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**Before the
Federal Communications Commission
Washington, DC 20554**

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

**REPLY COMMENTS OF
THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER
ADVOCATES**

I. INTRODUCTION

Pursuant to the Notice of Proposed Rulemaking (“NPRM”) issued by the Federal Communications Commission (“Commission” or “FCC”),¹ the National Association of State Utility Consumer Advocates (“NASUCA”²) offers these reply comments to comments responding to the NPRM. Unfortunately, NASUCA is also forced to respond here to a number of comments that went well beyond the request for comments in the NPRM in lobbying the Commission to adopt a numbers-based universal service fund (“USF”) contribution mechanism in place of the current revenue-based mechanism. As previously stated by NASUCA (and others), there is no need to adopt such a radical

¹ FCC 06-94 (rel. June 27, 2006); notice of the NPRM was published in the Federal Register on July 10, 2006.

² NASUCA is a voluntary, national association of 44 consumer advocates in 41 states and the District of Columbia, organized in 1979. NASUCA’s members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. *See, e.g.*, Ohio Rev. Code Chapter 4911; 71 Pa. Cons. Stat. Ann. § 309-4(a); Md. Pub. Util. Code Ann. § 2-205(b); Minn. Stat. Ann. Subdiv. 6; D.C. Code Ann. § 34-804(d). Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (*e.g.*, the state Attorney General’s office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

change to the USF contribution mechanism.³ These commenters continue to ignore the facts and the impacts of the radical change they propose.

There were some comments germane to the NPRM. NASUCA replies to certain of those comments.

II. THE COMMISSION SHOULD DISREGARD THE COMMENTS REGARDING SWITCHING TO A NUMBERS-BASED MECHANISM.

The NPRM set forth the two subjects on which comment was sought: “First, we seek comment on whether to eliminate or raise the interim wireless safe harbor.”⁴ (Details of that request are set forth in that and the next paragraph of the NPRM.) And “[s]econd, we seek comment on the USF obligations we have established in this Order for interconnected [voice over Internet protocol] VoIP providers.”⁵ (Likewise, details of this second request are included in that and the next paragraph of the NPRM.)

Nowhere in the NPRM is there an invitation to comment on whether the Commission should adopt a numbers-based USF contribution mechanism. Despite that, a number of commenters have exclusively,⁶ or prominently,⁷ addressed that subject. In the interest of an accurate record, then, NASUCA is compelled to respond.

³ CC Docket No. 96-45, et al. (“96-45”), *Ex parte* letter of the National Association of State Utility Consumer Advocates (June 29, 2006).

⁴ NPRM, ¶ 66.

⁵ *Id.*, ¶ 68.

⁶ These include the comments by AT&T Inc.; BellSouth Corporation; CTIA - The Wireless Association® (“CTIA”); United States Telecom Association (“USTA”); Verizon; and Vonage America, Inc. (“Vonage”). Notably, Vonage’s comments do not even mention the fact that Vonage has appealed the 06-94 Order. *Vonage v. FCC*, No. 06-1276 (D.C. Cir.).

⁷ These include Cincinnati Bell Wireless LLC; Cingular Wireless LLC (“Cingular”); Information Technology Industry Council (“ITIC”); Iowa Utilities Board; Time Warner Inc. (“Time Warner”); and The VON Coalition (“VON”).

For example, USTA says (again) “It is increasingly clear that the current universal service contribution methodology – based on interstate end user telecommunications revenue – is becoming unsustainable in the face of technological changes and market competition.”⁸ Carriers have been saying that for years now.⁹

The facts contradict these claims. As NASUCA has periodically done, we again present the Commission with charts and graphs that display 1) the USF contribution base (said to be in dire straits); 2) the USF payment requirements; and 3) the resultant USF contribution factor. This time, we include the latest information on these amounts from the Universal Service Administrative Company (“USAC”), including the filing on the contribution base dated September 1, 2006.¹⁰ This shows that, once again, the contribution base has **grown**, not shrunk, increasing 3.4% over the previous quarter.¹¹

If it were indeed true that “[e]ach of the three distinguishing characteristics of [the current system] – interstate, telecommunications, and revenue – is increasingly difficult to measure and unreliable as a stable and sustainable source of funds”¹² one would expect the USAC reports to show some evidence of the problem. **The lack of such evidence makes the support for the numbers-based mechanism exceedingly tenuous, based on what can be described as equivalent to an urban legend.**¹³

⁸ USTA Comments at 2.

