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 Numberings 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
	)	

COMMENTS OF THE
UNITED STATES TELECOM ASSOCIATION

The United States Telecom Association (USTA),[1] through the undersigned and pursuant to the Report and Order and Second Further Notice of Proposed Rulemaking released by the

[1] USTA is the Nation's oldest trade organization for the local exchange carrier industry. USTA's carrier members provide a full array of voice, data and video services over wireline and wireless networks.

Federal Communications Commission (FCC or Commission)[2] and pursuant to sections 1.415 and 1.419 of the Commission's rules,[3] hereby submits its comments on the Second Further Notice.

INTRODUCTION AND SUMMARY

USTA applauds the Commission's decision to adopt an interim universal service contribution methodology that will allow it to take additional time to more fully consider the long-term contribution methodologies before it. The Commission has requested comment, seeking additional information, on numerous long-term contribution proposals: a revenue-based contribution proposal and three connections-based contribution proposals with several variations. It is imperative that the Commission collect a sufficient amount of data in this proceeding so that commenting parties can adequately assess and comment on the proposals under consideration by the Commission as well as the supporting data and also so that the Commission is able to make a decision regarding the adoption of a long-term contribution methodology that will be specific, predictable, and sufficient to preserve and advance universal service and a decision that can be legally sustained.

In these comments, USTA continues to advocate a primarily connections-based contribution methodology for contributions to the universal service fund – one that assesses the majority of contributions on carriers that provide access and transport services and one that allows certain contributions to be made based on revenues. USTA also emphasizes that the

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[2] *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 Numbering 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) (Second Further Notice).

connections-based contribution methodology that it advocates complies with Section 254 of the Telecommunications Act of 1996 (1996 Act) and can be legally sustained.

DISCUSSION

I. A CONNECTIONS-BASED METHODOLOGY IS THE BEST MEANS FOR ENSURING THAT CONTRIBUTIONS TO THE UNIVERSAL SERVICE FUND WILL BE SPECIFIC, PREDICTABLE, AND SUFFICIENT TO PRESERVE AND ADVANCE UNIVERSAL SERVICE.

USTA supports the Commission's use of a revenues-based contribution methodology as an interim, short-term contribution measure to support the universal service fund. However, USTA does not advocate the use of revenues as the sole basis for contribution to universal service as a long-term measure. There are problems with the continued use of revenues as the sole basis for contributions to the universal service fund. One problem involves the classification of services subject to universal service contributions. Specifically, as more carriers – notably wireless carriers – bundle local, long distance, and other services, they have difficulty assessing the amount of the contribution that should be made to the universal service fund based on those services offered. Another problem involves the fear of erosion of the base upon which universal service contributions are made as new services that may not be subject to universal service contributions are being substituted for those previously subject to universal service contributions and as existing services that are subject to universal service contributions may be re-classified as no longer subject to universal service contributions.

A connections-based methodology that assesses contributions based on a carrier's retail relationship with the end user and the capacity of the services provided to the end user resolves many of the problems – particularly the problem resulting from bundled local and long distance services – that have occurred under a revenues-based contribution methodology. Accordingly,

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[3] 47 C.F.R. §§1.415 and 1.419.

USTA advocates the adoption of a connections-based contribution methodology that assesses contributions based on the connections to the network that carriers have for providing switched local service (access service) and switched long distance service (transport service).[4] More specifically, USTA advocates adoption of a variation to such connections-based contribution methodology, one which would permit carriers that only provide transport services, not combined access and transport services, to contribute to universal service on a revenues basis.[5] USTA sets forth below the details of the variation on the connections-based contribution methodology that it advocates the Commission should adopt.

II. ANY CONNECTIONS-BASED CONTRIBUTION METHODOLOGY ADOPTED BY THE COMMISSION MUST COMPLY WITH SECTION 254 OF THE 1996 ACT.

Section 254 of the 1996 Act contains two specific provisions that guide the Commission on carriers that must contribute to universal service. Section 254(b)(4) states that "all providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service."[6] More importantly, section 254(d) states that "*every 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."[7]

The 1996 Act unambiguously states that telecommunications carriers that provide interstate telecommunications services must contribute to universal service on an equitable and nondiscriminatory basis. Yet, two of the connections-based contributions proposals on which the

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[4] The Commission notes that this methodology is based on a proposal that is similar to the one previously proposed by SBC and BellSouth. *See* Second Further Notice, para. 87.
[5] USTA supports the second alternative set forth by the Commission in the Second Further Notice. *See* Second Further Notice, para. 92.
[6] 47 U.S.C. §254(b)(4).

