

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

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

Reply to Oppositions to Petition For Reconsideration

The Ad Hoc Telecommunications Users Committee (hereinafter “Ad Hoc” or the “Committee”), pursuant to section 1.429 of the Commission’s Rules, hereby replies to oppositions to Ad Hoc’s January 29, 2003 Petition for Limited Reconsideration of the Commission’s December 13, 2002 Report and Order and

Second Further Notice of Proposed Rulemaking, in the above-captioned proceedings.¹

Ad Hoc asked that the Commission reconsider the Report and Order by establishing a “presumptively” reasonable level at or below which providers’ universal service fund (USF) administrative cost surcharges would be considered not misleading and not an unreasonable practice. Data submitted by Ad Hoc justify a presumptively reasonable USF administrative cost surcharge no higher than one percent (1%) of the amount of money carriers collect for remittance to the USF. Ad Hoc suggested that USF-related administrative cost surcharges above that level could give rise to Commission sanctions for misleading and unreasonable carrier practices, absent carrier justification.

Nextel, AT&T, WorldCom and SBC oppose Ad Hoc’s petition. They argue that the Commission should deny Ad Hoc’s petition because (a) Ad Hoc seeks and “over the top” rate prescription;² (b) Ad Hoc’s request is inconsistent with the Commission’s decision not to regulate the rates of non-dominant carrier;³ and (3)

¹ *Federal State Joint Board on Universal Service*, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 02-329, released December 13, 2002 (hereinafter the *Report and Order*). In some instances a party’s opposition to Ad Hoc’s Petition is within a document titled “comments” rather than “opposition. Ad Hoc accordingly replies to “oppositions” whether or not the oppositions are titled as such.

² Nextel, Opposition To And Comments On Petitions For Reconsideration, at 2-5.

³ AT&T, Comments On Petitions For Reconsideration And Clarification, at 7-8; WorldCom merely concludes at page 7 of its Comments On Petitions For Reconsideration that there is no basis for Commission reconsideration of its decision to allow carriers to recover their USF-related administrative costs through their rates or a separate line item. Although Ad Hoc believes that the Commission made a significant error in allowing carriers to recover their USF-related administrative cost through a separate line item, Ad Hoc did ask the Commission to reconsider that portion of the *Report and Order*. Instead, Ad Hoc’s petition addresses the absence of any presumptive restriction on the level of USF-related administrative cost charges.

Ad Hoc fails to account for the “enormous” one-time costs associated with implementing the Commission’s new line item requirement.⁴

These parties have not refuted the need for the reconsideration sought by Ad Hoc. Indeed, the record and developments since Ad Hoc filed its Petition for Limited Reconsideration confirm Ad Hoc’s fear that at least one major carrier may use a separate, grossly inflated, misleading “administrative” charge to enhance profitability, rather than recover legitimate USF-related administrative costs. In so doing, carriers would be engaged in a practice that is as unreasonable as their unjustified mark-ups of the Commission prescribed USF assessment factor. If the Commission allows carriers to impose such charges, it should not be surprised if consumers infer that the Commission is responsible for such charges.

Nextel and AT&T are wrong when they argue that any Commission oversight of their USF-related administrative charges would be inconsistent with their status as non-dominant carriers. The Commission has advised non-dominant carriers that they are still subject to complaints and the Commission’s jurisdiction.⁵ In fact, there are already instances in which the Commission has intervened to police unreasonable practices by non-dominant carriers.⁶ Of course, the most recent of these interventions is the *Report and Order* in which

⁴ SBC Comments at 4.

