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 No. 98-170

JOINT REPLY COMMENTS OF SBC COMMUNICATIONS INC. AND BELLSOUTH CORPORATION

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JOINT REPLY COMMENTS OF SBC COMMUNICATIONS INC. AND BELLSOUTH CORPORATION

SBC Communications Inc. (SBC) and BellSouth Corporation (BellSouth) hereby reply to the comments submitted in response to the Commission's Second Further Notice of Proposed Rulemaking in the above-referenced proceeding.[1]

[1] *Federal-State Joint Board on Universal Service et al.*, CC Docket Nos. 96-45 et al., Report and Order and Second Further Notice of Proposed Rulemaking, FCC 02-329 (rel. Dec. 13, 2002) (*USF Contribution Order* or *Second Further Notice*).

I. INTRODUCTION AND SUMMARY

There is widespread acknowledgement among commenters that further reform of the Commission's universal service contribution methodology is needed. Commenters recognize that continuing to assess contributions based on interstate revenues will not provide a stable and sufficient source of universal service support, as customers continue to migrate to bundled packages of local and long distance services that do not contain a distinct charge for interstate service and broadband services (*e.g.*, cable modem service) that are not included in the contribution base. Proponents of retaining a revenue-based contribution methodology have no real solutions for these serious problems.

SBC and BellSouth do have a solution. Our proposal for a connections-based contribution methodology assesses a flat-rated contribution on each end user connection, which means the Commission no longer will be required to analyze or classify services provided over that end user connection. This creates a more "future proof" contribution methodology that will ensure there is a stable and sufficient source of universal service support as technology and services continue to evolve rapidly. The SBC/BellSouth proposal also splits the contribution on switched access connections when an end-user customer chooses to purchase local and long distance services from separate carriers. By retaining a revenue-based contribution methodology for stand-alone switched long distance and occasional use services, the proposal addresses implementation concerns that interexchange carriers (IXCs) raised about the original SBC/BellSouth proposal. The modified SBC/BellSouth proposal ensures that IXCs do not require any additional customer information from local exchange carriers in order to calculate their contributions and recover those contributions from end users. The net result is a

contribution methodology that produces an "equitable and nondiscriminatory" contribution on the part of all providers of interstate telecommunications services, as required by section 254(d).

There is very little opposition to the SBC/BellSouth proposal. Indeed, most of the criticisms that AT&T and others level against the connections-based methodology developed by SBC and BellSouth relate to the *original* SBC/BellSouth proposal. As discussed below, these criticisms are utterly irrelevant and have been fully addressed by the modified SBC/BellSouth proposal that is discussed in the *Second Further Notice*. The remaining criticisms focus on unfounded claims that the SBC/BellSouth proposal would somehow impose an unfair contribution burden on CMRS providers and providers of stand-alone switched long distance services. To the contrary, our proposal creates an identical obligation for wireline and wireless carriers, which is not the case today under the revenue-based contribution methodology. Moreover, if anything, the SBC/BellSouth proposal unfairly benefits providers of stand-alone switched long distance services, since their contribution obligation is also shared with providers of occasional use (*e.g.*, calling card) services.

Unlike the SBC/BellSouth proposal, the proposed telephone number-based contribution methodologies do not comport with section 254. They completely exempt long distance services — the quintessential interstate telecommunications services — from the contribution base. On its face, such a broad exemption fails to satisfy the "equitable and nondiscriminatory" contribution requirement of section 254. Moreover, any number-based contribution methodology almost certainly will fail to adequately assess contributions on new Voice over Internet Protocol (VoIP) services, which may not use telephone numbers for which a universal service charge can be assessed.

The proposed number-based contribution methodologies also would be difficult to administer. It would require the Commission to implement an entirely new information-sharing mechanism to account for "assigned" numbers, as well as numbers provided to resellers, non-carriers, and ported numbers. Proponents of a number-based contribution methodology do not explain how this complicated number-tracking process would work. In addition, the number-based contribution methodologies would penalize Centrex and PBX customers by assessing universal service contributions on non-working numbers. The number-based methodologies proposed by the Michigan Public Service Commission (MPSC) and Sprint are even more problematic. The MPSC proposal would assess contributions on all telephone numbers, even if they are not associated with end users or are not in service, which creates a cost recovery problem. Sprint's proposal eliminates entirely the contributions assessed on special access and private lines, which leaves residential customers holding the bag for the vast majority of the universal service obligation. The Commission should reject all of these proposals.

