

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

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
1998 Biennial Regulatory Review –)	
Streamlined Contributor Reporting)	CC Docket No. 98-171
Requirements Associated with Administration)	
of Telecommunications Relay Service, North)	
American Numbering Plan, Local Number)	
Portability, and Universal Service Support)	
Mechanisms)	
)	
Telecommunications Services for Individuals)	CC Docket No. 90-571
with Hearing and Speech Disabilities, and the)	
Americans with Disabilities Act of 1990)	
)	
Administration of the North American)	CC Docket No. 92-237
Numbering Plan and North American)	NSD File No. L-00-72
Numbering Plan Cost Recovery Contribution)	
Factor and Fund Size)	
)	
Number Resource Optimization)	CC Docket No. 99-200
)	
Telephone Number Portability)	CC Docket No. 95-116
)	
Truth-in-Billing and Billing Format)	CC Docket No. 98-170

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SUMMARY

Universal service, the goal of ubiquitously available, affordable basic phone service, is an important societal goal. There are many ways universal service can be funded, and Section 254 of the Communications Act provides certain parameters within which this Commission and the states must operate.

There is no broad consensus as to how the Commission should proceed to reform the carrier assessment system in place today. Indeed, there is substantial support in the comments for maintenance of the current revenue-based assessment structure. The record demonstrates no evidence of a serious problem with the current structure of universal service assessments. Thus, there is no basis for change at this time.

Nevertheless, in considering possible reforms to the mandatory contribution/carrier assessment aspects of the federal USF program, the Commission cannot ignore the effect on all contributors of the trend towards increasing the size of the federal fund. Any substantial reform in USF program assessment methods also requires reform in the distribution of USF; otherwise end users of services may begin to select services not subject to the heaviest of USF assessments as a means of avoiding payment of this regulatory tax. Similarly, if sufficient discipline in the distribution of subsidies is not imposed, incumbent carriers receiving funding in high cost markets may encourage inefficient use of subsidized telecommunications services and over-investment in subsidized networks, thereby foreclosing competitive entry by alternative service providers.

It is obvious from the comments that carriers understand that the incidence of USF contributions is not competitively neutral, which is why many comments focus exclusively on

shifting the payment burden elsewhere. The “Coalition for Sustainable Universal Service” (CoSUS), for example, seeks to shift USF payments away from its interexchange and large business user members and towards the wireless industry and local exchange providers (LECs). Another proposal by SBC aims at redistributing the USF funding burden in a manner that advantages incumbent LECs and harms wireless carriers by loading an increasing level of contribution assessments onto wireless carriers based on wireless network capacity. Neither CoSUS nor SBC offer hard data to support their arguments in favor of drastic reform.

The Commission should take these proposals for what they are, self-interested attempts to makeover the USF program to mitigate the incidence of USF tax on the interexchange or ILEC industry segments. CoSUS members are looking for a “free pass” on contributing to the USF; they are unwilling even to split USF costs with LECs when the opportunity would arise. Moreover, while exempting themselves from virtually all their USF payment obligations, the IXCs’ proposal would double wireless carriers’ USF assessments.

SBC’s proposal is no less self-serving. SBC would have all telecommunications carriers pay either an access fee or a transport “Qualifying Service Connection” fee for each interstate network connection based on the particular connection’s capacity and function. While SBC would require interexchange carriers to pay something for the interstate telecommunications services they provide to end users, the SBC proposal would harm wireless interests even more than the CoSUS proposal. Wireless carriers would pay both access and interstate fees for each of their subscribers, as well as capacity fees for all wireless network connections with a capacity over 64 Kbps. SBC, like CoSUS, also suggests a number of network capacity contribution ratios that advantage its network and its business customers.

Nextel already contributes its fair share to USF. Going forward, Nextel and other wireless services providers will continue to contribute to USF on their growing subscriber bases and concomitant increased revenues. The demand for wireless services, however, is not infinitely elastic and wireless carriers cannot sustain increasing and disproportionate USF funding burdens without subscribers dropping service or potential subscribers deciding not to sign up for wireless service. Because wireless can be a viable competitor to landline telecommunications services, the Commission ought to avoid this outcome at all costs. Any decision on USF funding has to account for the relative elasticity of demand for various telecommunications services.

The Commission should consider, among other things, broadening the pool of assessable interstate telecommunications revenues. The statute does not limit assessment to end user telecommunications revenues, and the addition of ILEC switched access and common line revenues would go a long way to addressing concerns regarding continual increases in the USF contribution factor. Additionally, the public interest would be better served by consideration of increasing the number of service providers that must contribute to USF.

These actions are better alternatives to the CoSUS and SBC proposals. These less drastic revisions have the advantage of not only improving the USF program, but also satisfying the Commission's mandate to make it both competitively neutral and administratively efficient. A connection-based proposal is not competitively neutral in its application to wireless services.

In short, there is no universal service reform proposal on the table that would not cause more severe market distortions than the distortions CoSUS and SBC claim are present under the

current revenue-based system. The CoSUS and SBC proposals would result in wireless subscriber rate shock and cannot be adopted in their present form.