⁹ See 96-45, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 02-329 (rel. December 13, 2002), ¶ 4 and n.7.

¹⁰ See <http://www.universalservice.org/res/documents/about/pdf/4q2006-contribution-base-fcc-filing.pdf>.

¹¹ Indeed, given a decrease in the support requirement, the contribution factor could decrease to 9.1%.

¹² USTA Comments at 2.

¹³ Perhaps the story also gains credibility in repetition.

In the face of these facts, none of the comments cited above add anything substantial to the issue. NASUCA will, therefore, only briefly respond to some of the further misstatements of these commenters.

The best place to begin is with VON, because their comments state that the Coalition “fundamentally disagrees with NASUCA’s post-*USF VoIP Order* claims that no additional near-term USF reform away from a revenues-based model is needed.”¹⁴ Of course, NASUCA’s assertion that there is no need for a numbers-based mechanism was not something arrived at only after the release of FCC 06-94, which VON refers to as the *USF VoIP Order*; we have been saying this consistently for years.

Of course, VON’s disagreement with NASUCA on this point would only be notable if there were a real basis for the disagreement. Unfortunately, there is not. For example, VON does not challenge the characterization of the current revenue situation depicted in the NASUCA *ex parte*. The best VON can do is say that a numbers-based mechanism “*could* remedy the current legal infirmities associated with shoe-horning VoIP into a revenues-based system” citing Vonage’s appeal of FCC 06-94.¹⁵ But Vonage’s appeal goes toward the alleged arbitrariness of the VoIP safe harbor, not to whether VoIP should contribute to the USF. And, without doubt, the numbers-based mechanism itself has “legal infirmities.”¹⁶

VON also says that “a numbers- or connections-based system is needed to alleviate the Universal Service administrative compliance challenges that are unique to

¹⁴ VON Comments at 3, citing the NASUCA *ex parte* letter referred to in footnote 3, *supra*.

¹⁵ VON Comments at 4 (emphasis added).

¹⁶ VON exposes one of those infirmities, being the claim that the Commission can assess telephone numbers for universal service purposes because of its exclusive jurisdiction over the North American Numbering Plan. *Id.* at 6.

VoIP services.”¹⁷ Any mechanism will have compliance challenges, and some of those challenges will be unique to specific segments of the industry. Indeed, as discussed below, the numbers-based mechanism contains even more segment-specific challenges.¹⁸

With VON’s disagreement pushed aside, we can examine VON’s – and others’ – claims for the benefits of a numbers-based mechanism.¹⁹ VON claims that the numbers-based mechanism is “equitable, non-discriminatory and competitively neutral.”²⁰ Yet if that were the case, why would there be a need for the various requests for special treatment for certain segments of the industry? Some of those requests are reflected in the comments here: ITIC refers to such an approach as “flexible.”²¹ CTIA and Verizon want special treatment for the numbers on family share plans.²² (Why not special treatment for multiple residential wireline numbers in a single location?) CTIA wants special treatment for prepaid wireless customers.²³ Verizon also wants special treatment for business and industrial users.²⁴ And Verizon also wants a “supplemental revenue-

¹⁷ Id.

¹⁸ The direction of the mechanism should not be controlled by a single segment of the industry.

¹⁹ On July 11, to great hoopla, the USF By The Numbers Coalition (“USFBTN”) was announced. In documents released on that date, USFBTN explained the putative benefits of the numbers-based mechanism. See http://www.ustelecom.org/news_releases.php?urh=home.news.nr2006_0711. As pointed out in NASUCA’s June 29, 2006 *ex parte*, none of the claims is more ludicrously overreaching than the one that rural customers will save on local toll calling from the reduction of interstate access charges.

²⁰ Id. at 5; see also IDT Comments at 10; Verizon Comments at 4; Vonage Comments at 6.

²¹ ITIC Comments at 5.

²² CTIA Comments at 5; Leap Wireless International, Inc. (“Leap”) Comments at 2-3; Verizon Comments at 4.