Commission seeks comment – the proposal that would assess a flat fee on carriers and would require a minimum contribution obligation and the proposal that would assess contributions based on telephone numbers – do not comply with the 1996 Act, specifically Section 254(d) of the 1996 Act, because these proposals would shift the majority of the universal service burden away from interexchange carriers (IXCs) to other interstate service providers. Thus, they do not assess universal service contributions on IXCs, which are equitable and nondiscriminatory.

With regard to the proposal that would assess a flat fee on carriers and would require a minimum contribution obligation (*i.e.*, the proposal that is based on the proposal promoted by the Coalition for Sustainable Universal Service (CoSUS)), USTA has made clear on numerous occasions that such a proposal violates Section 254(d) of the 1996 Act.[8] More specifically, USTA has emphasized that the CoSUS proposal is "legally deficient because certain telecommunications carriers that provide interstate telecommunications services are excluded from contribution to universal service."[9] Likewise, the proposal that would base contributions on telephone numbers has similar problems to the proposal that would assess a flat fee and require a minimum contribution obligation because the majority of carriers that provide interstate telecommunications services do not have assigned telephone numbers and thus would not be required to contribute to universal service under a telephone number-based contribution mechanism. Under the telephone-number based proposal, carriers providing special access and private lines (*i.e.*, services for which carriers do not have assigned numbers) would be assessed a

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[7] 47 U.S.C. §254(d) (emphasis added).

[8] *See* Letter to Marlene Dortch, Secretary, FCC from Robin E. Tuttle, USTA, CC Docket No. 96-45 (Sept. 13, 2002) (USTA September 13 Letter); Letter to William Maher, Chief, Wireline Competition Bureau, FCC from Lawrence E. Sarjeant, USTA, CC Docket No. 96-45 (Oct. 7, 2002); and Letter to FCC Chairman Michael K. Powell, FCC from Walter B. McCormick, USTA, John Rose, Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), and Michael Brunner, National Telecommunications Association (NTCA), CC Docket No. 96-45 (Oct. 15, 2002).

contribution to universal service based on the capacity of the service to the end user, but this proposal would exempt most carriers providing interstate telecommunications services (e.g., providers of long distance service or prepaid calling cards) from contributing to universal service.

III. A CONNECTIONS-BASED METHODLOGY THAT ASSESSES CONTRIBUTIONS BASED ON THE ACCESS AND TRANSPORT SERVICE PROVIDED IS THE BEST PROPOSAL TO ENSURE COMPLIANCE WITH SECTION 254 OF THE 1996 ACT AND TO ENSURE THE LONG-TERM SUSTAINABILITY AND VIABILITY OF THE UNIVERSAL SERVICE FUND.

USTA took into consideration the claims of some carriers – notably IXCs – that a connections-based contribution mechanism would be difficult to implement because they do not have access to certain information regarding the number and capacity of connections that their customers have to the network. Although USTA believes the information that IXCs need is available to them for customers that presubscribe to their services, USTA has modified its support of the connections-based contribution mechanism it previously advocated.

As noted above, USTA urges the Commission to adopt a connections-based contribution mechanism that assesses contributions based on the access and transport services provided by a carrier's retail relationship with an end user and that allows the basis of the contributions to be split when a carrier does not provide both the access and transport services to an end user. More specifically, the basis of contributions would be split when an end user does not obtain its access and transport services from one carrier, and, as a result, the provider of access services would contribute on a connections-basis and the provider of the transport services would contribute on a revenues-basis. Although telecommunications services are increasingly being provided on a bundled basis, not all carriers offer both access and transport services or are able to capture a customer for provision of both services even when they are available on a bundled basis from the

[9] USTA September 13 Letter at 1-2.

carrier. As a result, it is likely that there will continue to be a need for the bases for universal service contributions to be split. This flexible approach to connections-based contributions resolves problems identified previously by IXCs about obtaining information from local exchange carriers (LECs) as to the number and capacity of connections an end user has to the network, but continues to provide an equitable and nondiscriminatory basis on which contributions to universal service will be assessed on all providers of interstate telecommunications services.

