NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

VIA ELECTRONIC DELIVERY

July 29, 2009

Chairman Julius Genachowski
Commissioner Michael Copps
Commissioner Robert McDowell
Commissioner Mignon Clyburn
Commissioner Meredith Baker
Federal Communications Commission (via e-mail)

Re: Ex Parte Communication, WC Dockets Nos. 06-122 and 05-337 and CC Docket No. 96-45

Dear Chairman Genachowski and Commissioners:

On July 10, 2009, AT&T Inc. ("AT&T") filed in WC Docket No. 06-122 a "Petition for Immediate Commission Action to Reform Its Universal Service Contribution Methodology."[1] AT&T seeks to have the Federal Communications Commission ("FCC" or "Commission") adopt a numbers-based contribution mechanism for the federal Universal Service Fund ("USF"), in place of the current revenue-based mechanism. The National Association of State Utility Consumer Advocates ("NASUCA")[2] opposes this

[1] Since then, AT&T has also filed a number of ex parte communications on the same subject. See, e.g., AT&T ex parte (July 21, 2009).

[2] NASUCA is a voluntary national association of consumer advocates in more than 40 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.

proposal, as we have consistently done in the past.[3] In anticipation of AT&T's Petition being put out for public comment, NASUCA touches on here some of the key reasons why AT&T's proposal should not be adopted.[4]

AT&T asserts that the Commission has

> put off the day of reckoning when the growth in the contribution factor finally reached an untenable level. That day arrived on July 1, 2009, when the contribution factor shattered the twelve percent ceiling set by the Commission in 2002, increasing 90 percent during this period of time, from 6.8 percent to 12.9 percent. That the factor would exceed twelve percent and show no sign of decreasing was entirely predictable. Over the past decade, interstate telecommunications revenues have fallen, as prices fell and consumers shifted to alternative communications technologies and services, while the size of the universal service fund has continued to grow by leaps and bounds.[5]

But attributing the current 12.9% contribution factor to a trend of decline in interstate revenues is simply false-to-fact. As NASUCA has continually shown over the years, the level of interstate revenues from which the contribution factor is derived has been remarkably stable, **now over the last seven years**. Chart 1 attached here shows the level of adjusted interstate revenues since the third quarter of 2002 ("3Q02"), with a trend line that is almost flat.[6] The adjusted revenues have fluctuated around a mean of $16.08 billion, with the maximum being $0.8 billion above the mean and the minimum being the current $1.32 billion below the mean, as shown on Chart 2. The range has thus been just over $2 billion around the $16 billion mean. This is hardly the "death spiral" that AT&T and others have continually predicted.[7]

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[3] See, e.g., NASUCA Comments to Refresh the Record (July 7, 2008) at 21-24; NASUCA ex parte (January 11, 2008) (attaching NASUCA resolution opposing numbers-based mechanism); NASUCA ex parte (September 25, 2007).

[4] AT&T says that, on this subject, the Commission "already has a complete record, refreshed late last year…" and that no additional comment is needed. AT&T Petition at 10. But AT&T itself uses the excuse of recent events for the "immediacy" of its proposal. NASUCA also does not believe that the record supports "an order that changes the current methodology to one based on telephone numbers." Id.

[5] Id. at 3-4 (footnote omitted). The omitted footnote cites to supposed support for AT&T's description of a "twelve per cent ceiling" on the contribution mechanism, which was nothing of the sort. AT&T also refers to the factor "approaching 15 percent…." Id. at 1. The "approach" is not close at all.

[6] There is a clear break between the period prior to 3Q02 and that after. For the sake of the record, however, we include the data and charts from 1Q99 through 3Q09, as Attachment A.

[7] See, e.g., Coalition for Sustainable Universal Service Comments (April 22, 2002) at 23.

Therefore, "falling interstate revenues" cannot drive the need to find a new USF contribution mechanism. In addition, AT&T's references to new technologies or services do not show imminent threats to the interstate revenue stream.[8]

It is true that the universal service fund has continued to grow. Chart 3 shows the same time period as Chart 1, for the fund size and the contribution factor. There also the trend is unmistakable: Given the relatively stable level of revenues, the contribution factor has changed in lockstep with the size of the fund. Chart 4 is perhaps the most graphic demonstration, showing revenues, fund size and contribution factors indexed to 1Q99.

