

**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 Format

CC Docket No. 98-170

**Reply Comments of TracFone Wireless, Inc.  
And Comments on Staff Study**

Mitchell F. Brecher  
Nancy E. Boocker  
GREENBERG TRAUIG, LLP  
800 Connecticut Avenue, N.W.  
Suite 500  
Washington, D.C. 20006  
(202) 331-3100

Its Attorneys

April 18, 2003

## SUMMARY

TracFone Wireless, Inc. (TracFone) maintains its support of a revenue-based universal service contribution methodology as the only equitable and nondiscriminatory approach to meeting the important goal of supporting universal service. The record developed in this proceeding overwhelmingly compels continuation of the recently modified revenue-based contribution methodology. Commenters advocated that, at a minimum, the Commission should allow time to examine whether recent modifications to the revenue-based methodology have been effective in addressing concerns regarding the revenue-based methodology. In particular, the Commission should examine the comments from a number of representatives of consumers reminding the Commission that connection-based methodologies would have particularly negative consequences for lower income and lower volume consumers.

The recent comments continue to highlight the numerous legal and policy shortcomings of each of the proposed connection-based contribution methodologies, while refuting the objections to the revenue-based methodology. The proposed connection-based and working telephone number-based methodologies have each received only self-serving support from the narrow categories of parties who would benefit the most from those proposals. The vast majority of commenters, including parties who support a different connection-based approach, criticize each of the connection-based proposals as violating the requirements of Section 254(d) of the Communications Act. On the other hand, many commenters suggest additional adjustments to the current methodology that would address the arguments underpinning the supposed need for a radical change. Rather than abandoning a revenue-based system which unquestionably fulfills each of the statutory requirements and the Commission's additional universal service objective of competitive neutrality, the Commission should use its authority under Section 254(d) to ex-

pand the base of contributors to include all who derive revenue from the provision of interstate telecommunications.

The Staff Study also provides independent evidence that there is no need for the Commission to adopt a connection-based contribution methodology because a revenue-based contribution methodology will remain viable at least through the year 2007. In addition, the Staff Study demonstrates that none of the proposed connection-based contribution methodologies would benefit residential consumers. Indeed, the connection-based methodologies that have received some support in the comments would result in significant increases in the portion of the universal service funding burden that would be borne by residential consumers. Moreover, the Staff Study fails to examine the impact of the various contribution methodologies on lower volume and lower income consumers. Such scrutiny would further corroborate the fact that connection-based and working telephone number-based contribution methodologies are particularly harmful to low volume and low income consumers, as well as carriers providing needed services to those market segments. Therefore, such proposals are not in the public interest, and should not be adopted.

## TABLE OF CONTENTS

	<u>Page</u>
SUMMARY .....	i
I. INTRODUCTION .....	2
II. THERE IS NOT BROAD SUPPORT FOR A CONNECTION-BASED CONTRIBUTION METHODOLOGY, ONLY SELF-SERVING SUPPORT FOR INDIVIDUAL PROPOSALS .....	4
III. ADVOCATES OF CONNECTION-BASED METHODOLOGIES HAVE NOT PROVEN A NEED TO ABANDON A REVENUE-BASED METHODOLOGY .....	11
IV. EACH OF THE PROPOSED CONNECTION-BASED CONTRIBUTION METHODOLOGIES CONTINUES TO HAVE FATAL FLAWS .....	14
A. Connection-Based Charge with Mandatory Minimum Contribution .....	14
B. Split the Connection Charge .....	17
C. Working Telephone Number-Based Contribution Methodology .....	19
D. CoSUS Proposal.....	24
V. THE COMMISSION STAFF STUDY DOES NOT SUPPORT ABANDONING A REVENUE-BASED METHODOLOGY, AND LACKS AN EXAMINATION OF LOW VOLUME CONSUMERS WHICH WOULD REINFORCE THIS CONCLUSION .....	25
A. The Staff Study Provides No Support for Abandoning a Revenue-Based Contribution Methodology.....	26
B. The Staff Study Fails To Adequately Examine the Impact of Connection-Based Contribution Methodologies on Certain Segments of Residential Consumers.....	27
VI. CONCLUSION.....	30

**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 Format

CC Docket No. 98-170

**REPLY COMMENTS OF TRACFONE WIRELESS, INC.  
AND COMMENTS ON STAFF STUDY**

TracFone Wireless, Inc. (TracFone), by counsel, hereby submits its reply comments in response to the Second Further Notice of Proposed Rulemaking in the above-captioned proceeding.<sup>1</sup> In addition, TracFone comments on the study prepared by Commission Staff regarding al-

---

<sup>1</sup> *Federal-State Joint Board on Universal Service, CC Docket No. 96-45 et al., (Report and Order and Second Further Notice of Proposed Rulemaking), FCC 02-329, released Dec. 13, 2002 (Report and Order and Second Further Notice), reconsidered in part, (Order and Order on*

ternative universal service contribution methodologies proposed in the above-captioned proceeding (Staff Study).<sup>2</sup>

## I. INTRODUCTION

TracFone is a provider of prepaid mobile wireless service that has participated extensively in this universal service contribution methodology proceeding. Throughout the proceeding TracFone has consistently advocated the continuation of a revenue-based universal service contribution methodology with such refinements and adjustments as necessary to ensure sufficiency of the Universal Service Fund. A system that requires contributions to the Universal Service Fund based on each carrier's revenues derived from interstate telecommunications is equitable and nondiscriminatory as required by the Communications Act, is competitively neutral, and is fair to consumers who must ultimately pay these fees. On February 28, 2003, TracFone submitted comments in this proceeding urging the Commission to allow recent changes to the revenue-based contribution methodology to be implemented before considering radical changes to that methodology.<sup>3</sup> As TracFone explained in its initial Comments, the impact of the recently-enacted changes to the revenue-based methodology should be fully assessed before any fundamental alteration or abandonment of that methodology is considered. TracFone also suggested additional changes to the revenue-based methodology, such as complete elimination of the wire-

---

*Reconsideration*), FCC 03-20, released Jan. 30, 2003, *further reconsidered in part*, (*Order and Second Order on Reconsideration*), FCC 03-58, released Mar. 14, 2003.

<sup>2</sup> *Commission Seeks Comment on Staff Study Regarding Alternative Contribution Methodologies*, CC Docket No. 96-45 *et al.*, *Public Notice*, FCC 03-31, released Feb. 25, 2003 (*Public Notice*).

<sup>3</sup> TracFone Comments at 5-13. Unless otherwise indicated, all comments cited in these Reply Comments refer to the comments filed on or before February 28 in response to the *Second Further Notice* in this proceeding.

less safe harbor, before the Commission considers abandoning the revenue-based methodology in favor of any of the proposed connection-based contribution methodologies.<sup>4</sup> TracFone submitted with its comments an economic report prepared by the national economic consulting firm, Economists Incorporated, which concludes that a revenue-based methodology is viable and will generate sufficient funds to support the universal service programs for the foreseeable future.<sup>5</sup> In addition, TracFone has described the legal and policy shortcomings of the various proposed connection-based and working telephone number-based universal service contribution methodologies described in the *Second Further Notice*.<sup>6</sup> Moreover, TracFone repeatedly has urged the Commission to carefully examine the disproportionate impact of any connection-based or working telephone number-based contribution methodology on lower volume and lower income consumers, as well as carriers like TracFone whose businesses are focused on serving those consumers.<sup>7</sup>

---

<sup>4</sup> TracFone Comments at 13-17.

<sup>5</sup> TracFone Comments at Appendix A. “The Sufficiency of Interstate Revenues to Fund Universal Service,” prepared by Henry B. McFarland, Economists Incorporated.

<sup>6</sup> TracFone Comments at 17-29.

<sup>7</sup> TracFone recognizes that not all low income consumers are low volume users, but a significant portion of TracFone’s customers are either low income or low volume, or both. Approximately 25 percent of TracFone’s customers have annual incomes under \$25,000 and its average customer has only 4-5 minutes of interstate calling in a month. TracFone Comments at 3. In addition, the Affidavit of Dr. Mark Cooper, attached to Comments filed by Consumers Union *et al.* provides evidence that low income households are disproportionately low volume households. *See* Consumers Union *et al.* Comments at Affidavit. It is also important to remember that many low income consumers do not receive Lifeline support, particularly for mobile wireless services, and therefore are not automatically exempt from universal service assessments.