²³ CTIA Comments at 6; Leap Comments at 2-3.

²⁴ Verizon Comments at 5. It is not at all clear how a plan that would “permit service providers to recover their contributions from individual business and institutional customer in a manner that minimizes the impact and promotes technological neutrality, **as long as the providers contribute the total required amount to the fund for all in-use, working and business and institutional customer numbers**” (id.; emphasis added) would work, unless some of the costs were transferred among customers.

based contribution from major categories of non-number based services (pre-paid calling card and special access services)...”²⁵

NASUCA’s June 29, 2006 *ex parte* letter summarized the variety of requests for special treatment that had been made to the Commission in a short period of time.²⁶ Despite the various assertions of competitive neutrality, NASUCA stated, “[I]t 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.”²⁷ That assessment is reinforced by the comments under review here.²⁸

VON also asserts that a numbers-based assessment mechanism “will ensure that USF contributions are assessed in an economically efficient manner, eliminating the distorting impact on demand for telecommunications services that plagues the current revenue-based assessment methodology whereby non-traffic sensitive costs are recovered on a usage-sensitive basis.”²⁹ VON’s argument is undercut by the fact that the current plan bases assessments on revenues, not usage; if billing for service is not based on usage, then the impact is minimized. One doubts whether much of the Coalition’s membership’s VoIP service is usage-sensitive; likewise, wireline or wireless usage under bundles is not impacted by a revenue-based assessment.

²⁵ Id.

²⁶ See NASUCA *ex parte* (June 29, 2006) at 3.

²⁷ Id.

²⁸ See also 96-45, Lake City Community College *ex parte* (June 28, 2006) (special treatment for institutions of higher education); id., j2 Global *ex parte* (June 28, 2006) (special treatment for “outsourced, value-added messaging services”).

²⁹ VON Comments at 5.

IDT posits that the USF mechanism should be based on numbers because the “the USF spreads costs incurred for the use of the nation’s telecommunications network among all its users”³⁰ and the Commission has allowed similar costs to be collected on a per-line basis for the subscriber line charge (“SLC”), local number portability (“LNP”) charge and the E9-1-1 surcharge.³¹ First, the law requires that “[e]very telecommunications carrier that provides interstate telecommunications services shall contribute” to the USF.³² That is not part of any numbers-based mechanism, where the burden falls only on carriers that have physical customer connections. Equally importantly, the USF encompasses a broad range of costs and programs, including schools and libraries funding, rural telemedicine funding and low-income support. Even within the so-called high-cost fund, only some portions are designed to support “the use of the network”; others (like Interstate Access Support and Interstate Common Line Support) despite their names are really just revenue replacement mechanisms for incumbent carriers.

VON also asserts that a numbers-based mechanism is sustainable.³³ That, of course, goes back to the assertion that the revenue-based mechanism is not sustainable – proven false by the experience of the last five years – and also ignores the demonstration by NASUCA that the revenue-based mechanism is actually more robust under conditions of fund growth than is a numbers-based mechanism.³⁴

³⁰ IDT Telecom, Inc. (“IDT”) Comments at 15.

³¹ Id.

³² 47 U.S.C. 254(d).

³³ Id. at 6.

³⁴ CC Docket No. 96-45, et al., NASUCA Reply Comments on Staff Study (May 16, 2003) at 7-11.

IDT claims great concern for “the poor, the elderly and those who do not choose the most economical service plan” in its support for the numbers-based mechanism.³⁵ IDT overlooks the countervailing concern: that the numbers-based mechanism charges customers equally³⁶ for mere access to the network, rather than the use of any interstate service. Thus an elderly person who uses her telephone sparingly – and never for interstate calls – is charged the same as the family in constant communication with friends in distant states.

As stated by NASUCA at the outset here, the Commission should pay no attention to the comments that go well beyond the requests for comment in the NPRM. If the Commission does consider those comments, it must also consider NASUCA’s rejoinders, which will lead the Commission **away** from implementing a numbers-based mechanism.

III. REPLIES TO COMMENTS ON THE NPRM

A. Comments Supporting The Safe Harbors

NASUCA agrees with Embarq’s position that “a safe harbor should be set high to provide incentives to providers to report actual revenues.”³⁷ As discussed in more detail in the next section, service providers that believe their interstate usage to be below the safe harbor will perform traffic studies or otherwise determine their interstate revenues because of the incentive to prove out their belief.³⁸

³⁵ IDT Comments at 16.

