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

FEB 28 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

1998 Biennial Regulatory Review-) CC Docket No 98-171
Streamlined Contributor Reporting)
Requirements Associated with Administration)
of Telecommunications Relay Service. North)
American Numbering Plan, Local Number)
Portability, and Universal Service Support)
Mechanisms)

)
Telecommunications Service for Individuals) CC Docket No. 90-571
with Hearing and Speech Disabilities, and the)
Americans with Disabilities Act of 1990)

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Administration of the North American) CC Docket No. 92-237
Numbering Plan and Nonh 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. 95-1 16
))
Truth-in-Billing and Billing Format) CC Docket No. 98-170

TO The Commission

COMMENTS OF THE WESTERN ALLIANCE

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SUMMARY

The Western Alliance agrees that it is urgent to address the Universal Service Fund ("USF") contribution mechanism. However, before the Commission can select a sustainable and equitable mechanism for the long term, it must resolve the rapid growth of the USF due to "access reform" and portable USF support, and expand the USF contributor base to include all entities that benefit from and/or impose costs upon the public switched network.

The Western Alliance believes that connection-based mechanisms deserve further study. However, before a final selection is made to move from "revenues" to one of the "connections" options, questions must be resolved regarding: (1) the number of "connections" in the initial contributor base; (2) the manner in which "capacity" will be tiered to determine the number and weighting "connections"; (3) the trends affecting the increase or decrease in "connections" during the foreseeable future; (4) the relative burdens placed upon residential and business end users; and (5) the relative burdens imposed upon light and heavy users of telecommunications services.

The Western Alliance vigorously opposes the attempts of interexchange carriers ("IXCs") to reduce their USF contributions. IXCs use and impose costs upon the facilities supported by the USF, and have recently sought and received the transfer of substantial portions of their former access charge obligations to the USF. IXCs have been the predominant contributors to the USF, and were clearly intended by Congress to remain so when it adopted Section 254(d) of the Communications Act. Therefore, the Western Alliance vigorously opposes the "Connections-Based Methodology with

Mandatory Minimum Obligation" and the "Telephone Number-Based Assessments" options as violations of Section 254(d).

Rather than reducing IXC contributions, the Commission must broaden the base of contributors to include Internet service providers ("ISPs"), cable modems and other broadband service providers. These entities are all "providers of interstate telecommunications" that the Commission may order to contribute to the USF under Section 254(d). They all derive substantial benefits from, and impose substantial costs upon, the local exchange network facilities supported by the USF.

The jury is still out on the choice between "connections" and "revenues" mechanisms. The principal concern regarding connections is that wire lines have been stagnant or declining during recent years, while wireless growth has slowed. If the *size* of the USF continues to grow rapidly, options based upon slow-growing types of connections are likely to experience rapid increases in per-connection contributions that may threaten long-term USF sustainability. In contrast, growth in the importance of bundled service packages has made it difficult to determine interstate revenues. One possible solution is the use of "safe harbors" like those applied to wireless carriers to estimate the interstate portion of bundled service package revenues.

Finally, if forced to choose now among the three connections-based options, the Western Alliance would select the "Splitting Connection-Based Contributions Between Switched Transport And Access Providers" option because it is the only one that requires IXCs to contribute in compliance with Section 254(d). However, ISPs, cable modems and other broadband service providers should also be required to contribute.

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TO The Commission

COMMENTS OF THE WESTERN ALLIANCE

The Western Alliance, by its attorney, hereby submits its comments in response to the Commission's Report and Order and Second Further Notice of Proposed Rulemaking, FCC 02-329, released December 13, 2002 ("FNRPM")

The Western Alliance understands that the narrow purpose of this proceeding is to consider alternatives or modifications to the current revenue-based mechanism for

calculating and collecting contributions to the Universal Service Fund ("USF"). However, the financing and sustainability of the USF are affected at least as much by the growth of the USF and the size of the USF contributor base as they are by the nature of the USF contribution mechanism. In fact, the growth of the USF, the composition of the USF contributor base, and the feasibility of various USF contribution mechanisms are all so closely interrelated that they must be considered together.

The Western Alliance agrees that it is urgent to address the USF contribution mechanism. However, it cannot properly evaluate the alternatives and modifications while it remains uncertain whether the Commission will transfer billions of additional cost recovery dollars from interstate access charges to the USF by adopting a mandatory "bill and keep" system in CC Docket No. 01-92. Likewise, it is difficult to choose a contribution mechanism when the continuing liberal designation of competitive Eligible Telecommunications Carriers ("CETCs") by both federal and state commissions makes it likely that payments of portable USF to CETCs will increase by billions of dollars during the next few years. And it is impossible to estimate the impact of various mechanisms upon various classes of service providers and end users when it remains uncertain whether or not cable modem and other broadband service providers, Internet service providers ("ISPs"), and even interexchange carriers ("IXCs") will be included in the contributor base.

I

Statement of Western Alliance Position

The predominant concern of the Western Alliance is the long-term sustainability of a USF sufficient to give residents of high-cost rural areas access to

telecommunications and information services reasonably comparable to those available in urban areas at rates that are affordable and reasonably comparable to urban rates. A sufficient and financially sound USF is needed to ensure that nationwide telephone penetration remains above 94 percent, and that all areas of the nation have access to the telecommunications and information services necessary to participate in the 21st Century economy and society. Moreover, the economics of networks leverage the high penetration rates produced by a strong and sufficient USF so as to increase substantially the value of the public telecommunications network as a whole, as well as its value to individual end users in urban, suburban and rural areas throughout the nation.

