BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	

COMMENTS OF
j2 GLOBAL COMMUNICATIONS, INC.

Philip L. Verveer
David M. Don
WILLKIE FARR & GALLAGHER
1875 K Street, N.W.
Washington, DC 20006
(202) 303-1000

Its attorneys

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j2 Global Communications, Inc. ("j2 Global"), hereby submits its Comments in the above-captioned proceeding.[1] j2 Global is one of the largest independent (non-carrier) unified communications or "unified messaging" ("UM") providers in the nation, with over 4.3 million subscribers.

I. INTRODUCTION AND SUMMARY

j2 Global's UM services - currently enjoyed at no cost by millions of consumers - has proven to be one of the best success stories among the myriad new communications-related technologies introduced to market in the last few years. Unfortunately, the continued viability of this valuable and competitive service (and others like it) is now threatened by certain of the Commission's proposed changes to the current universal service contribution methodology - namely, the telephone number-based approach. Certainly, providing for ongoing and sufficient

1 Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report and Order and Second Further Notice of Proposed Rulemaking*, 17 FCC Rcd 24952 (2002) ("*Order*" or "*Second Further Notice*").

universal service support is important and necessary. However, providing for this goal should not, and does not need to, come at the expense of providers such as j2 Global which rely almost exclusively on numbering resources from competitive carriers. If the Commission is determined to adopt such a connections-based approach, services which are offered at minimal or no cost to consumers should be exempted.

The genesis of universal service is usually traced back to Section 1 of the Communications Act of 1934, as amended, in which Congress mandated that the FCC "make available, so far as possible, to all the people of the United States, . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service . . . at reasonable charges."[2] Since, the goal of universal service has served as an important regulatory pillar and significantly influenced much of the Commission's agenda.

In pursuit of quality and affordable telecommunications services for all, the universal service program and its predecessors have helped to ensure that nearly 94 percent of Americans have access to, at a minimum, basic local telephone service.[3] This success of the current contribution methodology is neither an accident nor the result of blind trial and error. Rather, it is based on the Commission's employment of, and adherence to, sound economic principles, while concurrently remaining attentive and responsive to changing market conditions.

In the most recent *Order*, the Commission made significant changes to the revenue-based assessment methodology, including adjusting the interstate revenues safe harbor for wireless carriers and modifying carrier assessments so that contributions are based on a percentage of

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[2] 47 U.S.C. § 151.

[3] Henk Brands & Evan T. Leo, *The Law and Regulation of Telecommunications Carriers* 197 (1999).

projected collected revenues, not historical gross-billed revenues. Arriving at these improvements was not an easy task; and despite their characterization as interim solutions, they may well serve to alleviate many of the issues presently confronting revenue-based assessments beyond the "near-term." Thus, before undertaking to radically change the present revenue-based system, as proposed in the *Second Further Notice,* the Commission should allow the time necessary to determine whether these recent changes will have a sustainable effect, and result in a universal system that is "specific, predictable, and sufficient."[4]

With respect to the specific proposals set forth in the *Second Further Notice*, the Commission must not lose sight of the seasoned economic principles that have guided it successfully thus far. Radical changes to the contribution methodology at this time are, at a minimum, premature. In fact, based on the significant changes made in the *Order*, these proposals may be unnecessary altogether. However, if the Commission moves forward to adopt any of the proposals in the *Second Further Notice*, it must consider both the adverse effects and the risk of unknown and unintended consequences of such a material shift in policy - especially with respect to the telephone number-based assessments proposal. While the Commission may not be required, or even able to take a service-by-service accounting of the potential negative impact of these proposals, it is incumbent upon the regulator to guard against known and easily avoidable harms to consumers.

II. THE COMMISSION HAS NOT PROVEN THAT REVENUE-BASED ASSESSMENTS SHOULD BE ABANDONED, AS SUCH, THE *ORDER'S* MODIFICATIONS SHOULD BE GIVEN TIME TO TAKE EFFECT.