II. THE COMMISSION SHOULD ADOPT THE SBC/BELLSOUTH CONNECTIONS-BASED CONTRIBUTION METHODOLOGY

Just two weeks ago, Commissioner Abernathy testified regarding the need to reconsider the Commission's current revenue-based methodology for assessing universal service contributions on carriers.[2] Commissioner Abernathy noted that, under that methodology, a combination of market trends has placed significant upward pressure on the contribution factor, driving it up to 9.1 percent and, ultimately, increasing the cost of telecommunications services

[2] Written Statement of Kathleen Q. Abernathy, Commissioner, Federal Communications Commission, on Preserving and Advancing Universal Service, Before the United States Senate Committee on Commerce, Science, and Transportation Subcommittee on Communications at 4-6 (Apr. 2, 2003) (Abernathy Statement).

for all consumers.[3] These trends include the increasing prevalence of bundled local/long distance service plans (making it difficult to isolate revenues from interstate telecommunications services on which contributions are based), and the decline in long distance revenues due, *inter alia*, to substitution by wireless services.[4] In addition, migration to broadband services (*i.e.*, cable modem services) and IP telephony services that do not contribute to universal service has accelerated, further reducing the contribution base. These trends are irreversible, and the problems they pose, as Commissioner Abernathy observed, are only likely "to get worse" under a pure revenue-based contribution methodology.[5] Commissioner Abernathy concluded that, as a consequence, "fundamental reform may be necessary to ensure the sustainability of universal service funding in the long term."[6]

The Commissioner is dead on. A revenue-based contribution methodology is not sustainable or competitively neutral in the current market. Unless the Commission overhauls its contribution methodology, the contribution base will continue to shrink, and the competitive distortions created by contribution disparities will only get worse. The SBC/BellSouth connections-based contribution methodology, on the other hand, would "create a more sustainable model for funding universal service in the future."[7] That is because, as the Commissioner observed, the number of end-user connections "has been more stable than the

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[3] *Id.* at 4-5.

[4] *Id.* at 5.

[5] *Id.*

[6] *Id.*

[7] *Id.*

pool of interstate revenues, and connections-based charges can be adjusted to ensure an equitable distribution of the funding burden among businesses and residential customers."[8]

SBC/BellSouth's connections-based proposal described in the *Second Further Notice* provides a workable mechanism for: (1) maintaining "specific, predictable and sufficient" federal support for universal service, and (2) ensuring that all providers of interstate telecommunications services make an "equitable and nondiscriminatory" contribution to universal service, as required by section 254.[9] SBC/BellSouth's proposal, which was modified to address implementation concerns raised by IXCs about splitting the contribution for switched connections, would ensure that all competing technologies and providers are subject to a contribution assessment that meets the requirements of the Act. It thus would ensure the long-term viability of the fund.

No one seriously challenged the merits of the SBC/BellSouth proposal. The minor objections some opponents offer consist largely of straw men relating to SBC/BellSouth's original proposal that already have been addressed in SBC/BellSouth's modified proposal. AT&T, for example, contends that the proposal discriminates against stand-alone providers of long distance (LD) services by creating significant costs for non-vertically integrated IXCs to obtain information from local carriers about the number of connections served by their presubscribed customers.[10] AT&T, joined by Sprint, further claims that SBC/BellSouth's proposal inequitably would require IXCs offering stand-alone long distance service to incur the costs of billing zero-volume subscribers, which is not a problem for integrated local/LD

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[8] *Id.*

[9] 47 U.S.C. § 254(b)(4) & (5).

[10] AT&T Comments at 47.

providers because they already would bill for the entire connection charge in their monthly subscription charges.[11]

Both of these "problems" already have been addressed by SBC/BellSouth's modified proposal. Under that proposal, each switched end user connection is assessed the full connection charge if the end user's carrier for switched local service also is the end user's carrier for switched LD service. When the end user's primary long distance provider is different from its local carrier, the local carrier is assessed one half the connection charge, and the carrier providing stand-alone LD service is assessed based on its interstate long distance revenue associated with that customer.[12] Because a provider of stand-alone long distance service would be assessed based on its revenues from its customers (whom it must be able to identify to bill for its services), it would have no need to determine the number and capacity of connections provided to its customers. Likewise, a stand-alone long distance provider would have no need to bill a customer for universal service in any month in which a subscriber made no long distance calls because the provider would have no revenue from that subscriber on which to contribute to universal service.

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[11] *Id.* at 52, Sprint Comments at 13.