⁵ *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96-61, 11 FCC Rcd 20730 (1996); recon. 12 FCC Rcd 15014 (1997); *Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Service*, GEN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411 (1994).

the Commission concluded that its responsibilities preclude reliance on marketplace forces to prevent inflation and mischaracterization of the Commission prescribed USF assessment factor. Obviously, and contrary to AT&T's assertion, market forces do not always prevent or correct abuses.⁷

The questions before the Commission as a result of Ad Hoc's petition are whether the carriers who oppose Ad Hoc's petition are likely to use the USF-related administrative charge to improve their profits, rather than merely cover those costs, and if so, what steps should the Commission take to prevent such an unreasonable practice. AT&T recently filed a revision to its VTNS option 196 that suggests that AT&T may plan on unreasonably inflating its USF-related administrative charge.⁸ Therein AT&T states that absent further changes from the FCC it will cap its USF-related administrative charge at one percent of the customer's interstate and international revenues. Given AT&T's often-stated claim that constraints in its billing systems prevent it from quickly effecting possible FCC mandated changes, it is at least unlikely that AT&T would treat other customers differently. In effect, AT&T implies that the Commission's regulatory USF-related requirements are so complex that it will incur enormous costs, perhaps in the range of one percent of interstate and international revenues. If AT&T were, however, to impose a USF-related administrative

⁶ 47 U.S.C. §258(a); *MCI WorldCom*, File No. ENF 99-04, DA No. 00-446, (Enforcement Bureau, rel, Mar. 1, 2000).

⁷ AT&T Comments at 7-8.

⁸ AT&T VTNS Option 196, section 7.198.1. Accessed March 12, 2003, <http://serviceguide.att.com/ndcaict/view.cfm?cid=31232>.

charge of one percent of its interstate and international revenues, it would realize revenues far in excess of that needed to cover its USF-related administrative costs.

SBC's petition and USTA's petition provide proof that a USF-related administrative charge of one percent of interstate and international revenues would deceive the public by creating the impression that the administrative costs that carriers incur to support contributions to the universal service fund (USF) are much higher than actually is the case. USTA notes that one of its members has suggested that the Commission adopt, "[a] safe harbor percentage of the *contribution amount* that the carrier collects (e.g., 2%)."⁹ SBC insists on the right to recover its "enormous" one-time implementation costs and asserts that the Commission should allow carriers, "[t]o withhold a small amount (e.g., 1%) from their contributions to reflect administrative costs related to the universal program."¹⁰ Indeed, SBC acknowledges that Ad Hoc's estimate of the recurring administrative costs associated with collecting and remitting to the USF may be true.¹¹ SBC takes issue with Ad Hoc's estimate because it would not, in SBC's view, compensate it for its "enormous" one-time implementation costs.¹²

The first point to note is that both SBC and the un-named USTA member estimate the recurring collection and remittance costs to be much lower than that implied in AT&T's apparent plan to impose a USF-related administrative charge

⁹ USTA Petition at 8, emphasis added.

¹⁰ SBC Comments at 7.

¹¹ *Id.*, at 6.

of about one percent. If AT&T's annual interstate and international revenues are approximately \$20 billion, one percent of that amount would be \$200 million a year.¹³ If AT&T's contribution to the USF is nine percent of its interstate and international revenues, it would contribute \$1.8 billion annually; and if AT&T were persuaded to impose an administrative charge of one percent on its annual USF contribution, AT&T would collect \$18 million for administrative costs. No one, not even AT&T, can honestly contend that billing and collecting its USF contributions will be closer to \$200 million, rather than the still generous \$18 million.

As for the *one-time* implementation costs alleged by SBC, they are far less than the difference between \$200 million and \$18 million. SBC's petition for reconsideration states that its preliminary estimate is that 4,000 man-hours will be required to complete the necessary programming changes in the Ameritech region alone, and that it expects similar workload requirements in its other four regions. SBC has utterly failed to justify the 4,000 man-hour estimate, let alone the assertion that none of the work done in the Ameritech region will reduce the workload in its other regions. Nevertheless, Ad Hoc will accept SBC's estimate for purposes of illustrating how grossly excessive a one percent of revenues, as opposed to one percent of USF contributions, would be. A fully loaded hourly

