

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
1998 Biennial Regulatory Review –)	CC Docket No. 98-171
Streamlined Contributor Reporting)	
Requirements Associated with Administration)	
of Telecommunications Relay Service, North)	
American Numbering Plan, Local Number)	
Portability, and Universal Service Support)	
Mechanisms)	
)	
Telecommunications Services for Individuals)	CC Docket No. 90-571
with Hearing and Speech Disabilities, and the)	
Americans with Disabilities Act of 1990)	
)	
Administration of the North American)	CC Docket No. 92-237
Numbering Plan and North American)	NSD File No. L-00-72
Numbering Plan Cost Recovery Contribution)	
Factor and Fund Size)	
)	
Number Resource Optimization)	CC Docket No. 99-200
)	
Telephone Number Portability)	CC Docket No. 95-116
)	
Truth-in-Billing and Billing Format)	CC Docket No. 98-170

REPORT AND ORDER

AND SECOND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: December 12, 2002

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Comment Date: 30 days from publication in the Federal Register.

Reply Comment Date: 60 days from publication in the Federal Register.

By the Commission: Chairman Powell, Commissioners Abernathy, Copps and Martin issuing separate statements; Commissioner Adelstein not participating.

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I. INTRODUCTION AND OVERVIEW

1. In this Report and Order (Order) and Second Further Notice of Proposed Rulemaking (*Second Further Notice*), we take interim measures to maintain the viability of universal service in the near term -- a fundamental goal of this Commission -- while we consider further long-term reforms. First, we increase to 28.5 percent the current interim safe harbor that allows cellular, broadband Personal Communications Service (PCS), and certain Specialized Mobile Radio (SMR) providers to assume that 15 percent of their telecommunications revenues are interstate.¹ We also require wireless telecommunications providers to make a single election whether to report actual revenues or to use the revised safe harbor for all affiliated entities within the same safe harbor category.² In addition, we seek to improve competitive neutrality among contributors by modifying the existing revenue-based methodology to require universal service contributions based on contributor-provided projections of collected end-user interstate and international telecommunications revenues, instead of historical gross-billed revenues. These changes will be implemented with the FCC Form 499-Q filed on February 1, 2003. We conclude that our actions to modify the current revenue-based contribution methodology will sustain the universal service fund and increase the predictability of support in the near term, while we continue to examine more fundamental reforms.

2. In light of these changes, we also conclude that telecommunications carriers may not recover their federal universal service contribution costs through a separate line item that includes a mark-up above the relevant contribution factor beginning April 1, 2003. Limiting the federal universal service line-item charge to an amount that does not exceed the contribution factor, set quarterly by the Commission, will increase billing transparency and decrease

¹ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 21252, 21258-59, paras. 13-15 (1998) (*Interim CMRS Safe Harbor Order*). In this Order, we use the term “mobile wireless” to refer to these non-paging Commercial Mobile Radio Service (CMRS) providers and not fixed wireless providers.

² So, for example, if in a given period a wireless telecommunications provider reports actual revenues for one affiliated paging provider, it will be required to report actual interstate telecommunications revenues for all other affiliated paging providers.

confusion for consumers about the amount of universal service contributions that are passed through by carriers. Carriers will continue to have the flexibility to recover legitimate administrative costs from consumers through other means.

3. Although the interim measures we adopt today will improve the current contribution methodology, they do not address our concerns regarding the long-term viability of any revenue-based system. In the *First Further Notice*, we observed that interstate telecommunications revenues are becoming increasingly difficult to identify as customers migrate to bundled packages of interstate and intrastate telecommunications and non-telecommunications products and services.³ This has increased opportunities to mischaracterize revenues that should be counted for contribution purposes. Such mischaracterization may result in decreases in the assessable revenue base. Increased competition also is placing downward pressure on interstate rates and revenues, which also contributes to the decline in the contribution base.⁴ For example, traditional long-distance providers increasingly are entering local markets at the same time that competitive and incumbent local exchange carriers are increasingly providing long-distance services. Customers also are migrating to mobile wireless and Internet-based services. As we recently noted, these changes have led to fluctuations in the contribution base and rising contribution obligations.⁵

4. The Commission initiated this proceeding to consider alternatives or modifications to a revenue-based system.⁶ An analysis of the record reveals interest in a connection-based methodology that would assess carriers based on their provision of connectivity to interstate networks, regardless of how many minutes of use or revenues are derived from a connection. A

³ See *Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing and Billing Format*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Further Notice of Proposed Rulemaking and Report and Order, 17 FCC Rcd 3752 (2002) (*First Further Notice*).

⁴ See *id.* at 3755-56, paras. 7-9.

⁵ See *Schools and Libraries Universal Service Support Mechanism*, First Report and Order, CC Docket No. 02-6, 17 FCC Rcd 11521, 11522-11524, paras. 1-3 (2002) (authorizing use of unused funds from schools and libraries support mechanism to prevent further increases to the contribution factor in the third and fourth quarters of 2002 and the first quarter of 2003).