In reviewing comments filed by other parties in this proceeding, TracFone is struck by the large number of commenters who agree that a revenue-based contribution methodology is sustainable and consistent with the requirements of the Communications Act and the Commission's stated policy goals in this proceeding. Connection-based contribution methodologies, however, suffer from numerous legal and policy deficiencies that have been identified and acknowledged by commenters, including those few commenters who support any of the proposed connection-based methodologies. As described in these Reply Comments, the record compiled in this proceeding reveals very little support for any of the connection-based or working telephone number-based alternative plans set forth in the *Second Further Notice*.

## **II. THERE IS NOT BROAD SUPPORT FOR A CONNECTION-BASED CONTRIBUTION METHODOLOGY, ONLY SELF-SERVING SUPPORT FOR INDIVIDUAL PROPOSALS**

In the *Second Further Notice*, the Commission claimed that a "substantial number of parties across various industry segments" support adoption of a connection-based contribution methodology.<sup>8</sup> That assertion is contradicted by the record. A substantial majority of commenters urge the Commission to retain a revenue-based contribution methodology. Paging carriers,<sup>9</sup> mobile wireless carriers,<sup>10</sup> small incumbent local exchange carriers,<sup>11</sup> and at least one state pub-

---

<sup>8</sup> *Second Further Notice*, at para. 4.

<sup>9</sup> Allied Comments at 5-6; American Association of Paging Carriers (AAPC) Comments at 7-8 (supporting the continuation of a revenue-based methodology for paging carriers even if a connection-based methodology is adopted for wireline carriers); Arch Wireless Comments at 4-5; WebLink Comments at 7-8.

<sup>10</sup> AT&T Wireless Comments at 7; CTIA Comments at 2-3; Nextel Comments at 21; TracFone Comments at 5-6; Verizon Wireless Comments at 2-4.

<sup>11</sup> Fred Williamson & Associates Comments at 4; Montana Independent Telecommunications Systems Comments at 5-6; National Telecommunications Cooperative Association (NTCA) Comments at 2-4.

lic utility commission<sup>12</sup> support the continuation of a revenue-based contribution methodology. Most important, representatives of consumers overwhelmingly favor continuation of a revenue-based methodology.<sup>13</sup>

Numerous and diverse parties expressed the view that a revenue-based contribution methodology is consistent with the requirements of the Communications Act as well as important policy goals of the Commission to create a competitively neutral contribution methodology.<sup>14</sup> Many commenters articulated important legal and policy concerns with connection-based proposals that have been raised throughout the proceeding. For example, a number of commenters continue to raise questions about whether any of the connection-based proposals would comply with Section 254(d) of the Communications Act, particularly the statutory requirement that any contribution methodology be “equitable and nondiscriminatory.”<sup>15</sup> Another legal infirmity with the proposed connection-based methodologies that continues to be highlighted by com-

---

<sup>12</sup> California PUC Comments at 3-10. In addition, j2 Global, a non-carrier provider of unified messaging, supports the continuation of a revenue-based methodology. j2 Global Comments at 1-3.

<sup>13</sup> American Association of People with Disabilities (AAPD) Comments at 1-2; Community Action Partnership (CAP) and Latino Issues Forum (LIF) Comments at 1-2; Consumers Union *et al.* Comments at 3-4; League of United Latin American Citizens (LULAC) Comments at 1; NAACP Comments at 2; National Association of State Utility Consumer Advocates (NASUCA) Comments at 3-5; National Indian Education Association Comments at 2; Rainbow/PUSH Coalition Comments at 1; Telecommunications Research & Action Center (TRAC) Comments at 1.

<sup>14</sup> Allied Comments at 5; Arch Wireless Comments at 4-5; California PUC Comments at 3-4, 9-10, 23; Fred Williamson & Associates Comments at 4; Montana Independent Telecommunications Systems Comments at 5; NASUCA Comments at 20; Verizon Comments at 1; Verizon Wireless Comments at 5; Virgin Mobile Comments at 15.

<sup>15</sup> Allied Comments at 7-8; California PUC Comments at 14-15, 20; Consumers Union *et al.* Comments at 11-15; Nextel Comments at 8, 20-21; TRAC Comments at 1; Verizon Wireless Comments at 3-4, 7-8; WebLink Comments at 4-7.

menters is whether these methodologies would violate Section 2(b) of the Communications Act by requiring contributions on wholly intrastate communications.<sup>16</sup> Commenters also explained why the various connection-based proposals would not meet the Commission's goal of establishing a competitively neutral contribution methodology as described in the *Universal Service Order*.<sup>17</sup>

Another objectionable aspect of the various connection-based methodologies proposed in the *Second Further Notice* identified by many commenters is that they would have disproportionately adverse consequences on certain market segments. Consumer groups, in particular, were very vocal in urging the Commission to consider the effect of the proposed connection-based methodologies on lower income and lower volume consumers who would be significantly harmed by large increases in those consumers' universal service contributions associated with regressive, connection-based methodologies.<sup>18</sup> In addition to harming low volume and low income consumers, consumer representatives recognized that connection-based contribution methodologies would improperly penalize certain carriers whose services are focused on the special

---

<sup>16</sup> Allied Comments at 10; AAPC Comments at 6; AT&T Wireless Comments at 2-3; California PUC Comments at 16, 25-26; Industrial Telecommunications Association (ITA) Comments at 5; Nextel Comments at 13; Verizon Wireless Comments at 7-8.

<sup>17</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, (*Report and Order*), 12 FCC Rcd 8776, paras. 46-55 (1997) (*Universal Service Order*), as corrected by *Erratum*, FCC 97-157, released June 4, 1997. Allied Comments at 9-10; NAACP Comments at 1; Nextel Comments at 8-9; WebLink Comments at 4-7.

<sup>18</sup> AAPD Comments at 1; CAP & LIF Comments at 1-2 (also reminding the Commission that low income prepaid wireless customers would not be exempt because they do not receive Lifeline support for such services); Consumers Union *et al.* Comments at 5-8; LULAC Comments at 2; NAACP Comments at 1; National Association of the Deaf (NAD) Comments at 1; National Indian Education Association Comments at 2; Rainbow/PUSH Coalition Comments at 1; TRAC Comments at 1-2; *see also* AT&T Wireless Comments at 3; California PUC Comments at 15-16, 21, 23; Fred Williamson & Associates Comments at 11 n.4.

needs of such consumers, including prepaid wireless carriers.<sup>19</sup> Even AT&T, which has been a leading proponent of replacement of a revenue-based contribution methodology with a connection-based or telephone number-based methodology, has recognized that it is not good public policy to increase the universal service contribution for low income consumers if it would result in an increase in the customers' bills by more than nine percent.<sup>20</sup> Unfortunately, AT&T refuses to recognize that its preferred telephone number-based contribution methodology would have a much greater negative impact on low income consumers, raising the universal service contributions for low income and low volume TracFone customers by more than tenfold.<sup>21</sup>

Another theme expressed by TracFone and many other commenters is that the Commission should give recently implemented changes to the contribution methodology a chance to take effect before trying to assess whether radical changes are necessary for a sustainable fund.<sup>22</sup>

---

<sup>19</sup> AAPD Comments at 1; Consumers Union *et al.* Comments at 12-13; LULAC Comments at 2; NAACP Comments at 1-2; National Indian Education Association Comments at 1-2; Rainbow/PUSH Coalition Comments at 2.

<sup>20</sup> On March 25, 2003, AT&T filed a Petition for Expedited Waiver requesting that the Commission allow AT&T to exclude from its reportable revenues the revenues AT&T receives from low income consumers who participate in AT&T's voluntary program for long distance customers, which the company calls "AT&T Lifeline." AT&T claims that without this waiver, it will have to discontinue its practice of not assessing universal service charges on these customers and adding a 9.1 percent universal service contribution to these customers' bills. AT&T states that such charges added to those customers' bills would be counterproductive because studies indicate that high toll bills are a significant contributor to loss of telephone service. TracFone takes no position on AT&T's waiver request. However, it is ironic that a company which has so adamantly advocated promulgation of a regressive connection-based or telephone number-based methodology notwithstanding the adverse impact of such methodology on lower income consumers now recognizes that substantial increases in the universal service fees to be borne by lower income consumers could force such consumers to abandon service.

<sup>21</sup> TracFone Comments at 2.