The Western Alliance recognizes that there are serious questions and concerns regarding the long-term finances of the existing USF program, and that these problems need to be addressed soon. However, before it can select a feasible, long-term alternative or modification to the present USF contribution mechanism, the Commission must address the rapid and continuing growth of the USF, and re-evaluate which classes of telecommunications carriers and service providers are required to contribute to the USF.

In 1995, the USF consisted of \$749.55 million in High-Cost Loop Support, and \$155.70 million in Lifeline and Link-Up Support.¹ By the end of 2003, the USF program will have ballooned in size almost 600 percent to a projected \$6.309 billion. During these eight years, High-Cost Loop Support has grown only 49.46 percent from \$749.55 million to \$1.120 billion. In contrast, the bulk of the increase has come from new social programs and "access reform." Congress and the Commission have expanded the USF

¹ The data used in this and the following paragraph are found in OPASTCO, Universal Service in Rural America: A Congressional Mandate at Risk (January 2003), at Appendix A. They were derived from data in Federal-State Joint Board Universal Service Monitoring Report, CC Docket No. 98-202 (October 2002) and various Universal Service Administrative Company ("USAC") projections.

program to add \$2.265 billion in new social programs for schools and libraries (projected \$2.250 billion in 2003) and rural health care (projected \$15 million in 2003). Meanwhile, the Commission's various "access reform" orders have transferred directly to the USF over \$1.950 billion² in annual cost recovery that was previously included in interstate access charges. Moreover, the increases in federal Subscriber Line Charges ("SLCs") adopted by the Commission in its "access reform" orders have resulted indirectly in the addition to the USF of a significant portion of the \$584.30 million of increased annual Lifeline Support between 1995 and 2003

Not only has the amount of annual USF support increased from \$905.25 million to \$6.309 billion during the past eight years, but also it may continue to grow to \$8 or \$10 billion per year within the next few years. At present, the most rapidly growing segment of the USF is portable support for wireless CETCs, which has increased from nothing in 1998, to \$440 thousand in 1999, to \$2.13 million in 2000, to \$11.27 million in 2001, to \$68.68 million in 2002, to a projected \$101.85 million in 2003. Unless this Commission and state commissions require proof of substantial net public interest benefits before designating multiple CETCs in rural telephone company service areas, this segment of the USF may increase by \$1 or \$2 billion during the next few years. In fact, the liberal granting of CETC status by this Commission and many state commissions is virtually forcing those wireless carriers that do not yet receive portable USF dollars to seek and

² For 2003, the access revenues transferred by the Commission to the USF program will include \$500.86 million in Long Term Support ("LTS"), \$126.72 million in Local Switching Support ("LSS"), \$650.00 million in Access Universal Service Fund support ("AUSF") and \$372.34 million in Interstate Common Line Support ("ICLS"). In addition, a substantial reason for the growth in Lifeline and Link-Up support from \$155.70 million in 1995 to \$740.00 million in 2003 has been the need to offset increases in the federal Subscriber Line Charge ("SLC") adopted by the Commission as a part of its "access reform" orders.

obtain CETC status and portable USF dollars in order to keep pace with their wireless competitors

In addition to portable USF, the pending proposals in CC Docket No. 01-92 to replace what remains of interstate access charges with a "bill and **keep**" system can add another \$1-to-\$2 billion to the USF. As the Western Alliance has previously detailed, "bill and keep" is not feasible in many portions of Rural America, where local service rates would have to increase by \$50-to\$100 or more per month per line to make up for the lost access revenues. Because rate increases of this magnitude are neither feasible nor affordable, a bill and keep system would entail yet another major transfer of cost recovery from access charges to the USF.

In light of the recent and potential future growth of the USF, there is a pressing need for the Commission to expand the base of USF contributors to include all entities and services that use and benefit from the public switched network and/or impose costs upon it. The Western Alliance is particularly concerned that two of the three connections-based mechanisms on which the Second FNPRM seeks comment [the "Connections-Based Methodology with Mandatory Minimum Obligation" ("Modified CoSUS Plan") and the "Telephone Number-Based Assessments" ("Modified AT&T Plan")] would substantially reduce USF contributions by the IXCs that have long provided more than 60 percent of USF funding. This not only is the wrong approach from a sustainability standpoint, but also is a direct violation of the Section 254(d) mandate that all telecommunications carriers providing interstate telecommunications services contribute to the USF on an equitable and nondiscriminatory basis.

Rather than reducing the USF contributions of IXCs, the Commission needs to expand the contributor base to include Internet access services, cable modem services, broadband telecommunications services, and other providers of telecommunications that make significant use of (and impose significant demands and costs upon) the public network. The Commission was given clear and express authority in the third sentence of Section 254(d) of the Act to require such other providers of telecommunications to contribute to the USF program.'

Only **after** the Commission has addressed the growth of the USF and the composition of the USF contributor base can the Commission and the industry properly analyze and compare the feasibility and impacts of various revenue-based and connection-based financing mechanisms

The Western Alliance believes that connection-based mechanisms constitute an interesting option that deserves further study and evaluation. However, before connections-based mechanisms can be properly evaluated, a number of very significant issues and questions need to be resolved or clarified

- How many "connections" will comprise the initial contributor base? The industry needs to know both: (1) the composition of the contributor base [i.e., will IXC, Internet Service Provider ("ISP"), cable modem, broadband, and other "connections" be included?]; and (2) the manner in which "capacity" will be defined and weighted to determine the number of "connections" applicable to certain services.
- How is the number of "connections" expected to increase or decrease during the foreseeable future? **Until** the composition of the initial "connections" is defined and calculated, the industry cannot determine how the number of "connections" has grown *or* decreased during recent years, or predict the likely trends during the future. One concern with the use of "connections" is that some factors that may affect the number of connections (e.g., second lines, wireless subscriber growth, and population growth) appear to have

³ 47 U.S.C. Sec. 254(d). ("Any other provider of interstate telecommunications may be **required** to contribute to the preservation and advancement of **universal service** if the public interest so requires.")

slowed or declined during recent years, while the size of the USF continues to increase. If "connections" prove to be a relatively static or declining base, their usage may not be feasible unless and until additional access cost recovery, as well as new programs and recipients, stop being added to the USF.

