carriers adopt to determine the interstate/intrastate allocations, there could be considerable variation among different wireless providers. Use of a safe harbor (which can be adjusted periodically through industry-wide traffic studies) insures that all wireless carriers revenues are treated alike.

[57] *Federal-State Joint Board on Universal Service, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 96-45, 13 FCC Rcd. 21252, at ¶ 6 (1998) *("Safe Harbor Order")*.

B. If the FCC Believes the 15% Safe Harbor Level is Too Low, It Should Re-Examine the Level in a Follow-up Proceeding

If the Commission concludes that the level of the CMRS safe harbor should be reassessed, the Commission should seek specific comments on assumptions and procedures for determining wireless carriers' proportion of interstate and intrastate usage and revenues. Working assumptions concerning traffic flows across state boundaries are needed, for example, to develop good faith estimates of the percentage of interstate calls made by customers under bundled packages. The Commission then could publish guidelines for wireless carriers to use to conduct internal revenue allocation studies that could be filed, with appropriate confidentiality protections, with the FCC to provide data for establishment of an industry-wide safe harbor. While a periodic re-assessment of the safe harbor would be necessary, this would be a far more efficient approach than requiring wireless carriers to attempt to track actual interstate revenues every quarter – and certainly would be superior to discarding the revenue-based assessment mechanism in favor of an ill-conceived and illegal connection-based approach.

VI. CONCLUSION

The Commission should reject the connection-based proposals, all of which are designed to shift burdens away from their proponents, and instead reform the revenue-based mechanism to provide a sustainable and equitable USF funding system.

Respectfully submitted,

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