So the problem is not revenues, it is the size of the USF. AT&T describes the ways the FCC has attempted to "rein in" the fund as unsuccessful.[9] This completely ignores the numerous pending proposals that would limit the size of the high-cost fund, in particular.[10] And AT&T's projection that if the Commission determines to directly support broadband services, "the pressures on the demand side [of the USF] may very well increase"[11] ignores the concomitant possibility of assessing broadband services for contribution.[12] Nonetheless, this shows the need to rein in the fund, and find new funding sources, rather than switch to a new contribution mechanism.

There is no need to transition to any numbers-based mechanism. But AT&T also refers to the specific numbers-based proposal that it and Verizon submitted in September 2008, and says that "[t]he virtues of the Numbers Proposal are beyond dispute."[13] Here again, AT&T's hyperbole is simply wrong.

There is in fact substantial dispute about the "virtues" of numbers-based contribution mechanism proposals. Given that the current AT&T Petition adds little to its previous pleadings in support of its proposal, however, NASUCA includes as a separate document the pertinent pages from

1) NASUCA's August 5, 2008 ex parte on the numbers-based contribution mechanism[14];

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[8] See AT&T Petition at 7-8 (Skype-In and Skype-Out); 8 (text-messaging and Tweeting); 8-9 (Magic Jack); 9 (Google Voice). All of these services either should be classified as interconnected voice over Internet protocol ("VoIP") services (e.g., Skype-In and -Out, Magic Jack) and should thus be subject to the current revenue-based mechanism's assessment on interconnected VoIP, or are already subject to the revenue-based assessment on wireless services (e.g., text-messaging and Tweeting).

[9] AT&T Petition at 6-7.

[10] See, e.g., NASUCA's comments filed May 8, 2009 in response to the FCC's Notice of Inquiry (FCC 09-28) concerning the non-rural high-cost fund.

[11] AT&T Petition at 6.

[12] See NASUCA Comments on Joint Board Recommended Decision (April 18, 2008) at 19. One source estimated that U.S. broadband revenue for 2008 exceeded $32 billion. See http://www.lightreading.com/document.asp?doc_id=169812.

[13] AT&T Petition at 12.

[14] See http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6520036812.

2) NASUCA's September 30, 2008 ex parte responding to the AT&T/Verizon proposal[15];
3) NASUCA's initial comments in response to the Commission's 2008 global intercarrier compensation and universal service Further Notice of Proposed Rulemaking ("FNPRM") (FCC No. 08-262)[16]; and
4) NASUCA's reply comments on the FNPRM.[17]

In particular, these excerpts show the flaws in the claims that a numbers-based mechanism would be beneficial for consumers.[18] This includes the notion that the numbers-based mechanism would be more stable than the current mechanism, because AT&T proposes changing the numbers-based assessment amounts "no more frequently than twice a year."[19] The revenues-based mechanism would also be more stable if it were calculated no more frequently than twice a year, in contrast to the current quarterly change.

A&T also asserts that a numbers-based mechanism will be competitively neutral.[20] But AT&T's proposal includes exceptions for numbers used for prepaid wireless services, secondary numbers used in wireless family plans, and numbers provided to Lifeline customers.[21] In that respect, AT&T's proposal is different from the proposal put out for comment by the Commission last fall in the FNPRM, which limited the exemptions to Lifeline customers and consumers of Community Voice Mail-type programs.[22] But as NASUCA's August 5 ex parte (attached here) stated, "The notion that a numbers-based system would be entirely competitively neutral and create no opportunities for arbitrage is a pipe dream."[23] The ex parte also showed the variety of requests for exemption or exception from a numbers-based mechanism.[24]

In the end, of course, it should not be surprising that AT&T would use NASUCA's attempt to ameliorate the increase to a 12.9% contribution factor as support for the

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[15] See http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6520172975. pp. 6-10.

[16] See http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6520188688, pp. 39-41.

[17] See http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6520191959, pages 10-11, 28-33. A chart in the reply comments (at 10-11) shows the untruth in AT&T's claim of a consensus on a numbers-based mechanism.

[18] See AT&T Petition at 12, 15-16.

[19] Id. at 13.

[20] Id. at 16.

[21] Id. at 13.

[22] See NASUCA Comments on the FNPRM, at 40-41 (attached hereto).

[23] NASUCA August 5, 2008 ex parte at 3.