[12] As discussed in SBC/BellSouth's initial comments, under their proposal, the Commission would determine appropriate contribution factors using the projected annual universal service funding requirement, the prior year's end user connections and the prior year's interstate end user long distance revenues. An end user connection base factor would be calculated by dividing the annual funding requirement by the total number of end user connections (expressed in bandwidth capacity units). The end user connection charge would be calculated by multiplying the end user connection base factor by the total number of bandwidth capacity units. Where local and long distance are separately provided to an end user, one half of the charge would be assessed to the local service provider. The remaining half would be multiplied by the total number of stand-alone switched long distance connections that are associated with switched local connections to create the residual funding requirement. That residual funding requirement then would be divided by total interstate revenues from stand-alone switched long distance services and occasional use services to determine the revenue-based contribution factor for providers of such services.

Other objections to a connections-based contribution methodology fare no better. AT&T and Sprint, for example, contend that SBC/BellSouth's proposal is discriminatory because integrated carriers would be assessed USF contributions on a flat-rated basis, while stand-alone IXCs would be assessed on a volume-sensitive basis.[13] They contend that, as a result, high volume long distance users "would be better off using an RBOC than procuring long distance from a non-vertically integrated provider."[14]

Once again, the connections-based methodology proposed by SBC/BellSouth already addresses these concerns and ensures that contributions by IXCs offering stand-alone long distance services are no more than equitable. Under the SBC/BellSouth proposal, the end user connection charge is split evenly between the IXC and the LEC, even though the IXC typically generates much more interstate revenue from its stand-alone switched long distance service than the LEC does from the SLC. This will substantially reduce the contribution factor assessed on stand-alone switched long distance services, while increasing the charge assessed on LEC services. Moreover, the one-half end user charge allocated to long distance providers is recovered from both stand-alone switched long distance *and occasional use services*. The proposal thus allocates a smaller proportional contribution obligation to providers of stand-alone switched long distance services and occasional use services, ensuring that they are not placed at a competitive disadvantage compared to providers of bundled offerings, and that customers do not have a disincentive to purchase such services.

Moreover, nothing in the SBC/BellSouth proposal prevents providers of stand-alone long distance services from offering service to high volume users on a flat-rated basis (*i.e.*, for a

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[13] AT&T Comments at 53; Sprint Comments at 14.

[14] AT&T Comments at 53; Sprint at 14-15.

bucket of minutes), and imposing flat-rated universal service charges. Indeed, IXCs already are doing so, and wireless carriers routinely do so. Thus, there is no reason to conclude that high volume customers necessarily would migrate to the RBOCs, as AT&T and Sprint claim.

NexTel likewise contends that the SBC/BellSouth proposal is inequitable, although it claims the proposal would shift a disproportionate share of the USF burden onto CMRS providers. In particular, it claims that the proposal would "assess wireless carriers twice (once for wireless transport and once for a wireless connection), while LECs and IXCs are assessed only once — making the proposal completely inequitable."[15] However, the proposal treats LECs, IXCs and CMRS providers identically. To the extent such carriers offer integrated local/long distance packages, they are assessed one end user connection charge. LECs and IXCs are assessed one half the connection charge only if they provide local or long distance service on a stand-alone basis. Likewise, a CMRS provider could offer a "local" wireless connection on a stand-alone basis, and offer equal access to long distance carriers, if it so chose. In that event, it too would be assessed only one half the end user connection charge.

Verizon Wireless also claims that the SBC/BellSouth proposal imposes a disproportionate share of the USF burden on CMRS providers. Specifically, it claims that wireless customers would be over-assessed if charged for every handset on the same basis as landline connections because customers with multiple handsets are unlikely to use all of them equivalently.[16] However, the same is true of customers with multiple wireline connections. Under SBC/BellSouth's proposal, customers with multiple wireline connections would be charged the same for each wireline connection irrespective of whether they used all of them

[15] Nextel Comments at 14.

[16] Verizon Wireless at 12-13.

equivalently. Likewise, the same argument could be made in connection with wireless customers that purchase a flat-rated service plan and do not use all of the minutes available to them.

