

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	

**REQUEST OF
THE NATIONAL ASSOCIATION
OF STATE UTILITY CONSUMER ADVOCATES
FOR INTERIM EMERGENCY RELIEF
TO REDUCE THE UNIVERSAL SERVICE FUND CONTRIBUTION FACTOR**

The National Association of State Utility Consumer Advocates (“NASUCA”)¹ hereby requests the Federal Communications Commission (“FCC” or “Commission”) to reduce the Universal Service Fund (“USF”) contribution factor from the 12.9% resulting from the Universal Service Administrative Company (“USAC”) projections for the third quarter of 2009² to a lower level, perhaps 11.3%, the contribution factor established and approved for the second quarter of 2009.³ NASUCA submits that this should be done by

¹ NASUCA is a voluntary, national association of consumer advocates in more than forty 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.

² See paragraph 11, below.

³ DA 09-584 (rel. March 13, 2009).

using funds held by USAC as “assets held for the Federal USF”⁴ and/or by using unspent schools and libraries funding. This relief is necessary in order to protect consumers throughout the Nation from the harm of paying increased USF assessments, when there are funds in reserve that could be spent.

BACKGROUND

1. USAC is a non-profit corporation formed by and subject to the plenary authority of the Commission to administer the USF distribution process, as well as the collection of revenues that fund the USF.⁵
2. Each quarter USAC projects demand and administrative expenses (“fund need”) for the USF.⁶ Each quarter USAC also projects collected end-user telecommunications revenues subject to assessment for the USF (“revenue base”).⁷
3. In simple terms, the fund need is divided by the revenue base to arrive at a percentage USF contribution factor for the upcoming quarter.
4. Also in simple terms, carriers subject to assessment pay into the USF the designated percentage of their interstate and international revenues. Carriers are permitted to pass through their USF payments to their end-user customers.
5. The unadjusted revenues, adjusted revenues, total fund need, and resulting contribution factors for each quarter from the first quarter of 1999 (1Q1999)

⁴ USAC 2008 Annual Report at 25.

⁵ 47 C.F.R. § 54.701.

⁶ 47 C.F.R. § 54.709(a)(3).

⁷ 47 C.F.R. § 54.709(a)(1).

through the second quarter of 2009 (2Q2009) are shown on Attachment A.

THE CURRENT USF CONTRIBUTION FACTOR SITUATION

6. On May 1, 2009, USAC reported its projection of fund needs for 3Q2009 as \$2.029 billion.⁸
7. Overall USF demand in the third quarter increased by \$146 million, broken down as follows: \$97.7 million increase in the High Cost Fund; \$36.8 million increase in the Low Income Fund; \$9.8 million decrease in the Rural Health Fund; and \$21.3 million increase in the Schools and Libraries Fund.⁹
8. On June 1, 2009, USAC reported its projection of the revenue base for 3Q2009 as \$18.033 billion.¹⁰
9. This is the lowest revenue base since the second quarter of 2007; apart from the second quarter of 2007, it is the lowest revenue base since the first quarter of 1999.
10. After adjustments for circularity and uncollectibles, the adjusted revenue base is approximately \$15.843 billion.¹¹

⁸ See http://www.usac.org/about/governance/fcc-filings/2009/Q3/3Q2009%20Quarterly%20Demand%20Filing%20_FINAL%205.1.09_.pdf.

⁹ The increase in the High Cost Fund was caused primarily by the change in the Interstate Common Line Support true-up adjustment from a \$46.8 million reduction in the second quarter to a \$22 million increase in the third quarter, a swing of \$68.8 million. Besides the ICLS true-up, out-of-period adjustments for the High Cost, Low Income, Rural Health and Schools and Libraries Funds increased projected demand for the third quarter by a net amount of \$41.7 million, compared to a \$5.5 million net increase during the second quarter.

¹⁰ See <http://www.usac.org/about/governance/fcc-filings/2009/Q3/3Q2009%20Contribution%20Base%20Filing.pdf>.

¹¹ The adjustment for circularity deducts the USF fund need from the revenue base; then a 1% uncollectible percentage is applied.

11. Combining the projected fund need with the adjusted projected revenue base yields a contribution factor of 12.9%.¹²
12. This would be the highest USF contribution factor in history and the first time the contribution factor has exceeded 12%.¹³ This would represent more than a 14% increase in the USF contribution factor in the space of a single quarter.