[24] Id.

change to a numbers-based mechanism.[25] As AT&T notes, the Commission did not act on NASUCA's request.[26] NASUCA continues to believe that the request was reasonable and deserved consideration. In the absence of such consideration, however, NASUCA hopes that AT&T's Petition will receive just as little attention from the FCC. Changing to a numbers-based mechanism is not necessary, and will harm consumers, for the many reasons NASUCA has expressed.[27]

Respectfully submitted,

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[25] AT&T Petition at 20.

[26] Id., n.46.

[27] We note that, once again, AT&T has not addressed the costs of switching to its proposed mechanism.

Chart 1: Adjusted Revenues 3Q2002-3Q2009

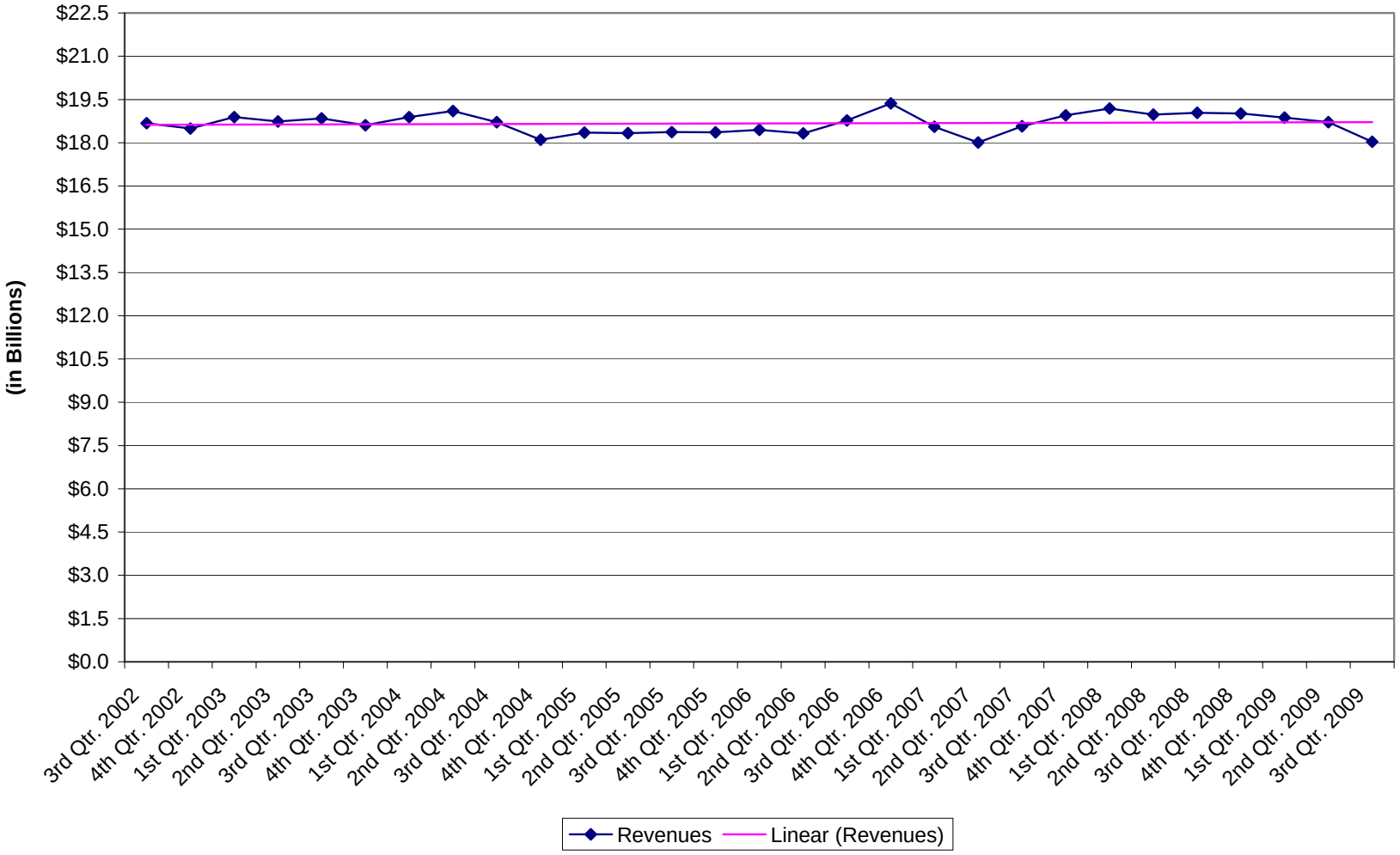