- What are the sizes of the burdens that will be placed upon residential and business end users under a connections-based mechanism? Until the foregoing definitional and trend questions are resolved, it is not possible to estimate these burdens with any accuracy. The Western Alliance does not believe that it presently can be determined whether a \$1.00 per month per "connection" charge is possible or feasible for residential end users. It is also concerned that a connections-based mechanism will impose excessive residual financing burdens upon multi-line business users and cause them to reduce their use of the public network to the detriment of carriers and end-users alike.
- Are "connections." and particularly capacity-based connections, congruent with the valuation by end users of the services provided over the facilities, and will they remain so as technology and usage patterns change? For example, will the capacity tier plan advanced in paragraph 81 of the FNPRM significantly impact service or capacity additions by business customers? Will a business customer investigating the purchase of additional services or facilities that will increase its capacity above 5 Mbps be influenced by the associated increase in its passed-through USF contribution cost from 16 "assessments" to 224 "assessments"? What relationship do the weights of the various tiers have to the valuation by customers of the services provided within those tiers? And will such tier plans and weights have to be revised regularly as technology and usage patterns change?
- Are "connections" equitable, or will they function as a regressive "tax" that imposes the same financial burden on both heavy users and light users of substantially similar services and facilities?

The Western Alliance recognizes that the commission's staff has started to look at some of these questions in its recent Public Notice (Commission Seeks Comment On Staff Study Regarding Alternative Contribution Methodologies), FCC 03-31, released February 26, 2003. However, this staff study was released so late in the present comment cycle that the Western Alliance has not yet have time to study it closely and analyze its data and assumptions. In any event, all of the foregoing questions and others must be

addressed and resolved before the Commission and the industry can reasonably evaluate the advantages and disadvantages of changing from a revenue-based USF financing mechanism to a connections-based one. Because of the importance of the USF to the availability and affordability of the services provided by rural telephone companies to their customers, the Commission's choice of the long-term USF financing mechanism will be the single most important decision it will render during the foreseeable future regarding rural telecommunications

Therefore, the Western Alliance urges the Commission to: (1) encourage the Federal-State Joint Board to consider and issue a Recommended Decision on the USF portability and CETC designation questions referred to it as soon as possible; (2) address and resolve these USF portability and CETC designation issues in a manner that controls and stabilizes the growth of the USF as soon as possible after the Joint Board delivers its Recommended Decision; (3) address and resolve the various proceeding regarding the addition of ISPs, cable modems and broadband services to the USF contributor base as soon as possible; (4) consider the comments and reply comments in this proceeding; and (5) issue a Third Further Notice of Proposed Rulemaking containing a specific and well-defined revenue-based or connections-based mechanism that the industry can evaluate with respect to its ability to sustain a sufficient USF and its impact upon customers and usage patterns.

If forced to select a connections-based mechanism at this time, the Western Alliance would choose the proposed "Splitting Connection-Based Contributions Between Switched Transport and Access Providers" ("Modified SBC-BellSouth Plan") option, with modifications. This option places the obligation of USF financing upon local

exchange carriers, IXCs and wireless carriers in a more equitable and nondiscriminatory basis than the other two proposed connections-based options which eliminate or minimize IXC contributions. However, it needs to be expanded, as initially proposed by SBC and BellSouth, to include contributions from providers of high-speed Internet access service, dial-up Internet access service, cable modem service, and other broadband services. Moreover, as indicated above, the Western Alliance's final evaluation of this option will depend very much upon the ultimate definition and capacity-based weighting of "connections," and the impact thereof upon USF financing and customer burdens.

II.

The Western Alliance

The Western Alliance is a consortium of the Western Rural Telephone Association and the Rocky Mountain Telecommunications Association. It represents about 250 rural telephone companies operating west of the Mississippi River.

Western Alliance members are generally small local exchange carriers ("LECs") serving sparsely populated rural areas. Most members serve less than 3,000 access lines overall, and less than 500 access lines per exchange. Their revenue streams differ greatly in size and composition from those of the price cap carriers. Most members generate revenues much smaller than the national telephone industry average, and rely upon universal service dollars for the recovery of 40 percent or more of their costs.

Western Alliance members incur per-customer facilities and operating costs far in excess of the national average. Not only does their small size preclude their realization of significant economies of scale, but also they serve remote and rugged areas where loop

and switching costs per customer are much higher than in urban and suburban America.⁴ Their primary service areas are comprised of sparsely populated farming and ranching regions, isolated mountain and desert communities, and Native American reservations. In many of these high cost rural areas, the Western Alliance member not only is the carrier of last resort, but also is the sole telecommunications provider ever to show a sustained commitment to invest in and serve the area.

Western Alliance members are highly diverse. They did not develop along a common Bell System model, but rather employ a variety of network designs, equipment types and organizational structures. They must construct, operate and maintain their networks under conditions of climate and terrain ranging from the deserts of Arizona to the rain forests of Hawaii to the frozen tundra of Alaska, and from the valleys of Oregon to the plains of Kansas to the mountains of Wyoming.