There is no doubt that the Commission's pursuit of universal service has been fruitful. However, as the Commission has learned, there is no "one-size-fits-all" or static formula

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4 47 U.S.C. § 254(d).

befitting the universal service mandate. The difficulties endemic to balancing competing interests in the universal service context were exposed and fully vetted in the rulemaking that led to the Commission's most recent *Order*. Thus, in keeping with changes in service and usage patterns in the telecommunications industry, the Commission endeavored to reconfigure its contribution methodology to more equitably impose the burdens associated with funding universal service.

In the *Order*, the Commission changed the current revenue-based contribution methodology in two very significant ways. First, it raised the interstate revenues safe harbor for wireless carriers from 15 percent to 28.5 percent. The Commission determined that 28.5 percent more accurately reflects the extent to which mobile customers use their phones for interstate calls.[5] Further, taking into account increased wireless substitution for traditional wireline services, the Commission found that increasing the safe harbor "also will improve the near-term viability of the universal service mechanisms by ensuring that the contribution base more accurately reflects today's marketplace."[6]

Second, the Commission modified carrier assessments so that contributions are based on projections provided by contributors of their collected end-user interstate and international telecommunications revenues for the following quarter. By this change, the Commission seeks to "promote competitive neutrality" and ensure that assessments are based on "revenue data that is more reflective of current market conditions."[7]

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5 *Order* ¶ 21.

6 *Id.*

7 *Id.* ¶ 29.

The *Order's* improvements are the result of significant industry debate and exhaustive Commission deliberation, yet they are billed as "interim" or "short-term" measures. The Commission offers no basis for why gradual (or as-needed) adjustments, such as those adopted in the *Order*, will not continue to effectively alleviate contribution inequities as they arise. These remedial adjustments are prime examples of the Commission's continued responsiveness to ever-changing market conditions, which has lent to the ongoing success of universal service. The Commission should continue on this proven course.

After just recently undergoing the difficult process of reform, the *Second Further Notice* proposes to radically alter the revenue-based methodology. However, without substantiating the need for such a drastic policy shift, or at least explaining why the *Order's* corrections will not help beyond the "near-term," the Commission is potentially harming consumers without providing for commensurate benefits. The Commission must first provide a well-reasoned analysis before abandoning the revenue-based contribution methodology.[8] It did not do this in the *First Further Notice*.[9] The Commission has fallen well short of providing the necessary basis in the *Second Further Notice*. And it is premature with respect to the *Order's* changes, because it is simply too early to adjudge their effectiveness. As such, these recent changes should be afforded time to take their intended effect before further changes are implemented.

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8 *See Motor Vehicles Mfrs. Ass'n of U.S., Inc., v. State Farm*, 463 U.S. 29, 57 (1983) ("An agency's view of what is in the public interest may change, either with or without a change in circumstances. But an agency changing its course must supply a reasoned analysis ...") (*citing Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970)).

9 *See* Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Further Notice of Proposed Rulemaking and Report and Order*, 17 FCC Rcd 3752 (2002) ("*First Further Notice*").

Indeed, the Commission has broad authority to promulgate comprehensive regulations to effectuate the universal service mandate. However, "regulation perfectly reasonable and appropriate in the face of a given problem may be highly capricious *if that problem does not exist*."[10] The Commission must be careful that its actions do not amount to a solution searching for a problem. Thus, as the Commission engages in broad speculation about the ills of a revenue-based system, without data to support its conclusions, it appears that this is just such a case.

More generally, with any decision certain to have deep and far-reaching effects, it is essential that the Commission have a firm understanding of where the telecommunications industry is going. For if the Commission is of the opinion that the very foundation of the industry is changing, and such changes can be articulated and evidenced in reliable and non-speculative data, then perhaps the proposed changes to the current contribution methodology are not radical enough. If, however, the Commission is not in a position to accurately forecast the direction of the industry with any relative accuracy, these changes may go too far at this time. Given the vast difference between change in degree and change in kind, the Commission must be absolutely sure the dramatic changes proposed in the *Second Further Notice* are necessary (to the exclusion of less sweeping alternatives).

