

**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)	CC Docket No. 98-171
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)	CC Docket No. 90-571
Disabilities Act of 1990.)	
)	
Administration of the North American)	
Number Plan and North American)	CC Docket No. 92-237
Numbering Plan Cost Recovery)	NSD File No. L-00-72
Contribution Factor and Fund Size.)	
)	
Number Resource Optimization)	CC Docket No. 99-200
)	
Telephone Number Portability)	CC Docket No. 95-116
)	
Truth-in-Billing and Billing Format)	CC Docket No. 98-170

**NASUCA's REPLY TO
OPPOSITIONS TO PETITIONS FOR RECONSIDERATION**

The National Association of State Utility Consumer Advocates (“NASUCA”)¹ replies to a key issue raised in the comments and Oppositions to Petitions for Reconsideration filed in these dockets by various parties.² The Oppositions and comments addressed various Petitions for Reconsiderations filed by Ad Hoc, AT&T, Nextel, SBC, USTA and Verizon Wireless (“Verizon Wireless”)³ regarding the December 13, 2002 Report and Order (“USF Contrib Mech R&O”) in these dockets.⁴ This Reply to Oppositions -- like NASUCA’s own Opposition -- addresses the attempts of some parties to reverse or limit the decision of the Federal Communications Commission (“Commission”) prohibiting markups of interstate carriers’ USF line items on customers’ bills. USF Contrib Mech R&O, ¶¶ 45.⁵

NASUCA opposes WorldCom’s suggestion (at 3) that the Commission should have immediately adopted a connection-based mechanism, rather than try and improve

¹ NASUCA is an association of 42 consumer advocates in 40 states and the District of Columbia. NASUCA’s members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. See, e.g., Chapter 4911, Ohio Rev. Code.

² Oppositions and comments were filed by Ad Hoc Telecommunications Users Committee (“Ad Hoc”), AOL Time Warner Inc. (“AOL”), AT&T Corp. (“AT&T”), ACUTA, Inc.: The Association for Communications Technology Professionals in Higher Education (“ACUTA”), the Cellular Telecommunications & Internet Association (“CTIA”), EarthLink, Inc. (“EarthLink”), Nextel Communications Inc. (“Nextel”), SBC Communications Inc. (“SBC”), Sprint Corporation (“Sprint”), the United States Telecom Association (“USTA”), Verizon Wireless (“Verizon Wireless”) and WorldCom, Inc. (“WorldCom”). Notably, the Commission’s rules provide for “[o]ppositions to petitions for reconsideration” (47 C.F.R. § 1.429(f)). The rules do not provide for comments *in support of* other parties’ petitions for reconsideration, which many of the comments discussed herein appear to be.

³ Verizon Wireless filed a Petition for Reconsideration but Verizon did not.

⁴ Report and Order and Second Further Notice of Proposed Rulemaking, FCC 02-239 (rel. December 13, 2002).

⁵ Failure to address here any particular argument raised in the Oppositions or comments should not be deemed to be acquiescence to that argument.

the revenue-based mechanism. Within the context of the Petitions for Reconsideration, however, NASUCA agrees with WorldCom that, in this proceeding,

Some parties opposed a connection-based plan, the Commission did not adopt it, and all carriers must now adapt to an interim contribution and recovery measure. No carrier is untouched by the additional investment required to cope with the new "no averaging" rule, and petitioners have not provided a sufficient basis for why they should be exempt from it.

WorldCom at 3.⁶

WorldCom shows starkly (at 4-6) why each of the various Petitions for Reconsideration is really a plea for special treatment for a particular segment of the industry -- SBC for companies that currently assess a flat-rated USF charge, Verizon Wireless for wireless carriers, Nextel for companies that serve governmental customers, and USTA for a variety of ILEC interests. Each company urges the Commission to view its special issue as important for competition, whereas, as WorldCom correctly notes (at 3), each such exemption actually provides the carrier with a competitive advantage.

AT&T correctly shows (at 5-7) that giving relief to one class of carriers is anti-competitive, but does not seem to realize that its "unbillables" issue is just a request for special treatment.⁷ CTIA (at 3-4) supports Nextel's and Verizon Wireless' issues favoring wireless carriers, but adds nothing to their arguments.

On behalf of all carriers, WorldCom argues (at 7) that the Commission should not limit line items that include the costs of USF administration. Dr. Seidel's affidavit filed

⁶ Evidently, WorldCom -- like many other carriers -- did not view the investment as excessive enough to justify its own Petition for Reconsideration.

⁷ As NASUCA pointed out in its Opposition, AT&T now has the ability to base its assessed revenues on its own projections of collected revenue. To the extent, then, that AT&T overprojects its collected revenue, it has only itself to blame.

with NASUCA's Opposition showed how such line items are not in the public interest.

Seidel Affidavit at ¶ 14. Nextel, for its part, fervently argues that Ad Hoc's sales tax analogy is "wholly irrelevant" to this proceeding. Nextel is incorrect: the sales tax analogy shows that, in the real world, firms operate with specific governmentally-directed line items *and survive without including a line item for the administrative costs thereof*.

