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

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

To: The Commission

PETITION OF THE UNITED STATES TELECOM ASSOCIATION FOR PARTIAL RECONSIDERATION AND CLARIFICATION

The United States Telecom Association (USTA) respectfully requests partial reconsideration and clarification of the Federal Communications Commission's (FCC's or Commission's) Report and Order and Second Further Notice of Proposed Rulemaking (Order or

Second Further Notice) in the above-referenced proceeding[1] regarding certain interim measures for universal service contributions. USTA files this Petition for Partial Reconsideration and Clarification (Petition) pursuant to FCC Rule Section 1.429.[2]

Introduction and Summary

In making appropriate changes to the current mechanism for assessing contributions to the federal universal service fund (USF or Fund) in its Order, the Commission has created opportunities for some inequities between carriers that must contribute to the Fund and make assessments on end user customers. USTA believes that these inequities can easily be corrected and requests that the Commission make the clarifications noted in this Petition.

First, the Commission should clarify that all carriers are entitled to recover their legitimate, administrative costs in a similar manner that does not discriminate between carriers in how they recover their costs. On its face the Order appears to limit all carriers to the same manner of recovery – through rates or a separate line item – for the administrative costs they incur in implementing the interim universal service contribution mechanism, but the underlying impact of the Order's cost recovery specifications is to limit price cap local exchange carriers'

[1] *Federal-State Joint Board on Universal Service; 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; Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990; Administration of the North American Numbering Plan and North American Numberings Plan Cost Recovery Contribution Factor and Fund Size; Number Resource Optimization; Telephone Number Portability; Truth-in-Billing and Billing Format*, Report and Order and Second Further Notice of Proposed Rulemaking, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, NSD File No. L-00-72 (rel. Dec. 13, 2002) (Order or Second Further Notice).

[2] *See* 47 U.S.C. §1.429.

options on how they may recover their administrative costs. Under the Commission's Order,[3] price cap carriers have the option of recovering their administrative costs through a separate line item – an unsatisfactory solution for most carriers – or through interstate rates.[4] The only interstate rates from which recovery could be sought would be price cap carriers' access rates and the clear policy that underlined the Commission's decision in the CALLS proceeding[5] was to remove non-access costs from access rates. Thus, the impact of the Commission's cost recovery specifications for price cap carriers is to unnecessarily limit their administrative cost recovery options. In addition, Section 254(d) of the Telecommunications Act of 1996 (1996 Act) requires that "every telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis . . . to preserve and advance universal service."[6] To the extent the contribution mechanism is required to be nondiscriminatory, arguably the limitations placed on price cap carriers unreasonably discriminates against them as to their recovery of administrative costs. The Commission's cost recovery specifications should be reconsidered so that all carriers can recover their costs in a manner that affords all carriers maximum flexibility in recovering their legitimate, universal service administrative costs.

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[3] *See* Order, para. 53.

[4] Carriers seeking recovery through their interstate rates would need to obtain exogenous treatment of such costs and they would bear the burden of making that exogenous showing – a showing that appears to be prejudged by the language of the Order.

[5] *See generally 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, CC Docket Nos. 96-262, 94-1, 99-249, 96-45 (rel. May 31, 2000) (CALLS Order).

[6] 47 U.S.C. §254(d).

Second, the Commission should clarify that local exchange carriers may continue to charge their Centrex customers the equivalency amount of one-ninth of the full universal service contribution assessment and may recover the difference in the full universal service assessment through contribution charges assessed on all multi-line business (MLB) customers. If this clarification is not made, the Order becomes inconsistent with – in fact, nullifies – the Commission's long-standing policy and its rule designed to treat Centrex service on a regulatory parity basis to PBX service. In addition, without this clarification, the Order would have the effect of forcing local exchange carriers to choose between dramatically increasing their Centrex charges, potentially making the service non-competitive with PBX service, or keeping the universal service assessment on Centrex lines at the one-ninth equivalency, which would cause carriers to not be able to recover from their business class customers millions of dollars in universal service contributions.

Third, the Commission should clarify that carriers may average certain narrow classes of universal service contribution charges over a customer class, as long as the contribution amount billed does not exceed the amount of the assessment that carriers are otherwise permitted to make pursuant to the Order, in order to alleviate certain carriers' inability to assess universal service contribution charges on certain interstate services and revenues that vary from customer to customer and bill to bill. This clarification is intended to resolve problems some carriers have with the ability of their billing systems to assess customer specific contribution charges on certain interstate services, such as the presubscribed interexchange carrier (PIC) change charge and the presubscribed interexchange carrier charge (PICC). Moreover, allowing carriers to determine the universal service line item at the customer class level instead of on an individual

customer bill basis could reduce the expense of billing system modifications that may be necessary to comply with the Commission's rule on the universal service line item charge.