Finally, a wireless interstate revenues safe harbor is a rational response to the problems of identifying the jurisdiction of wireless revenues. There are many examples of regulatory allocators that are not constantly revised and adjusted. These include the frozen 25% interstate allocation factor that allocates ILEC costs between federal and state jurisdictions, which has not been revised since 1986 despite undisputed shifts in relative use of ILEC plant from local towards increased interstate use. The wireless safe harbor addresses a jurisdictional revenue separations issue unique to the wireless industry. It does not create any USF funding shortfall and it should not be substantially revised.

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REPLY COMMENTS

Nextel Communications, Inc. (“Nextel”) hereby files its reply comments in the above-captioned proceeding. Over fifty parties filed comments addressing aspects of the Federal Communications Commission’s (“Commission”) Further Notice of Proposed Rulemaking on

proposed reforms of the universal service contribution methodology.¹ There is no immediate consensus among these commenters as to the appropriate near term course of action or even on the need for substantial changes in contribution method, although the majority supports continuation of a revenue-based collection method.

I. INTRODUCTION

As Nextel observed in its initial comments in this proceeding, the Commission has no easy choices when it confronts its statutory responsibilities to support universal service. Taken as a whole, the comments reveal that there is no reason for a radical departure, such as that proposed by the “Coalition for Sustainable Universal Service” (“CoSUS”) from the Commission’s established program of assessing mandatory universal service contributions based upon individual carrier’s interstate telecommunications revenues. More important, no commenter or group of commenters has come up with a proposal that is better than what is currently in place, or the current plan with slight modifications.

Virtually no commenters beyond CoSUS and SBC, with the concurrence of BellSouth, (*i.e.*, those providers who would be reducing their contribution under a changed system), believe that there is a pressing need to abandon universal service fund (“USF”) assessments based on interstate telecommunications revenues, a system that is working reasonably well, to try something new and untested. Indeed, most telecommunications competitors, consumer interests and large users observe that the USF assessment situation is not at all the dire USF “death spiral” that CoSUS portrays. As discussed herein, appropriate modifications to the revenue-based

¹ Federal-State Joint Board on Universal Service, et al., *Further Notice of Proposed Rulemaking*, CC Docket 96-45, FCC 02-43 (rel. February 26, 2002) (“*Further Notice*”).

funding approach must address legitimate concerns about the growing need for additional funding. At the same time, the Commission must adopt measures to curb the growth of non-essential universal service funding as well as identify new means of creating the proper incentives for carriers receiving USF funding to become more efficient in their delivery of supported services.

Fundamentally, the reform proposals offered for Commission consideration by CoSUS and SBC blatantly promote the commercial interests of these commenters. CoSUS members propose to exempt themselves from the responsibility of collecting USF – under the CoSUS proposal, Local Exchange Carrier (“LECs”) and Commercial Mobile Radio Service (“CMRS”) providers would pick up the USF funding obligation that these interexchange carriers would drop. Large business customers would also benefit from the institution of the CoSUS proposal, as multi-line business USF payment obligations would be set on a “residual” basis, once each CMRS/residential and single line business connection already was assessed \$1 monthly. This capacity/residual approach represents a windfall to multi-line businesses at the expense of households and small businesses, as the \$1 monthly assessment on CMRS carriers effectively doubles CMRS contributions and reduces the residual amount businesses would be called upon to pay. The SBC proposal is a variation on the same basic theme that shifts a portion of the funding burden back to interexchange carriers but continues to have a disproportionately adverse effect on CMRS carriers and their customers. In fact, aspects of the SBC proposal are even more inequitable than the CoSUS plan because they load even more USF costs onto CMRS carriers by applying a capacity charge to certain CMRS connections.

In contrast to the CoSUS and SBC proposals, CMRS carriers are *not* seeking to exempt themselves or their customers from paying a fair share of USF assessments. CMRS carrier contributions to USF are growing as CMRS subscribership and revenue continue to grow. CMRS carriers are very concerned about the disproportionate effect that the CoSUS and SBC “a connection is a connection” methodologies would create. Depending upon the definitions that are used, CMRS carriers could expect a doubling, tripling or even a quadrupling of their current assessments for USF. Such an increase would not only be a substantial rate shock to CMRS customers, it could slow the growth of CMRS subscribership. Just as important from a public policy perspective, these additional assessments would lessen the chance that CMRS can become a viable mass market competitor to established service providers who have neatly engineered a USF contribution system that allows them to shed the lion’s share of their funding responsibilities onto CMRS carriers and their customers at the same time many of these same carriers receive USF subsidies to support the services they deliver to end-users from USF payments by CMRS carriers.

The Commission cannot uncritically accept the assertion that connection-based assessments are somehow fairer or more equitable than the present revenue-based assessment method.² Instead, the Commission has the responsibility to analyze the effect of all proposals on each segment of the USF contributor market and to determine whether the proposed assessment method is, as to each segment, non-discriminatory and equitable. The CoSUS and the SBC

² In fact, many consumer interests correctly point out the regressive nature of a connection-based assessment. Comments of the Consumer Federation of America, et al., at 9-12; Comments of National Association of State Utility Consumer Advocates at 16-18.

proposals each fail this test. Other methods of sustaining a healthy and growing contribution base are available and are consistent with the requirements of Section 254, including, for example, expanding the assessable interstate telecommunications revenues base to include, for example, switched access or other wholesale revenues.