³⁶ In the absence of the special treatments discussed above.

³⁷ Embarq Comments at 3; see also Comments of TracFone Wireless, Inc. (“TracFone”) at 2.

³⁸ See TracFone Comments at 4.

TracFone recommends eliminating the wireless safe harbor altogether.³⁹ TracFone notes that “the fact that some providers are able to identify which calls are interstate and which are intrastate indicates that the technology is likely to be available to all providers to make those determinations.”⁴⁰ NASUCA agrees with this point, but has no objection to the wireless safe harbor being retained, so long as it is periodically reviewed.

B Voip Carriers Should Not Use A “Wireline Safe Harbor” Or The Wireless Safe Harbor.

ACA asserts on behalf of its membership of “nearly 1,100 small and medium-sized cable companies”⁴¹ that “[m]any ... report that their underlying providers are currently unable to provide them with accurate usage data.”⁴² Thus there must be some ACA members whose providers **can** provide them with accurate usage data. Yet none of that data is presented here – where the opportunity has been given – in order to refute the Commission’s 64.9% safe harbor. In accordance with the Embarq reasoning above, the current VoIP safe harbor will create an incentive for ACA members to require their “third-party provider[s] such as Level 3 or Net-2-Phone” to provide such data, if they believe their actual interstate traffic is lower.

All ACA can do is to assert that its members’ VoIP traffic is more like the traffic carried by wireline providers, and should use as a safe harbor “12.8%, the most recent reported percentage of wireline interstate and international minutes.”⁴³ ACA admits that

³⁹ Id. at 3.

⁴⁰ Id. at 5 (emphasis in original).

⁴¹ American Cable Association (“ACA”) Comments at [2].

⁴² Id. at [3].

⁴³ Id. at [1-2].

the “report” in question is from 2001,⁴⁴ which should be enough to dismiss ACA’s proposal.

ACA quotes a member’s slogan, “Sounds, acts, and feels **just like old fashioned phone service** – minus the domestic toll charges,” with that emphasis,⁴⁵ in an attempt to justify using the old-fashioned wireline number. But the rest of the copy is more revealing, with the emphasis in the original:

Wave Broadband is introducing an exciting new way to get phone service! With WavePhone you get **unlimited local and domestic long distance** calling to the 50 states, Guam, Puerto Rico, and the U.S. Virgin Islands, as well as international calls to Canada, and all the most requested calling features—including voice mail—for one low monthly rate.⁴⁶

Not much “old-fashioned” about that package. Perhaps the quotation from the webpage should have this more appropriate emphasis: “Sounds, acts, and feels just like old fashioned phone service – **minus the domestic toll charges.**” Clearly that is a focus of this service.

ACA’s apparent “compromise” is for the Commission to adopt the wireless safe harbor (37.1%) for VoIP. This is apparently justified, according to ACA, because “[a]s with VoIP, the Commission has found that wireless service is a substitute for [plain old telephone service] POTS.”⁴⁷ As noted above, VoIP is not a substitute for POTS; neither is wireless. Indeed, ACA overlooks the fact that the Commission Order it cites⁴⁸ raised the wireless safe harbor from 15 to 28.5 percent *because of the level of interstate wireless*

⁴⁴ Id. at {2}, n. 3.

⁴⁵ Id. at [5] (emphasis in original).

⁴⁶ See <http://www.wavebroadband.com/art.php?id=phone> (footnote omitted).

⁴⁷ ACA Comments at [6].

⁴⁸ See footnote 9, *supra*.

calling, which of course is not POTS. The key question for any service for USF assessment purposes under the current mechanism is the level of interstate revenues produced by the service; ACA has not shown either that the Commission’s 64.9% VoIP safe harbor is inaccurate, **or** that the 2001 wireline interstate traffic level or the 2006 wireless safe harbor of 37.1% are more appropriate for VoIP.