<sup>22</sup> CTIA Comments at 3; Consumers Union *et al.* Comments at 3-4; j2 Global Comments at 3-6; Montana Independent Telecommunications Systems Comments at 6; NASUCA Comments at 4;

Some parties explained how the change in the wireless safe harbor will significantly increase the contribution base.<sup>23</sup> Commenters also suggested specific approaches for allocating the interstate revenues of mobile wireless carriers,<sup>24</sup> and other changes to the revenue-based methodology that would further improve the methodology and ensure an adequate funding mechanism.<sup>25</sup> A number of commenters urged the Commission to consider whether the base of universal service contributors should be broadened before considering changes to the funding methodology. Specifically, those commenters urged the Commission to address pending issues regarding whether facilities-based broadband Internet access providers and providers of telephone services using the

---

NTCA Comments at 2; Nextel Comments at 21-24; Verizon Wireless Comments at 2-3; WebLink Comments at 8-10. Even one commenter supporting a connection-based proposal also urges the Commission not to rush to judgment on a universal service contribution methodology. Qwest Comments at 2.

<sup>23</sup> Consumers Union *et al.* Comments at 3 & Affidavit of Dr. Mark Cooper; Fred Williamson & Associates Comments at 5; NTCA Comments at 2; TracFone Comments at 9-10; *see also* Virgin Mobile Comments at 14.

<sup>24</sup> California PUC Comments at 6 (expressing support for TracFone's proposed methodology for calculating interstate calls of wireless carriers); Nextel Comments at 24-27; TracFone Comments at 15-17; Verizon Wireless Comments at 5-7.

<sup>25</sup> For example, TracFone has proposed eliminating the wireless safe harbor because carriers have the capability to identify interstate traffic and to allocate interstate revenues. TracFone Comments at 15. Such an approach would be more equitable because carriers with interstate telecommunications revenues above the safe harbor could not avail themselves of the safe harbor while those carriers with interstate telecommunications revenues below the safe harbor could report their actual revenues. TracFone has submitted an *ex parte* estimating the additional contributions that might be available if mobile wireless carriers were assumed to have various levels of interstate revenues. Letter from M. Brecher, Counsel for TracFone Wireless, Inc., to M. Dortch, Federal Communications Commission, filed Oct. 25, 2002. *See also* California PUC Comments at 6 (proposing to eliminate the safe harbor over time). NASUCA Comments at 17 (proposing that carriers with over 40 percent interstate telecommunications revenues would be required to report actual revenues).

Voice Over the Internet Protocol (VoIP) should be required to contribute to the Universal Service Fund before considering whether to change the current contribution methodology.<sup>26</sup>

As explained below and confirmed by the Staff Study, proponents of connection-based contribution methodologies only support such methodologies if they conclude that such methodologies would reduce their contributions to the Universal Service Fund. Even the minority of commenters who support any of the connection-based or working telephone number-based contribution methodology proposals have articulated very divergent views on the parameters of such methodologies. For example, some local exchange carriers favor a methodology that involves splitting the connection charge between access providers and transport providers, but strongly oppose a telephone number-based methodology or a connection-based methodology with a mandatory minimum contribution requirement.<sup>27</sup> In particular, these local exchange carriers claim that such an approach is necessary to ensure that interexchange carriers are not permitted to escape their equitable and nondiscriminatory share of contributions to the Universal Service

---

<sup>26</sup> Fred Williamson & Associates Comments at 5-6; Montana Independent Telecommunications Systems Comments at 7; NTCA Comments at 3; TracFone Comments at 14-15; Verizon Comments at 3-4; *see also* NRTA & OPASTCO Comments at 12-15; SBC/BellSouth Comments at 5-6; USTA Comments at 10; Virgin Mobile Comments at 14 n.20. If anyone still questions whether telephone services delivered in the VoIP protocol are competitive substitutes for circuit switched telecommunications and should be subject to the same universal service obligations, those people are directed to an article entitled “New MCI Greeted by Skepticism” in the April 15, 2003 edition of the WASHINGTON POST (at page E 1). MCI’s Chief Executive Officer, Michael Capellas, announced that his company is “positioned to take advantage of a broad industry movement away from traditional circuit switched networking toward ‘Internet Protocol,’ or IP standards.” Noting that IP is more efficient than circuit switched networks and provides companies with “huge savings” when they transmit voice or data, Mr. Capellas announced that “[t]he world is moving towards IP.”

<sup>27</sup> NRTA & OPASTCO Comments at 3-9; Qwest Comments at 3-5; SBC/BellSouth Comments at 3-4; USTA Comments at 4-6.

Fund.<sup>28</sup> Interexchange carriers and large business users of their services, on the other hand, strongly disagree with those local exchange carriers, and advocate either a telephone number-based contribution methodology or the original Coalition for Sustainable Universal Service (CoSUS) proposal. These parties claim that splitting the connection charge between access and transport providers would be too administratively burdensome and inequitable for long distance providers that do not provide access.<sup>29</sup> Predictably, wireline prepaid calling card providers also supported the original CoSUS proposal because that proposal would totally relieve those carriers from any universal service contribution obligation despite the fact that those carriers derive significant revenues from the sale of interstate telecommunications services. Indeed, those carriers oppose any hint of a minimum contribution for carriers that do not provide connections because such an obligations would be too administratively cumbersome.<sup>30</sup>

Even parties supporting some sort of connection-based methodology often acknowledge that the “equitable and nondiscriminatory” requirement necessitates that a contribution methodology have some relationship to relative use of the network (rather than mere connection to a network irrespective of usage). For example, these parties generally support capacity-based tiers for multiline business connections.<sup>31</sup> Virgin Mobile proposes what it describes as a connection-

---

<sup>28</sup> NRTA & OPATSCO Comments at 6; Qwest Comments at 4; SBC/BellSouth Comments at 14-15; USTA Comments at 5-6.

<sup>29</sup> AT&T Comments at 46-53; Sprint Comments at 12-14; WorldCom Comments at 38-42.

<sup>30</sup> International Prepaid Communications Association (IPCA) Comments at 6-9, 14-16; Telstar Comments at 4-7.

<sup>31</sup> Ad Hoc Comments at 10-12; AT&T Comments at 7-9; NRTA & OPASTCO Comments at 10 (“Each proposal uses capacity to deal with the inherent problem that simply counting end-user connections would assign vastly too great a share of the responsibility for contributions to residential and single line business connections, including end users that do not make any

based methodology with an equitable contribution component. Under Virgin Mobile's approach, mobile wireless carriers would contribute only \$0.30 per connection, based on interstate revenues and relative use of the network.<sup>32</sup> The joint comments of SBC and BellSouth advocate that the Commission develop a capacity tier structure so that there would be a reasonable relationship between a carrier's contribution level and the level of its interstate activities. Although SBC and BellSouth suggest that the level of a carrier's interstate activities should be measured by the number and capacity of connections, their comments support this approach by arguing that higher capacity connections generate higher interstate revenues.<sup>33</sup> Finally, WorldCom asserts that it would not object to a connection-based methodology with a minimum contribution, but only if the minimum contribution is neither progressive nor regressive.<sup>34</sup>

### **III. ADVOCATES OF CONNECTION-BASED METHODOLOGIES HAVE NOT PROVEN A NEED TO ABANDON A REVENUE-BASED METHODOLOGY**

Proponents of connection-based and working telephone number-based methodologies generally rely on two major assertions supporting an alleged need to move away from a revenue-based methodology. First is the unproven claim that interstate revenues are declining leading to a so-called "death spiral" of decreasing interstate revenues, an expanding Universal Service

---

interstate calls."); SBC/BellSouth Comments at 12-13; Sprint Comments at 11; USTA Comments at 8-9; WorldCom Comments at 34-37.

<sup>32</sup> Virgin Mobile Comments at 7-12.

<sup>33</sup> SBC/BellSouth Comments at 12.

<sup>34</sup> WorldCom explained that the minimum contribution "should not result in a carrier that has lower interstate end-user telecommunications revenues paying a disproportionately higher contribution than a carrier that has higher interstate end-user revenues." WorldCom Comments at 33.

Fund, and constantly increasing contribution factors.<sup>35</sup> Second, they raise the “problem” of increased bundling of interstate services with intrastate services, as well as enhanced services and customer premises equipment. According to this argument, with bundled services the incentives are great to allocate revenues away from interstate services in order to avoid universal service contribution, and the Commission cannot adequately monitor these allocations.<sup>36</sup> TracFone and many other commenters addressed both of these issues in their initial comments and showed that the asserted “death spiral” is merely tired rhetoric unsupported by facts<sup>37</sup> and that concerns about bundling are belied by marketplace experience and, to the extent that such concerns are valid, means are available to address those concerns.<sup>38</sup>

In addition to the study prepared on behalf of TracFone by Economists Incorporated, Consumers Union *et al.* submitted an affidavit of Dr. Mark Cooper that demonstrates that the increased contribution from wireless carriers should ensure the sufficiency and viability of a

---

<sup>35</sup> AT&T Comments at 11-15; IPCA Comments at 12; Sprint Comments at 7; Telstar Comments at 2; WorldCom Comments at 6-11.