I. All Carriers Should Be Afforded Maximum Flexibility In Recovering Their Legitimate, Universal Service Administrative Costs.

USTA member companies do have ongoing administrative costs that they are entitled to recover. Further, some incumbent local exchange carriers (ILECs) will have additional administrative costs resulting from the implementation of the Commission's Order on interim changes to the universal service contribution recovery mechanism. Illustrative of these costs are the need to establish a mechanism to base each customer's contribution on that customer's interstate services charges so that the contribution assessment is no more than the sum of the current contribution factor times the customer's interstate charges and the need to develop a system to project interstate revenues for the following quarter and to track such revenues for subsequent true-up. In addition, as the Commission moves forward with a permanent contribution mechanism the likelihood is substantial that carriers will have to make additional changes to their billing systems, which will generate new administrative costs that carriers will be entitled to recover.

Today all carriers may recover their administrative costs associated with universal service contributions by including such costs in the end-user billed amounts for universal service. The rule adopted in the Order prohibits carriers from charging each customer any more than the contribution factor times the charges for that customer's interstate services.[7] The rule was designed to prevent carriers from labeling as billed universal service charges more than their out-

[7] *See* Order, para. 54 ("Carriers . . . may not include administrative costs in line items that are characterized as federal universal service contribution recovery charges").

of-pocket universal service costs,[8] but not to prohibit carriers from recovering their legitimate, administrative expenses associated with collecting and remitting universal service assessments.[9] The Order permits carriers that are not rate-regulated to recover their administrative costs through rates or other line items.[10] The Order also permits rate-of-return (ROR) ILECs to recover their administrative costs through inclusion of their costs in their cost accounting, and thus part of their end-user revenue requirement.[11] With regard to cost recovery for carriers subject to price cap regulation, the Order simply states that the Commission does "not anticipate that administrative costs associated with our contribution methodology will be extraordinary."[12]

On its face the Order appears to limit all carriers to the same manner of recovery – through rates or a separate line item – for the administrative costs they incur in implementing the universal service contribution mechanism, but the underlying impact of the Order's cost recovery specifications is to limit price cap local exchange carriers' options on how they may recover such administrative costs. As noted previously, the Commission's Order provides price cap carriers with the option of recovering their administrative costs through a separate line item[13] or through

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[8] *See id*., para. 48 ("We are concerned, however, that the flexibility provided under our current rules may have enabled some companies to include other completely unrelated costs in their federal universal service line items").

[9] *See id.*, para. 54 (these administrative costs "are no different than other costs associated with the business of providing telecommunications service and may be recovered through rates or other line items charges").

[10] *See* Order, para. 55.

[11] *See id*.

[12] *See id*.

[13] Requiring such costs to appear in yet another line item would be an unsatisfactory solution because customers are already annoyed with the large number of separate line items over and above the service charges already listed on their bills. Price cap carriers are effectively being required to add a new line item to recover the administrative expense of another line item.

interstate rates, which requires them to make a showing that such costs should receive exogenous treatment.[14] While the Order does not specifically state that universal service-related administrative costs are not exogenous, it appears to prejudge that issue by finding them not to be "extraordinary.[15] Thus, each price cap carrier would have the burden of making that exogenous showing each year – and the Commission would have to make an affirmative finding in each case for the recovery to be permitted.[16] The end result is that price cap carriers cannot simply recover their administrative costs associated with universal service contributions in the same facile manner as can carriers that are not rate-regulated and carriers that are ROR regulated. More importantly, the Order unnecessarily limits the administrative cost recovery options of price cap carriers and imposes on them cost recovery burdens that are not imposed on carriers that are not rate-regulated and on carriers that are ROR regulated. The Commission has not provided any policy reason why price cap carriers should bear a unique burden in administering the universal service program. In addition, the limitations imposed by the Order on the cost recovery options available to price cap carriers appears to discriminate against such carriers in contravention of Section 254, which requires all carriers that provide interstate

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[14] Such showings are often time-consuming and costly, particularly for the amount of administrative costs to be recovered.

[15] *See* Order, para. 55. Price cap carriers face unique problems in making adjustments to their interstate rates. They may not generally include newly-imposed costs in their interstate rates unless the Commission finds that they are "extraordinary." *See* 47 C.F.R. ∋ 61.45(d)(1)(vi).