Nextel (at 6-10) supports -- at length -- Verizon Wireless' constitutional argument, but adds nothing to the argument.⁸ The argument is substantially undercut by the U.S. Supreme Court's recent denial of *certiorari* on an appeal from the decision of the Tennessee Supreme Court upholding a Tennessee Regulatory Commission order requiring ILECs to include the logos of CLECs on the covers of the ILECs' telephone books. *BellSouth Ad. & Pub. Corp. v. Tenn. Reg. Auth.*, 79 S.W.3d 506 (2002), *cert. den.* 2003 US LEXIS 1128, 71 U.S.L.W. 3547 (US February 24, 2003). The Tennessee Supreme Court stated:

[T]he governmental interest in this case is important, indeed, for informing consumers about their choices in the local telecommunications service market is a fundamental aspect of promoting free competition. Moreover, the government's chosen means to advance its goals, the requirement that logos of competing telecommunications service providers be displayed on equal footing with BellSouth's logo, does not substantially affect BellSouth's ability to communicate its own speech to customers in the market. Given the significant weight of the governmental interest and the relatively narrow impact of the orders in this case, we conclude that the TRA's orders are not unduly burdensome.

⁸ Especially with regard to the fact that wireless customers are similarly situated to wireline customers, in their need for uniform USF line items, as addressed in the Seidel Affidavit attached to NASUCA's Opposition. Seidel Affidavit at ¶¶ 7-10.

79 S.W.3d at 522. A similar analysis shows the Commission's prohibition on markups for USF line items to be well within the proper bounds of regulation of commercial speech.

Verizon attempts to add substance to the notion that converting to "pure" USF line items will be expensive, by stating that "Verizon estimates they will take some 5,000 person-hours to accomplish." Verizon at 4.⁹ This is no more credible than SBC's estimate of 4,000 person-hours for the Ameritech region alone.

SBC's comments on the Petitions for Reconsideration basically represent support for SBC's own Petition for Reconsideration. SBC at 2. Although SBC acknowledges that "the Commission's new rule is nothing more than a logical extension of the Commission's longstanding requirement that no carrier is permitted to shift an unreasonable share of its contribution obligation to any customer or class of customers..."¹⁰ SBC does not realize that its own request to average collections across a class of customers also violates that logical extension.

Joining AT&T on the "rounding" issue, SBC points out that end-user payments are limited to 2 decimal places. SBC at 5. SBC misses the point. Although it is true that for a consumer with a \$1.00 interstate bill a contribution factor that goes to the third decimal place (.001, or 0.1%) will be lost, if the customer has a \$100,000 interstate bill, there can be more decimal places to the contribution factor. In any event, this does not provide any more support than AT&T originally had for allowing carriers to round up their USF contribution line items, rather than rounding down.

⁹ Despite its concerns, Verizon did not file a Petition for Reconsideration on this issue.

¹⁰ SBC at 7, citing *Federal-State Joint Board on Universal Service*, CC Docket 96-45, Report and Order, 12 FCC Rcd 8776, ¶ 829 (1997).

Conclusion

AOL correctly points out (at 3) that “[n]one of the petitions provide any new or compelling evidence to warrant reconsideration of the Commission’s decision.” See also EarthLink at 4. AOL further correctly points out (at 5) that “[t]he limits on the pass-through contained in the *Report and Order* reasonably prevent carriers from attempting to use the pass-through as a means effectively to raise rates or to discriminate against certain services, customers or classes of customers.” As EarthLink notes (at 2), “the *Report and Order* approach is vastly superior [to] the prior law because it will increase billing transparency, eliminate fraudulent practices, and decrease confusion for customers.”

AT&T asserts that the billing changes necessitated by the prohibition on markups “will not be necessary if the Commission moves to a connection-based assessment mechanism along the lines of the CoSUS proposal, or the modified numbers-based contribution mechanism proposed by AT&T and Ad Hoc.” AT&T at 4. Yet none of the connection-based proposals discussed by the Commission would allow markups on the connection-based assessments. Equally importantly, under all three proposals discussed by the Commission -- and as studied by the Commission Staff¹¹ -- there remain significant revenue-based components that may or may not apply to a particular carrier depending on the Commission’s ultimate decision, which carriers will undoubtedly seek to recover in line items.

NASUCA has consistently argued that the Commission should forbid carriers from placing any USF line items on customers’ bills. See, e.g., Initial Comments (June

¹¹ See Public Notice released February 26, 2003 in these dockets.

25, 2001) at 7-17. The Commission's December 2002 ruling was, from the consumer perspective, preferable to the carriers' proposals that they be allowed to include company-determined markups on USF line items (see USF Contrib Mech R&O, ¶ 43, n. 120). The carriers' proposals are repeated in the pending Petitions for Reconsideration. On the issue of additional line items for USF administrative costs, NASUCA would again refer the Commission to Dr. Seidel's affidavit (at ¶ 14) and agree with ACUTA that "administrative surcharges" should not be allowed "because the costs to carriers to collect universal service contributions are a cost of doing business." ACUTA at 2.

Respectfully submitted,

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March 10, 2003

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Opposition to Petitions for Reconsideration was served by first class mail, postage prepaid, to the parties identified below this 10th day of March 2003.

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