Chart 2: Deviation from 3Q2002-3Q2009 Mean and from 3Q2002

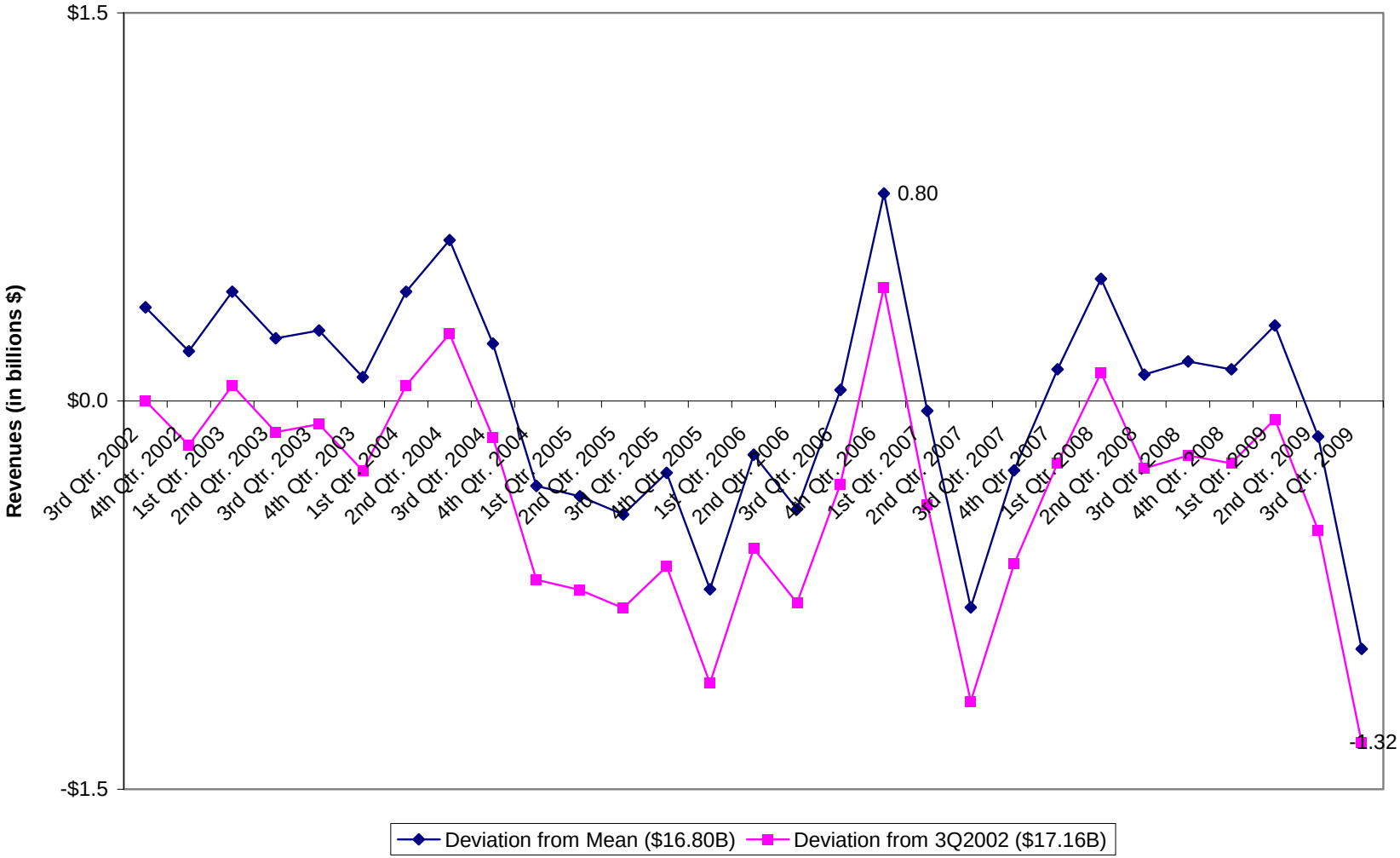


Chart 3: Fund Size and Contribution Factor
Since 3Q02

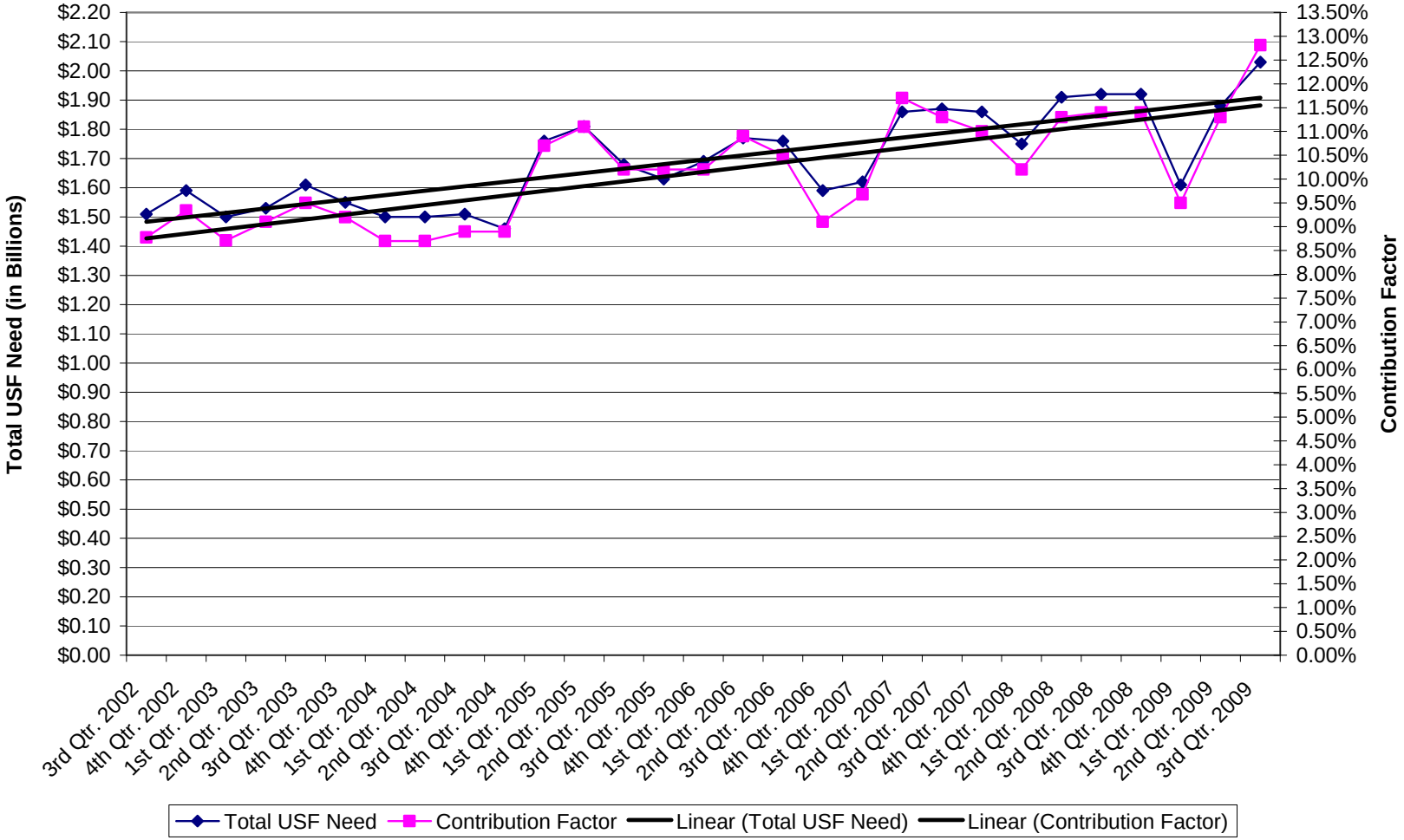
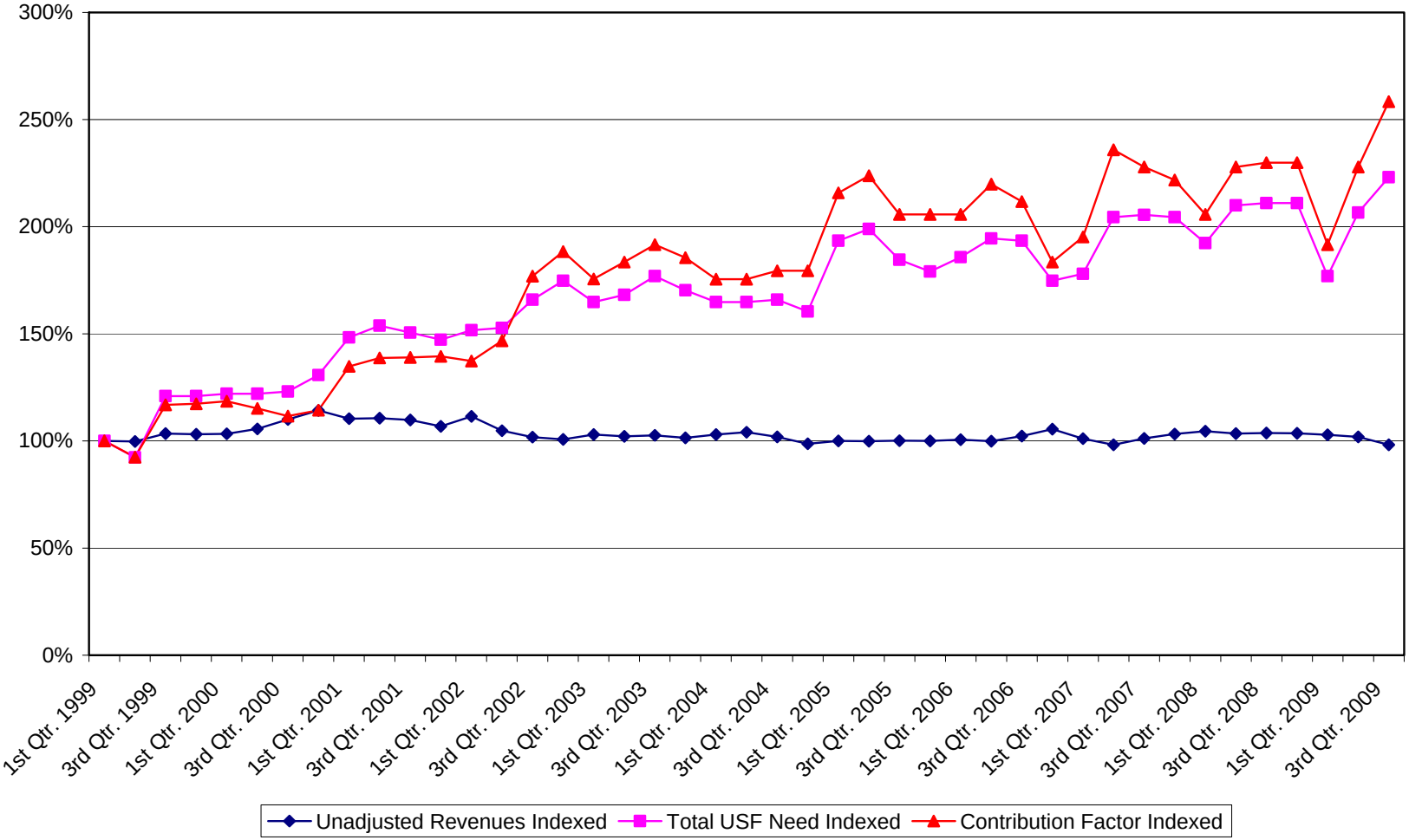