PREVIOUS CONTRIBUTION FACTOR ADJUSTMENTS

13. In the third and fourth quarter of 2002 and the first quarter of 2003, the Commission, used “on an interim basis ... funds collected in the schools and libraries support mechanism ... to stabilize universal service contributions in accordance with the public interest....”¹⁴
14. In the fourth quarter of 2005, the Commission lowered the revenue base in order to keep the contribution factor at 10.2% in anticipation of impacts of Hurricane Katrina.¹⁵

THE ANTI-DEFICIENCY ACT

15. Commission staff have determined that certain obligations under the USF are subject to the Anti-Deficiency Act (“ADA”), 31 U.S.C. § 1341.

¹² Rounding up from 12.81%.

¹³ See Attachment A.

¹⁴ DA 02-3387, citing 47 C.F.R. § 54.709(a). That rule was adopted in *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, First Report and Order, FCC 02-175 (rel. June 13, 2002), ¶ 3. In anticipation of changes in the USF contribution mechanism (which have never occurred), the Commission held that the unused funds would flow to the overall mechanism for three quarters; thereafter, unused schools and libraries funds would be held for use by the schools and libraries fund. *Id.*

¹⁵ DA 05-2454.

16. Nonetheless, Congress has consistently passed legislation that exempts the USF from the ADA, including through December 31, 2009.¹⁶

FUNDS THAT COULD BE AVAILABLE TO STABILIZE THE CONTRIBUTION FACTOR

17. According to USAC, there is a total of \$1 billion in unused schools and libraries funds.¹⁷
18. Based on the USAC 2008 Annual Report, as of December 31, 2007, there were approximately \$5.726 billion in “Assets held for the Federal USF.”¹⁸ That amount is likely greater now.¹⁹

¹⁶ See H.R. 1105, Omnibus Appropriations Act, 2009 (Public Law 111-8), §501 (“Section 302 of the Universal Service Antideficiency Temporary Suspension Act is amended by striking ‘December 31, 2008’, each place it appears and inserting ‘December 31, 2009’.”). See also H.R. 5419, 108th Cong 2d Sess., §302, Universal Service Antideficiency Temporary Suspension Act (effective Dec. 23, 2004) and H.R. 2862, 109th Cong 1st Sess., 8,633, Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006 (effective Nov. 22, 2005); H.J. 20 (effective January 1, 2007); Consolidated Appropriations Act of 2008, H.R. 2764, Division D–Financial Services and General Government Appropriations Act, 2008, Title V–Independent Agencies, at 61.

¹⁷ 3Q2009 Fund Size Projections at 36-41, including \$25 million for Funding Year 1999, \$50 million for Funding Year 2001, \$50 million for Funding Year 2002, \$200 million for Funding Year 2003, \$275 million for Funding Year 2004, \$200 million for Funding Year 2005, \$175 million for Funding Year 2006, and \$25 million for Funding Year 2007. See http://www.universalservice.org/about/governance/fcc-filings/2009/Q3/3Q2009%20Quarterly%20Demand%20Filing%20_FINAL%205.1.09_.pdf.

¹⁸ USAC 2008 Annual Report at 30.

¹⁹ As of December 31, 2006, the amount was \$5.336 billion. On a going-forward basis, the FCC and USAC should determine how much cash needs to be prudently reserved to meet all future obligations, as a matter of rational cash management. It appears that these balances now earn very little interest. It is unfair to subject consumers to increases in the contribution factor, given these non-optimal cash management practices.

THE AMOUNTS NEEDED TO STABILIZE THE USF CONTRIBUTION FACTOR

19. NASUCA has calculated that it would take \$651.3 million in added revenues to reduce the projected 12.9% 3Q2009 contribution factor to 12.3%; \$1.350.2 billion to reduce the factor to 11.8%; \$1.954 billion to reduce the factor to 11.4% (the highest contribution factor to-date); and \$2.111 billion to maintain the factor at the 2Q2009 level of 11.3%.²⁰

WHEREFORE, NASUCA requests that the Commission act to ameliorate the impact of the substantially increased contribution factor on carriers and consumers.²¹

²⁰ See Attachment B.

²¹ For the longer term, the Commission should seriously consider moving to an annual or semi-annual contribution factor. In 2009, the contribution factor has gone from 9.5% to 12.9%, but for the entire year-to-date, the averaged factor would have been 11.2%. Similar patterns exist for prior years. The fluctuations in the factor are principally the result of prior period adjustments to both revenues and demand. For example, USAC is required to project fund needs for all competitive carriers that file line counts, even if they are not yet ETCs. The excess collections are then returned through adjustments six months later. If revenues and demand were projected for a full year, much of the variability could be avoided. Indeed, if the assessment factor had been set at 11.3% for all of 2009, there would probably be a small surplus at the end of the year. Collections and disbursements would be trued up in succeeding years. The objective would be to preserve a relatively stable assessment factor.

