NASUCA
NATIONAL ASSOCIATION
OF STATE UTILITY
CONSUMER ADVOCATES

VIA ELECTRONIC DELIVERY

June 29, 2006

Chairman Kevin Martin
Commissioner Jonathan Adelstein
Commissioner Michael Copps
Commissioner Deborah Tate
Commissioner Robert McDowell
Federal Communications Commission (via e-mail)

Re: Ex Parte Communication, FCC Dockets 96-45, 01-92, 03-133, 04-36

Dear Chairman Martin and Commissioners:

On June 21, 2006 the Federal Communications Commission ("Commission") took a major step to reforming the federal universal service fund ("USF") contribution mechanism, by announcing that it was requiring providers of voice over Internet protocol ("VoIP") service to contribute directly to the fund.[1] This was a step consistently recommended by the National Association of State Utility Consumer Advocates ("NASUCA"), including in a February 27, 2006 ex parte letter. Numerous segments of the industry have supported this move.[2]

The NASUCA February 27 ex parte showed that the current contribution mechanism for the USF, based on carriers' interstate and international revenues, is **not** at risk. The Commission's recent action on VoIP bolsters the current mechanism. **There is no pressing need to move to a connections-based or numbers-based mechanism.[3]**

[1] The decision was released, as FCC 06-94, on June 27, 2006. Previously, VoIP providers may have contributed to the USF indirectly when they purchased interstate services from other carriers.

[2] See, e.g., BellSouth ex parte (June 14, 2006); Qwest ex parte (June 13, 2006); NTCA ex parte (June 14, 2006) at 5-6. Ad Hoc's argument that there is no need to assess broadband services (Ad Hoc May 15, 2006 ex parte at 5) is rendered moot by the recently-issued order.

[3] The idea that a numbers-based mechanism will "eliminate … litigation" (Sprint June 14, 2006 ex parte at 1) is ludicrous.

The facts on the current mechanism contradict the frequent claims that the revenue-based mechanism is "broken" and needs to be replaced.[4] NASUCA's February 27 ex parte presented graphic information on the state of the revenue-based mechanism; updated figures are presented here. This ex parte is also submitted in response to the literal flood of ex partes that other stakeholders have presented.

On June 1, 2006, the Universal Service Administrative Company ("USAC") reported to the Commission that the revenues subject to assessment for the third quarter of 2006 ("3Q06") would be $18.77 billion, an **increase** of 2.5% over the previous quarter.[5] Revenues in 3Q06 are at their highest level since 2Q02. Based on these numbers, the USF contribution percentage for 3Q06 will be 10.5%, a decrease from the 10.9% factor for 2Q06. As NASUCA stated in the February 27 letter:

> This means there is no pressing need -- indeed, possibly no long-term need -- for the Commission to adopt a contribution mechanism other than the current mechanism based on interstate and international revenues.

The Commission's order to collect USF assessments from VoIP providers diminishes the need to switch to a different mechanism.[6] The need is further diminished by the Commission's decision, in the order announced June 21, 2006, to raise the interstate safe harbor percentage for wireless carriers.

The need will be even further diminished if the Commission takes the step of continuing

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[4] See, e.g., Verizon ex parte (May 23, 2006) at 1 ("Sharp declines in long distance revenues, coupled with the proliferation of bundled services and IP-based alternatives to traditional long distance, have led to a shrinking funding base."); AT&T ex parte (June 2, 2006); AT&T ex parte (May 11, 2006) at 2; CTIA ex parte (June 1, 2006) at 2.

[5] See Public Notice, DA 06-1252 (rel. June 9, 2006).