<sup>36</sup> AT&T Comments at 15-18; IPCA Comments at 12; Qwest Comments at 3; SBC/BellSouth Comments at 7-8; Sprint Comments at 5-6; USTA Comments at 3; WorldCom Comments at 11-13.

<sup>37</sup> Despite over a dozen references to the “death spiral” in AT&T’s Comments, there is no explanation why AT&T’s concerns about bundled services and uncaptured interstate revenue cannot be addressed in the context of a revenue-based methodology. WorldCom recognizes that wireline long distance revenues have declined in large part because of substitution of wireless long distance service. As WorldCom acknowledges, a decline in wireline interexchange carriers’ interstate revenues is not tantamount to a decline in interstate revenues. WorldCom Comments at 9. *See also* Verizon Comments at 3 (contending that in earlier phases of the proceeding parties have failed to place underlying data on the record making it impossible to determine whether those parties’ conclusions are reliable).

<sup>38</sup> California PUC Comments at 7-9; Fred Williamson & Associates Comments at 6-7; NASUCA Comments at 5-8; Verizon Wireless Comments at 3.

revenue-based funding mechanism.<sup>39</sup> As discussed below, the Commission's Staff Study also supports the viability of a revenue-based contribution methodology through at least 2007.

Although some proponents of connection-based methodologies have asserted that increased bundling may lead to difficult allocation issues and incentives to develop pricing structures solely to avoid universal service contributions, many commenters have explained that the bundling issue can be adequately addressed by various safe harbors that can be adjusted when necessary.<sup>40</sup> The Commission's recent changes to the wireless safe harbor is an example of such adjustments.<sup>41</sup> As TracFone's Comments explained, the realities of the marketplace make it impractical to develop pricing structures of bundled services primarily for the purpose of evading universal service contributions.<sup>42</sup> Those seeking replacement of a revenue-based methodology with a connection charge never acknowledge that their bundling concerns would need to be addressed in any event because the Commission's connection-based proposals generally contain

---

<sup>39</sup> Consumers Union *et al.* Comments at 3 & Affidavit; *see also* NASUCA Comments at 8-14 ("The record shows that the patient is nowhere near critical.").

<sup>40</sup> California PUC Comments at 7-9; Fred Williamson & Associates Comments at 6-7; NASUCA Comments at 6-7; TracFone Comments at 11-12; Verizon Wireless Comments at 5; *see also* j2 Global Comments at 5; Verizon Comments at 4-5 & Attachment. Recently the State of Virginia recognized that revenues from bundled communications services can be reasonably allocated when it passed legislation to permit companies to make reasonable allocations among bundled transactions that include communications services and other services taxed at different rates. 2003 Va. Acts ch. 160 (to be codified at VA. CODE ANN. § 58.1-3812(L)).

<sup>41</sup> TracFone agrees with parties claiming that the revised wireless safe harbor is too low and proposes elimination of the safe harbor for mobile wireless carriers. TracFone Comments at 15.

<sup>42</sup> TracFone Comments at 12-13 (describing how mobile wireless carriers reduce the price of the non-telecommunications portion of their bundled handset and service offerings even though this results in greater universal service contributions).

some component that would assess interstate revenues.<sup>43</sup> In addition, advocates of the various connection-based methodologies fail to respond to legal and policy concerns raised with respect to each of the connection-based proposals described in the *Second Further Notice*.

#### **IV. EACH OF THE PROPOSED CONNECTION-BASED CONTRIBUTION METHODOLOGIES CONTINUES TO HAVE FATAL FLAWS**

##### **A. Connection-Based Charge with Mandatory Minimum Contribution**

Not a single commenter favors this proposal, and many parties concur with the problems identified in TracFone's Comments. For example, TracFone and others have explained that the proposal would not meet the "equitable and nondiscriminatory" requirement of Section 254(d) because some interstate carriers would contribute based on connections to the network, while other carriers would contribute only a minimum amount based on revenues. This situation causes particular concern when carriers who are treated differently under this plan are offering competing services.<sup>44</sup> Another concern raised by TracFone is that the proposal would allow those carriers that provide network connections for a small minority of their customers, such as the large long distance companies (who provide service to some customers via special access lines and thereby provide "connections"), to deduct their connection-based contributions from their minimum revenue-based contributions and thus totally avoid any contribution obligation on

---

<sup>43</sup> See California PUC Comments at 7-8; Fred Williamson & Associates Comments at 7; NASUCA Comments at 20, 24; Verizon Wireless Comments at 9; see also AT&T Wireless Comments at 2-3 (claiming that even under a connection-based methodology, Section 2(b) of the Communications Act would require the Commission to permit carriers to deduct from the connection-based assessment the portion attributable to intrastate services).

<sup>44</sup> TracFone Comments at 19-20; Consumers Union *et al.* Comments at 14-15; Nextel Comments at 12-13; Verizon Comments at 9.

the major portion of their revenues which are associated with their interstate services provided via switched access.<sup>45</sup>

Many commenters point out that it is particularly problematic to propose assessing all revenues rather than only revenues derived from end-users because such an approach would lead to double counting in certain situations and would particularly impede the ability of resellers to compete with facilities-based carriers.<sup>46</sup> Finally, TracFone and others explain that this proposal would impermissibly assess intrastate revenues in violation of Section 2(b) of the Communications Act.<sup>47</sup>

Notwithstanding these legal and policy objections, a few commenters suggest that this proposal might be acceptable, with certain significant modifications. For example, Sprint would support a flat, mandatory fee applied to all carriers irrespective of whether they collect a connection fee.<sup>48</sup> While such an approach would address certain legal and competitive concerns regarding the deduction of connection-based charges from a mandatory minimum, such an approach would not meet the requirements of Sections 254(d) because carriers with connections would pay for those connections and an additional mandatory minimum but carriers with no connections to the network, such as dial around long distance providers, as well as those long distance providers that connect customers only through use of switched access, would contribute only a mandatory

---

<sup>45</sup> TracFone Comments at 20; *see also* IPCA Comments at 14 (arguing such an approach would favor single providers of multiple services); SBC/BellSouth Comments at 15-16; Telstar Comments at 7-8.

<sup>46</sup> TracFone Comments at 20-22; California PUC Comments at 13; SBC/BellSouth Comments at 16; Telstar Comments at 8-9; Verizon Comments at 10-11; Virgin Mobile Comments at 12-13.

<sup>47</sup> TracFone Comments at 22-23; ITA Comments at 6; Nextel Comments at 13.

<sup>48</sup> Sprint Comments at 9.

minimum and thus a proportionately lower contribution level. Sprint's suggested mandatory minimum also would violate Section 2(b) because the connection-based charges would be imposed on carriers irrespective of whether they carried any interstate traffic over those connections. Indeed, Sprint's proposal might exacerbate the assessment of intrastate revenues because the mandatory minimum assessment would apply irrespective of the level of interstate telecommunications service revenues. In addition, a flat fee imposed on each carrier would not be equitable and nondiscriminatory because it would place a greater relative burden on smaller carriers who would have to divide the charge over fewer customers, resulting in higher per customer charges.

WorldCom would not object to a minimum contribution requirement if it were to be offset against the carrier's connection-based assessment and the minimum contribution should be proportionate to a carrier's interstate revenues.<sup>49</sup> It appears, however, that WorldCom's first condition would negate its proportionality requirement. As a large volume long distance carrier that also has some connections, WorldCom would offset its connection-based assessments and it is difficult to see how WorldCom would then pay a minimum contribution that is proportionate to its interstate revenues. A smaller volume long distance carrier with no connections would likely contribute a substantially greater proportion of its interstate revenues because the smaller carrier would have no offset.

Virgin Mobile suggested what it describes as an equitable contribution plan, which essentially fixes connection-based contributions on the average interstate revenues and use of the network of different industry segments. For example, mobile wireless carriers would pay a \$.30

---

<sup>49</sup> WorldCom Comments at 33-34.

connection charge per handset, while local exchange carriers would pay a \$1.00 connection charge. Interexchange carriers and others that contribute on a revenue basis would pay based on a contribution factor that is greater than one percent and relatively equivalent to the contributions of connection-based carriers.<sup>50</sup> The details of this proposal are uncertain, but Virgin Mobile's proposal would result in a substantial increase in the universal service contributions from low volume wireless consumers and mobile wireless carriers who serve a significant portion of those customers, because the connection-based charge would be derived from an average for the mobile wireless industry as a whole. Thus, none of the variations on a mandatory minimum proposal presents any significant advantage over the Commission's discriminatory and unlawful connection-based methodology with a mandatory minimum contribution proposal.