Predictable and sufficient federal USF revenues are essential to Western Alliance members if they are to continue constructing, maintaining and operating telecommunications facilities in high-cost rural areas, while providing quality services to their rural customers at affordable rates. Therefore, the Western Alliance has found it necessary to participate in this and other portions of CC Docket No. **96-45**.

⁴ The Commission has noted an estimated \$866.27 cost for a loop in a Wyoming wire center and compared it with an estimated \$9.97 cost for a loop in a New York City wire center. It noted further that overhead cost adjustments could greatly increase this cost difference. Second Rebuttal and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Rebuttal and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166 (Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers), FCC 01-304, released November 8, 2001, at para 45 and n. 140.

III.

All Providers **Of** Interstate Telecommunications Should **Be** Required **To** Contribute **To** **The** Universal Service Fund

Section 254(d) of the Communications Act requires that "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service." The provision also gives the Commission the discretion to exempt carriers whose contributions would be *de minimis*, and permits the Commission to require "[a]ny other provider of interstate telecommunications . . . to contribute to the preservation and advancement of universal service if the public interest so requires." 47 U.S.C. Sec. 254(d).

IXCs, wireless carriers, Internet access providers, cable modem service providers and broadband service providers all make significant use of (and impose significant costs upon) the facilities supported by the USF to originate and/or terminate their traffic. Moreover, the services they provide are significantly more valuable (and, hence, capable of generating larger revenues and profits) due to the fact that their customers can communicate with millions of rural residents and businesses that might not be reachable without the USF. Given that IXCs, wireless carriers, Internet access providers, cable modem service providers and broadband service providers all benefit significantly from the USF, they should all make substantial contributions to it

A. Interexchange Carriers

At the time Section 254(d) was enacted in 1996, IXC's generated the lion's share of interstate telecommunications revenues, and were the predominant contributors to the USF. At present, IXC's remain the class of telecommunications carriers with the highest interstate revenues, and provide well over 60 percent of the contributions to the USF.

There can be no question but that Congress was fully aware of the crucial role of IXC's in the financing of the USF at the time that it enacted Section 254(d). There also can be no question but that Congress plainly intended to include IXC's as one of the principal providers (if not the principal providers) of interstate telecommunications services required to contribute to the USF on an equitable and nondiscriminatory basis. Any connections-based mechanism that slashes the contributions of IXC's to a fraction of their present level is likely to violate Section 254(d) of the Act. Hence, the Western Alliance vigorously opposes the "Connections-Based Methodology with Mandatory Minimum Obligation" ("Modified CoSUS Plan") and the "Telephone Number-Based Assessments" ("AT&T Plan") options as violations of Section 254(d).

At a time when access "reform" and liberal designation of CETCs are rapidly increasing the size of the USF, the reduction or virtual elimination of the IXC contributions that historically have funded the major portion of the USF would only exacerbate the resulting financial strains. Instead, the Commission needs to be looking to broaden the base of USF contributors.

Requiring IXC's to continue to contribute to the USF is equitable because IXC's: (1) make extensive use of the local exchange network facilities supported by the USF; and (2) are responsible for a significant portion of the high cost of constructing,

maintaining and operating these facilities. Even where an IXC has declined to originate traffic in certain rural areas, it still derives substantial value from the fact that its customers can make calls to, and receive calls from, people in those rural areas

Moreover, the Commission in recent years has granted IXC requests for reduction of the access charges that formerly compensated LECs for IXC use of their networks, and has transferred almost \$7.2 billion in access charge reductions since 1996 to subscriber line charges and the USF.⁵ However, when the ink was barely dry on the CALLS Order and the MAG Order, AT&T and other IXCs began proposing new "connections-based" plans that would eliminate all or virtually all contributions by IXCs to the USF. If these IXC proposals are adopted, IXCs will have obtained a virtually free ride on the local exchange network, and will be able to continue using the network extensively while forcing LECs and the other USF contributors to bear all of the costs of originating and terminating their traffic. This not only is inequitable, but also will reduce the incentives for investment in local exchange facilities

Finally, whether the Commission adopts a revenue-based or a connection-based mechanism, IXCs are fully capable of determining their contribution obligations in an administratively efficient manner from usage and billing information already in their

⁵ From the adoption of the 1996 Act to the issuance of the CALLS Order in May 2000, the Commission reduced the interstate access charges paid by IXCs by an estimated \$3.2 billion News Release (FCC Reduces Access Charges By \$3.2 Billion; Reductions Total \$6.4 Billion Since 1996 Telecommunications Act), released May 31, 2000. In the CALLS Order [FULL CITE] itself, the Commission slashed the interstate access charges paid by IXCs to large LECs by another \$3.2 billion. Finally, the Commission's Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166 (Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers), FCC 01-304, released November 8, 2001 ("MAG Order") cut the interstate access charges paid by IXCs to rural and other non-price cap LECs by \$727 million, and mandated a further reduction of \$65 million in July 2003. In CC Docket No. 01-92, the Commission is presently considering the adoption of "bill and keep" proposals that could eliminate the remaining interstate (and possibly intrastate) access charges altogether, and transfer substantial additional cost recovery to the USF

possession. For example, IXC's already know and report their interstate telecommunications revenues. And where IXC's and other carriers are offering bundled service packages, the Commission can and should establish "safe harbors" similar to those for wireless carriers to determine the portions of such bundled package revenues to be included in the USF contribution base. Likewise, IXC's know or should know the number and identity of their presubscribed customers, as well as the numbers of calls and/or revenues associated with alternative calling arrangements such as dial-around calls, prepaid calling cards and credit cards.