Chart 4: Universal Service Fund Indexed to 1Q99



Attachment A: Data and charts from 1Q99 through 3Q09

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	
3rd Qtr. 2009	18.03	15.84	2.03	0.128	

Source: Contribution Factor Public Notices.

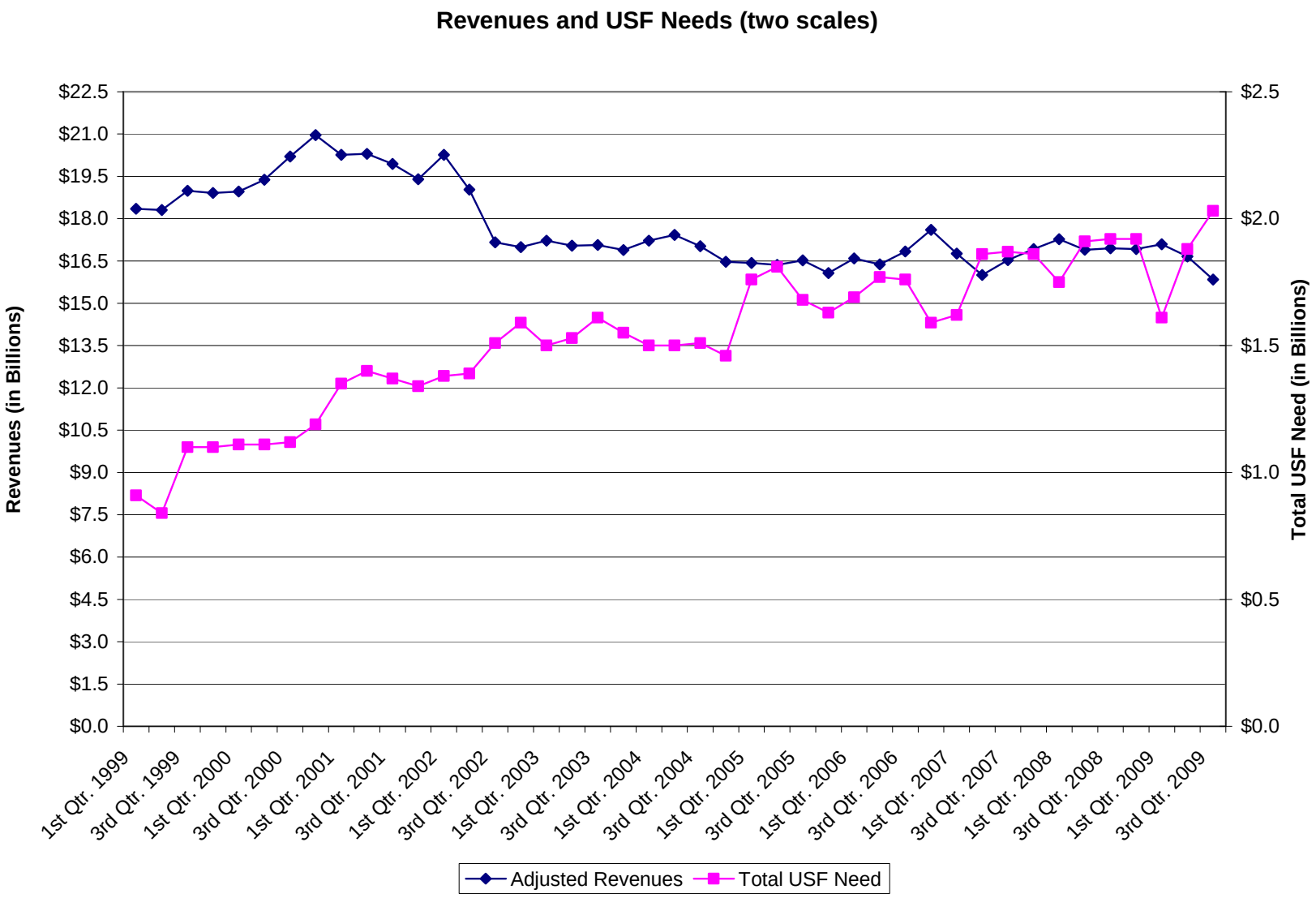
Notes:

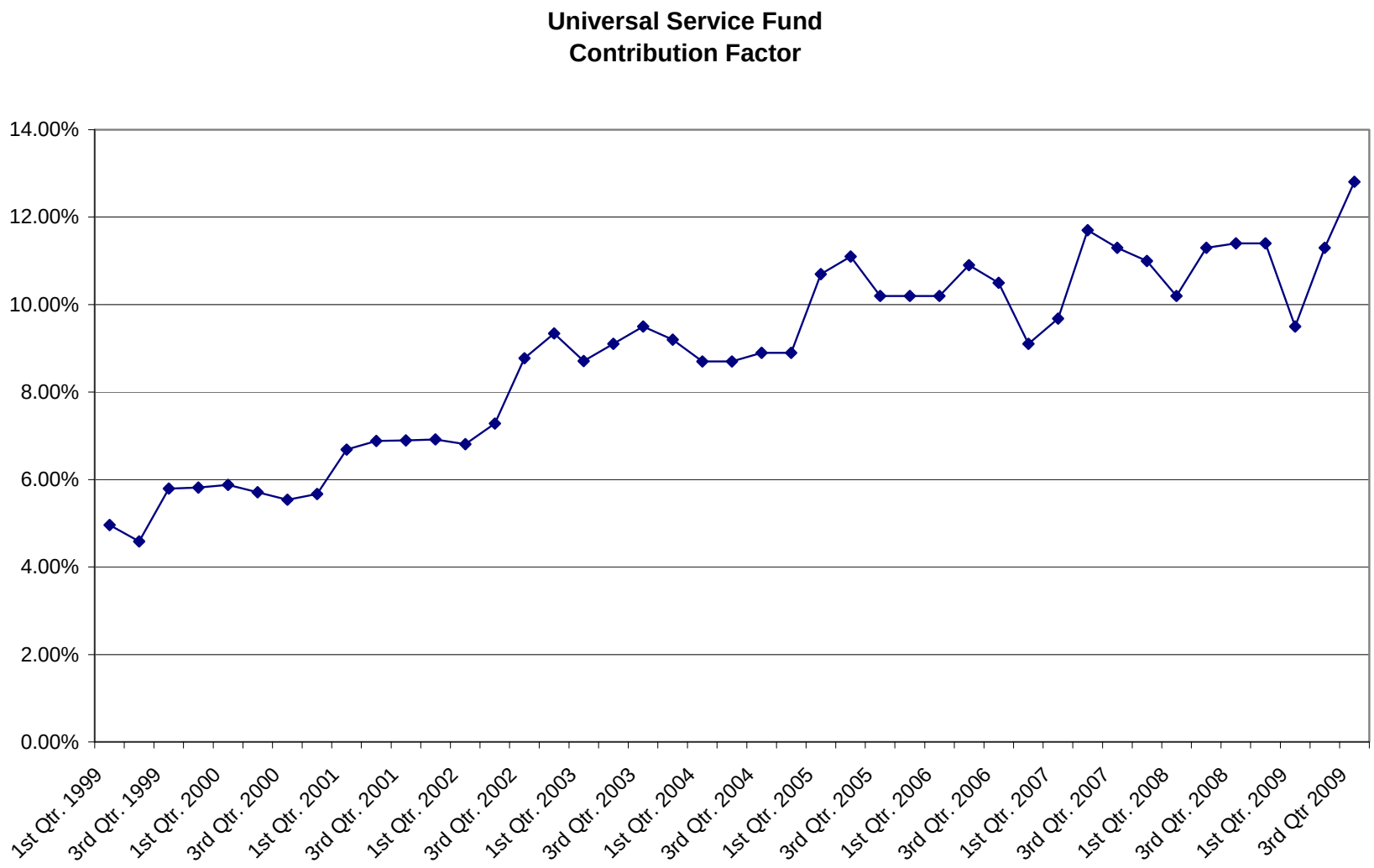
(a) Prior to 2Q01, the quarterly numbers were calculated using a 6-month base, so there is no comparable figure for unadjusted revenues.

(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%.


Revenues and USF Needs (two scales)
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
$2.5
$2.0
$1.5
$1.0
$0.5
$0.0
1st Qtr. 1999
3rd Qtr. 1999
1st Qtr. 2000
3rd Qtr. 2000
1st Qtr. 2001
3rd Qtr. 2001
1st Qtr. 2002
3rd Qtr. 2002
1st Qtr. 2003
3rd Qtr. 2003
1st Qtr. 2004
3rd Qtr. 2004
1st Qtr. 2005
3rd Qtr. 2005
1st Qtr. 2006
3rd Qtr. 2006
1st Qtr. 2007
3rd Qtr. 2007
1st Qtr. 2008
3rd Qtr. 2008
1st Qtr. 2009
3rd Qtr. 2009
Adjusted Revenues
Total USF Need


Universal Service Fund
Contribution Factor
14.00%
12.00%
10.00%
8.00%
6.00%
4.00%
2.00%
0.00%
1st Qtr. 1999
3rd Qtr. 1999
1st Qtr. 2000
3rd Qtr. 2000
1st Qtr. 2001
3rd Qtr. 2001
1st Qtr. 2002
3rd Qtr. 2002
1st Qtr. 2003
3rd Qtr. 2003
1st Qtr. 2004
3rd Qtr. 2004
1st Qtr. 2005
3rd Qtr. 2005
1st Qtr. 2006
3rd Qtr. 2006
1st Qtr. 2007
3rd Qtr. 2007
1st Qtr. 2008
3rd Qtr. 2008
1st Qtr. 2009
3rd Qtr 2009

Attachment B (separate document): Excerpts from NASUCA filings