If the pass-through of USF charges to customers were competitively neutral, then the interexchange carriers and incumbent LECs would not be expending so much energy trying to exempt themselves and their customers from paying. The connection-based assessment proposals are nothing more than a gambit to avoid or to shift a regulatory tax, pure and simple. And if the tax incidence can be shifted to those parties that may prove to be a viable competitive threat, such as the CMRS industry, so much the better for interexchange carriers and incumbent LECs. The Commission must reject these proposals and seek, perhaps through the Joint Board process, a more balanced approach to any necessary reforms.

II. COSUS IS PEDDLING AN ENTIRELY SELF-SERVING PROPOSAL.

CoSUS' comments cling tightly to the notion that there is a USF death spiral that requires the immediate administration of the drastic medicine CoSUS prescribes – collection of USF program money in a wholly different manner. Of course, some of the parties to the CoSUS coalition were the same parties that urged the Commission to increase USF funding requirements to pave the way for Commission adoption of the CALLS plan and other “ILEC network cost recovery” plans. So not only did CoSUS members prime the USF spending pump by offloading \$650 million in annual interstate access costs from the access charges that they - and ultimately their customers – pay, but they now want the Commission to burden CMRS customers and LEC

customers to pay the price of the CALLS regulatory initiative. Frankly this is an offer the Commission has no choice but to turn down.

With all of its arguments about the cross-elasticity of demand for local and long distance services, the CoSUS comments never once stop to consider the adverse effect of the proposal on the demand for CMRS service and the development of mass market facilities-based competition. In fact, CoSUS unabashedly suggests that interexchange carriers suffer discrimination vis-à-vis CMRS carriers under the present assessment methodology with its safe harbor reporting of interstate CMRS revenue.³ The virtually total USF payment exemption CoSUS seeks on behalf of its members is patently ridiculous at the least and amounts to industry protectionism at its worst. The Commission's obligation is to protect competition; not competitors.⁴ This includes competition (and potential competition) among varying industry segments. The Commission, therefore, should not shelter particular industry segments from the realities of the marketplace. Interexchange markets will rise and fall in response to business and consumer demand for service, and CoSUS has provided no evidence that the present revenue-based collection system is legally flawed or discriminatory in its effects.

³ As discussed, *infra*, and as the Commission has recognized, CMRS carriers need some form of safe harbor reporting mechanism for interstate revenues due to the nature of CMRS networks and services. While the present safe harbor figure is 15%, CoSUS appears to believe that the correct safe harbor figure is 100% of CMRS revenues. See CoSUS Comments at 31. This is plainly incorrect. The notion that all CMRS revenues are interstate would come as quite a shock to the state public service commissions, who collect state USF revenues from CMRS carriers, typically based on CMRS intrastate revenues.

⁴ FCC v. RCA Communications, Inc., 346 U.S. 86, 94-95 (1953) (stating that the benefits of competition cannot be asserted "in an abstract, sterile way"); Hawaiian Telephone Co. v. FCC, 498 F.2d 771, 776 (D.C. Cir. 1974) (stating that the Commission did not satisfy its public interest mandate in approving applications where it considered the factor of competition "not in terms
(continued...)

The CoSUS' proposal is the essence of self dealing. CoSUS argues that interexchange carriers should pay only for the end user or retail connections they have, *i.e.*, only their special access customers. CoSUS also argues that the Commission, as a policy matter and to simplify collection, should not attempt to split USF collection responsibilities for any network connection between an interexchange carrier and a LEC, but rather direct LECs to bill and collect the entire USF connection-based assessment directly.⁵ This imposes an additional regulatory obligation on the LEC while it frees the interexchange carrier from an obligation, which appears discriminatory.

Further, as noted above, in addition to shedding most of its members' USF funding responsibilities, CoSUS seeks to secure a reduction in funding obligations across the multi-line business segment of its market, the segment of the market most attractive and most vulnerable to competitors. The means of achieving this reduction is the proposed "residual" funding to be contributed by multi-line business connections. Under the proposal, multi-line business connections start to fund universal service only after a connection-based charge of \$1 monthly for all non-multi-line business connections is spread over all other connections. Plainly, there has not been adequate examination of the question whether this "residual" funding approach would institute another redistribution of current funding requirements in a manner that advantages business customers at the expense of other network connectors.

(..continued)

primarily as to benefit the public but specifically with the objective of equalizing competition among competitors").

⁵ CoSUS Comments at 80.

The effect of this redistribution is not competitively neutral. As CMRS commenters demonstrated, the CoSUS proposal effectively doubles the USF funding obligation on each CMRS subscriber, which in turn, due to the relative cross-elasticity of demand for CMRS service, could depress demand for service and raise CMRS costs as a competitor. All of which bolsters an unstated goal of the interexchange carrier members of CoSUS, that CMRS service be a less desirable potential substitute for landline interexchange services.

The predicate for the radical change CoSUS seeks is missing. There is no evidence of any huge decline in interexchange revenues that would justify the massive redistribution of pre-existing USF funding responsibility to the market segments that CoSUS appears to believe compete at the margins with interexchange services.⁶ In fact, one CoSUS member, WorldCom, recently announced that it was raising some of its interstate rates.⁷ And under the CoSUS proposal, there is no guarantee that any savings that interexchange carriers realize from shifting the USF funding burden elsewhere will be passed onto interexchange subscribers.⁸ When the

⁶ While Worldcom asserts that “millions upon millions of traditional wireline long distance voice minutes and the associated revenues have migrated to wireless, e-mail, and instant messaging,” they offer no data supporting this statement. Comments of Worldcom, Inc. at 2-3.