B. Wireless Carriers

The Western Alliance questions whether the recently adopted 28.5 percent "safe harbor" for cellular, broadband Personal Communications Service ("PCS") and certain Specialized Mobile Radio ("SMR") providers may still underestimate the interstate portion of the revenues of these carriers.

The increasing availability of "Digital One Rate" and similar wireless calling plans appears to be encouraging wireless users to make a large and rapidly increasing portion of their interstate long distance calls on their wireless phones. In Comments filed with the Commission on February 3, 2003 in WT Docket No. 02-381, Western Wireless claims that its recent surveys have found that 48 percent of wireless customers have replaced 90 percent or more of their landline long distance calling with their wireless service (Comments of Western Wireless Corporation in WT Docket No. 02-381, at p. 5). in light of these usage patterns and trends, it appears that the revised 28.5 percent "safe harbor" may still be too low. The Western Alliance believes that the USAC should be ordered to design and conduct surveys, traffic studies and/or other appropriate inquiries

to determine accurate "safe harbors" for wireless carriers and other providers offering bundled services.

C. Internet Access Providers

Internet access or service providers ("ISPs") are "providers of interstate telecommunications" that the Commission may require to contribute to USF under Section 254(d) of the Act. The public interest requires the Commission to exercise its discretion to include ISPs as contributors to the USF.

Like IXCs, ISPs derive substantial benefits from, and impose substantial costs upon, the local exchange network facilities supported by the USF. Many ISP customers use local exchange networks to originate and terminate their e-mail and instant messages, and to initiate other uses of the Internet and World Wide Web. ISPs and their customers place substantial burdens and expenses upon local exchange facilities (e.g., the lengthy average holding times of dial-up Internet traffic has tied up switching ports for hours, and forced many LECs to increase their switching capacity). ISPs also benefit from the ability of their customers to communicate with the millions of residences and small businesses able to participate on the network due to the Commission's universal service programs. ISPs are also major beneficiaries of the Schools and Libraries program.

ISPs provide substantial amounts of interstate and international "telecommunications" and "telecommunications service" to their customers. Section 3(43) of the Act defines "telecommunications" as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." 47 U.S.C. Sec. 153(3). Section 3(46) of the Act defines "telecommunications service" as "the offering of

telecommunications for a fee directly to the public, or such classes of users as to be effectively available to the public, regardless of the facilities used." 47 U.S.C. Sec. 153(46) ISPs are primarily conduits through which their customers transmit and receive e-mail and instant messages of their own choosing, and visit web sites of their own choosing. ISPs do not generally change the form or content of such information as sent and received, and generally offer their service to the public for a fee.

When it has been in their interest, ISPs have sought and received from Congress the very same protections from liability as telecommunications carriers for the content carried over their facilities. For example, the Digital Millennium Copyright Act protects ISPs from copyright liability. (a) where they transmit, route, provide connections, and make intermediate or transient copies of material (i.e., act as mere conduits without having any involvement with content) [17 U.S.C. Sec. 512(a)]; (b) where they cache web sites without modifying their content [17 U.S.C. Sec. 512(b)]; and (c) where they host web sites if they have no involvement with (or financial interest in) the content [17 U.S.C. Sec. 512(c)]. In addition, Section 230 of Communications Decency Act [which was not voided in Reno v. ACLU, 521 U.S. 844 (1997)] exempts ISPs from liability for defamation on the basis of content published by others that is accessed or transmitted via their facilities. And Section 231(b) of the Communications Act [the Child Online Protection Act, which has been stayed but not yet voided by the courts] exempts from liability, telecommunications carriers, ISPs and others "similarly engaged in the transmission, storage, retrieval, hosting, formatting or translation (or any combination thereof) of a communication made by another person, without selection or alteration of the content of the communication."

ISPs operate "facilities that provide end-users with access to an interstate public or private network, regardless of whether the connection is circuit-switched, packet-switched, wireline or wireless, or leased line." In other words, ISPs provide "connections" under the definition proposed in paragraph 76 of the FNPRM.

When ISPs were fledgling enterprises in the 1990s, the Commission declined to regulate them, and gave them a free ride on the public switched network by exempting them from access charges and USF contributions. The ISP industry has now grown and developed to a point where it is no longer equitable or economically rational to continue the free ride. The ISP industry has developed large customer and revenue bases of its own. It should no longer be "subsidized" by being given access to local exchange facilities without paying access charges or making USF contributions, and thereby forcing the direct and shared costs of its usage to be borne by LECs, their customers, and other USF contributors. Likewise, if ISPs are to be healthy and sustainable businesses, they must be responsible for determining and paying all of their costs, and making their service, pricing and investment decisions on the basis of such actual costs.

D. Cable Moderns and Other Broadband Service Providers

Cable modem service providers and other broadband service providers also use the local exchange network supported by the USF to terminate significant portions of their traffic. In addition, these service providers derive substantial value from the fact that their customers can communicate with households and businesses that are connected to the public network because of universal service programs. Therefore, they should be rewired to contribute to the USF.

In sum, the Western Alliance reiterates that all telecommunications carriers and service providers that significantly use and benefit from the local exchange network facilities supported by the USF and/or that impose significant costs upon these facilities should be required to contribute to the USF. This group includes major existing contributors **like** the LECs, IXCs and wireless carriers, as well as ISPs, cable modems and broadband service providers. Because the composition of the USF contributor base will significantly affect the advantages, disadvantages, impacts and burdens of the various revenue-based and connection-based mechanisms under consideration in this proceeding, the pending contributor base issues need to be resolved before the mechanism options can be adequately analyzed and considered.