The connections-based contributions methodology that USTA urges the Commission to adopt would allow carriers to assess end users on their retail relationships for access to the network and for transport services provided over that access connection. Contributions would be based on the number of connections to the network, a connection unit that is assigned a monetary value,[10] and the multiple of units (or a factor) assigned to the service provided (*i.e.*, based on the bandwidth capacity of the service). A carrier providing both switched local service (access service) and switched long distance service (transport service) to an end user would contribute to universal service by multiplying the number of network connections by a full connection unit by the factor assigned for the bandwidth capacity of the service purchased. A carrier that provides only switched local service (access service) to an end user would contribute to universal service by multiplying the number of network connections by one half of a full connection unit by the factor assigned for the bandwidth capacity of the service purchased. A carrier that provides only switched long distance service (transport service) to an end user would contribute to universal service based on a percentage of its interstate retail revenues. Likewise, a carrier that provides occasional use interstate telecommunications services (e.g., dial-around long distance service,

[10] USTA is not advocating, at this time, any particular monetary value that should be assigned for a contribution unit.

prepaid calling card long distance service, or long distance operator service) would contribute to universal service based on a percentage of its interstate retail revenues. Finally, a carrier that provides a non-switched connection either to an interstate private line service or to a switched long distance service would contribute to universal service by multiplying the number of network connections by a full connection unit by the factor assigned for the bandwidth capacity of the service purchased.

USTA supports the bandwidth capacity categories that SBC and BellSouth identified in their October 10, 2002 *ex parte* letter to the Commission in this docket.[11] Specifically, USTA advocates that bandwidth capacity be broken down into the following categories:

One-way paging
Asymmetrical (□ 6 Mbps)
Asymmetrical (> 6 Mbps)[12]
Centrex (□ 64 Kbps)
□ 56 Kbps (switched voice)
□ 64 Kbps
> 64 Kbps but < 1.544 Mbps
□ 1.544 Mbps but < 45 Mbps
45 Mbps
OC3
OC12
OC24
OC48
OC192.[13]

USTA also supports the assignment of factors, as proposed by SBC and BellSouth in the SBC/BS Modified Connections Ex Parte Letter, for certain services/bandwidth capacities (*i.e.*, for one-way paging, the factor should be one half of one; for asymmetrical services that are less than or equal to 6 Mbps, the factor should be one; for asymmetrical services that are greater than

[11] *See* Letter from Jamie M. Tan, SBC Communications, Inc., to Marlene Dortch, Secretary, FCC (Oct. 10, 2002) (SBC/BS Modified Connections Ex Parte Letter).
[12] USTA notes that the SBC/BS Modified Ex Parte Letter listed this category of bandwidth capacity as asymmetrical services that are greater than or equal to 6 Mbps, but this category should have been listed as asymmetrical services that are only greater than 6 Mbps.

6 Mbps, the factor should be two; for Centrex services, the factor should be one-ninth of one; and for switched voice services that are less than or equal to 56 Kbps, the factor should be one).[14] For all other services provided at bandwidth capacity greater than 56 Kbps, USTA endorses the concept in the SBC/BS Modified Connections Ex Parte Letter that the factors for these higher bandwidth services should be reflective of carriers' revenue-based contribution obligations today (*i.e.*, the factors for these higher bandwidth services should be revenue neutral to minimize any impact on customers).[15] Due to the fact that the data relied upon by BellSouth and SBC was limited, it is not clear to USTA, at this time, that the factors assigned by BellSouth and SBC for these higher bandwidth services in the SBC/BS Modified Connections Ex Parte Letter should be applied to the whole industry.[16] Furthermore, analysis of additional data may reveal that adjustments may be necessary to the factors USTA advocates for the lower bandwidth services.