Verizon Wireless further complains that if a wireless customer wanted to replace landline service with mobile service (and 4 mobile handsets), he would face a significant increase in USF assessments, even if all handsets are not used to make interstate calls.[17] However, its complaint is a complete *non sequitor*, comparing apples to oranges. "[L]andline service (where [a customer] uses for [sic] handsets in his house)" is not the same thing as "mobile service (and 4 mobile handsets)."[18] In the former case, all four handsets share a single connection. Consequently, the handsets cannot be used to make four separate calls at the same time. Moreover, they cannot be used to make calls away from home. In contrast, where a customer has "mobile service (with 4 mobile handsets)," the customer has four separate mobile connections, enabling the customer and his family to make four separate calls at the same time, and to take their phones with them to make calls away from home. Indeed, it is precisely because mobile service provides such flexibility that wireless providers can and do charge more for wireless service. And, because a customer with "mobile service (with 4 mobile handsets)" necessarily pays more than he would for landline service with four handsets, he should anticipate paying more in USF assessments for his four mobile connections than he would for landline service. Verizon Wireless's complaint thus is completely beside the point.

Finally, the Industrial Telecommunications Association, Inc. (ITA) asserts that the SBC/BellSouth proposal "could be damaging for small entities because it does not allow for a *de*

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[17] Verizon Wireless at 13.

[18] *See id.*

minimis exemption."[19] However, ITA does not explain why the existing exemption would not, or could not, apply. Under the Commission's rules, a contributor is exempt if its contribution in any given year is less than $10,000.[20] There is no reason the same rule could not continue to apply under the SBC/BellSouth proposal.

III. THE COMMISSION SHOULD NOT ADOPT A TELEPHONE-NUMBER BASED CONTRIBUTION METHODOLOGY

The Commission should reject not only the telephone number-based assessment mechanism proposed jointly by AT&T and the Ad Hoc Telecommunications Users Committee (Ad Hoc) but also the modified number-based proposals set forth by the MPSC and Sprint.[21] Although AT&T and Ad Hoc finally have added some detail to the skeletal telephone-number based proposal they first introduced last fall, these additional specifics do not cure the fundamental statutory and administrative defects of this proposed mechanism.

A. Proposed Number-Based Contribution Methodologies Do Not Comport With Section 254

All of the number-based methodologies included in the record fail to pass statutory muster because they effectively exempt the largest class of carriers that provide interstate telecommunications services — the IXCs — from contributing to the universal service fund on an "equitable and nondiscriminatory basis" as required by Section 254.[22] As a number of commenters correctly point out, IXCs do not obtain numbers from the North American

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[19] ITA Comments at 6.

[20] 47 C.F.R. § 54.708.

[21] *See, e.g.,* MPSC Comments at 2-6; Sprint Comments at 4, 15-18.

[22] *See* 47 U.S.C. §§ 254(b)(4), (d).

Numbering Plan Administrator (NANPA), the Pooling Administrator (PA), or other carriers.[23] Under most circumstances, carriers that obtain numbers from the NANPA, the PA, or other carriers are those providing either local exchange service or wireless service to end users. Accordingly, basing universal service contributions on "assigned" telephone numbers is a threshold that automatically exempts the majority of IXCs from any universal service obligations. Any assessment mechanism that results in the broad exclusion of this segment of traditional interstate telecommunications providers is *per se* unlawful.

The illegality of a number-based methodology is confirmed by the Commission's recent *Staff Study* comparing the three primary assessment proposals.[24] According to the *Staff Study*, in the first year of implementation, the AT&T/Ad Hoc proposal would reduce the IXC industry's contribution to the universal service fund from a share of 51 percent (2003) to only 14 percent.[25] This alone is compelling evidence that the number-based mechanism is unlawful on its face. An assessment mechanism that so drastically reduces the contributions of the principal providers of interstate telecommunications services does not comport with section 254's requirement that every provider contribute to universal service on an "equitable and nondiscriminatory basis."

AT&T goes to great lengths to convince the Commission that a formula that conveniently minimizes the IXCs' universal service contributions is lawful. According to AT&T, "no meaningful difference exists between formulas that might yield an assessment of zero for some carriers and formulas that must yield a positive number that the Commission could then reduce to zero for some carriers." It further argues that "[i]t is *not* of paramount importance that the

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[23] *See, e.g.,* SBC/BellSouth Joint Comments at 18; National Telecommunications Cooperative Association (NTCA) Comments at 3-4.

[24] *See Commission Seeks Comment on Staff Study Regarding Alternative Contribution Methodologies*, CC Docket Nos. 96-45 *et al.*, *Public Notice,* FCC 03-31 (rel. Feb. 26, 2003) (*Staff Study*).