[6] The Commission has previously indicated that VoIP cannot practically be separated into interstate and intrastate components. *In the Matter of Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, Memorandum Opinion and Order, FCC 04-267 (rel. November 12, 2004), ¶ 14. Clearly, the Commission's identification of a safe harbor undercuts that rationale. Likewise, the assertions of "factual similarities" between VoIP and wireless services (see, e.g., GCI June 9, 2009 ex parte) undercut the rationale. See also GCI ex parte (June 14, 2006); NTCA ex parte (June 14, 2006); Sprint ex parte (June 14, 2006); T-Mobile ex parte (June 8, 2006) at 2; Cbeyond ex parte (June 14, 2006); but see Voice on the Net Coalition ex parte (June 14, 2006) at 4-5. NASUCA agrees with NARUC that, whatever the Commission's decision here, it "not include language that could prejudice the viability of State funds or State assessment authority." NARUC ex parte (June 14, 2006) at 1.

to assess digital subscriber line ("DSL") broadband revenues for the USF,[7] while adding cable modem broadband revenues to the assessment base.[8] As discussed at the Commission's open meeting, it is estimated that DSL providers currently report $350 million in revenues that are assessed. Based on the figures in the June 9, 2006 contribution factor Public Notice, a $350 million reduction in the revenue base would have resulted in an increase in the contribution factor from 10.5% to 10.7%.[9] But there is no reason for this part of the assessment base to be removed.

NASUCA's February 27 letter refuted the primary arguments for the move away from the revenue-based mechanism to a connections- or numbers-based mechanism. The February 27 letter also referenced NASUCA's September 30, 2005 comments filed in the CC Docket No. 96-45, including its appendices, which discussed these issues at length.[10]

Another reason **not** to move to a numbers-based or connections-based mechanism has become apparent through a review of recent ex parte filings in this docket. One of the key arguments against the current revenue-based mechanism was that it encouraged arbitrage, in that carriers moved their operations so as not to be subject to the revenue-based assessment (e.g., moves to IP service).[11] But it now appears that any numbers-based or connections-based mechanism will create a whole new set of incentives for arbitrage, creating attempts to reduce the use of numbers or reduce the assessment on specific types of numbers.

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[7] *In the Matter of the Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket 02-33, et al., Report and Order, FCC 05-150 (rel. September 23, 2005), ¶¶ 112-113. After finding that DSL broadband service was an information service rather than a bundle of information and telecommunications services, the Commission nonetheless assessed DSL until July 1, 2006. NASUCA submits that the same reasoning allows assessment of DSL and cable modem broadband service on a permanent basis. See Voice on the Net Coalition ex parte (June 5, 2006) at 1; see also TDS Telecommunications Corp. ex parte (June 14, 2006).

[8] See NTCA ex parte (June 14, 2006) at 1-4.

[9] A $350 million reduction in the $18.774 billion revenue base would result in an $18.424 billion base; after adjustment for circularity and uncollectibles, the base would be $16.494 billion; given the $1.763 billion projected demand and administrative expenses, the rounded-up contribution factor would be 10.7%.

[10] The negative impacts on consumers from the move to a numbers-based mechanism are accurately albeit colorfully depicted by the Keep USF Fair Coalition. Keep USF Fair Coalition ex parte (March 27, 2006). The Coalition's February 27, 2006 ex parte also shows the lack of need for dramatic change in the mechanism. NASUCA does not endorse either the accuracy or the efficacy of the Coalition's description of the numbers-based mechanism as one backed by Chairman Martin.

[11] See BellSouth ex parte (June 1, 2006) at 1.

This is apparent from CTIA's efforts to win special treatment for certain wireless numbers in a numbers-based mechanism;[12] likewise, TracFone's similar requests on behalf of its wireless customers;[13] Virgin Mobile's similar requests for its customers;[14] Sage Telecom's on behalf of "personalized ring and 8YY toll-free";[15] United Online Inc.'s on behalf of its services;[16] Community Voice Mail and GrandCentral Ventures, Inc. for their free services;[17] USA Mobility's on behalf of paging companies;[18] OnStar Corporation's and Mercedes-Benz USA, LLC's on behalf of the "core telematics" service used in automobiles;[19] ACUTA and Educause on behalf of colleges and universities generally;[20] State University of New York at Albany on behalf of university PBXs;[21] and Hughes' efforts to subdivide broadband capacity in a connections-based mechanism.[22] Likewise, the Intercarrier Compensation Forum's proposal contains wide latitude for arbitrage.[23] Others oppose this proposed variety in the supposedly simpler numbers-based mechanism.[24]

[12] CTIA ex parte (April 26, 2006). Although many of Ad Hoc's positions are fundamentally in error (including support for a numbers-based mechanism), Ad Hoc's criticism of CTIA's requests are spot on. Ad Hoc ex parte (May 18, 2006) at 1-4.