#### **B. Split the Connection Charge**

This proposal is supported primarily by certain local exchange carriers.<sup>51</sup> TracFone's Comments explained that the proposal would be inequitable and discriminatory because some carriers would contribute based on revenues while competing carriers would contribute based on connections, leading to very different contribution levels among competing carriers.<sup>52</sup> One particularly inequitable and discriminatory variation of this proposal would be to assess all wireline transport providers (*i.e.*, interexchange carriers) based on interstate revenues, while assessing

---

<sup>50</sup> Virgin Mobile Comments at 9-10.

<sup>51</sup> NRTA & OPASTCO Comments at 5-7; Qwest Comments at 5-8; SBC/BellSouth Comments at 9-13; USTA Comments at 6-10. The State of Texas opposed any universal service contributions for governmental units, but stated that splitting the connection methodology appears to be the most equitable. State of Texas Comments at 3-4.

<sup>52</sup> TracFone Comments at 23; *see also* Consumers Union *et al.* Comments at 14-15; IPCA Comments at 17-20; Nextel Comments at 14; Telstar Comments at 10-11; Verizon Wireless Comments at 18.

mobile wireless providers a connection fee for both the access and transport portions of the service.<sup>53</sup> TracFone and others also raise potential violations of Section 2(b) because this proposal would require contributions even if a customer made no interstate calls in a month.<sup>54</sup> Interexchange carriers strongly opposed this approach, claiming that they do not have adequate information regarding transport connections<sup>55</sup> and that such an approach discriminates against carriers that do not offer both switched access and switched transport.<sup>56</sup>

In light of the many concerns identified with the split charge proposal, the initial comments offer many variations on this approach. The *Second Further Notice* sought comment on two variations of this proposal and commenters suggested other variations.<sup>57</sup> As a result, it is

---

<sup>53</sup> TracFone Comments at 24; Verizon Comments at 10 (arguing that it should not matter whether a customer purchases local and long distance services from the same or different carriers). *See also* AT&T Comments at 53-54 (arguing that alternative proposals to tie the transport component to a percentage of end-user revenues do not address the fundamental unfairness of splitting the connection charge and suffer from the same flaws as the revenue-based system). Both Nextel and Verizon Wireless argue that their mobile wireless services constitute one unified service, rather than access service and transport service. Nextel Comments at 14; Verizon Wireless Comments at 14-17

<sup>54</sup> TracFone Comments at 24; *see also* Allied Comments at 10; AT&T Wireless Comments at 2-3; Virgin Mobile Comments at 10-12.

<sup>55</sup> AT&T Comments at 48-52; Sprint Comments at 12-13; WorldCom Comments at 38-42.

<sup>56</sup> AT&T Comments at 48-53; Sprint Comments at 14-15; Telstar Comments at 12; WorldCom Comments at 39-40.

<sup>57</sup> NRTA & OPASTCO Comments at 6 (If interexchange carriers insist that they do not have connection information, the Commission should assess their contribution based on each interexchange carrier's relative share of total interstate end-user revenues.); Qwest Comments at 5-8 (Connection-based charge for both access and presubscribed transport providers, but would use a hybrid connection/revenue methodology for transport on private line circuits if there are two carriers. This proposal would use revenue-based charge for dial around and prepaid long distance services.); SBC/BellSouth Comments at 9-13 (For switched services, there would be one connection charge if one carrier provides access and transport. If two carriers are involved, the access provider would pay one half of a connection charge and the transport provider would

difficult to evaluate this approach. It appears that each suggested version of this plan would violate Section 2(b) by assessing intrastate revenues as well as the equitable and nondiscriminatory requirement of Section 254(d) by requiring low volume customers and the carriers who serve them to contribute disproportionately large amounts to the Universal Service Fund. In addition, it appears that mobile wireless carriers would always pay a connection-based charge for both access and transport services, while wireline interexchange carriers would contribute based on revenues under some circumstances, leading to a potentially inequitable result for low volume customers of mobile wireless carriers who would pay a flat fee regardless of their interstate usage, if any. Similarly, very high volume customers of at least some wireline interexchange carriers would pay much higher revenue-based rates while other high volume consumers would pay a flat connection-based charge.<sup>58</sup>

### **C. Working Telephone Number-Based Contribution Methodology**

This methodology is favored by several large interexchange carriers and large telecommunications customers.<sup>59</sup> Although the working telephone number-based contribution method-

---

pay a revenue-based charge. For non-switched connections, the provider of the access connection would pay a full connection charge regardless of whether there is a different transport provider.); USTA Comments at 6-8 (A carrier that provides both access and transport would contribute based on connections, but if separate carriers provide those services, the access provider would contribute based on connections and the transport provider would contribute based on revenue.).

<sup>58</sup> See Sprint Comments at 14-15.

<sup>59</sup> Ad Hoc Comments at 5-8; AT&T Comments at 4-10; Sprint Comments at 15-18; *see also* Telstar Comments at 2. The Michigan Public Service Commission proposes a variation on this proposal that would assess all categories of numbering resources, with the exception of the aging category, rather than assigned end-user telephone numbers and would not assess private line and special access services that do not use assigned telephone numbers. Michigan PSC Comments at 4-5. TracFone believes that this proposal suffers from the legal and policy infirmities described

ology purports to be an attempt to address legal concerns regarding the Commission's jurisdiction to assess intrastate communications, TracFone's Comments explained that the Commission's authority over the North American Numbering Plan does not confer upon it plenary jurisdiction over intrastate services that use telephone numbers, nor does it confer jurisdiction to assess all revenues derived from services using such numbers. Neither does the Commission's jurisdictional authority over the North American Numbering Plan negate the statutory limitation on the Commission's jurisdiction over intrastate services, including revenues derived from such intrastate services, codified at Section 2(b) with respect to other matters such as universal service.<sup>60</sup> AT&T suggests that *NARUC v. FCC*<sup>61</sup> supports the Commission's power to assess a flat-rated charge on a connection merely because it is capable of being used for an interstate service, without violating Section 2(b). As TracFone's Comments explained, however, the proposal to assess universal service charges on local connections that are not used for any interstate services is distinguishable from assessment of Federal Subscriber Line Charges on access lines that are not used for interstate service, because Federal universal service charges, unlike Subscriber Line Charges (end-user interstate access charges), would not be recovering costs that have been as-

---

with respect to the other telephone number-based connection methodologies discussed in the comments.

<sup>60</sup> TracFone Comments at 24-25; *see also* California PUC Comments at 25-26; ITA Comments at 7; SBC/BellSouth Comments at 18; Verizon Wireless Comments at 20-22. Ad Hoc cites *People of the State of New York & Public Service Commission of the State of New York v. FCC*, 267 F.3d 91 (2d Cir. 2001) as support for the proposition that Section 251(e) grants the Commission plenary authority over intrastate numbering issues. Ad Hoc Comments at 7-8. As Verizon Wireless explained, that case is inapposite because it dealt solely with numbering administration, which is specifically addressed in Section 251(e), rather than the separate universal service provisions of Section 254. Verizon Wireless Comments at 20-21.

<sup>61</sup> 737 F.2d 1095 (D.C. Cir. 1984).

signed to the interstate jurisdiction pursuant to the jurisdictional separations process.<sup>62</sup> AT&T concludes incorrectly that a working telephone number-based methodology would not be inconsistent with the holding in *Texas Office of Public Utility Counsel v. FCC*<sup>63</sup> because the proposed methodology would not vary universal service contributions with the amount of revenue, including intrastate revenue. The U.S. Court of Appeals for the Fifth Circuit explained that the “plain language of § 2(b) directs courts to consider FCC jurisdiction over a very broad swath of intrastate services.”<sup>64</sup> Nothing in the court’s opinion indicates that that the jurisdictional fence erected by Section 2(b) would not apply to a non-revenue-based contribution methodology which resulted in Federal universal service contribution assessments on intrastate service.

TracFone and other commenters also explained that a working telephone number-based contribution methodology would violate Section 254(d) because it would not require contributions from every telecommunications carrier that provides interstate telecommunications service, e.g., prepaid wireline calling card providers would be totally exempt simply because their services are provided without those carriers controlling working telephone numbers.<sup>65</sup> In an effort to avoid this facial legal infirmity, some parties have suggested that those providers of interstate telecommunications service who would not otherwise contribute should be required to contribute

---

<sup>62</sup> TracFone Comments at 23 n.45.