III. IF IT ABANDONS THE CURRENT REVENUE-BASED CONTRIBUTION METHODOLOGY, THE COMMISSION MUST FULLY CONSIDER ALL OF THE ADVERSE CONSEQUENCES.

In light of the *Order's* improvements on the current contribution methodology, it is premature for the FCC to abandon the revenue-based approach. However, if the Commission

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10 *Home Box Office, Inc. v. FCC*, 567 F.2d 9, 36 (D.C. Cir. 1977) (emphasis added) (citation omitted).

moves toward a connections-based methodology without pausing to gauge the success of alternatives, such as those recently adopted in the *Order*, it must fully consider the negative consequences that will follow. There is no doubt that under the three proposed connections-based methodologies, many heavily utilized consumer services will not only be harmed, but actually and unnecessarily forced out of existence because of the added cost of providing those services.

It is axiomatic that funding requirements for universal service necessarily impact end-user prices, and that changes in the price of services affect the consumption of those services. Under the current methodology, those who consume more interstate telecommunications services tend to shoulder a greater share of funding universal service (*i.e.*, consumers who use more telecommunications services pay more to their service providers who tend to pass the charge along as a percentage of the total bill).[11] Any change to the current methodology should be more, not less, representative of the principles underscoring *Ramsey* pricing.[12] Adoption of any of the three proposals in the *Second Further Notice* would constitute an abrupt retreat from these accepted economic realities and serve to skew the balance that was realigned by the *Order*.

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11 The FCC actually requires this type of recovery where carriers impose end-user charges. *See Order* ¶ 40.

12 As explained by the Commission, "[t]he theory behind Ramsey pricing is that prices to different customer groups are set at varying levels above incremental costs depending upon the demand elasticities of the group. Those customer groups with an inelastic demand are charged higher prices and those with an elastic demand are charged lower prices." International Settlement Rates, IB Docket No. 96-261, *Report and Order*, 12 FCC Rcd 19806, ¶ 76 n.130 (*citing* Ramsey, F., *A Contribution to the Theory of Taxation*, *Economic Journal*, Vol. 37, No. 1, at 47-61, 1927; *see also*, William Baumol, *Economic Theory and Operations Analysis*, at 513-16, *and* Kenneth Train, *Optimal Regulation*, Chapter 4).

To illustrate the potential, and perhaps unintended side-effects of the proposed connections-based methodologies, one can look at any number of services that are (ironically in this context) free or nearly free to consumers. For example, one of the services that stands to lose the most under a connections-based contribution system, and especially under the proposed telephone number-based assessment methodology, is the advertising supported UM service offered by j2 Global. Among the UM services that j2 Global offers is a free telephone number that allows its subscribers to receive faxes and/or voicemail into their personal email accounts. When a fax is received by the service provider's (j2 Global's) server, it is transmitted to the subscriber's email inbox for retrieval. Operational costs attributed to this service are primarily recovered through advertising revenue. The vast majority of j2 Global's subscribers are small businesses, home offices and consumers.[13] Today, j2 Global has approximately four million of these customers.[14]

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13 While UM is not a "new" service it is only within the last several years that it has been offered to the so-called "SOHO" (small office, home office) and residential markets by service providers such as j2 Global. Previously, UM was limited to large companies willing to invest significant sums in hardware upgrades.

14 With respect to the proposed telephone number-based assessment methodology, the Commission also seeks comment on "whether the plan might encourage public policy goals such as the conservation and optimization of existing telephone number resources." *Order* ¶ 96. j2 Global is an exceedingly efficient utilizer of telephone numbering resources and can report a utilization level of approximately 95% for the numbers assigned to it by carriers. Over the last several years, j2 Global has devoted a considerable amount of time, energy, and financial resources to ensure that its inventory of telephone numbers is efficiently assigned to subscribers. This process is managed, in part, through j2 Global's Life Cycle Management ("LCM") program. The LCM process identifies subscribers who no longer use the service. Those users targeted by LCM are notified that their service is being terminated; once cancelled, the numbers are aged for a short period before being reassigned to other users. In fact, j2 Global only maintains an approximately two month inventory of unassigned numbers. j2 Global is committed to maintaining these efficiencies.