USF formula results in a positive assessment on every telecommunications carrier, however negligible it may be."[26] While these statements may be true in the abstract, they completely miss the point. A formula such as that proposed by AT&T and Ad Hoc, which yields an assessment of zero for a carrier generating hundreds of millions of dollars worth of interstate telecommunications activity, is completely at odds with the statute and therefore must fail as a matter of law. AT&T acknowledges that a number of IXCs, including stand-alone IXCs, would be relieved of any universal service contribution obligations under its proposal.[27] Such a result is wholly inconsistent with the Act. The exclusion of the primary interstate telecommunications service — interstate long distance service — is unlawful and should not be permitted.

This presumption is further strengthened by the plain language of section 254(d), which grants the Commission express authority to impose this obligation on other providers. The Commission may require "[a]ny other provider of interstate telecommunications . . . to contribute to the preservation and advancement of universal service if the public interest so requires."[28]

Thus, the Act is clear. The Commission is bound by statute to establish a universal service assessment mechanism that requires the broadest possible base of providers of interstate telecommunications services. An expansive base of contributors not only will help ensure that no one group of providers, services, or customers is disproportionately burdened but also will create a stable and sufficient universal service contribution base. Any revised assessment mechanism, such as a number-based proposal, that results in the widespread elimination of the

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[25] *Id.* at 8.

[26] AT&T Comments at 41, 42 (emphasis included in original).

[27] AT&T Comments at 40.

[28] 47 U.S.C. § 254(d).

largest class of carriers providing interstate telecommunication services must be rejected as *per se* unlawful.

In an attempt to draw attention away from the obvious deficiencies in its proposal, AT&T touts its number-based proposal as "simpler and more straightforward" than the other connections-based plans detailed in the record.[29] As an initial matter, administrative ease is not a statutory requirement. A desire for administrative ease and simplicity cannot trump the statutory mandate that every provider of interstate telecommunications services must contribute to universal service on an "equitable and nondiscriminatory basis." Further, as demonstrated more fully below, the administrative efficiencies of a number-based proposal are greatly exaggerated.

The principle that there should be a correlation between universal service contributions and the capacity and the level of use of the network is an important guide. This principle underlies the Commission's original adoption of a revenue-based mechanism. No one disputes that a revenue-based methodology at one time satisfied the statutory requirements; however, it has become clear that such an assessment formula is no longer sustainable in the changing telecommunications marketplace. A number-based methodology, however, is not a lawful replacement. In contrast, the SBC/BellSouth Joint proposal strikes a reasonable balance between sustaining a stable universal service fund and retaining a relationship between a carrier's contribution and its level of interstate activity, as represented by the number of connections provided by the carrier and the capacity of those connections.

B. The Proposed Number-Based Contribution Methodologies Would Be Difficult to Administer

All that glitters is not gold with the AT&T/Ad Hoc proposal. According to AT&T, its proposed mechanism is preferable to the SBC/BellSouth methodology because the former does

[29] AT&T Comments at 4.

not require information sharing among carriers.[30] This statement is false. Numbers that carriers provide to other carriers (*e.g.,* resellers) and non-carrier entities (*e.g.,* retail dealers and unified messaging service providers) are "intermediate" numbers.[31] As SBC and BellSouth indicated in their initial comments, the carriers providing these "intermediate" numbers are supposed to report these numbers to the NANPA.[32] Once the reseller or non-carrier assigns the number to a customer, the initial assigning carrier is supposed to move the number from the "intermediate" category to the "assigned" category. However, as BellSouth pointed out in the *Numbering Resource Optimization* proceeding over two years ago, there is no way for the reporting carrier to know how the reseller or non-carrier is using the number.[33] Carriers have no way to obtain such data from resellers and non-carriers, and these entities are under no obligation to provide such information. As a result, the "assigned" category on NRUF may not be capturing all of the numbers contemplated by the Commission when it adopted this requirement. In order to ensure that "assigned" numbers are counted accurately under a number-based proposal and the appropriate carrier is assessed, information sharing would have to be mandatory.

As AT&T points out, not all resellers submit NRUF reports to the NANPA. Nonetheless, AT&T recommends that resellers that receive numbers from other carriers should be responsible for contributing to the universal service fund on the basis of those numbers.[34] SBC and BellSouth agree. However, in the absence of reporting by resellers, it is unclear how the process

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[30] AT&T Comments at 30.

[31] *See Numbering Resource Optimization*, CC Docket No. 99-200, *Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 7574, 7586, ¶ 20 (2000).

[32] SBC/BellSouth Comments at 20-21.