IV

Do Connections Constitute A More Sustainable And Equitable Basis For USF Financing Than Revenues?

The Western Alliance believes that it is prudent for the Commission to continue to explore "connections" and other alternative mechanisms for financing the USF in a further stage of this rulemaking. Thorough analysis of a variety of options will enable the commission to select the mechanism that best satisfies the two primary goals of a USF contribution mechanism - namely (1) sustainability of a sufficient USF in the long run; and (2) equitable treatment of both direct and indirect contributors. However, particularly due to the continuing shifts of access cost recovery to the USF and the unchecked growth of portable USF for CETCs, the Western Alliance does not believe that there is sufficient information and analysis available at the present time to make an intelligent, long-term choice among connection-based and revenue-based mechanisms.

A. Lone Run Sustainability

To be sustainable in the long run a USF financing mechanism must have a contribution base that will grow in a manner congruent with the size of the Fund itself. If the base grows at roughly the same rate as the Fund, contribution rates (whether expressed in terms of a charge per connection or a percentage of revenues) will remain relatively stable. However, if the base "grows" at a rate much slower than the Fund, contribution rates will have to be increased steadily and will ultimately rise to levels that will generate resistance and avoidance behavior.

The Western Alliance is concerned that the growth patterns of "connections" may not be capable of financing a sufficient USF at stable contribution rates. It has found the typical growth pattern of communications delivery technologies to be comprised of an early period of steep growth in the number of "connections" during the adoption phase, and then a leveling off onto a plateau as penetration rates stabilize with maturity. For example, wireline "connections" constitute a mature delivery technology that is not growing significantly, and that may actually decline as digital subscriber loop ("DSL") and wireless services reduce the demand for second lines. Likewise, wireless "connections" may still be increasing, but their rate of growth is slowing and may level off at a penetration level far below the 94-95 percent level achieved by wireline service. Finally, ISP, cable modem and broadband "connections" appear to be still in the growth phase, but there are some signs that their penetration plateau may be considerably below the 94-95 percent level.

If "connections" in fact comprise a relatively slow-growing contribution base, they will not be able to finance the current rapidly growing USF in a stable and efficient manner. If replacement of access charges by "bill and keep" and/or increasing portable support to CETCs add further billions of dollars to the USF, contributions will have to be set far above the Commission's target of 51.00 per month per "connection," and/or excessive residual financing burdens will have to be imposed upon multi-line business customers. Even if the Commission stops transferring cost recovery from access charges to the USF and stops encouraging grant of CETC status in rural areas to all who ask, normal inflationary forces will cause the size of the USF to increase somewhat over time.

Wireline Access Lines. At the present time, wireline access lines comprise the major component of "connections." As indicated by Commission data for total U.S. access lines, their numbers and growth have been declining during recent years:

<u>Year</u>	<u>Total U.S. Access Lines</u>	<u>Annual Growth</u>
1995	158,219,924	4.4%
1996	165,420,650	4.6%
1997	173,890,908	5.1%
1998	180,471,261	3.8%
1999	186,658,645	3.4%
2000	188,626,589	1.1%
2001	179,746,541	-4.7%

SOURCE: Industry Analysis and Technology Division, Trends in Telephone Service (May 2002), at Table 8.1

Competitive local exchange carrier ("CLEC") growth has not been sufficient to offset these recent wireline declines. Commission data for LLEC and CLEC end-user switched access lines show similar slow growth and recent declines:

<u>Date</u>	<u>ILEC Lines</u>	<u>CLEC Lines</u>	<u>Total Lines</u>	<u>Growth Rate</u>
Dec 1999	181,307,695	8,194,243	189,501,938	
June 2000	179,761,930	11,557,381	191,319,311	0.96%
Dec 2000	177,683,672	14,871,409	192,555,081	0.65%
June 2001	174,485,706	17,274,727	191,760,433	-0.41%
Dec. 2001	172,043,582	19,653,441	191,697,023	0.00%
June 2002	167,472,318	21,644,928	189,117,246	-0.01%

SOURCE: Industry Analysis and Technology Division, Local Telephone Competition: Status as of June 30, 2002 (December 2002) at Table I

Wireless Connections. In contrast to wireline "connections," wireless "connections" grew rapidly during the last half of the 1990s, but their rate of growth appears to be slowing during recent years. Recent Commission data (derived from Cellular Telecommunications and Internet Association surveys) indicate:

<u>Date</u>	<u>Estimated Wireless Subscribers</u>	<u>Growth Rate</u>
June 1995	28,154,415	16.7%
Dec. 1995	33,785,661	20.0%
June 1996	38,195,466	13.1%
Dec. 1996	44,042,992	15.3%
June 1997	48,705,553	10.6%
Dec. 1997	55,312,293	13.6%
June 1998	60,831,431	9.8%
Dec. 1998	69,209,321	13.8%
June 1999	76,284,753	10.2%
Dec. 1999	86,047,003	12.8%
June 2000	97,035,925	12.8%
Dec. 2000	109,478,031	12.8%
June 2001	118,397,734	8.1%
Dec. 2001	128,374,512	8.4%

SOURCE: Seventh Report (Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services), FCC 02-179, released July 3, 2002, at Appendix C, Table 1

Internet connections. After growing rapidly during the late 1990s, Internet "connections" have exhibited spotty growth patterns since 2000. The total number of U.S. households subscribing to online services rose from 63.2 million at the end of September 2000 to 70.7 million at the end of June 2001, and then fell to 67.9 million at

the end of September 2001. Jupiter Research, CyberAtlas (November 15, 2001). Whereas the numbers of DSL and cable modem connections are increasing, the paid dial-up ISP and satellite sectors have been stagnant, while the free ISP and Internet TV sectors have declined sharply ld. At the end of the Third Quarter 2001, Internet connections were as follows:

<u>Technology</u>	<u>Customers</u>	<u>Growth during 0 3 2001</u>
Paid Dial-Up ISP	53,294,752	2.1%
Free ISPs	4,850,000	-46.7%
Cable Modems	5.3 14,909	7.7%
Internet TV	8 12,000	-33.6%
DSL	3,524,000	13.1%
Satellite	1 14,000	0.0%
TOTAL	67,909,661	-3.9%

SOURCE: Jupiter Research, CyberAtlas (November 15, 2001)

In sum, the total number of applicable “connections” does not appear likely to grow very rapidly during the foreseeable future. The principal current component of connections-based mechanisms -- wireline access lines – constitutes a mature delivery technology that has grown slowly during the past decade and that is likely to decline during the next few years. And although wireless connections grew rapidly during the 1990s, this growth is also slowing as the wireless industry matures. Whereas some wireless carriers may continue to add subscribers, much of this “growth” may come at the expense of other wireless and wireline carriers, and therefore not significantly increase the total number of connections. Internet growth has also been spotty, with DSL and cable modem providers taking many of their new subscribers from slower-speed Internet services. There are some in the Internet industry who believe that *70 million customers* is close to the upper limit of the Internet market, while others believe that there will be at least one more period of significant growth once the present shake-out is completed

Hence, unless a new telecommunications delivery system enters the market and wins wide acceptance, the total number of “connections” is not likely to increase significantly during the foreseeable future. Moreover, the preference of many customers for “one-stop shopping” may actually produce fewer total “connections” (albeit, at higher rates per connection) as customers consolidate multiple services into a single provider and a single connection.

Contrast: Revenue Base. With the exception of 1997, interstate and international telecommunications revenues grew steadily at a 6-to-7 percent rate from 1993 to 2000.

<u>Year</u>	<u>Interstate/International Revenues</u> <u>(Millions of Dollars)</u>	<u>Growth Rate</u>
1993	\$ 75,933	6.9%
1994	\$ 80,611	6.2%
1995	\$ 86,224	7.0%
1996	\$ 94,407	9.5%
1997	\$ 97,514	3.3%
1998	\$ 104,284	6.9%
1999	\$ 111,293	6.7%
2000	\$ 119,745	7.6%

SOURCE: Industry Analysis and Technology Division, Trends in Telephone Service (May 2002) at Table 16.2.

It is possible that telecommunication revenues have decreased during the general economic downturn of 2001 and 2002. However, any such decline may right itself as general economic conditions improve.

One factor that may produce revenue increases in the future is the trend in the telecommunications industry for the provision of additional and higher quality services over existing facilities and connections. For example, wireline telephone carriers are offering an increasing variety of voice and data services over traditional copper lines. Likewise, wireless carriers are adding instant messaging, data services and Internet

access to their mobile voice services. These additional services should significantly increase revenues per connection, and produce continued growth in a revenue base even if the number of connections remains relatively constant or declines.

The principal drawback of a revenue-based mechanism is that it is increasingly difficult to determine interstate and international revenues as carriers bundle greater and greater numbers of intrastate, interstate and international voice, data and non-telecommunications services into integrated packages. One potential solution to this problem is the development of “safe harbors” for service packages similar to those presently used to estimate the interstate component of various wireless services. The Commission and/or USAC could conduct surveys or studies with respect to common categories of service packages, and specify reasonable “safe harbors” for each category. Individual service providers would then have the option to use the “safe harbor” formula to estimate their interstate and international revenues, or furnish their own specific usage studies to support a different formula.

B. Equitable Considerations

The second major criterion with which to compare connection-based and revenue-based mechanisms is equity. That is, which mechanism places more fair and equitable burdens on telecommunications customers as a whole and/or various classes of telecommunications customers?

As a threshold matter, connections-based mechanisms may be regressive with respect to residential connections because they will place the same contribution upon each individual or household “connection” regardless of the pricing or usage of the “connection.” In contrast, the existing revenue-based mechanism places the same

proportional contribution burden on each residential and business customer – equal to a specified percentage (currently, 7.2805%) of the price of the interstate and international services used during each billing period by the customer.

Second, the connection-based mechanisms proposed by the Commission appear to place an excessive burden upon multi-line business customers. Particularly if the Commission attempts to keep the total direct or indirect contribution applicable to households and single-line businesses under a connection-based mechanism at \$1.00 per month or so, it is likely that the residual burden borne by multi-line business customers will be large. The Western Alliance is concerned that excessive USF contributions may drive some multi-line business customers off of the network or reduce the amount and capacity of the services they use. If this occurs, it will reduce both general telecommunications revenues and USF contributions, and force the residential and business customers remaining on the network to pay higher rates and make larger USF contributions.

Third, the various capacity categories and contribution weights used to determine the contributions of multi-line business customers in a connections-based mechanism appear to have little relationship to the value of the associated services. For example, if the tier plan proposed in Paragraph 81 of the FNPRM were implemented, would it be rational for a business using service with a capacity of 4 Mbps (and paying 16 USF assessments) to upgrade its service to 7 Mbps (and pay **224** USF assessments)? At the various tier boundaries, would increases from "1" to "16" to "224" to "336" USF assessments deter or postpone service upgrades? And even if the category boundaries

and weighted assessments were reasonable at the time of their adoption, would changes in technology and usage patterns render them obsolete or disruptive over time?

