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

In the Matter of	)	
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
	)	

To: The Commission

COMMENTS OF RURAL CELLULAR ASSOCIATION

Rural Cellular Association ("RCA")[1], by its attorneys, respectfully submits these comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding concerning contributions to the federal Universal Service Fund ("USF"). *See Notice of Proposed Rulemaking*, 38 Communications Reg. (P&F) 1013 (2006) ("*NPRM*"). In particular, RCA will address questions posed by the Commission regarding the methods by which mobile wireless providers compute and report their interstate and international revenues.

I. Introduction

In its *Report and Order* accompanying the NPRM the Commission made interim modifications to the approach used to assess contributions to the USF. Of direct interest to RCA members was the decision to raise the interim wireless "safe harbor," which represents an assumed amount of revenues derived from interstate and international traffic, from the 28.5 percent level to 37.1 percent. The safe harbor option has been offered by the Commission as one of the methods by which wireless carriers may report revenues in view of the difficulties faced by some wireless carriers in determining the exact amount of revenues derived from interstate

[1] RCA is an association representing the interests of more than 90 small and rural wireless licensees providing commercial services to subscribers throughout the nation. Its member companies provide service in more than 135 rural and small metropolitan markets where approximately 14.6 million people reside. RCA was formed in 1993 to address the distinctive issues facing wireless service providers.

and international traffic. In raising the safe harbor percentage the Commission stated a policy preference that wireless providers contribute to the USF based upon their actual data rather than the safe harbor where possible.[2] Among other things the NPRM questions whether the alternative of using a safe harbor should be eliminated and whether wireless carriers should be required to report only on the basis of actual revenues or representative traffic studies,[3] while at the same time expressing concern that carriers that report on actual revenues or traffic studies at this time "…may not be doing so accurately."[4] The NPRM also invites comments on specific questions that relate to how a mobile wireless carrier should be permitted to identify interstate and international traffic if that carrier relies on traffic studies or reports actual revenues from such traffic.

II. Comments

A. The Interim Safe Harbor Should Be Retained and Revised Periodically Based Upon Percentages of Actual Revenues Reported By Facilities-Based Mobile Wireless Carriers

RCA respectfully wishes to remind the Commission that small wireless carriers often lack the administrative personnel and billing system tools to accomplish the same tasks that large carriers may perform. RCA requests that wireless carriers continue to be offered the opportunity to report on the basis of a safe harbor in addition to the options of (i) performing representative traffic studies and (ii) calculating the total amounts of actual interstate and international revenues.

Small and rural wireless carriers in particular need flexibility in the manner of reporting revenues due to their reliance on billing systems that were designed for customer billing purposes, not regulatory reporting purposes. Not all wireless carriers have the software tools

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2 *Report and Order*, para. 28.
3 NPRM at para. 66.
4 *Report and Order*, para. 29.

available to identify traffic on a jurisdictional basis and to do so with such accuracy that their officers are prepared to certify, under penalty of perjury, that the reported amounts are correct. The safe harbor option offers carriers an opportunity to report revenues at a level that the Commission finds to be a reasonable, indeed a high level, prediction of the amount of reportable revenues.

The Commission has access to revenue data reported on Form 499 by all facilities-based mobile wireless carriers and can analyze that data and traffic studies filed by the carriers to set an appropriate safe harbor percentage on a periodic basis.[5] In order to avoid underreporting of revenue it is not unreasonable for the Commission to set the safe harbor at the high end of the range of revenues reported by other facilities-based mobile wireless carriers. However when analyzing the data the Commission should consider whether other subgroups of carriers are definable, such that a different safe harbor percentage may apply to one identifiable group than to another. In essence, if a carrier is to avail itself of the safe harbor, it would be electing to report and ultimately pay into the USF at a rate that is at the top level for all similarly situated carriers. No carrier should pay at a top rate indicated by a safe harbor if its traffic patterns and revenues are inconsistent with the operating characteristics of the group on which the safe harbor was based.

RCA believes that the safe harbor reporting option remains important to small and rural wireless carriers and should be retained by the Commission. Limitations in administrative and billing system resources that are common to many small carriers make the safe harbor an efficient approach to compliance with FCC reporting requirements without any negative impact on contribution amounts to the USF.

5 RCA submits that only data reported by facilities-based mobile wireless carriers is relevant to this analysis because resellers of wireless service make independent decisions as to how to market service and, as a result, may derive an unusually high or low percentage of revenues from interstate and international traffic.

B. Anomalies of Mobile Wireless Service Call for Practical Approaches to Identifying Traffic on Which Revenues Are Reported

There are unique aspects to mobile wireless service that are not conducive to a perfect separation of revenues on a jurisdictional basis.[6] As a result, the Commission should establish reporting standards that are consistent with the nature of mobile phone use and the unique aspects of providing mobile wireless service.

1. Numbering Plan Areas and Cell Site Locations Are Appropriate Means to Identify Traffic for Purposes of Computing Revenues

By its nature mobile service follows the user to the extent that network facilities are available to serve the user's location. The exact physical location of the user is immaterial if the user is within the service range of a cell site that can process the call. It follows that a mobile wireless carrier has no need (and often no ability) to identify the exact physical location of the user at the originating or terminating end of a call (other than to the limited extent required to comply with E-911 Phase II requirements of the FCC).

With the user's exact location generally unknown the serving carrier, for purposes of calculating interstate revenue, must attempt by inexact means to determine whether a call is an interstate call. Considering the circumstances reasonable assumptions are necessary in that process.

One reasonable assumption a mobile wireless carrier might choose to make is that the address and jurisdiction of the originating cell site is the originating location of the call. This is information available to most wireless carriers through their switch records.