[13] TracFone ex parte (May 2, 2006) at 1-2.

[14] Virgin Mobile ex parte (June 9, 2006).

[15] Sage Telecom ex parte (June 27, 2006).

[16] United Online Inc. ex parte (April 26, 2006).

[17] Community Voice Mail ex parte (May 30, 2006); GrandCentral Ventures, Inc. ex parte (April 11, 2006). Of all the requests for exemption, these appear most meritorious.

[18] USA Mobility, Inc. ex parte (June 8, 2006).

[19] OnStar Corporation ex parte (June 14, 2006) at 1-2; Mercedes-Benz USA, LLC ex parte (April 12, 2006).

[20] ACUTA/Educause ex parte (May 31, 2006) and attached white paper; see also Central Florida Community College ex parte (June 26, 2006).

[21] State University of New York at Albany ex parte (May 24, 2006).

[22] Hughes ex parte (May 17, 2006).

[23] Intercarrier Compensation Forum ex parte (November 22, 2005) at 3-4.

[24] See AT&T ex parte (May 10, 2006) at 2.

CTIA asserts that a numbers-based mechanism will benefit residential customers.[25] CTIA's arguments are flawed from the outset. The very first point raised in its letter is the claim that "[c]ustomers in rural areas will no longer be penalized with higher federal universal service contribution costs when they call beyond their local calling areas."[26] Currently, rural customers pay USF contributions only on interstate long distance calls. Almost all long distance calling required due to constricted local calling areas are intrastate calls, not assessed for the USF. Under a numbers-based mechanism, a consumer who made many "local toll" calls, and few interstate calls would be required to pay more into the USF. We could point out numerous other flaws in CTIA's arguments in addition to those addressed by one of CTIA's own members, TracFone Wireless.[27]

NASUCA appreciates the concerns of some in the industry for low-income consumers.[28] Yet an exemption from USF assessments -- the principal benefit these companies posit for low-income consumers -- can be part of *any* USF mechanism, and is not inherent to a numbers-based mechanism.

Some have proposed a dual system, using numbers or connections for part of the fund, and revenues for the rest.[29] It seems that the many more options available under a dual system would open even more opportunities for arbitrage. And carriers would incur the expense of developing a numbers-based process while maintaining the revenue mechanism.[30] Conflicts and differences between the two would likely increase the cost of the system. Carriers would obviously seek to recover those costs from consumers.[31]

In the end, the best solutions for the USF will be to both broaden the contribution base and limit the size of the fund. Currently, some of the proposals on the intercarrier compensation issue threaten to balloon the fund while also increasing the burden on end-use customers.[32] The Commission must not guarantee revenues to carriers in the name of universal service where the revenues are not demonstrably needed to create reasonably comparable, affordable, and just and reasonable rates.

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[25] CTIA ex parte (April 26, 2006).

[26] Id. at 1.

[27] TracFone ex parte (May 2, 2006) at 2-4.

[28] See CTIA ex parte (April 26, 2006) at 1.

[29] Qwest ex parte (April 7, 2006).

[30] Qwest identifies the activities required under an 18-month transition (id. at 2), but does not quantify the cost of the effort.

[31] Id. at 2-3.

[32] Intercarrier Compensation Forum ex parte (November 22, 2005) at 2 (a **$2.7 billion** increase in the USF).

The Commission has many proposals before it to **limit** the growth in the fund; NASUCA's proposals in this regard were also presented in its September 30 comments. Further, as NASUCA has previously demonstrated, the revenue-based mechanism is actually more robust and equitable than a connection-based mechanism, even when the needs of the fund grow substantially.[33]

As also stated in the February 27 letter:

> NASUCA continues to oppose these proposals because a connection-based mechanism inevitably shifts USF responsibility from those who use interstate services (as with the current revenue mechanism) to those who merely have access to the local network, regardless of their interstate usage, or even of their intrastate usage. This inevitably shifts the burden of supporting the entire USF and all the programs it contains onto lower use and lower income consumers. This shifting of burdens is not in the public interest.