C. Wireless Carriers Accrue Interstate Revenues From Terminating Interstate Calls.

RCA says that wireless carriers should not have to count, for USF purposes, “incoming traffic,” because that would “be a duplicate contribution for the same call....”⁴⁹ That is ludicrous. In RCA’s example, in interstate calls, the IXC that carries the traffic to the wireless carriers accrues interstate revenues. But the wireless carrier that terminates the call **also** accrues interstate revenue for handling that same call. The law requires USF assessments to be made on both carriers’ interstate revenues for that call.

IV. CONCLUSION

The comments in support of a numbers-based mechanism are beyond the scope of the NPRM, and should be ignored. The comments that support changing the new wireless and VoIP safe harbors lack adequate basis and can be disregarded.

⁴⁹ Rural Cellular Association (“RCA”) Comments at 6.

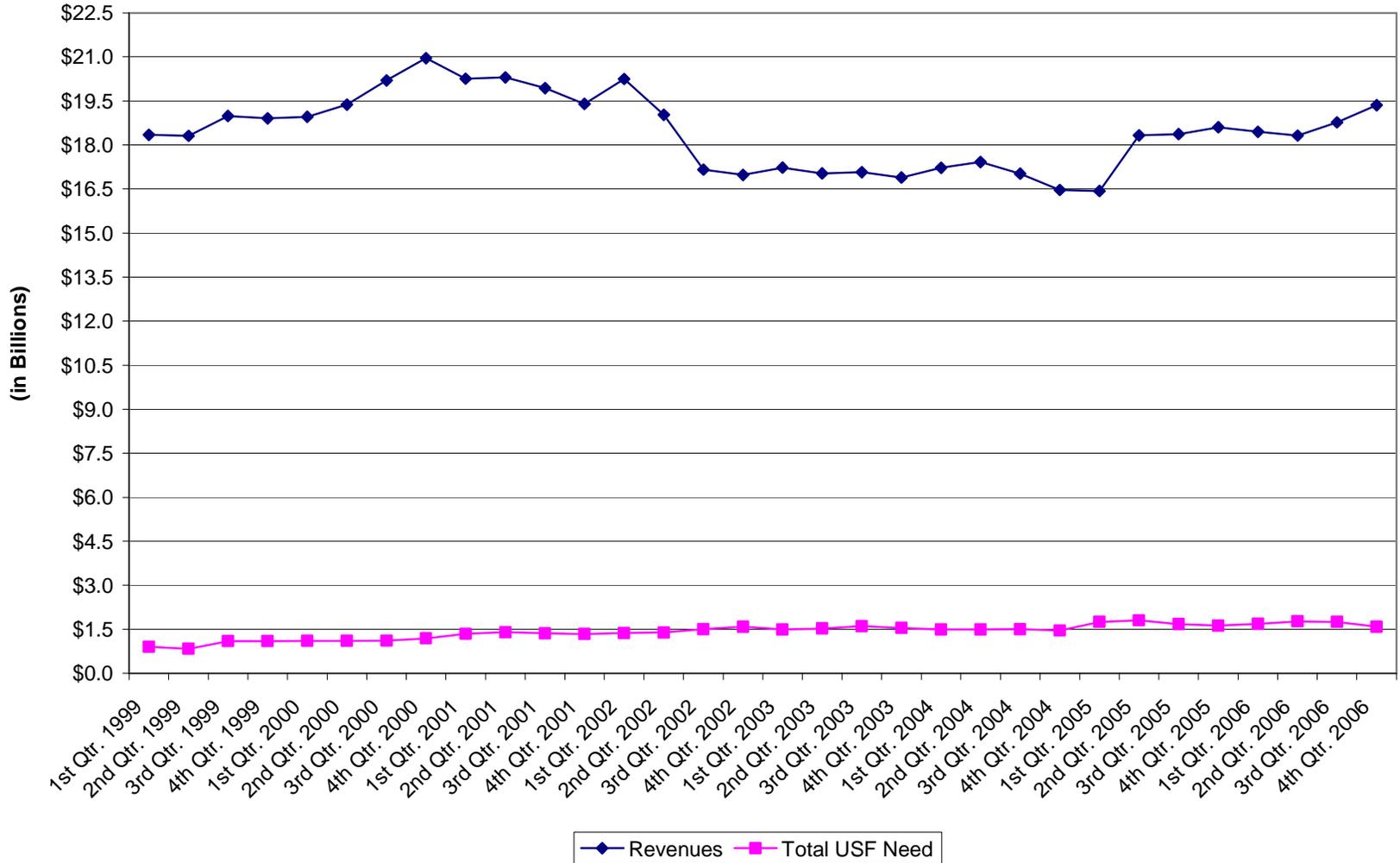