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6 The issue of identifying interstate traffic and revenues is the focus of these comments because few if any RCA members include international traffic in service plans that provide for a fixed number of minutes for a certain price per month. For that reason it is normally possible for RCA members to identify the revenue derived from outbound international calls. To the extent that an interstate call is not included in a fixed number of minutes rate plan it is normally possible for the carrier to calculate the revenue from an interstate call, subject to other limitations as discussed in this Section II.B.1.

At the terminating end of a wireless call, there are other reasonable assumptions to be made by wireless carriers attempting to identify interstate traffic. If the call is originated and terminated on the wireless network of the same carrier, the carrier's switch records most likely will indicate the name of both serving cell sites. If the two serving cell sites operated by the same carrier are in different states, the call can reasonably be presumed interstate without actual knowledge of the exact physical location of the users. In that situation the call revenue derived from the outbound user can be counted as interstate revenue.

Additional assumptions are typically necessary if the wireless-originated call is bound for a user who is located beyond the service area of the originating carrier's network. In that situation the originating carrier has less information by which to classify the call for jurisdictional purposes. Wireless carriers have no monitoring systems, and hence no visibility, outside of their own networks to identify the location of the cell site or physical location of the party receiving the call; accordingly, another reasonable assumption must be made.

One reasonable approach is for the wireless carrier to assume that if the receiving party's phone number includes a Number Plan Area ("NPA") that is different than that of the originating caller's NPA, the call is interstate. RCA members typically operate in rural areas where NPAs cover large areas, sometimes entire states.

Some wireless carriers have the ability to process and integrate data and find it practical and more accurate to classify inter-carrier traffic as interstate if the location of the originating cell site is not in the NPA of the called party.

RCA submits that carriers should be permitted to classify traffic as interstate by relying on serving cell site locations or the calling and called parties' NPAs, or some combination of the two methods. The Commission is respectfully urged to consider the differences between large and small wireless carriers' service areas and allow reporting wireless carriers to use reasonable discretion in making informed assumptions about the jurisdictional nature of traffic they process.

2. Only Outgoing, Not Incoming, Traffic Should Be Analyzed for Purposes of Computing Revenues

Telecommunications industry practice for both wireless and landline carriers has been to bill customers and report revenues for jurisdictional purposes as to all outgoing calls. Consistency in this practice is essential to maintaining an equitable balance between carrier types in the level of their contributions to the USF. If wireless carriers were obligated to contribute to the USF based upon incoming traffic there would be a duplicate contribution for the same call, a result never intended by the Commission or Congress.

For example, if an interstate call is placed over a landline network for termination by a wireless carrier, the caller's payment to the interexchange carrier handling the call will be included in interstate revenue reported by that interexchange carrier. There is no revenue requirement to the USF that relates to the termination of that call by a wireless carrier, just as there is no revenue requirement to the USF if the call were terminated by a landline or VoIP provider. To require in this situation a wireless carrier to estimate any revenue benefit from termination of the call is to require the wireless carrier to distinguish some incoming minutes from others, something its billing system does not already do or, for practical purposes, typically have the ability to do.

For wireless carriers that do not rely upon the safe harbor the burdens associated with calculating interstate and international revenues are already substantial and, in the case of small and rural wireless carriers, often the burdens have a greater impact. The Commission may take official notice of the fact that the USF is fully funded by one revenue report per call and decide that wireless carriers need not attempt to analyze incoming traffic for purposes of revenue reporting.

C. Use of Traffic Studies Should Remain Available On Terms That Are Feasible For Small and Rural Wireless Carriers

The option of reporting interstate and international revenues based upon representative traffic studies conducted by wireless carriers should continue to be available to carriers. Some small and rural carriers do not have billing systems in place that allow for jurisdictional separation and reporting based upon actual revenues. Many RCA members would find it to be prohibitively costly and administratively burdensome if they were obligated to rework or replace billing systems to permit separation and calculation of actual revenues, especially in view of the fact that the USF contribution system is already under review and subject to wholesale change in the near future.

The Commission should allow wireless carriers, and at a minimum the non-nationwide wireless carriers, to conduct representative traffic studies once each year and rely on the data produced to report their interstate and international revenues on a quarterly basis on Form 499-Q. The traffic study methodology and data would be filed once each year with Form 499-A. This approach will lessen the administrative burden associated with conducting studies but still provide for accurate reporting of revenues by wireless carriers.

III. Conclusion

The highly competitive nature of the mobile wireless industry is the direct result of legislation to promote competition and of Commission rules and policies that have implemented the law. Wireless carriers have responded in a manner that has benefited consumers immensely through the offering of unique service and rate plans never attempted before in the telecommunications industry. RCA's wireless carriers have joined in this revolution and brought to rural markets the same types of service packages that are offered by the large wireless carriers in the largest U.S. markets.

Along with the benefits of service mobility come the problems of attempting to identify traffic along jurisdictional lines. Reasonable assumptions about the physical location of the users are necessary, and wireless carriers should be granted necessary flexibility in how to identify traffic subject to USF contributions and how to report revenues. All three of the current options – the safe harbor percentage, representative traffic studies, and calculation of actual revenues – should be retained and be available to facilities-based mobile wireless carriers as a permissible means to report interstate and international revenues.

RCA members in particular are in need of reporting methods and policies that recognize the administrative burdens placed upon smaller companies. Billing systems and switch records available to smaller companies were not designed to produce information that tracks wireless traffic on a jurisdictional basis. If a non-nationwide carrier conducts a representative traffic study it should be permitted to rely on that study for a full year so as to lessen the burdens placed upon carriers that do not have the same administrative resources that are available to the largest wireless carriers.

Respectfully submitted,

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August 9, 2006