However, because of j2 Global's reliance on free or nearly-free pricing and numbering resources from competitive carriers, under the telephone number-based assessment proposal, it would no longer be able to offer the service for free. The proposed universal service charges would pass through to the subscriber; and, as a result of the high elasticity of demand displayed by most subscribers to these free services, a great percentage of current subscribers would forfeit the service. The cumulative result would be lose-lose. The Universal Service Fund would be enriched only minimally by the few customers who might pay the charge, yet millions of consumers would be deprived of an economic alternative to traditional faxing. The same outcome likely would result for other free services that also rely on telephone numbers.[15]

IV. IF THE COMMISSION ABANDONS REVENUE-BASED ASSESSMENTS, UM SERVICES, AND THOSE LIKE IT, SHOULD BE EXEMPTED.

If the Commission determines to impose a connections- or telephone number-based contribution methodology, independent UM service providers, or more generally, service providers offering stand-alone services that rely on telecommunications, at minimal or no cost to the consumer, should be specifically exempted from assessment. Failure to exempt these service providers would be contrary to the public interest because like free email services, such as Hotmail or Yahoo, pricing experts have determined that the monthly unit cost for these services should be at or near zero. Naturally, if the market would bear a higher price, vendors would charge more. As such, the Commission could not rationally conclude that these services would

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15 The Commission's proposed action may adversely affect many important services/programs that rely on telephone numbers. For instance, a telephone number-based approach might jeopardize programs such as "Call to Protect," which provides free wireless phones for victims of domestic violence, and "Communities on Phone Patrol" (COPP), which provides free wireless phones and airtime to volunteer neighborhood watch groups. Information on these programs is available at http://www.wirelessfoundation.org/01about/index.htm (last visited February 28, 2003).

be able to survive the types of assessments the Commission is considering in the *Second Further Notice*.[16] The inherent futility of such a proposition is glaring.

In this regard, the Commission asks, "[i]f certain telephone numbers associated with specific types of services, such as electronic fax services, should be treated differently," how should those numbers be identified.[17] The administrative costs associated with differentiating these numbers for assessment purposes would be minimal and it would ensure consumers' unabated enjoyment of these services. However, if the Commission adopts one of the proposed contribution methodologies and fails to exempt services with a *de minimis* monthly unit cost, then aside from ultimately depriving consumers of these services, the Commission will have effectively destroyed a business model that has brought to market a bevy of new technologies and service offerings that have attracted millions of subscribers and enabled successful communications enterprises, such as j2 Global, to exist and grow.

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16 *See Burlington Truck Lines, Inc., v. U.S.*, 371 U.S. 156, 167-68 (1962) ("There are no findings and no analysis here to justify the choice made, no indication of the basis on which the Commission exercised its expert discretion…The agency must make findings that support its decision, and those findings must be supported by substantial evidence…Here the Commission made no findings specifically directed to the choice between two vastly different remedies with vastly different consequences to the carriers and the public. Nor did it articulate any rational connection between the facts found and the choice made.").

17 *Order* ¶ 97.

V. CONCLUSION

For the foregoing reasons, j2 Global respectfully requests that the Commission retain the current revenue-based contribution methodology, or in the alternative, exempt service providers with a *de minimis* monthly unit cost from any assessment.

Respectfully Submitted,

/s/ Philip L. Verveer
Philip L. Verveer
David M. Don
WILLKIE FARR & GALLAGHER
1875 K Street, N.W.
Washington, DC 20006
(202) 303-1000

Attorneys for
j2 Global Communications, Inc.

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