[33] *See, e.g.,* BellSouth Petition for Reconsideration/Clarification, CC Docket No. 99-200, at 3 (filed July 17, 2000); BellSouth Opposition, CC Docket No. 99-200, at 14 (filed Aug.15, 2000).

would work for assessing the reseller and exempting the initial carrier providing the number. Again, it appears that information sharing between carriers would be required.

Proper assessments on ported numbers also would necessitate the sharing of information. According to AT&T, the provider to whom a number is ported should be assessed the universal service contribution, as that carrier is in the best position to recover the assessment from the end user most efficiently.[35] Likewise, Sprint states that, for ported numbers, the carrier that bills the end users should remit the assessment.[36] While SBC and BellSouth agree with this position, it is unclear how the process would work to ensure that the appropriate carrier is assessed without some sharing of information. As AT&T points out, under today's rules, ported numbers are reported by the porting carrier as "assigned," and are not reported by the carrier to whom the number is ported.[37] Thus, under AT&T's proposal, a mechanism would have to be developed to exempt the porting carrier and assess the carrier to whom the number is ported. The record does not answer the questions raised by such a process. Will there be a reconciliation of NRUF reports? Will carriers be required to exchange information among themselves? Will carriers have to seek reimbursement from other carriers? Clearly, many implementation issues remain. In addition, the administrative challenges of this process will become even more complex as porting becomes more prevalent, especially with the commencement of wireless portability in November 2003.

Another alleged advantage of the AT&T/Ad Hoc proposal is that the growth of VoIP will not threaten the viability of a number-based assessment mechanism. This claim is unsupported.

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[34] AT&T Comments at 6.

[35] *Id.* at 7.

[36] Sprint Comments at 17.

To date, there is no consistent answer on how VoIP would be treated under a number-based methodology. Moreover, as the National Rural Telecom Association (NRTA) and the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) point out, VoIP service providers may not utilize telephone numbers for which a universal service charge can be assessed.[38] AT&T acknowledges that VoIP subscribers will be able to reach each other or place calls to a phone on the PSTN without being assigned a unique ten-digit telephone number.[39] In the absence of a unique 10-digit number assigned to the end user, the VoIP subscriber would be excluded from the contribution base.

One of the known advantages for customers using VoIP is the ability to avoid long distance charges when placing outbound calls. Therefore, VoIP subscribers may not find it necessary to be able to *receive* incoming calls through the VoIP architecture. Indeed, if a customer can avoid a universal service charge by not obtaining a unique 10-digit number, he may be inclined not to request the assignment of such a number. Under these circumstances, despite the interstate activity generated by the VoIP service, the VoIP provider would not be subject to a universal service contribution because of the absence of an "assigned" number. Thus, AT&T's assertion that a number-based mechanism is sustainable as VoIP service becomes more widespread is overstated.

Another alleged advantage of the AT&T/Ad Hoc plan is that Centrex and PBX customers would be treated similarly.[40] Again, this benefit is exaggerated and ignores existing regulations. The Commission's rules permit carriers to categorize all numbers contained in blocks assigned to

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[37] AT&T Comments at 6 (citing 47 C.F.R. § 52.15(f)(v)).

[38] NRTA and OPASTCO Comments at 8.

[39] AT&T Comments at 28.

Centrex or PBX systems as "assigned" if 50 percent or more of these numbers are working at all times.[41] This rule allows similar treatment of Centrex and PBX customers and grants carriers the necessary reporting flexibility in light of the fact that they have no way of knowing whether a PBX number is working or not, since the customer controls these numbers from its PBX trunk. If a Centrex customer has fewer than 50 percent of its numbers working at all times, a carrier is not allowed to report the entire block of numbers as "assigned" in NRUF. Thus, under these circumstances, NRUF would not capture the non-working Centrex numbers as "assigned." Notwithstanding this fact, AT&T proposes to assess every single Centrex number, whether working or not. It is unclear how AT&T's mechanism would accomplish this assessment, since there is no process detailed in the record to address the discrepancy created by non-working Centrex numbers. In addition, requiring Centrex and PBX customers to pay a universal service fee on non-working numbers raises concerns about fairness and customer harm. Clearly, there are significant holes in the AT&T/Ad Hoc proposal.

AT&T and Ad Hoc attempt to rebut arguments that a number-based plan unfairly exempts IXCs from universal service contributions by noting that long distance carriers that provide toll-free numbers would be subject to universal service assessments on these toll-free numbers.[42] This fact does not save the AT&T/Ad Hoc proposal from statutory failure. At the end of April 2002, there were approximately 24.5 million toll-free numbers (800, 888, 877, and 866) assigned[43] — this figure represents only four percent of the total "assigned" numbers as

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[40] Ad Hoc Comments at 4-5; AT&T Comments at 33-34.