⁷ *AT&T Increases Universal Service Fee, Citing ‘Lag’ Problem*, LONG-DISTANCE COMPETITION REPORT, Jan. 7, 2002 (noting that WorldCom’s price increased the monthly fee for the 7 Cents Anytime plan and a more modest increase in basic rates of about 5 cents, taking the basic rates up to 35 cents at their highest for daytime calling Monday through Friday); Kris Hudson, *Study: Smaller Long-Distance Carriers’ Rates Are Lowest for Colorado Residents*, DENVER POST, Feb. 28, 2002 (noting that WorldCom, AT&T and Sprint all increased their rates by 10 to 20 percent, “mostly because of a rise in the federal universal service charge”). WorldCom’s website lists 17 domestic rate increases.

⁸ Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long-Distance Users, Federal-State Joint Board on Universal Service, *Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45*, 15 FCC Rcd 12962, 13068 (2000) (“CALLS Order”).

rhetoric is stripped away, it is obvious that the CoSUS proposal is a plan that would, without any doubt, benefit the CoSUS coalition members. However, it is unlawfully discriminatory, because it is not competitively neutral and therefore cannot be adopted.

III. SBC'S CONNECTION PLUS CAPACITY PROPOSAL IS FATALLY FLAWED.

Obviously recognizing the effect of the CoSUS' proposal on ILECs, SBC/BellSouth seek to redistribute some of the USF funding burden back to interexchange carriers by proposing an alternate version of a connection-based plan. The SBC plan would have all telecommunications carriers pay either an access or a transport Qualifying Service Connection ("QSC") fee for each interstate network connection based on the particular connection's function and capacity.⁹ If a connection provided both interstate access and interstate transport, as presumably a CMRS connection would, then two QSC charges would be assessed. Additional assessments would result from the introduction of broadband capacity.

In essence, SBC is tinkering with the CoSUS proposal to achieve a result less harmful to its core local landline interests. As a result, its plan is even more adverse to the continued competitive development of the wireless market than is the CoSUS proposal. Like the CoSUS proposal, SBC seeks to shield its business customers from the brunt of USF funding responsibilities. SBC's proposed capacity ratios for Centrex, for example, are designed to shield those business customers from USF payments. Under its proposal, ILEC Centrex customers would pay 1/9th of a connection assessment for each Centrex line.¹⁰ CMRS connections, on the other hand, would be assessed 2 assessments, one each for an access and a transport function.

⁹ SBC Comments at 7.

¹⁰ SBC Comments at Appendix A, Universal Service Fund Allocation Mechanism, at 2.

And if the connection is a broadband connection, as many planned next-generation CMRS networks will be, CMRS carriers and their customers would be further penalized and would pay for four or more connection assessments for a single wireless handset in the hands of a subscriber. Even more than CoSUS, this proposal disadvantages carriers that invest in broadband technologies, as it assesses progressively greater contributions to all higher bandwidth services because capacity is “an additional indicator of telecommunications activity.”¹¹

This proposal cannot be adopted, particularly as SBC offers no quantitative analysis to back up its assertions of the proposal’s fairness and equity. On its face the proposal skews USF contribution burdens even more heavily onto CMRS carriers than does the CoSUS proposal. Prior to any serious consideration of SBC’s proposal, the Commission would have to give notice that properly frames the foreseeable effects of the proposal SBC presents.

IV. THERE ARE ALTERNATIVES TO CONNECTION-BASED PLANS THAT COULD ADDRESS CONCERNS ABOUT GROWING FUNDING REQUIREMENTS.

A. Broaden the Pool of Interstate Telecommunications Revenue Assessed.

The CoSUS proposal and the SBC proposal present far too narrow options for reform, and, quite obviously, the Commission need not limit its consideration to proposals such as these. Indeed, there are several less drastic universal service assessment reform options that would satisfy the Commission’s stated goals for reform. For example, the Commission could change the basis of its assessment in another manner – by no longer limiting its assessment base to end-user interstate telecommunications revenues. There is no impediment to the Commission

¹¹ SBC Comments, Appendix A at 2. SBC proposes that “Capacity units will be assigned to Access QSCs and to Interstate [transport] QSCs based on the maximum bandwidth of the service provided to the end user.”

including carrier access revenues within its assessment base. For 2000, the interstate switched access revenue of ILECs was over \$7.8 billion.¹² If that revenue were included in the assessment base, the effect would be substantial and would increase funding stability significantly. In fact, if these revenues had been included in the assessment base, the contribution factor applied to carrier revenue for the fourth quarter of 2000 would have been lowered by approximately 8.6 percent.¹³

Section 254(d) states that “[e]very telecommunications carrier that provides interstate telecommunications service 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.”¹⁴ In its initial decision promulgating the USF rules, the Commission decided that it could best satisfy this statutory mandate by ensuring that USF assessments were both competitively neutral and administratively efficient.¹⁵ The Commission eschewed basing contributions on gross telecommunications revenues because it was concerned this would create

¹² See *Statistics of Communications Common Carriers 2000/2001*, at Table 4.2 Access Revenues of Reporting Incumbent Local Exchange Carriers, Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission (the chart indicates that the amount is based on the interstate access revenue reported by 52 ILECs).