USTA opposes adoption of connections-based contribution mechanism based on the bandwidth tiers and the associated rate factors set forth in paragraph 81 of the Commission's Second Further Notice. In addition, USTA does not support adoption of a minimum flat percentage set as low as one percent of a carrier's total, annual interstate telecommunications revenues, as suggested by example in paragraph 78 of the Commission's Second Further Notice, as the basis of contributions.[17] Finally, USTA notes that whatever bandwidth tiers and associated rate factors that the Commission may select in conjunction with a connections-based

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[13] *See* SBC/BS Modified Connections Ex Parte Letter at 2.
[14] *See id*.
[15] *See id*.
[16] Yet, it does appear to USTA that the factors for services that are provided at bandwidths that are less than or equal to 64 Kbps, greater than 64 Kbps but less than 1.544 Mbps, and greater than or equal to 1.544 Mbps but less than 45 Mbps should be closer to 24, given the manner in which SBC and BellSouth handled transport services in calculating the factors they propose for these bandwidth services.
[17] USTA is continuing to evaluate to the percentage of interstate end user revenues that should be contributed to universal service by these carriers.

contribution mechanism, such tiers and rate factors will likely need to be revisited and adjusted over time because higher bandwidths will become cheaper in the future and the economic realities dictated by such cost changes may necessitate such a reassessment.

In addition to the basic structure of the connections-based contribution mechanism advocated by USTA, there are several other important requirements the Commission should adopt as part of a connections-based mechanism. First, similar to the interim measure adopted by the Commission, USTA urges the Commission to collect contributions on a "collect and remit" basis. As with revenues-based contributions, lag issues exist with connections-based contributions and adoption of a "collect and remit" system for a connections-based mechanism would resolve this problem. However, the Commission should not require reporting on the number and capacity of end-user connections on a monthly basis, as contemplated in paragraph 74 of the Second Further Notice. Quarterly reporting is sufficient and more frequent reporting would result in administrative burdens, particularly for small carriers. Second, the Commission should broaden the contribution base for universal service by assessing all broadband service providers and Internet service providers (ISPs). With regard to contributions by broadband service providers, all such providers, whether considered information service providers or telecommunications service providers, should be assessed in a similar manner. There must be parity in the contribution methodology under which all telecommunications providers contribute to universal service. With regard to contributions by ISPs, if the Commission concludes that ISPs are not required to contribute to universal service, the Commission should find, at a minimum, that the public interest requires them to contribute to the support of the Schools and Libraries (S&L) and Rural Health Care (RHC) programs. Third, the Commission should clearly permit all carriers to recover their legitimate, administrative costs. Although the Commission

provided for separate line item recovery of administrative costs when it adopted the interim universal service contribution measures, the Commission did not clearly indicate how administrative costs for price cap carriers could be recovered. Certain terminology used in the Second Further Notice seemed to indicate that price cap carriers may be limited in the method in which they can recover their administrative costs, which may prohibit such carriers from recovering such costs, unlike rate-of-return regulated carriers and carriers that are not rate regulated. USTA urges the Commission to clarify for interim contribution measures and for the long-term connections-based contribution mechanism that all carriers are entitled to recover their administrative costs associated with universal service contributions, whether such recovery is through a separate line item, an exogenous showing, or through the universal service line item subject to a cap on such recovery.[18]

Finally, with regard to the use of universal service funds to support the S&L and RHC programs, USTA continues to urge the Commission to establish a separate fund to support these programs.[19] As USTA has previously advocated, the funding base for these programs should be broader than the existing base and should include Internet service providers (ISPs), cable modem service providers, and all other broadband service providers.[20] Again, as USTA has previously

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[18] *See 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 Numbering Plan Cost Recovery Contribution Factor and Fund Size; Number Resource Optimization; Telephone Number Portability; Truth-in-Billing and Billing Format*, Petition of the United State Telecom Association for Partial Reconsideration and Clarification, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, NSD File No. L-00-72 (filed Jan. 29, 2003).

[19] *See Federal-State Joint Board on Universal Service*, Reply Comments of the United States Telecom Association, CC Docket No. 96-45 (May 13, 2003) at 3.

[20] *See id*.

advocated, the base of funding support for the S&L and RHC programs should ultimately come from tax revenues rather than from assessments on the telecommunications industry.[21]

CONCLUSION

In sum, USTA urges the Commission to adopt a connections-based contribution mechanism that assesses contributions based on carriers' provision of access and transport services and that allows contributions to be made on a revenues-basis in limited circumstances. USTA maintains that such a contribution mechanism complies with Section 254 of the 1996 Act and can be legally sustained. USTA also maintains that adoption of such a contribution mechanism would ensure the long-term sustainability and viability of the universal service fund.

Respectfully submitted,

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[21] *See id*.