In sum, the jury is still out on the "revenues" versus "connections" question. If the size of the USF continues to grow rapidly due to "access reform" and portable USF, there are serious questions about the long-term sustainability of both types of mechanisms, but particularly about options based predominately upon wireline and other slow growing types of connections. If the applicable "connections" are growing slowly, per-connection contributions will not remain stable as the size of the USF grows. This will be a significant problem if USF growth is limited to normal inflationary pressures. It will become a huge problem if portable CETC support, access "reform" and similar programs continue adding millions or billions of dollars to the USF.

Whereas "revenues" have also grown more slowly than the USF, they presently appear much more likely than "connections" to be capable of growth in the long-term. The Commission needs to explore whether use of "safe harbors" to estimate the interstate portion of the revenues of bundled service packages will solve some of the shortcomings of the existing revenue-based mechanism. It also should consider whether the broadening of the base of USF contributors to include ISPs, cable modems and other broadband service providers in addition to LECs, IXC's and wireless carriers will produce an more sustainable and equitable revenue-based mechanism..

V

"Splitting Connection-Based Contributions Between Switched Transport And Access Providers" Option

If forced to choose among the three connections-based mechanisms upon which the Commission has requested comment, the Western Alliance would select the "Splitting

Connection-Based Contributions Between Switched Transport And Access Providers” option, which could also be denoted as the “Modified SBC/BellSouth Plan.” However, this choice is made with reservations, particularly that the broad base of contributors designated by SBC and BellSouth not be narrowed by excluding Internet access providers and others and that the “different capacity tiers for different types of connections” be defined so that its feasibility and impacts can be analyzed.

The Modified SBC/BellSouth Plan is the only one of the three options that complies with Section 254(d) of the Act. If the assumptions of the Commission’s staff study are accurate, the “Connections-Based Methodology with Mandatory Minimum Obligations” option (or “Modified CoSUS Plan”) would place the predominant Contribution burden upon local exchange carriers (incumbent and competitive) and wireless carriers, while reducing the contribution burden of IXCs from above 50 percent to a mere 22 or 23 percent. The “Telephone Number-Based Assessments” option (or “AT&T Plan”) would also place the predominant contribution burden upon local exchange carriers and wireless carriers, while slashing the contribution burden of IXCs to an even smaller 13 or **14** percent.

Claims by IXCs that they do not have access to the information needed to determine their contribution obligation under the SBC/BellSouth Plan are nonsense. IXCs and their billing agents know what services and facilities the IXCs sell to their customers, and bill and collect for them accordingly. They know the numbers, identities, *rates and services* of their presubscribed customers, as well as the numbers **and prices** of the dial-around calls they originate and the debit cards they sell. They can obtain all the

connection and capacity information they need to calculate their USF contribution from their own customer account data.

A critical and material element of the SBC/BellSouth Plan was that Internet access providers be required to contribute to the USF. The FNPRM deletes this portion of the Plan, indicating that “we do not propose at this time to directly assess information service providers” FNPRM at para. 87. As detailed above, the Commission has express authority in Section 254(d) to require Internet access providers to contribute to the USF, and should further the public interest by requiring Internet access providers and all other service providers that benefit from the Universal Service program to contribute to it. The Commission should not continue to duck or delay this decision, but should broaden the base of USF contributors now so that the sufficiency and impacts of all the revenue-based and connection-based contribution options can be fully and accurately analyzed before the critical selection is made

The Commission also needs to clearly specify and seek comment upon the “different capacity tiers for different types of connections” that would govern the Modified SBC/BellSouth Plan. FNPRM at para. 87. **Like** the nature and identity of the contributor base, this determination is necessary for full and accurate analysis of the sufficiency and impacts of the option. As detailed above, the Western Alliance is concerned that the boundaries and weightings of various capacity tiers will not accurately reflect customer valuation of services, and that they will adversely impact purchase and upgrade decisions at or near the tier boundaries. Moreover, even if a capacity tier structure might initially be accurate, it can become inaccurate and disruptive as technology and usage patterns change.

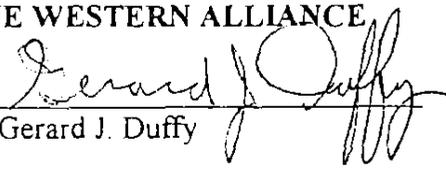
VI

Conclusion

The Western Alliance vigorously supports the Commission's efforts to develop a contribution mechanism that will sustain the USF in the long run. However, before a feasible contribution mechanism can be selected, the Commission must address the growth of the USF and the composition of the contributor base. Until these critical matters *are* resolved, it is not possible to analyze the feasibility, sustainability and equity of the various "revenue-based" and "connection-based" options. Therefore, the Western Alliance asks the Commission to resolve the pending access "reform," USF portability and USF contributor base proceedings as rapidly as possible; and to use the current round of comments to develop a specific proposed "revenue-based" or "connection-based" contribution mechanism that can be placed before the industry for comment and analysis. Whereas the Western Alliance agrees that the problems with the USF contribution mechanism must be resolved soon, the issue of sustainable USF funding is too important to Rural America for this critical decision to be made on the basis of the unanswered questions and still-too-vague proposals presently before the Commission.

Respectfully submitted,

THE WESTERN ALLIANCE

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CERTIFICATE OF SERVICE

I, Kelly Laraia, hereby certify that copies of the foregoing "Comments of The Western Alliance" were served on this 28th day of February 2003, to the persons listed below:

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The Honorable Kathleen Q. Abernathy, Commissioner
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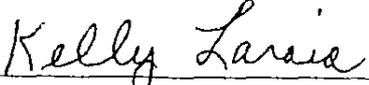
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