The updated data supports NASUCA's position that the Commission should not move away from the current revenue-based USF contribution mechanism. The record does not support "quickly moving to a numbers-based USF contribution methodology for all covered services…."[34] As NASUCA stated in the February 27 letter, there are more gradual, less radical changes that will adequately preserve and advance the USF.

Respectfully submitted,

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[33] CC Docket No. 96-45, et al., NASUCA Reply Comments on Staff Study (May 16, 2003) at 7-11. No party has, to NASUCA's knowledge, attempted to refute these findings.

[34] Vonage ex parte (June 14, 2006) at 1.

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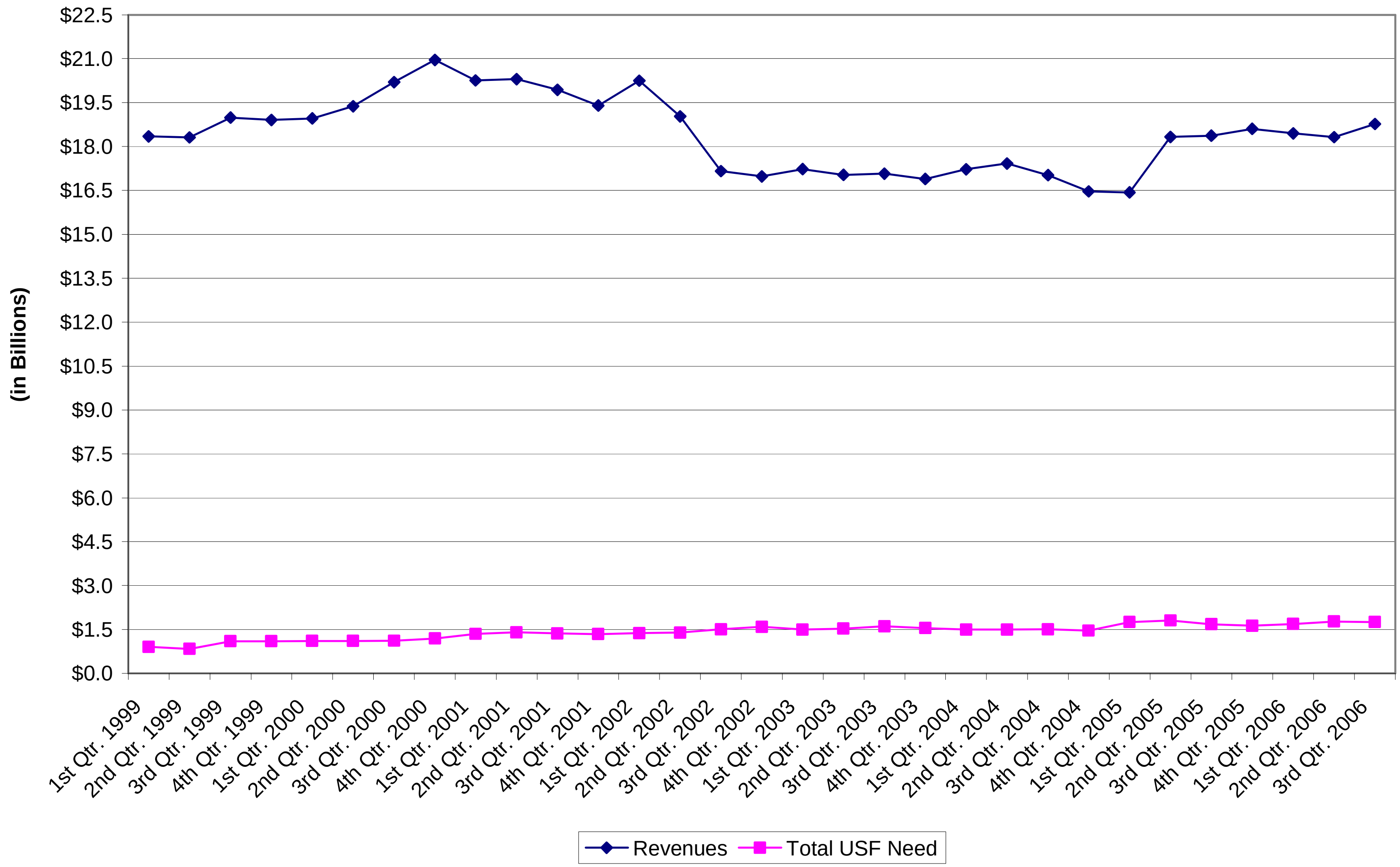
CC: Federal-State Joint Board on Universal Service (and Joint Board Staff).