¹³ This figure is based on the fourth quarter 2000 USF contribution factor. The Proposed Fourth Quarter 2000 Universal Service Contribution Factor, 15 FCC Rcd 17485, *Public Notice*, (Common Carrier Bureau 2000). That contribution factor was 0.05668. If interstate switched access revenue had been included in the contribution base, then the contribution factor would have been 0.051824, which is a decrease of approximately 8.6 percent in the applicable contribution factor.

¹⁴ 47 U.S.C. § 254(d).

¹⁵ See Federal-State Joint Board on Universal Service, *Report and Order*, 12 FCC Rcd 8776, 9206 (1997), *as corrected by* Federal-State Joint Board on Universal Service, *Erratum*, CC Docket No. 96-45, FCC 97-157 (rel. June 4, 1997), *aff'd in part, rev'd in part, remanded in part* (continued...)

a double-payment for resold services and thus not be competitively neutral. The Commission rejected with equal vigor the suggestion that contributions be based on non-revenues-based measures, such as a per-minute or per-line basis because such a mechanism would be administratively difficult.¹⁶ While the Commission originally settled on “end-user” telecommunications service revenue as its assessment metric, there is no question, legal or otherwise, that it could as easily have chosen gross telecommunications revenues, or, after the *Texas Office Public Utility Counsel* decision, gross interstate telecommunications revenues as its preferred assessment metric.¹⁷ Given the increasing demands on the USF fund and the importance of stability, it may be time for the Commission to broaden the USF assessment base by eliminating the restriction on assessment of wholesale revenues.

The Commission’s prior expressed concerns about the potential for double carrier payments are relevant here. If CMRS is doubly assessed for CMRS carrier access and transport under the SBC proposal or for combining local and long distance into a single offering as under the CoSUS proposal, then LEC access revenue should be assessed, regardless of whether the sale of service is to a carrier and not to a retail end-user. The Commission must not disregard the statutory requirement that contributions be equitable and nondiscriminatory.¹⁸ Commission acceptance of a double assessment on CMRS services would mean it is no longer concerned

(..continued)

sub nom. *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (“*Universal Service Order*”).

¹⁶ *Id.*

¹⁷ *Texas Office Public Utility Counsel v. Federal Communications Commission*, 183 F.3d 393 (5th Cir. 1999).

¹⁸ 47 U.S.C. § 254(b)(4).

about double payments. A double payment on CMRS without revisiting the lack of double payment on other carries would be the essence of discrimination.

B. Broaden the Pool of Interstate USF Contributors.

The Commission is faced with a dilemma in supporting the growing requirements of the USF fund today. If USF funding needs continue to expand, the Commission can require that all WiFi, fiber networks and broadband service providers contribute to the USF. While this issue is raised in the pending Broadband Notice, the resolution of the broadband USF contribution issue is directly related to the question of fairness and equity in USF funding posed by connection-based and other USF assessment proposals in this proceeding.¹⁹

Nextel concurs with the comments of the National Rural Telecom Association (“NRTA”) and the Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”), as well as those of Verizon Wireless that the proposed connection-based assessment has serious defects. If, however, the Commission ultimately decides to adopt a policy of a flat-fee monthly contribution assessment methodology, there would be no public policy rationale for excepting facilities-based broadband Internet access providers from USF assessments.²⁰ The public interest would best be served by including all providers of telecommunications, Internet Service Providers and other content providers in the USF interstate revenues assessment base, regardless of their particular technology platform or facilities ownership. Imposing connection-based universal service obligations on wireless carriers that

¹⁹ In fact, NECA’s Comments in this proceeding correctly argue that the Commission cannot properly analyze the effect of connection-based rates until it decides as an initial matter, which entities are required to fund these connections. See NECA Comments at 4.

²⁰ See Comments of NRTA & OPASTCO at 12; Comments of Verizon Wireless at 12.

offer Internet access, but not on other Internet access providers, is patently anti-competitive and unfairly burdens wireless carrier service offerings.

V. THERE IS NO JUSTIFICATION FOR INCREASING THE CMRS SHARE OF USF CONTRIBUTIONS.

The CoSUS and SBC proposals take the approach that all carriers can be fairly assessed in the same manner, regardless of the type of service a particular carrier offers and regardless of the relative level of demand for its services. This simplistic view of the world ignores that the demand for landline local service is relatively inelastic and that the lion's share of USF subsidies support landline local service provided by incumbent LECs. It also ignores that the wireless market is not a monolith, but is comprised of many carriers with different business models. The Commission encouraged CMRS providers to offer a wide range of services and there is healthy variety among CMRS carrier offerings. For example, Nextel's customer base is comprised significantly of business users. Other CMRS providers have other service niches. One emerging service plan among some wireless providers is to offer local-only CMRS service that requires a separate account for long distance – often requiring that the long distance be prepaid. For example, Leap Wireless and MetroPCS are offering unlimited local calls for a flat monthly rate of around \$35. These service plans target customers who stay within a local calling area and make mostly local calls.²¹

²¹ Kathy Brister, *New Cellphone Provider Seeks Atlanta-Area Niche with Unlimited Local Calls*, ATLANTA JOURNAL AND CONSTITUTION, Feb. 21, 2002. Other wireless carriers have caught on and now also are trying the unlimited local calls flat-rate plan, including Alltel Corp.'s Boomerang, U.S. Cellular Corp.'s MetroZone, Northcoast PCS and rural provider HickoryTech Corp. Even Qwest Communications International Inc. has copied the flat-rate plan and now is offering unlimited local calls for \$40 per month alongside its traditional offerings. Dan Meyer, *Carriers entice with all-you-can-eat plans; Smaller players try to differentiate from nationwide competition*, RCR WIRELESS NEWS, May 6, 2002, at 1.