[16] Even if the Commission were to accept an exogenous showing, price cap ILECs have only a limited range of existing interstate rates through which to effect recovery. Most of these are already limited by other rules, including the provisions of the CALLS Order. Exogenous recovery through traffic-sensitive switching and transport rates is not permitted under the rules set forth in the CALLS Order. For the most part, residence and single line business Subscriber Line Charges (SLCs) are at their caps. This leaves only the MLB PICC, and perhaps the MLB SLC, as rates that would be affected by any exogenous recovery.

telecommunications service to contribute to universal service on an "equitable and nondiscriminatory basis."[17]

All carriers should be permitted to recover their legitimate, universal service administrative costs in a similar manner that does not result in unnecessary discrimination in how different carriers recover their costs. Accordingly, the Commission should reconsider and clarify paragraph 55 of the Order, stating that the costs associated with administering universal service assessments are legitimate costs that all service providers, including price cap carriers, have the right to recover and that carriers have the option to recover these costs through their universal service contribution charges.[18] More specifically, all carriers should be permitted to include in their billed universal service contribution line item an incremental amount, subject to a cap, to recover their administrative costs.

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[17] 47 U.S.C. э 254(d).

[18] Rather than requiring each carrier to calculate its administrative costs each quarter or each year, one USTA member suggests that the Commission may want to consider adopting a safe harbor percentage of the contribution amount that the carrier collects (e.g., 2%), which the carrier could collect in the line item on its bill for universal service until its administrative costs associated with implementation and assessments of universal service contributions has been reimbursed. This safe harbor percentage for administrative costs would be built into the quarterly contribution factor by adding that incremental safe harbor percentage to the universal service factor. If, for example, the contribution factor would allow a carrier to recover $1.00 from a customer, the factor would be increased to allow the billed amount to be $1.02. The carrier would remit $1.00 to the Universal Service Administrative Company and would retain $0.02 to cover its administrative costs. Once the carrier's costs have been fully recovered, it would no longer be permitted to include the incremental safe harbor percentage in the billed, line item amounts for universal service. Carriers with higher administrative costs would retain the incremental safe harbor percentage in their bills for a longer period of time than would those with lower costs, but the incremental administrative charge could not exceed the established safe harbor percentage.

II. The Treatment Of Centrex For Universal Service Contributions Should Remain Consistent With The Commission's Purpose In Adopting Its "Equivalency" Rule.

The Commission's rules allow local exchange carriers to assess universal service contributions on an "equivalency" basis of one-ninth of the per-line charge to other MLB customers.[19] Yet, the Order may be read to require carriers either to charge Centrex customers a full universal service contribution for each Centrex line or to forgo recovery of most of their contributions if they elect to charge Centrex customers one-ninth of the universal service contribution. It is important to recall the reasoning for the Commission's "equivalency" rule and to assess the impact of creating a scenario where universal service contributions are inconsistent with the flexibility afforded to carriers by the rule.

Centrex customers are charged full business subscriber line charges, without an equivalency reduction, and carriers make universal service contributions based on those interstate revenues. Pursuant to FCC Rule Section 69.158, carriers have the option of using a one-ninth equivalency reduction for recovery of universal service contributions from Centrex customers. Today, those carriers exercising that option recover the remaining universal service contributions through a universal service line item that is averaged across MLB customers. If the carriers assess their end-users a universal service line item on the basis of each customer's actual interstate revenues, the resulting price increase would present a significant rate shock to Centrex customers, and could make Centrex service non-competitive with PBX service – precisely the result the equivalency factor was intended to avoid.

Use of the Centrex equivalency factor is a long-standing Commission policy that recognizes that Centrex service and PBX service are "functionally equivalent" and that "Centrex

[19] *See* 47 C.F.R. ∋ 69.158.

customers should be treated similarly to PBX customers."[20] In the Access Charge Reform Order, the Commission granted petitions of USTA and others and established an equivalency factor for the presubscribed interexchange carrier charge, or PICC, because PBXs "concentrate usage from multiple lines [on the customer's premises] to a few trunks [to the central office]."[21] PICCs are charged on a per-trunk basis, so without the equivalency adjustment PBX service would have an artificial cost advantage over Centrex service, which is charged a PICC on each line. To avoid that disparity, the Commission accepted USTA's recommendation that PICCs should be charged on a line-to-trunk equivalency basis of 9:1.[22] In finding the need for a Centrex equivalency ratio, the Commission said that it did

> not want wish to encourage a large customer to choose one of these arrangements, PBX, over another, Centrex, simply because, as a result of its IXC being charged substantially more PICCs, *i.e.*, non-cost-related charges, for Centrex service, the PBX service becomes cheaper.[23]

The Commission further noted that because Centrex customers pay the full multi-line subscriber line charge, they already pay all the costs associated with the additional facilities from the central office.[24] The PICC, however, does not to cover those loop costs, but instead "it will contribute to the recovery of the cost of single-line business and residential loops."[25] The Commission found

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[20] *See Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure,* Second Order on Reconsideration and Memorandum Opinion and Order, 12 FCC Rcd 16606, para. 31 (1997) (Access Charge Reform Order).

[21] *Id*., para. 32.

[22] *See id*., para. 38.

[23] *Id*., para. 33.

[24] *See id*., para. 35.