Respectfully submitted,

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June 9, 2009

ATTACHMENT A: HISTORICAL USF CONTRIBUTION FACTORS

USF Contribution Fund

	Unadjusted Revenues	Adjusted Revenues	Total USF Need	Contribution Factor	
1st Qtr. 1999	18.35	18.35	0.91	0.050	
2nd Qtr. 1999	18.31	18.31	0.84	0.046	
3rd Qtr. 1999	18.99	18.99	1.10	0.058	
4th Qtr. 1999	18.91	18.91	1.10	0.058	
1st Qtr. 2000	18.96	18.96	1.11	0.059	
2nd Qtr. 2000	19.38	19.38	1.11	0.057	
3rd Qtr. 2000	20.20	20.20	1.12	0.055	
4th Qtr. 2000	20.96	20.96	1.19	0.057	
1st Qtr. 2001	20.26	20.26	1.35	0.067	
2nd Qtr. 2001	20.30	20.30	1.40	0.069	(a)
3rd Qtr. 2001	20.14	19.94	1.37	0.069	
4th Qtr. 2001	19.60	19.40	1.34	0.069	
1st Qtr. 2002	20.45	20.26	1.38	0.068	
2nd Qtr. 2002	19.22	19.03	1.39	0.073	
3rd Qtr. 2002	18.68	17.16	1.51	0.088	(b)
4th Qtr. 2002	18.49	16.99	1.59	0.093	(b)
1st Qtr. 2003	18.89	17.22	1.50	0.087	(b)
2nd Qtr. 2003	18.74	17.04	1.53	0.091	(c)
3rd Qtr. 2003	18.84	17.07	1.61	0.095	
4th Qtr. 2003	18.61	16.89	1.55	0.092	
1st Qtr. 2004	18.89	17.22	1.50	0.087	
2nd Qtr. 2004	19.10	17.42	1.50	0.087	
3rd Qtr. 2004	18.71	17.02	1.51	0.089	
4th Qtr. 2004	18.10	16.47	1.46	0.089	
1st Qtr. 2005	18.35	16.43	1.76	0.107	
2nd Qtr. 2005	18.33	16.36	1.81	0.111	
3rd Qtr. 2005	18.37	16.52	1.68	0.102	
4th Qtr. 2005	18.36	16.07	1.63	0.102	(d)
1st Qtr. 2006	18.45	16.59	1.69	0.102	
2nd Qtr. 2006	18.32	16.38	1.77	0.109	
3rd Qtr. 2006	18.77	16.84	1.76	0.105	
4th Qtr. 2006	19.36	17.60	1.59	0.091	
1st Qtr. 2007	18.55	16.76	1.62	0.097	
2nd Qtr. 2007	18.01	16.00	1.86	0.117	
3rd Qtr. 2007	18.57	16.53	1.87	0.113	
4th Qtr. 2007	18.95	16.92	1.86	0.110	
1st Qtr. 2008	19.19	17.27	1.75	0.102	
2nd Qtr. 2008	18.98	16.90	1.91	0.113	
3rd Qtr. 2008	19.04	16.95	1.92	0.114	
4th Qtr. 2008	19.01	16.92	1.92	0.114	
1st Qtr. 2009	18.87	17.09	1.61	0.095	
2nd Qtr. 2009	18.71	16.66	1.88	0.113	

Source: Contribution Factor Public Notices.

Notes:

- (a) Prior to 2Q01, the quarterly numbers were calculated using a 6-month base, so there is no comparable figure for unadjusted revenues.
- (b) For 3Q02, 4Q02 and 1Q03, the FCC adjusted the contribution factor. The factor shown here is the unadjusted (calculated) factor.
- (c) Beginning 2Q03, a circularity factor was applied that increased the adjustment.
- (d) For 4Q05, 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%.

**Attachment B: Impact of Additional Revenue on Contribution Factor
(\$000,000)**

(1) Target USF Contribution Factor	11.0%	11.3%	11.4%	11.8%	12.3%
(2) 3Q Total USF Demand	2,028.9	2,028.9	2,028.9	2,028.9	2,028.9
(3) Target USF Revenue Base (1) x (2)	18,444.5	17,954.9	17,797.4	17,194.1	16,495.1
(4) 3Q USF Revenue Base	15,843.9	15,843.9	15,843.9	15,843.9	15,843.9
(5) Difference (3) - (4)	2,600.7	2,111.0	1,953.5	1,350.2	651.3

Source: USAC Quarterly Filings