Not all wireless service providers have the same demand for their services and very few are USF program beneficiaries.²² At the same time CoSUS is trying to offload the USF payment burden from wireline to wireless carriers, local landline carriers often erect barriers to prevent wireless carriers from being certified as ETCs eligible to provide core services and to participate in universal service subsidy payments.

CMRS carriers have been contributing to the fund based on their interstate end user telecommunications revenues, as Commission rules require.²³ CMRS is the smallest piece of the end user interstate telecommunications revenue pie. The Commission estimates that CMRS is currently contributing approximately 14 percent of all USF funds – as compared to the 24% contributed by ILECs and 65% contributed by interexchange carriers.²⁴ CMRS continues to grow as a market segment more quickly than landline connections, however, so it is constantly picking up more of the USF contribution load on a relative basis.²⁵

Furthermore, as Voicestream argued in its comments herein, even though wireless providers may pay less into the USF fund than ILECs or interexchange carriers, that does not

²² Under the Commission's rules, in order for a wireless carrier to receive universal service support, it must be designated by the state commission in a state where support is available as an eligible telecommunications carrier ("ETC") pursuant to Section 214(e) of the Communications Act of 1934 ("Act"), as amended. 47 U.S.C. § 214(e).

²³ *Universal Service Order*, 12 FCC Rcd at 9206 (noting that carriers' contributions are based on end-user telecommunications revenue).

²⁴ 1998 Biennial Regulatory Review, *Further Notice of Proposed Rulemaking and Report and Order*, CC Docket No. 96-45, FCC 02-43 (rel. Apr. 8, 2002).

²⁵ The Boston-based Yankee Group, an industry research firm, expects that global wireless subscribers will surpass the number of wireline access lines by 2006. *U.S. Wireless Phone Penetration Climbs*, WIRELESS INSIDER, Oct. 1, 2001.

prove that the current system is discriminatory.²⁶ Rather, the differentiation in relative industry contribution and individual carrier total revenues is an indication of the different amount of interstate/international telecommunications revenue taken in by each industry segment.²⁷ The Commission's *Universal Service Monitoring Report* for the first half of 2000 shows that CMRS carriers accounted for 7% of the total interstate/international end-user telecommunications revenue used to calculate USF contributions, while ILECs accounted for 18% and IXCs accounted for 74%.²⁸ It would be grossly discriminatory for the Commission to require CMRS providers, who provide disproportionately more intrastate service than interstate service to their subscribers when compared with the service provided by interexchange carriers to their customers, to exempt interexchange carriers from paying USF assessments. Exempting interexchange carriers while at the same time double-charging CMRS carriers, including those CMRS carrier customers that make no interstate calls, is discriminatory.

CoSUS vigorously attacks the CMRS revenue reporting safe harbor, even though the safe harbor is an essential feature of any system that requires wireless carriers to separate interstate from intrastate telecommunications revenues. The CMRS safe harbor is a recognition by the Commission of something that is true regardless of whether CMRS providers offer "bucket" plans or not – there is no neat and tidy way of identifying interstate versus intrastate CMRS telecommunications traffic and then associating interstate minutes with interstate revenues.

²⁶ Voicestream Comments at 4.

²⁷ Voicestream Comments at 4-5.

²⁸ Voicestream Comments at 4-5; *Universal Service Monitoring Report*, Table 1.1 (Oct. 2001). Furthermore, as Verizon argued in its comments, as interexchange carrier's revenues decrease, so do their USF assessments. See Verizon Comments at 15-16.

CMRS interstate and intrastate revenues cannot be separated because CMRS carriers operate without regard to state boundaries in their service areas. Further, advertised CMRS service plans do not separate intrastate and interstate service into subcomponents – these concepts are not relevant to wireless telecommunications users.²⁹ The Commission acknowledged as much in its 1998 *Wireless Safe Harbor Order*.³⁰

The inability of CMRS carriers to identify with accuracy interstate and intrastate traffic and revenue does not validate a connection-based approach or justify its substitution with a revenue-based system with a safe harbor. In evaluating USF funding alternatives, the Commission should take a similar perspective to the CMRS safe harbor as it has over the years with other jurisdictional allocators. Indeed, the Commission continues to be content prescribing a completely arbitrary ILEC local loop plant separation factor of 25% as the allocator of interstate ILEC plant costs for years. Since 1986, the Commission has frozen the ILEC's nontraffic sensitive ("NTS") local loop costs that can be allocated to the interstate plant using a 25% factor, regardless of the actual interstate or intrastate use of ILEC local plant.³¹ Prior to

²⁹ Wireless users are concerned with competing carriers' coverage areas, roaming capability and the number of peak and off-peak minutes included in a service package.