Chart 1



$22.5
$21.0
$19.5
$18.0
$16.5
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$13.5
$12.0
$10.5
$9.0
$7.5
$6.0
$4.5
$3.0
$1.5
$0.0
(in Billions)
1st Qtr. 1999
2nd Qtr. 1999
3rd Qtr. 1999
4th Qtr. 1999
1st Qtr. 2000
2nd Qtr. 2000
3rd Qtr. 2000
4th Qtr. 2000
1st Qtr. 2001
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2nd Qtr. 2005
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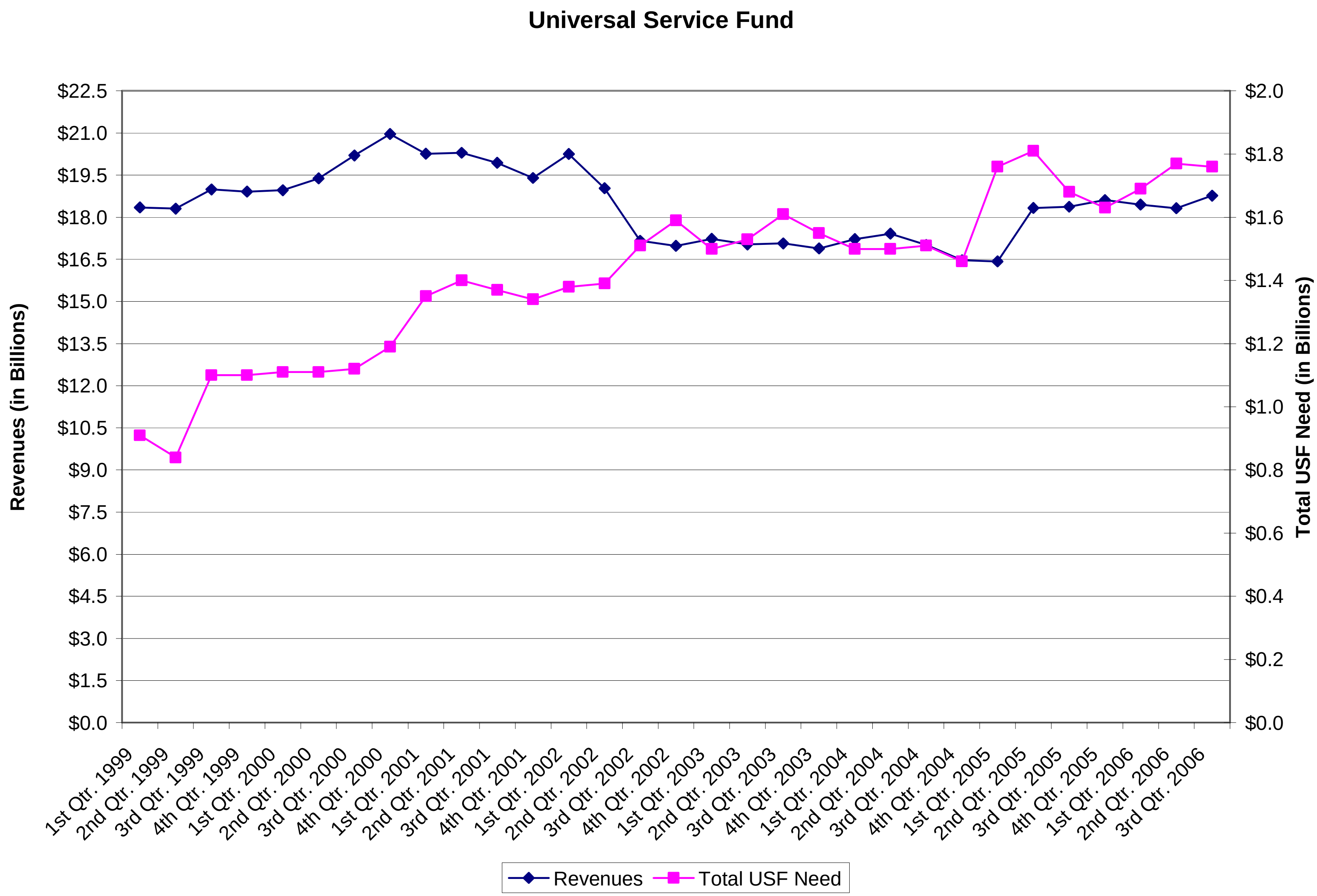
2nd Qtr. 2006
3rd Qtr. 2006
Revenues
Total USF Need