<sup>63</sup> 183 F.3d 393 (5th Cir. 1999).

<sup>64</sup> 183 F.3d at 447. In addition, AT&T forgets that the Court of Appeals for the Fifth Circuit invalidated, based on Section 2(b), the Commission’s rule prohibiting carriers from disconnecting local service to low income customers who fail to pay toll charges even though that rule did not involve an assessment of intrastate rates. 183 F.3d at 421-424.

<sup>65</sup> TracFone Comments at 25-26; NRTA & OPASTCO Comments at 9; USTA Comments at 5-6; Verizon Comments at 11; Virgin Mobile Comments at 17.

based on their end-user interstate revenues.<sup>66</sup> This “solution” to the Section 254(d) requirement that “every” carrier must contribute would inevitably lead to violation of the other Section 254(d) requirement that the contribution methodology must be equitable and nondiscriminatory. Commenters also note that such an approach would effectively exempt most interexchange carriers from any meaningful contribution obligations.<sup>67</sup> In addition, the working telephone number-based assessment proposal fails to take into account the significant disparities among services provided to, and the revenue generated by, any particular telephone number.<sup>68</sup> Verizon raises the concern that this proposal could adversely impact certain services (*e.g.*, toll free services, distinctive ring services) by assessing them multiple contributions for only one connection.<sup>69</sup>

Notwithstanding AT&T’s claim to the contrary, it is clear that a working telephone number-based contribution methodology would discriminate against providers of prepaid wireless services.<sup>70</sup> AT&T claimed that the problem raised by prepaid carriers was a lack of a subscription agreement and determining when a handset is active.<sup>71</sup> AT&T, however, completely ignores

---

<sup>66</sup> Ad Hoc Comments at 10 (refers to end-user revenues, but presumably means interstate end-user revenues); Verizon Comments at 11; *see also* Sprint Comments at 18 (urging a flat minimum fee if such a fee is necessary).

<sup>67</sup> California PUC Comments at 23; Consumers Union *et al.* Comments at 13-14; Fred Williamson & Associates Comments at 8-9; NTCA Comments at 3-4; Nextel Comments at 15; SBC/BellSouth Comments at 18; USTA Comments at 5-6; Virgin Mobile Comments at 17.

<sup>68</sup> Allied Comments at 15; *see also* Office of Advocacy, SBA Comments at 5 (arguing that many small businesses have telephone lines that are not connected to long distance networks); SBC/BellSouth Comments at 17-18 (explaining that telephone numbers have no correlation to the level of a carrier’s interstate telecommunications activities).

<sup>69</sup> Verizon Comments at 11.

<sup>70</sup> AT&T Comments at 32-33.

<sup>71</sup> AT&T Comments at 32.

TracFone Comments throughout this proceeding that any methodology that does not take into account actual use of the network or revenues would be particularly harmful to low volume and low income consumers, and that prepaid wireless carriers would be especially harmed because a significant portion of their customers are low volume and low income customers.

Several proponents of the working telephone number proposal have asserted that an important benefit would be that the Universal Service Fund would receive contributions from certain broadband Internet services, particularly VoIP services, because these services will need to use working telephone numbers. These commenters claim that the Commission would not need to address whether these services are telecommunications services or information services.<sup>72</sup> While this line of argument may be appealing to those who would prefer to avoid difficult decisions, it is completely at odds with the requirements of Section 254(d). That provision requires contributions to universal service from every telecommunications carrier providing interstate telecommunications service and permits the Commission to require contributions from other providers of telecommunications, if the public interest so requires. The Commission cannot create a universal service contribution methodology that completely ignores the provision of the Communications Act that directly addresses the issue, and it cannot require contributions from VoIP providers without a determination that those providers are telecommunications carriers or they provide interstate telecommunications and the public interest requires that they contribute. In addition, certain commenters contend exactly the opposite, *i.e.*, that this proposal would exempt many broadband Internet service providers and VoIP service providers who do not use

---

<sup>72</sup> AT&T Comments at 28-29; *see also* Michigan PSC Comments at 7.

telephone numbers in their provision of service.<sup>73</sup> Whether or not Internet access services in general and VoIP services in particular should be subject to universal service contribution obligations should be the result of Commission deliberations based on a record; those services should not be brought into the universal service funding system through the “back door” of a working telephone number-based plan.

#### **D. CoSUS Proposal**

Although the Commission did not seek additional comment on the CoSUS proposal – a plan long abandoned by several members of the original CoSUS coalition, including AT&T and the Ad Hoc Telecommunications Users Committee, a few commenters continue to support the original CoSUS proposal.<sup>74</sup> These parties cling to the peculiar argument that it is not necessary to require contributions from every interstate telecommunications carrier as long as every interstate carrier is subject to the same contribution methodology.<sup>75</sup> These parties turn the plain language of the statute on its head, ignoring the requirement that “[e]very telecommunications carrier that provides interstate telecommunications services shall contribute.” They also ignore the inequitable and discriminatory aspects of the CoSUS proposal, as well as the violation of Section 2(b). TracFone and many other parties addressed legal and policy problems with the CoSUS proposal in prior comments in this proceeding and will not repeat them here.<sup>76</sup>

---

<sup>73</sup> NRTA & OPASTCO Comments at 8; Nextel Comments at 15; SBC/BellSouth Comments at 18-19.

<sup>74</sup> IPCA Comments at 11-13; Telstar Comments at 4-5; WorldCom Comments at 18-32.

<sup>75</sup> IPCA Comments at 6-9; WorldCom Comments at 25-30; *see also* Ad Hoc Comments at 7; Sprint Comments at 7.

<sup>76</sup> *See, e.g.*, TracFone Comments in CC Docket 96-45 *et al.*, filed Apr. 22, 2002; TracFone Reply Comments in CC Docket 96-45 *et al.*, filed May 13, 2002. To the extent deemed necessary,

**V. THE COMMISSION STAFF STUDY DOES NOT SUPPORT ABANDONING A REVENUE-BASED METHODOLOGY, AND LACKS AN EXAMINATION OF LOW VOLUME CONSUMERS WHICH WOULD REINFORCE THIS CONCLUSION**

The *Public Notice* seeks comment on a Staff Study attempting to analyze the impact of various universal service contribution methodologies under consideration by the Commission. The Staff Study compares the impact of a revenue-based contribution methodology and the three connection-based methodologies described in the *Second Further Notice*.

The Staff Study necessarily depends on many assumptions and predictions regarding the future needs of the Universal Service Fund, the precise details of each proposal, and customer demand for services in various market segments. TracFone has not attempted to analyze each of the individual assumptions or predictions that underlie the Staff Study, and it has not attempted to create its own detailed assessment of the impact of alternative assumptions and predictions on different types of carriers and market segments. As explained more fully below, TracFone believes that the Staff Study falls short in one important respect: the Staff Study fails to reveal the full impact of the various proposals on residential customers because the Staff Study does not examine different segments of residential customers.

---

TracFone hereby incorporates its earlier comments with respect to the CoSUS proposal. TracFone notes that WorldCom supports the CoSUS proposal by referring to an article by Jerry Hausman and Howard Shelanski, arguing that it would have been more economically efficient for the Commission to support the Schools and Libraries Fund through assessments on local exchange carriers rather than interexchange carriers. WorldCom Comments at 22-23. That article, however, never addresses the legal issues surrounding Section 2(b) nor the implications of any methodology on mobile wireless carriers. Jerry Hausman & Howard Shelanski, *Economic Welfare and Telecommunications Regulation: The E-Rate Policy for Universal Service Subsidies*, 16 YALE J. ON REG. 19 (1999). See also Nextel Comments at 18-21 (urging the Commission to consider elasticities of demand for mobile wireless carriers in developing an equitable and nondiscriminatory contribution methodology).

**A. The Staff Study Provides No Support for Abandoning a Revenue-Based Contribution Methodology**

Accepting all of the Staff Study's assumptions and predictions as reasonable, the Staff Study provides strong evidence that the Commission should retain a revenue-based universal service contribution methodology. Overall, nothing in the Staff Study indicates that there would be any benefit to residential consumers from switching to any of the connection-based contribution methodologies. Notwithstanding all the rhetoric and hyperbole offered by proponents of the alternative methodologies about the desperate need to radically overhaul the current methodology because of alleged "death spirals" and ever increasing contribution factors for consumers, the Staff Study demonstrates that average residential households at all income levels, including lower income levels, would pay significantly higher contributions under two connection-based proposals and would make essentially the same contributions under the proposal for connection-based contributions with a mandatory minimum contribution requirement.