³⁰ Federal-State Joint Board on Universal Service, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 13 FCC Rcd 21252, 21255-56, para. 6 (1998) ("*Wireless Safe Harbor Order*").

³¹ Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, *Decision and Order*, 96 FCC 2d 781, 782, para. 2 (1984). The 25% interstate allocation was phased in over eight years in order to mitigate the impact on carriers who were collecting an interstate allocation as high as 85% under the usage-based approach. See United States Telephone Association, Amendment of Section 36.154 of the Commission's Rules, *Memorandum Opinion and Order*, 6 FCC Rcd 1873, para. 3 (1991).

adoption the 25% interstate allocation factor, the Commission allocated NTS costs according to a usage-based formula, called subscriber plant factor ("SPF").

There is substantial precedent for using simplifying assumptions such as a wireless safe harbor, regardless of whether the allocator captures the actual relationship of revenues to network use. In establishing the 15% safe harbor, the Commission relied on the percentage of interstate traffic experienced by wireline providers.³² A CMRS safe harbor is essential to the administration of USF funding given the realities of wireless networks and operations. The 15% interstate revenues estimate is not necessarily inaccurate. If, however, the Commission is convinced it should be changed, then it can begin to increase the factor in stages, and cap it at a new level. The Commission cannot merely abandon the safe harbor, nor can it jump to a new, higher allocator without some rational basis for its action.

In phasing out the SPF, for example, the Commission was guided by the Joint Board's findings that the fixed 25% allocation factor would: "(1) [e]nsure the permanent protection of universal service; (2) provide certainty to all parties; (3) be administratively workable; and (4) be fair and equitable to all parties."³³ Many of the same reasons the Commission used to eliminate the usage-based SPF support maintaining a safe harbor for CMRS carriers. The Commission is, of course, free to commence a proceeding to establish new safe harbor figures; however, the principle behind the wireless safe harbor remain sound. Alternatively, the Commission might freeze the relative contribution of what CMRS carriers are paying now, similar to the Sprint

³² *Wireless Safe Harbor Order*, 13 FCC Rcd at 21258-59, para. 13 ("Current Commission statistics indicate that the nationwide average percentage of interstate wireline traffic reported for purposes of the [Dial Equipment Minutes] weighting program is approximately 15 percent.").

³³ *Universal Service Order*, 12 FCC Rcd at 8925.

proposal, or even cap the contribution.³⁴ Indeed, all these alternatives are preferable to the complete rewriting of the USF contribution rules in order to suit the agenda of a single segment of the broader telecommunications industry.

Finally, it is not obvious that the Commission would not need a CMRS interstate allocator even if it at some point in the future adopts a connection-based assessment. As pointed out, many wireless carriers, including Leap Wireless, offer local-only plans. These carriers should not be assessed USF charges under a connection-based methodology when all of their connections are used only for the purposes of intrastate calling. A basic flaw of each of the connection-based proposals is that CMRS customers would be double or triple assessed for universal service, even if they never make an interstate call.

VI. THERE MUST BE A MORE BALANCED APPROACH TO USF ASSESSMENT AND FUNDING.

As has been demonstrated by the vast majority of the commenters in this proceeding, there is no need to rush to judgment and every reason to analyze carefully the implications of any proposed overhauls of USF funding. The Commission also has to look carefully at what USF funds actually support. As Nextel stated in its comments, the Commission ought to initiate the promised review of funding of second residential lines and the like. It is also important that the Commission ensure that the universal service program not overburden competitive services. The USF tax rate has gone from 3.19% of a carrier's interstate and international end-user revenues in

³⁴ Comments of Sprint at 12 (maintaining the current mobile wireless interstate allocation by retaining the relative contributions of the wireline and mobile wireless industries).

the first quarter of 1998 to 7.2805% in the second quarter of 2002.³⁵ It has increased every year even as the total universal service pool has increased. If this trend continues, and there is every reason to believe that it will, a large portion of the price that consumers pay for service will simply be inefficient payments to subsidize other users rather than payment for their own service. It is time for the Commission to determine, from the standpoint of efficiency, whether its funding program is truly giving those carriers receiving USF funding the appropriate incentives to encourage appropriate network investment or is instead encouraging over-consumption of subsidized services. This review also must focus on whether the ever-expanding buckets of universal service money is socially efficient.

If, for example, a non-urban ILEC can use the federal High Cost Support funding it receives to maintain an \$8.00 per month local residential service rate, then there is something wrong with the federal support system that also must be addressed.³⁶ The goal of ensuring comparable urban and rural telephone rates must not be compromised by misuse of USF to support artificially low rural telephone rates to keep more efficient competitors from entering a market. USF funding should not support rates that are unsustainable in a competitive market and

³⁵ Proposed Second Quarter 2002 Universal Service Contribution Factor, *Public Notice*, CC Docket No. 96-45 (rel. March 8, 2002) (Because the Commission took no action on the proposed contribution factor within 14 days after the release of this *Public Notice*, the contribution factor was automatically approved.); First Quarter 1998 Universal Service Contribution Factors Revised and Approved, *Public Notice*, 12 FCC Rcd 21881 (1997).