[41] *Numbering Resource Optimization*, *et al,,* CC Docket No. 99-200, *et al, Third Report and Order and Second Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200*, 17 FCC Rcd 252, 304, ¶ 122 (2001).

[42] Ad Hoc Comments at 7; AT&T Comments at 30-31.

calculated by the Commission as the basis for its *Staff Study*.[44] Thus, the suggestion that somehow requiring IXCs to contribute to the universal service fund based on assigned toll-free numbers is more than sufficient to satisfy the Act is completely unpersuasive.

Not surprisingly, there is no support in the record for the AT&T/Ad Hoc proposal in its current form. Two parties, the MPSC and Sprint, put forth their own number-based proposals that the Commission also should reject. The MPSC contribution proposal requires an assessment on *all* categories of numbers except aging.[45] Under this proposal, a carrier would collect and remit universal service contributions from its end users based on its inventory of "assigned" numbers. In addition, a carrier would be required to contribute to the universal service fund based on its inventory of "available," "intermediate," "reserved," and "administrative" numbers.[46]

The modifications suggested by the MPSC do not cure the fundamental flaws in the AT&T/Ad Hoc proposal. Indeed, the MPSC's suggestion that carriers contribute based on not only "assigned" numbers but also numbers not associated with end users or not in service at all (*e.g.,* "available," "intermediate," "reserved," and "administrative") is unlawful, inequitable, and discriminatory.

As of December 2001, there were approximately 626 million "available" numbers – the largest category of numbers.[47] Adding "reserved," "administrative," and "intermediate" numbers

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[43] *FCC Releases Study on Telephone Trends, News*, 2002 FCC LEXIS 2558, *3 (May 22, 2002).

[44] Toll-free numbers are assigned by the toll-free database administrator, Database Service Management, Inc. (DSMI), not the NANPA. In addition, toll-free numbers are not reported as part of NRUF.

[45] MPSC Comments at 4.

[46] Id. at 4-5.

to the contribution base brings to the total to 697 million numbers. Imposing a universal service contribution on these numbers, which do not have end users associated with them, could deprive carriers of the ability to recover their universal service costs. The MPSC seems unconcerned with such an outcome. In fact, the MPSC's proposal expects carriers to contribute approximately $1.4 billion to the universal fund separate and apart from the assessments on "assigned" telephone numbers.[48]

Such a result is wholly inconsistent with the Commission's rules allowing carriers to recover all of their universal service contributions from their end users.[49] Any mechanism that denies a carrier an opportunity to recover its universal service obligation would be unlawful. Moreover, the absence of lawful cost recovery would place some carriers – primarily LECs and CMRS carriers — at a significant competitive disadvantage.

The discriminatory effects of the MPSC proposed mechanism are illustrated by the treatment of "intermediate" numbers.[50] Numbers identified as "intermediate" in one carrier's inventory may be identified as "assigned" (or any one of the other categories) in the receiving carrier's inventory. Thus, the same number is counted in both carriers' inventories for reporting purposes. The carrier that has designated the number as "assigned" will be able to recover its universal service costs from the end user; however, the carrier that has categorized this same number as "intermediate" will not be able pass through the universal service charge to the end

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[47] *Numbering Resource Utilization in the United States as of December 31, 2001*, Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, Table 1 (August 2002).

[48] MPSC Comments at 9.

[49] 47 C.F.R. §§ 69.131, 69.158, 54.712.

user, since there is no "end user" attached to the "intermediate number." As with "available," "reserved," and "administrative" numbers, this outcome would harm some carriers by foreclosing the recovery of their universal service contributions in violation of the Commission's rules and long-standing precedent of allowing cost recovery.

The MPSC argues that imposing an assessment on all numbers would help foster number conservation. The Commission's mandate in this proceeding is to develop a universal service assessment mechanism that complies with the Act. As demonstrated above, the MPSC proposal fails to accomplish this objective. Moreover, the Commission's existing number optimization rules, which have been in place for over three years, are sufficient to directly address concerns about number conservation. Contrary to the MPSC's assertion, there is ample evidence that carriers are doing their part to use numbers efficiently. Indeed, the Commission has found that "[c]arriers are returning large quantities of telephone numbers that they do not need to the North American Numbering Plan Administrator so that those numbers can be assigned to other carriers with more immediate needs."[51] In the last two quarters of 2001 and the first quarter of 2002, carriers returned 42 million numbers to the NANPA – the equivalent of five area codes.[52] Thus, the Commission need not — and should not — use the universal service contribution mechanism as a number conservation tool.