¹² *Id.*

¹³ The most recently reported Commission data on AT&T revenues identifies a total of \$33.3-Billion in Operating revenues for 2001 (2001 SOCC, Table 2.1). Assuming that AT&T's distribution of interstate, international, and intrastate revenues mirrors the industry in total, (48.4% interstate, 21.5% international, 30.1% intrastate – FCC IAD Trends in Telephony, Table 10.2), approximately \$23-Billion of the \$33-Billion total would be generated by interstate and international services. For purposes of being very conservative in this pleading, Ad Hoc reduces AT&T interstate and international revenues to an estimated \$20 Billion.

cost of \$150 per hour for programming functions is very generous.¹⁴ Thus, SBC's one time costs for billing system changes would not exceed \$3 million (\$150 X 20,000 hours). Even if that estimate were doubled to account for changes to customer care and other related systems, SBC's total one-time costs would be only \$6 million – obviously far less than the amount which could even theoretically justify exogenous cost treatment and certainly far less than the difference between \$200 million (1% of AT&T's interstate and international revenues) and \$18 million (1% of AT&T USF contribution, assuming a USF assessment factor of 9%).

The foregoing actually understates the level of “over-reaching” by long distance carriers that would occur in the name of administering collection and remittance of the Commission mandated USF program if they impose administrative charges of even half of one percent of interstate and international revenues. Exchange carriers may encounter higher one-time costs than long distance carriers, given the additional de-averaging correctly mandated by the *Report and Order*. The long distance carriers will simply add another percentage surcharge to their long distance bills. By any stretch of even the carriers' fertile imaginations, none of them can reasonably claim to incur \$6 million of one-time implementation costs to impose that additional charge on their customer's bills.

¹⁴ The generosity of \$150 per hour is corroborated by review of the GSA contract fully-loaded ceiling rates for currently effective IT contracts. See, the GSA Functional Area 4 Ceiling Labor Rates (fully-loaded) for the period June 2002 to June 2003. Those rates vary from a low of about \$30 per hour for a “software engineer – associate” to a high of \$136 for a “software developer – lead.” Taken from: http://www.gsa.gov/Portal/content/offerings_content.jsp?contentOID=120863&contentType=1004, Accessed March 10, 2003.

And as the SBC and USTA pleadings show, the recurring collection and remittance costs, particularly given the carriers' goal of not incurring any uncompensated cost related to collecting and remitting USF contributions, are minor and consistent with Ad Hoc's estimate of one percent of USF contributions.

Finally, Ad Hoc has not, as alleged by Nextel, urged the Commission to prescribe rates or even rate structures.¹⁵ Instead, as stated in its Petition for Limited Reconsideration, Ad Hoc, "[s]uggests that the Commission establish a "presumptively" reasonable level at or below which carrier USF administrative cost surcharges would be considered not misleading and not an unreasonable practice."¹⁶ Ad Hoc did not ask the Commission to prescribe a particular administrative surcharge; nor did the Committee urge the Commission to limit how carriers may recover their administrative costs. Neither the Commission nor the Courts have previously found that the approach suggested by Ad Hoc constitutes a rate prescription, even though, as explained by the Committee, this exact approach was utilized in the AT&T and local exchange carrier price cap orders.¹⁷ Commission establishment of a presumptive level of reasonableness would, however, do much to deter carriers from implicitly using the USF program to enhance their profitability.

¹⁵ Nextel, Opposition To And Comments On Petitions For Reconsideration, at 2-5.

¹⁶ Ad Hoc, Petition For Limited Reconsideration, at 8.

¹⁷ *Id.*

In view of the foregoing, Ad Hoc reiterates its request that the Commission grant Ad Hoc's Petition For Limited Reconsideration in the above-captioned proceeding.

Respectfully submitted,



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Certificate of Service

I, Michaeleen I. Williams, hereby certify that true and correct copies of the preceding Reply to Opposition to Petition for Reconsideration of the Ad Hoc Telecommunications Users Committee was served this 13th day of March, 2003 via the FCC's ECFS system, and by first class mail upon the following:

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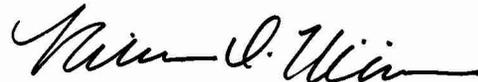
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