Universal Service Fund
Revenues (in Billions)
Total USF Need (in Billions)
$22.5
$21.0
$19.5
$18.0
$16.5
$15.0
$13.5
$12.0
$10.5
$9.0
$7.5
$6.0
$4.5
$3.0
$1.5
$0.0
$2.0
$1.8
$1.6
$1.4
$1.2
$1.0
$0.8
$0.6
$0.4
$0.2
$0.0
1st Qtr. 1999
2nd Qtr. 1999
3rd Qtr. 1999
4th Qtr. 1999
1st Qtr. 2000
2nd Qtr. 2000
3rd Qtr. 2000
4th Qtr. 2000
1st Qtr. 2001
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1st Qtr. 2004
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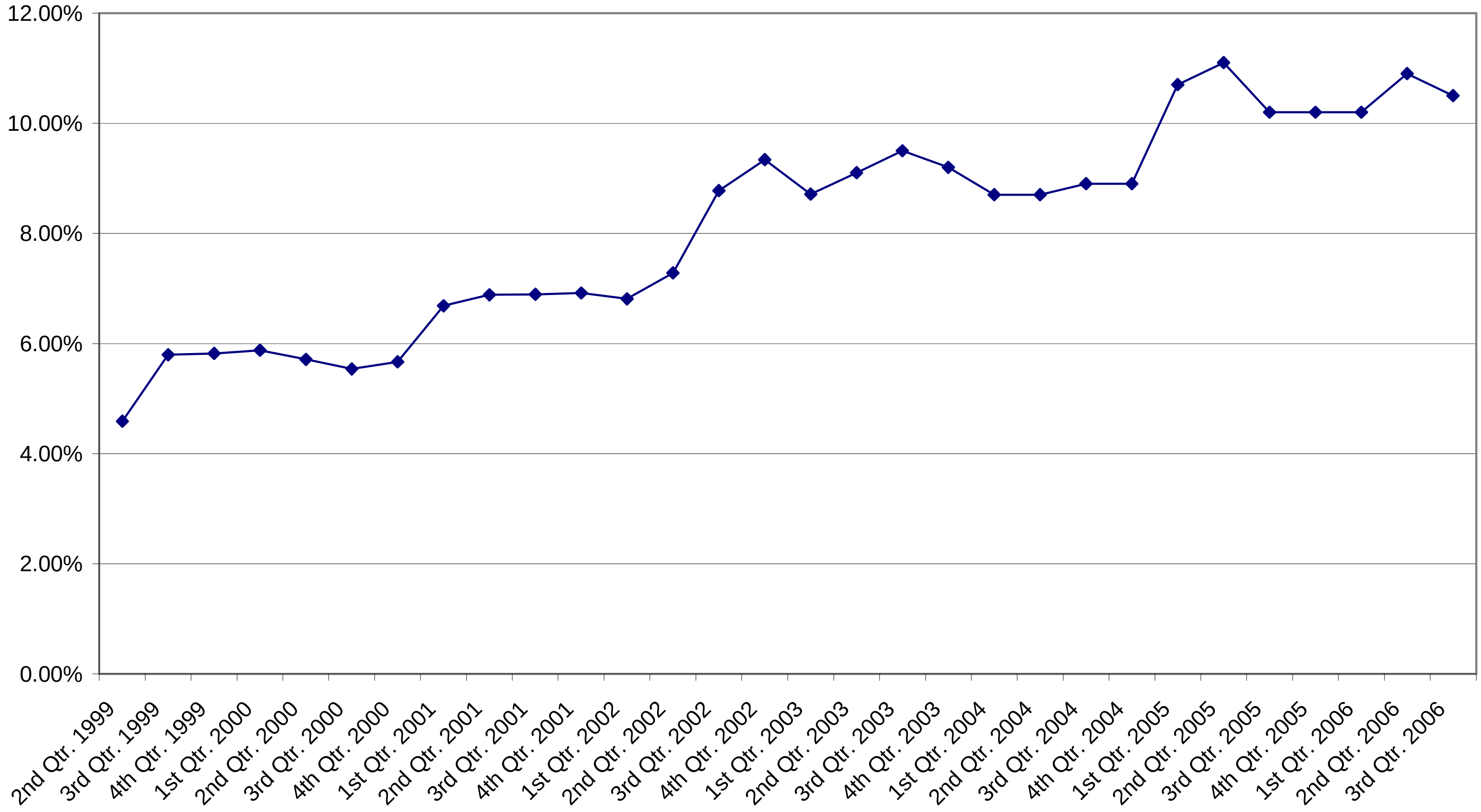
4th Qtr. 2004
1st Qtr. 2005
2nd Qtr. 2005
3rd Qtr. 2005
4th Qtr. 2005
1st Qtr. 2006
2nd Qtr. 2006
3rd Qtr. 2006
Revenues
Total USF Need