As indicated above, SBC and BellSouth also oppose Sprint's number-based proposal. The Sprint proposal retains the AT&T/Ad Hoc assessment on "assigned" telephone numbers but

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[50] "Intermediate" numbers are defined as "numbers that are made available for use by another telecommunications carries or non-carrier entity for the purpose of providing telecommunications service to an end user or customer." 47 C.F.R. § 52.15(f)(1)(v).

[51] *FCC Releases Telephone Numbering Resource Utilization Report*, *News,* 2002 FCC LEXIS 3775, *2 (Aug. 1, 2002).

[52] *Id.*

eliminates the separate assessment on special access and private lines. Sprint's rationale is that assessing T-1 lines on the basis of capacity will effectively double-charge the business customer because that customer will be assessed for the telephone numbers associated with these facilities as well.[53] This proposal is self-serving and even more flawed than the deficient AT&T/Ad Hoc plan, as it would completely exempt large IXCs from contributing to the universal service fund. At least the AT&T/Ad Hoc mechanism requires a contribution from those IXCs providing purely interstate services — special access and private lines.

The record overwhelmingly supports retaining a contribution assessment on purely interstate telecommunications services such as special access and private lines. In fact, Sprint is the only party that proposes to exempt these special access and private line services. The removal of the assessment on these interstate services undermines the principle that there should be some correlation between the amount contributed to universal service and the traffic carried over (and therefore the revenue associated with) a particular line.

Finally, SBC and BellSouth continue to believe that reliance on NRUF data as the source for determining universal service assessments is problematic. As SBC and BellSouth explained in their comments, carriers are interpreting the Commission's definition of "intermediate" numbers[54] in a variety of different ways.[55] Some carriers that provide numbers to other carriers

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[53] Sprint Comments at 16.

[54] The Commission has defined "intermediate numbers" as "numbers that are made available for use by another telecommunications carrier or non-carrier entity for the purpose of providing telecommunications service to an end user or customer. Numbers ported for the purpose of transferring an established customer's service to another service provider shall not be classified as intermediate numbers." 47 C.F.R. § 52.15(f)(1)(vi).

[55] *See* Letter from Robert C. Atkinson, Chairman, North American Numbering Council, to Mr. William Maher, Chief, Wireline Competition Bureau, FCC, Re: NPRM for Intermediate Numbers (dated Jan. 29, 2003) (Attachments – NANC IMG Review of Intermediate Numbers (dated Nov. 19, 2002 and Minority Report on Intermediate Numbers (dated Jan. 15, 2003)). The NANC has asked the Commission to institute a rulemaking to clarify the definition of "intermediate" number.

are categorizing those numbers as "assigned," while others are designating such numbers as "intermediate." Given this inconsistency, it is possible that both the carrier providing the number (Carrier A) and the carrier receiving the number (Carrier B) could have the same number designated as "assigned." Under the AT&T and Ad Hoc proposal, the end user could receive a double universal service assessment. Carrier A (the carrier providing the number to Carrier B) could seek recovery from the receiving carrier, Carrier B. Carrier B, in turn, could seek recovery from its end user twice — first, in order to recover its own universal service contribution and second, to reimburse Carrier A for its universal service contribution. In the absence of a double assessment, Carrier A would have no source of recovery for its universal service costs. Thus, a double universal service charge on end users and the inability to recover costs are two very real consequences of a number-based plan that have not been addressed.

In sum, a telephone-number based mechanism would be neither "competitively neutral," "equitable and nondiscriminatory," nor administratively simple. Such a methodology, on its face, minimizes the contribution obligations of IXCs, which generate the majority of interstate telecommunications revenues. Moreover, a *de minimis* obligation does nothing to overcome this flaw. Accordingly, the Commission should reject the AT&T/Ad Hoc number-based proposal as well as the modified number-based mechanisms set forth by the MPSC and Sprint.

IV. CONCLUSION

For these reasons, the Commission should adopt the modified SBC/BellSouth proposal for a connections-based contribution and recovery mechanism. Unlike alternative revenue-based and number-based proposals, the SBC/BellSouth proposal satisfies the requirements of section 254(d) and provides a stable source of universal service support in an environment of rapid technological and market developments.

Respectfully Submitted,

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