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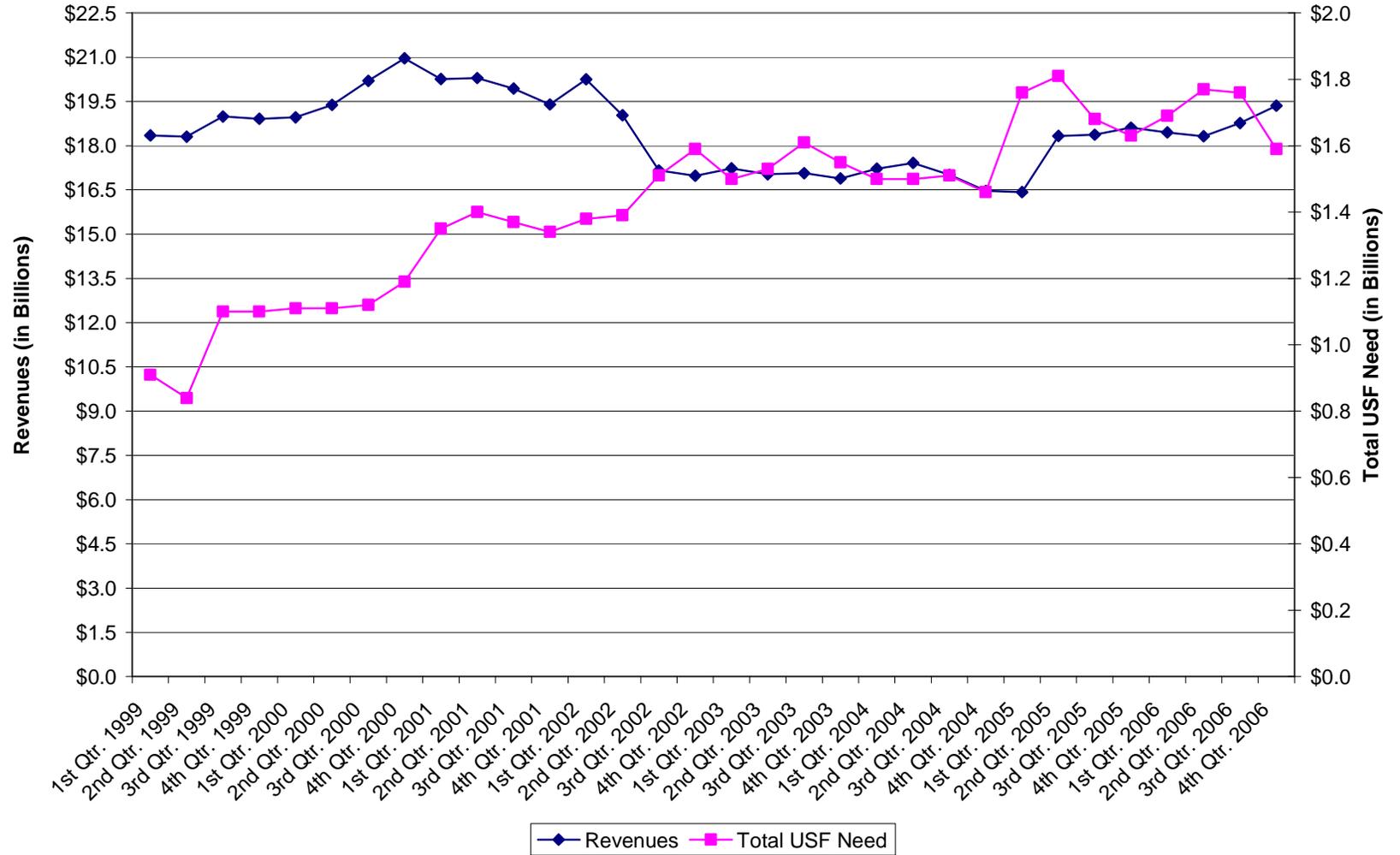
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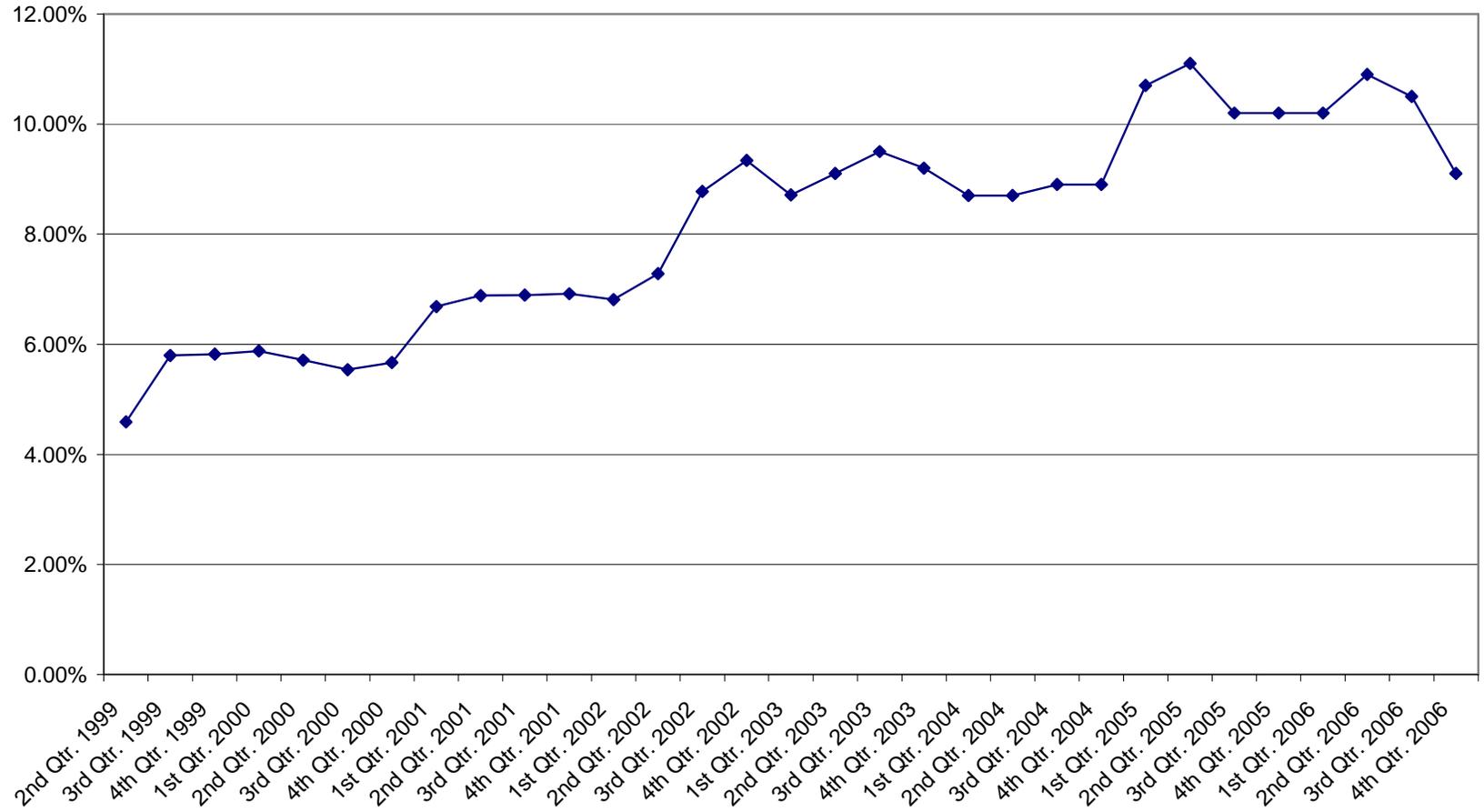
Chart 1



Universal Service Fund



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
4th Qtr. 2006	19.36	1.59	0.091

Source: Contribution Factor Public Notices.

Note - For the fourth quarter of 2005, because of the impact of Hurricane Katrina, the FCC adjusted the contribution base to \$17.87 billion to maintain the contribution factor at 10.2%.