It is difficult to imagine how the Commission possibly could conclude that the public interest would be served by mandating a contribution system which would require residential consumers to shoulder 67 to 68 percent of the total universal service funding requirement – the Staff Study prediction of the result of a splitting the connection charge proposal – or how such an increase could be consistent with the Act and with the goals of universal service. Although not quite as egregious, the working telephone number-based methodology is estimated to result in residential assessments comprising 45 to 46 percent of the total universal service contributions. The Staff Study estimates that residential assessments would comprise no more than 42 percent of the universal service contributions under a revenue-based methodology. In short, the Staff Study indicates that under any of the alternatives to a revenue-based system now under consid-

eration, residential consumers would provide either essentially the same or a larger percentage of total universal service funding than they do under the current revenue-based system.

On the other hand, it is easy to understand why certain carriers and large customers support specific connection-based proposals. Based on the Staff Study, each industry segment advocating a certain connection-based proposal would see its own universal service contributions decline significantly under its preferred proposals. For example, under the splitting the connection proposal advocated by SBC, BellSouth, and some other local exchange carriers, the Staff estimates that local exchange carriers would see their share of contributions decrease from 27 percent in 2003 to 20 percent in 2007. Similarly, the working telephone number-based methodology advocated by AT&T and its large business user allies would result in interexchange carrier contributions plunging from 51 percent of the total to 13 percent of total universal service contributions! Large business users with DS3 interstate private line service would see an average monthly contribution drop from \$650 in 2003 to \$229 in 2007 for each DS3 private line. The Staff Study confirms what has long been apparent to TracFone and others: the connection-based alternatives would simply transfer responsibility for funding the Federal universal service programs from the largest interexchange carriers and their large and deep-pocketed corporate users to residential ratepayers, including lower income residential consumers, and to those carriers who focus on serving those lower income users.

**B. The Staff Study Fails To Adequately Examine the Impact of Connection-Based Contribution Methodologies on Certain Segments of Residential Consumers**

One significant shortcoming of the Staff Study is that it does not examine the impact of the various proposals on different segments of the residential market. In particular, the Staff Study does not attempt to analyze the impact of the various proposals on low volume users. As TracFone has explained in prior filings, it is these consumers who would be most harmed by a

regressive connection-based charge. This failure even to attempt to assess the impact of various proposals on low volume consumers merely highlights this proceeding's focus on the concerns which have been articulated by carriers and large users who have advocated radical, self-serving changes to the universal service contribution methodology, primarily designed to reduce their own share of universal service funding and transfer their share to residential consumers and those providers who serve them.

Of course, under any of the Commission's connection-based proposals, the monthly contribution for residential customers would not vary, assuming that the average low volume household, like the Staff Study's average residential household, has approximately one primary residential phone and one mobile wireless handset. Thus, there would be no significant additional calculations needed to expand this aspect of the Staff Study. Under a revenue-based methodology, however, the monthly contribution could vary significantly depending on whether or not the household has a high or low volume of interstate calls. Not only is each household contributing in proportion to its use of interstate telecommunications networks, but low income households are able to limit their calling volume and thereby limit both the amount they pay for telecommunications services and additional assessments for universal service.

The Staff Study estimates that under a revenue-based contribution methodology, an average household would pay a total monthly contribution of \$2.21 in 2004 and \$2.38 in 2007. These estimates assume that typical monthly wireless contribution levels per residential handset would be \$0.74 and \$0.79 respectively. For low volume mobile wireless consumers, such as TracFone customers, the average monthly contribution per residential handset would be much less. TracFone's current universal service payments average approximately \$0.09 per handset. Using the Staff Study's estimated contribution factors, this would increase to an average monthly

contribution of approximately \$0.16 per handset in 2004 and \$0.18 per handset in 2007. This lower mobile wireless contribution could result a lower total monthly household contribution of under \$1.63 in 2004 and less than \$1.77 in 2007. In addition, under a revenue-based methodology low volume long distance customers could see similar reductions in their universal service contributions, and consequently their overall household universal service contributions.<sup>77</sup>

Finally, it is important to keep in mind that the Staff Study assumes that average residential households would have only one mobile wireless handset in 2004 and 1.16 handsets in 2007. For residential households with more than one mobile wireless handset, the disparity between a connection-based methodology and a revenue-based methodology would be more pronounced, particularly for households where mobile wireless handsets are used primarily to call other members of the household or for safety purposes. This critical point should not be ignored because residential households increasingly rely on multiple wireless handsets that are used by family members for safety and security purposes – a consumer need that is fully consistent with universal service policy and which is being addressed by carriers like TracFone and other pre-paid wireless service providers.

---

<sup>77</sup> The Staff Study estimates that residential consumers had a monthly average of 55 minutes of interstate long distance calling in 2001 and that the monthly average is declining. Consumers Union *et al.* has estimated that the average low volume long distance customer has a monthly average of half the minutes of interstate long distance calling of the average residential customer, and noted that many low income households make few or no interstate calls each month. See Consumers Union *et al.* Comments in CC Docket No. 96-45 *et al.*, at 10-11, filed April 22, 2002. We have not attempted to quantify the impact of these differences on a residential customer's total universal service contributions because of the numerous assumptions contained in the Staff Study regarding decreasing minutes and decreasing long distance rates.

## VI. CONCLUSION

For the reasons set forth above, TracFone supports the continuation of a revenue-based contribution methodology, with such additional changes and refinements as are necessary to ensure the continued sustainability of the Universal Service Fund and to ensure that the fund will continue to be supported by contributions from every provider of interstate telecommunications service on an equitable and nondiscriminatory basis. Also, for the reasons described in these comments, none of the alternative connection or telephone number-based proposals set forth in the *Second Further Notice* would comply with the relevant provisions of the Communications Act or the Commission's competitive neutrality requirement. Accordingly, none of those proposals should be adopted.

Respectfully submitted,

**TRACFONE WIRELESS, INC.**

A handwritten signature in black ink, appearing to read 'M. F. Brecher', is written over a horizontal line.

Mitchell F. Brecher  
Nancy E. Boocker  
GREENBERG TRAURIG, LLP  
800 Connecticut Avenue, N.W.  
Suite 500  
Washington, D.C. 20006  
(202) 331-3100  
*Its Attorneys*

April 18, 2003

## CERTIFICATE OF SERVICE

I, Joelle Zajk, an Executive Assistant with the law firm of Greenberg Traurig, LLP, hereby certify that on April 18, 2003, a true and correct copy of the foregoing Reply Comments of TracFone Wireless, Inc., was submitted to the following:

The Honorable Michael K. Powell \*  
Chairman  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

Mr. John Muleta \*  
Chief, Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

The Honorable Kathleen Q. Abernathy \*  
Commissioner  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

Ms. Carol Matthey \*  
Deputy Chief, Wireline Competition Bureau  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

The Honorable Jonathan S. Adelstein \*  
Commissioner  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

Mr. Peter Tenhula \*  
Acting Deputy Chief, Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

The Honorable Michael J. Copps \*  
Commissioner  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

Mr. Eric Einhorn \*  
Chief, Telecommunications Access Policy  
Division  
Wireline Competition Bureau  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

The Honorable Kevin J. Martin \*  
Commissioner  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

Ms. Diane Law Hsu \*  
Deputy Chief, Telecommunications  
Access Policy Division  
Wireline Competition Bureau  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

Mr. William Maher \*  
Chief, Wireline Competition Bureau  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

Mr. Paul Garnett \*  
Attorney, Telecommunications Access  
Policy Division  
Wireline Competition Bureau  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554  
(Filed via ECFS)

Ms. Sheryl Todd \*  
Telecommunications Access Policy Division  
Wireline Competition Bureau  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554  
(3 copies)

Qualex International \*  
Portals II  
445 12th Street, SW  
Room CY-B402  
Washington, D.C. 20554  
(CD-ROM)

John T. Nakahata  
Michael G. Grable  
HARRIS, WILTSHIRE & GRANNIS LLP  
1200 18<sup>th</sup> Street, NW  
Suite 1200  
Washington, D.C. 20036

David M. Wilson  
Leon M. Bloomfield  
Wilson & Bloomfield LLP  
1901 Harrison Street  
Suite 1630  
Oakland, CA 94612

James S. Blaszak  
Stephen J. Rosen  
Levine, Blaszak, Block & Boothby, LLP  
2001 L Street, NW  
Suite 900  
Washington, D.C. 20036

Kenneth E. Hardman  
MOIR & HARDMAN  
1015 18<sup>th</sup> Street, NW  
Suite 800  
Washington, D.C. 20036-5204

Jeanne Jansenius  
President  
ACUTA, Inc.  
152 West Zandale Drive, Suite 200  
Lexington, Kentucky 40503

Michael Altschul  
Senior Vice President, General Counsel  
CELLULAR TELECOMMUNICA-  
TIONS &  
INTERNET ASSOCIATION  
1250 Connecticut Avenue, N.W.  
Suite 800  
Washington, DC 20036

Albert H. Kramer  
Allan C. Hubbard  
Robert N. Felgar  
DICKSTEIN SHAPIRO MORIN &  
OSHINSKY, LLP  
2101 L Street, NW  
Washington, D.C. 20037-1526

Alan D. Mandl  
Mandl & Mandl LLP  
10 Post Office Square-Suite 630  
Boston, MA 02109

Counsel for International Prepaid  
Communications Association, Inc.