[25] *Id*.

that it would be "inequitable to require Centrex users to cause its presubscribed IXC to bear a significantly larger PICC contribution than do similarly-sized PBX users."[26]

In reaching its decision, the Commission relied on information submitted by large Centrex users, such as the City of New York, the County of Los Angeles, and Boston University, who showed that, without an equivalency ratio, the costs to many government, education, and health care facilities would increase sharply.[27] By adopting the equivalency ratio, the Commission "ensure[d] that all multi-line business customers shoulder a similar portion of the PICC contribution, irrespective of whether they use Centrex or PBX arrangements."[28] The information submitted by these large Centrex users at the time of the Access Charge Reform Order was significant enough to drive a regulatory solution that would not dictate customer choice of either Centrex service or PBX service. The Commission should not now drive such consumer choices without knowledge of the impact of the changes caused by the Commission's treatment of Centrex for universal service contributions in this Order.

The same logic applied in the Access Charge Reform Order also applies to extending the equivalency ratio for universal service contributions. Like the PICC contribution, the universal service contribution does not pay the cost of the line being delivered to the customer. The Centrex customer still pays the full subscriber line charge that pays that cost. As with the PICC, requiring Centrex customers to pay the full universal service contribution would encourage customers to select PBXs over Centrex arrangements solely because of non-cost-related charges. As a result, in the CALLS Order, the Commission applied that equivalency ratio to universal

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[26] *Id*.

[27] *See id*., para. 34.

[28] *Id*.

service, adopting FCC Rule Section 69.158, which cross-references the Commission's PICC Rule Section 69.153(e).[29]

Importantly, in the Second Further Notice, the Commission showed its intention to retain its Centrex equivalency policy by proposing to apply the same one-ninth equivalency ratio in its connections-based proposals.[30] In order to be consistent in applying its Centrex equivalency policy to the interim contribution mechanism as well, the Commission should clarify the Order, stating that carriers are allowed to recover the difference caused by assessing Centrex lines based on the equivalency ratio from other business customers through a small increase in the billed universal service contribution amount to other MLB customers.

III. The Commission Should Allow The Assessment On Certain Charges To Be Recovered On An Averaged Basis Over A Customer Class.

Some local exchange carriers' billing systems are unable to identify certain interstate costs on a customer-specific basis in calculating universal service contributions.[31] For example, some customers who change their PIC are billed a PIC change charge in their local bill, and this charge is subject to universal service assessment.[32] Billing systems that are unable to calculate

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[29] *See* CALLS Order, B-56. The equivalency ratio was incorporated into the CALLS proposal that the Commission released for comment and was adopted into the final rules without further discussion. *See* Memorandum in Support of the Coalition for Affordable Local and Long Distance Service Plan (filed Aug. 20, 1999), appended to *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Low-Volume Long Distance Users; Federal-State Joint Board on Universal Service,* Notice of Proposed Rulemaking, 14 FCC Rcd 16872, 16973 (1999).

[30] *See* Order, paras. 76 and 87.

[31] The principal interstate expense on local bills, the Subscriber Line (also called the End User Common Line) Charge, is the same for all similarly-situated customers (*i.e.*, customer class) in a state.

[32] In other instances the PIC change charge is billed to the interexchange carrier to which the customer has subscribed.

universal service charges on a customer-specific basis cannot add the appropriate increment to those charges to recover the contribution amount.

The same problems exist in those states that still have end-user PICCs for customers who have not presubscribed to an interexchange carrier. The billing systems are unable to differentiate between customers with PICCs on their bills and those without them in order to add to the universal service portion of the bills of the former an increment to defray the universal service contribution assessed on the PICC.

In both of these instances, the Commission should allow the amounts that would otherwise apply to individual customers to be averaged and added to the factor which is billed to all customers within a given customer class (primary, non-primary, and multi-line business) in a state. This would allow local exchange carriers with these billing systems problems to recover from customers their universal service assessment on these interstate charges. The amount averaged and billed could not exceed the amount of the assessment that the carriers are unable otherwise to recover, and carriers could be required to keep detailed records to demonstrate that this is the case.

Importantly, without this requested clarification, it is likely that carriers' administrative costs will increase, impacting their need to recover those costs and aggravating the problem already identified in this Petition regarding administrative cost recovery. Yet, by allowing carriers to determine the universal service line item at the customer class level instead of on an individual customer bill basis, the expense of modifying billing systems in order to comply with the Commission's rule on the universal service line item charge may be eliminated.

CONCLUSION

For the foregoing reasons, USTA respectfully requests that the Commission grant this Petition to make the clarifications cited herein, which will correct the inequities that the Order has created between carriers that must contribute to the universal service fund and that must make universal service contribution assessments on end user customers.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of USTA's Petition for Partial Reconsideration and Clarification was served on this 29th day of January 2003 by electronic delivery to the persons listed below.

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