³⁶ See, e.g., *Federal and State Universal Service Programs and Challenges to Funding*, GAO-02-187 (February 2002) (reporting local telephone service rates of between \$4.22 and \$55.00 per month, including several counties where local residential service costs less than \$8.00 per month).

that lead to over consumption of these supported services.³⁷ It would be irresponsible for the Commission to review only the manner in which consumers (ultimately) pay money into the fund without also taking a careful look into the ways in which USF monies are spent.

As part of this review, any second and third ILEC residential lines which are unreasonably subsidized should not be supported by USF funds. Other funding support could likely be tightened without sacrificing the goals of universal service. The Commission should pursue this type of reform in tandem with its consideration of assessment reform. It is also critical that the Commission put under the microscope any proposals to add new subsidies to the federal USF fund.

VII. SHORT TERM ADJUSTMENTS ARE WARRANTED.

In the *Further Notice*, the Commission considers referring one or more issues to the Federal-State Joint Board on Universal Service ("Joint Board"). CoSUS, of course, argues that the Commission should not refer the proposed overhaul of the USF contribution mechanism to the Joint Board. Referral to the Joint Board, however, could assist in the development of a record on how a wholesale change of telecommunications carriers' USF contributions might affect telecommunications markets and competition.

In fact, when the Commission has considered universal service reform much less comprehensive than the proposal being considered here, the Commission consulted the Joint Board. Indeed, immediately *after* the Commission promulgated its initial universal service

³⁷ This in fact might be a reasonable additional condition to USF funding the Commission ought to consider incorporating in its 10th Circuit Remand on the sufficiency of universal service funding. Federal-State Joint Board on Universal Service, *Notice of Proposed Rulemaking and Order*, CC Docket No. 96-45, FCC 02-41 (rel. Feb. 15, 2002).

contribution rules, it asked the Joint Board to identify universal service issues unique to rural carriers.³⁸ In July of 1998, the Commission referred additional issues to the Joint Board including, among others, (i) an appropriate methodology for determining support amounts, (ii) the extent to which USF support should be applied to intrastate jurisdiction and (iii) to what extent it is reasonable for providers to recover USF charges through rates, surcharges and other means.³⁹ Given the Commission's history in referring far less sweeping changes in the USF program to the Joint Board, and the enormity of the changes that are being considered in this proceeding, referral to the Joint Board is well worth considering.

Nextel agrees with NECA's Comments that the Commission has to first make critical choices about its contribution policies prior to jumping ahead to reform the USF assessment methodology. While the Commission considers more balanced recommendations on USF reform, there are several incremental reforms that can be implemented. As numerous commenters suggested, the Commission should immediately adopt a collect and remit assessment methodology.⁴⁰ Adoption of a collect and remit mechanism would eliminate an inherent problem of the current system – namely the unpredictable rise and fall of revenues and uncollectibles. Allowing carriers to contribute to the fund based on the exact amount that they collect from end-users would avoid unnecessary administrative confusion and ensure USF stability. This system has worked well in many states, and the Commission's USF administrator

³⁸ See *Universal Service Order*, 12 FCC Rcd at 8917.

³⁹ See Federal-State Joint Board on Universal Service, *Order and Order on Reconsideration*, 13 FCC Rcd 13749, 13752 (1998).

⁴⁰ Comments of AT&T Wireless at 6; Comments of Western Wireless at 3; Comments of CoSUS at 29.

plainly would have the authority to investigate circumstances where carriers reported unusually high uncollectibles. Thus, any concern about carrier abuse of collect and remit is overstated

The Commission could also adopt the federal excise tax ("FET") model. As commenters observed, the federal excise tax model has two distinct advantages: (i) it would eliminate much of the current USF collection bureaucracy, and (ii) would eliminate the excessively high pass-through rates that some telecommunications carriers charge their customers.⁴¹ Also, as Nextel's Comments noted, the FET model exempts governmental entities from assessment. The Texas State Attorney General's Office specifically supported this exemption, and pointed out that it would be entirely consistent with the present Lifeline assessment exemption.⁴² Adopting a collect and remit mechanism and the federal excise tax model would not only support USF fund stability, but would do so in a fair and equitable manner.

VIII. CONCLUSION

The Commission should not adopt any of the universal service assessment reform proposals put on the table either by CoSUS or SBC. Each of these connection-based proposals seek to exempt the entity proposing it from USF assessment, while at the same time doubling or tripling a CMRS carrier contribution requirements on each wireless connection, regardless of whether a CMRS customer ever makes a single interstate call. The Commission has other alternatives available if it is concerned about deterioration of the USF funding base, including eliminating the current exemption of interstate switched access revenue from assessment and broadening the base of fund contributors.

⁴¹ Comments of Paetec Communications, Inc. at 3

⁴² Texas Attorney General Comments at 2-3.

CMRS carriers participate in USF funding using the CMRS interstate revenues safe harbor. The safe harbor continues to be essential for CMRS carriers, who operate in an environment in which the concept of jurisdictional separations is irrelevant. CMRS carriers have not invested in the systems needed to identify and track revenues jurisdictionally because they have no business need to do so. A change either to the existing USF assessment system, or to the CMRS interstate revenue safe harbor can only move forward once more balanced proposals are formulated and fully considered through all applicable Commission's processes and through the filter of what is fair, workable and consistent with a statute that encourages the establishment of viable facilities-based competition rather than the perpetuation of subsidies.

Respectfully submitted,

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