Universal Service Fund
Contribution Factor



USF Contribution Fund

	Revenues	Total USF Need	Contribution Factor
1st Qtr. 1999	18.35	0.91	0.050
2nd Qtr. 1999	18.31	0.84	0.046
3rd Qtr. 1999	18.99	1.10	0.058
4th Qtr. 1999	18.91	1.10	0.058
1st Qtr. 2000	18.96	1.11	0.059
2nd Qtr. 2000	19.38	1.11	0.057
3rd Qtr. 2000	20.20	1.12	0.055
4th Qtr. 2000	20.96	1.19	0.057
1st Qtr. 2001	20.26	1.35	0.067
2nd Qtr. 2001	20.30	1.40	0.069
3rd Qtr. 2001	19.94	1.37	0.069
4th Qtr. 2001	19.40	1.34	0.069
1st Qtr. 2002	20.25	1.38	0.068
2nd Qtr. 2002	19.03	1.39	0.073
3rd Qtr. 2002	17.16	1.51	0.088
4th Qtr. 2002	16.98	1.59	0.093
1st Qtr. 2003	17.23	1.50	0.087
2nd Qtr. 2003	17.03	1.53	0.091
3rd Qtr. 2003	17.07	1.61	0.095
4th Qtr. 2003	16.89	1.55	0.092
1st Qtr. 2004	17.22	1.50	0.087
2nd Qtr. 2004	17.42	1.50	0.087
3rd Qtr. 2004	17.02	1.51	0.089
4th Qtr. 2004	16.47	1.46	0.089
1st Qtr. 2005	16.43	1.76	0.107
2nd Qtr. 2005	18.33	1.81	0.111
3rd Qtr. 2005	18.37	1.68	0.102
4th Qtr. 2005	18.61	1.63	0.102
1st Qtr. 2006	18.45	1.69	0.102
2nd Qtr. 2006	18.32	1.77	0.109
3rd Qtr. 2006	18.77	1.76	0.105

Source: Contribution Factor Public Notices.