Frederic G. Williamson  
President, Fred Williamson & Associates,  
Inc.  
2921 East 91<sup>st</sup> Street, Suite 200  
Tulsa, OK 74137-3355

Jeremy Denton, Director  
Government Affairs  
Robin Landis  
Regulatory Affairs Assistant  
INDUSTRIAL  
TELECOMMUNICATIONS  
ASSOCIATION, INC.  
1110 N. Glebe Road, Suite 500  
Arlington, VA 22201

Michigan Public Service Commission  
David A. Voges  
Steven D. Hughey  
Michael A. Nickerson  
Assistant Attorneys General of Michigan  
Public Service Division  
6545 Mercantile Way, Suite 15  
Lansing, MI 48911

Michael C. Strand,  
CEO & General Counsel  
Montana Independent  
Telecommunications Systems  
P.O. Box 5239  
Helena, MT 59604-5239

Nancy J. Bloch  
National Association of the Deaf  
814 Thayer Avenue  
Silver Spring, Maryland 20910-4500

Craig J. Brown  
Sharon J. Devine  
Suite 700  
1020 19<sup>th</sup> Street, NW  
Washington, DC 20036

Attorneys for Qwest Communications  
International, Inc.

David L. Hill  
Audrey P. Rasmussen  
Hall, Estill, Hardwick, Gable,  
Golden & Nelson, P.C.  
Suite 700, North Building  
Washington, DC 20036-3406

David C. Bergmann  
Assistant Consumers' Counsel  
Ohio Consumers' Counsel  
10 West Broad Street  
Suite 1800  
Columbus, OH 43215-3485

Michael J. Travieso  
Chair, NASUCA Telecommunications  
Committee  
NASUCA  
8300 Colesville Road  
Suite 101  
Silver Spring, MD 20910

Richard A. Askoff  
NATIONAL EXCHANGE CARRIER  
ASSOCIATION, INC.  
80 South Jefferson Road  
Whippany, NJ 07981

Cleo Fields  
General Counsel  
Rainbow/PUSH Coalition  
1131 8<sup>th</sup> Street, NW  
Washington, DC 20002

Mark C. Rosenblum  
Judy Sello  
AT&T CORP.  
295 North Maple Avenue  
Room 1135L2  
Basking Ridge, NJ 07920

Howard J. Symons  
Sara F. Leibman  
Bryan T. Bookhard  
Mintz, Levin, Cohn, Ferris, Glovsky and  
Popeo, P.C.  
701 Pennsylvania Avenue, NW  
Suite 900  
Washington, D.C. 20004

Douglas I. Brandon  
Vice President - External Affairs  
AT&T WIRELESS SERVICES, INC.  
1150 Connecticut Avenue, NW  
Washington, D.C. 20036

Dirck A. Hargraves, Esq.  
Counsel  
Telecommunications Research  
& Action Center  
P.O. Box 27279  
Washington, D.C. 20005

Margot Smiley Humphrey  
HOLLAND & KNIGHT  
2100 Pennsylvania Avenue, NW  
Suite 400  
Washington, D.C. 20006

Angela N. Brown  
Richard M. Sbaratta  
BELLSOUTH CORPORATION  
675 West Peachtree Street, NE  
Suite 4300  
Atlanta, GA 30375-0001

Stuart E. Polikoff  
THE OPASTCO  
21 Dupont Circle, NW  
Suite 700  
Washington, D.C. 20036

Andrew J. Imparato  
President and CEO  
American Association of People with Dis-  
abilities  
1879 H Street, NW, Suite 330  
Washington, DC 20006-3603

L. Marie Guillory  
Daniel Mitchell  
NATIONAL TELECOMMUNICATIONS  
COOPERATIVE ASSOCIATION  
4121 Wilson Boulevard, 10<sup>th</sup> Floor  
Arlington, VA 22203

Hector M. Flores  
League of United Latin American Citizens  
2000 L Street, N.W., Suite 610  
Washington, DC 20036

Hope Halpern  
Director of Regulatory Affairs  
and Corporate Communications  
Telstar International, Inc.  
1 North Broadway  
White Plains, NY 10601

Hilary O. Shelton  
Director  
National Association for the Advancement  
Of Colored People  
1025 Vermont Avenue, NW, Suite 1120  
Washington, DC 20005

Laura H. Phillips  
Laura S. Gallagher  
DRINKER BIDDLE & REATH LLP  
1500 K Street, NW  
Suite 1100  
Washington, D.C. 20036

James Bachtell  
Angela J. Campbell  
Institute for Public Representation  
Georgetown University Law Center  
600 New Jersey Avenue, NW  
Suite 312  
Washington, D.C. 20001

Laurie Pappas  
Deputy Public Counsel  
Texas Office of Public Utility Counsel  
1701 North Congress Avenue  
Suite 9-180  
Post Office Box 12397  
Austin, TX 78711-2397

Jeffry A. Brueggeman  
Gary L. Phillips  
Paul K. Mancini  
SBC COMMUNICATIONS INC.  
1401 I Street, NW  
Suite 1100  
Washington, D.C. 20005

Marybeth Banks  
H. Richard Juhnke  
Jay C. Keithley  
Sprint Corporation  
401 9<sup>th</sup> Street, NW  
Suite 400  
Washington, D.C. 20004

Roger B. Borgelt  
Assistant Attorney General  
Consumer Protection Division  
Public Agency Representation Section  
Post Office Box 12548  
Austin, TX 12548

Philip L. Verveer  
David M. Don  
WILLKIE FARR & GALLAGHER  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, NW  
Washington, D.C. 20036

Lawrence E. Sarjeant  
Vice President - Law and General Counsel  
UNITED STATES TELECOM  
ASSOCIATION  
1401 H Street, NW  
Suite 600  
Washington, D.C. 20005

Lawrence W. Katz  
Attorney for Verizon Telephone Companies  
1515 North Courthouse Road  
Suite 500  
Arlington, VA 22201

John T. Scott, III, Vice President  
and Deputy General Counsel  
Anne E. Hoskins, Regulatory Counsel  
Verizon Wireless  
1300 I Street, NW  
Suite 400 West  
Washington, D.C. 20005

Helen E. Disenhaus  
Douglas D. Orvis, II  
SWIDLER BERLIN SHEREFF FRIED-  
MAN, LLP  
3000 K Street, NW  
Suite 300  
Washington, D.C. 20007

Richard S. Whitt  
Alan Buzacott  
Lori Wright  
WorldCom, Inc.  
1133 19<sup>th</sup> Street, NW  
Washington, D.C. 20036

Ruth Milkman  
A. Renée Callahan  
Lawler, Metzger & Milkman  
1909 K Street, NW  
Suite 820  
Washington, D.C. 20006

Carolyn W. Groves  
Brian W. Higgins  
Wilkinson Barker Knauer, LLP  
2300 N Street, NW, Suite 700  
Washington, DC 20037-1128

Jonady Hom Sum  
Gary M. Cohen  
Lionel B. Wilson  
Attorneys for the Public Utilities  
Commission  
State Of California  
505 Van Ness Avenue  
San Francisco, CA 94102

Thomas M. Sullivan  
Eric E. Menge  
Radwan Saade, Ph.D.  
Office of Advocacy  
U.S. Small Business Administration  
409 3rd Street, S.W.  
Washington, DC 20416

John Cheek  
Executive Director  
National Indian Education Association  
700 North Fairfax Street, Suite 210  
Alexandria, VA 22314

Derrick Span  
National President  
Community Action Partnership  
1100 17th Street NW, Suite 500  
Washington DC 20036

Luis Arteaga  
Interim Executive Director  
Latino Issues Forum  
785 Market Street, 3rd floor  
San Francisco, CA 94134

A handwritten signature in black ink, reading "Joelle Zajk", is written over a horizontal line.

Joelle Zajk

\* Sent via hand delivery.