⁶ See *Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, Notice of Proposed Rulemaking, 16 FCC Rcd 9892, 9894-96, paras. 2-6 (2001) (*2001 Notice*).

substantial number of parties across various industry segments now support adoption of a connection-based assessment methodology.⁷ In addition, four out of five state members of the Federal-State Joint Board on Universal Service (Joint Board) recommend adoption of a connection-based system for calculating universal service contributions, while the fifth member proposes assessing contributions on a combination of connections, capacity, and terminating minutes of use.⁸

5. Although many parties agree that a connection-based contribution methodology will best ensure the long-term viability of the Commission's universal service mechanisms as the telecommunications marketplace continues to evolve, they differ on how best to implement such a mechanism. Key areas of disagreement include whether to make the provider of the end-user connection (most often the local exchange carrier) solely responsible for contributions or whether that responsibility should be shared between the access (e.g., local exchange carrier) and transport (e.g., interexchange carrier) providers.⁹ Commenters also disagree on how best to calculate assessments for higher-capacity connections.¹⁰ Moreover, parties have expressed concern that they cannot estimate assessments for multi-line business connections without access to more reliable data on the number and capacity of non-switched (e.g., special access or private line) connections.¹¹

6. We conclude that it is appropriate to further study long-term reforms of the

⁷ Interest in a connection-based methodology spans across various industry segments. *See generally* ASCENT Comments; ATA Comments; BellSouth Reply Comments; C&W Reply Comments; Home et al. Comments; ITAA Comments; Qwest Reply Comments; SBC Comments; Sprint Comments; Letter from Walter McCormick, United States Telecom Association, to Marlene H. Dortch, Federal Communications Commission, filed Oct. 21, 2002 (*USTA Oct. 21 Ex Parte*); VON Reply Comments. NRTA and OPASTCO support adoption of a flat-fee mechanism. *See* NRTA and OPASTCO Comments. The Coalition for Sustainable Universal Service (CoSUS), representing various interexchange carriers and end-users, also supports adoption of a connection-based mechanism. The original membership of CoSUS was comprised of Ad Hoc Telecommunications Users Committee (Ad Hoc), AT&T, e-commerce & Telecommunications Users Group (eTUG), Level 3 Communications, and WorldCom. *See* CoSUS Comments at 1-4. Ad Hoc and AT&T, which continue to support some form of a connection-based mechanism, are no longer members of CoSUS. *See* Letter from James S. Blaszak, Counsel for Ad Hoc Telecommunications Users Committee, to Marlene H. Dortch, Federal Communications Commission, filed Oct. 3, 2002 (*Ad Hoc Oct. 3 Ex Parte*) (asserting that the Commission should adopt a contribution assessment methodology based on working telephone numbers and connections-based assessments for special access and private lines); Letter from Robert W. Quinn, Jr., AT&T, to Marlene Dortch, Federal Communications Commission, filed Oct. 22, 2002 (*AT&T Oct. 22 Ex Parte*).

⁸ Letter from G. Nanette Thompson, State Chair of the State Joint Board Members, to Chmn. Michael K. Powell, Federal Communications Commission, filed Aug. 7, 2002 (*State Joint Board Ex Parte*).

⁹ *See infra* paras. 16-18.

¹⁰ *See, e.g.,* CoSUS Comments; Qwest Comments; SBC/BellSouth Comments; Letter from Jamie M. (Mike) Tan, SBC Communications, Inc., to Marlene Dortch, Federal Communications Commission, filed Oct. 10, 2002 (*SBC Oct. 10 Ex Parte*).

¹¹ *See, e.g.,* Nextel Reply Comments at 7; Letter from W. Scott Randolph, Director Regulatory Affairs of Verizon, to Marlene H. Dortch, Federal Communications, dated Oct. 29, 2002 (*Verizon Oct. 29 Ex Parte*), at Attachment, pg. 7.

contribution methodology.¹² In this *Second Further Notice*, we seek comment on whether to retain a revenue-based system and specific aspects of three connection-based proposals in the record. First, we ask for comment on a proposed contribution methodology that would impose a minimum contribution obligation on all interstate telecommunications carriers and a flat charge for each end-user connection depending on the nature or capacity of the connection. Next, we seek comment on a proposal to assess all connections based purely on capacity. Under this proposal, contribution obligations for each switched end-user connection would be shared between access and transport providers. Finally, we seek comment on a proposal to assess providers of switched connections based on their working telephone numbers. We remain committed to adopting a contribution methodology that will ensure the continued viability of universal service as the marketplace continues to evolve.

II. BACKGROUND

A. The Act

7. The assessment and recovery of universal service contributions are governed by the statutory framework established by Congress in the Act.¹³ Section 254(b) instructs the Commission to establish universal service support mechanisms with the goal of ensuring the delivery of affordable telecommunications services to all Americans, including consumers in high-cost areas, low-income consumers, eligible schools and libraries, and rural health care providers.¹⁴ Section 254(d) of the Act states that “[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.”¹⁵

¹² See, e.g., Letter from Cellular Telecommunications and Internet Association, Qwest Communications, International, Inc., United States Telecom Association, Verizon Communications, Verizon Wireless, to Marlene H. Dortch, Federal Communications Commission, dated Oct. 25, 2002 (*Interim Revenue Coalition Ex Parte*).

¹³ Communications Act of 1934, as amended, 47 U.S.C. §§ 201, 202, 254. The Telecommunications Act of 1996 amended the Communications Act of 1934. See Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act).

¹⁴ 47 U.S.C. § 254(b).

¹⁵ 47 U.S.C. § 254(d). See also 47 U.S.C. § 254(b)(4), (5) (providing that Commission policy on universal service shall be based, in part, on the principles that contributions should be equitable and nondiscriminatory, and support mechanisms should be specific, predictable, and sufficient). The Commission adopted the additional principle that federal support mechanisms should be competitively neutral, neither unfairly advantaging nor disadvantaging particular service providers or technologies. See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8801-03, paras. 46-51 (1997), as corrected by *Federal-State Joint Board on Universal Service*, Erratum, CC Docket No. 96-45, FCC 97-157 (rel. June 4, 1997), and Erratum, 13 FCC Rcd 24493 (1997), *aff'd in part, rev'd in part, remanded in part sub nom, Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999), *cert. denied*, 530 U.S. 1210 (2000), *cert. dismissed*, 531 U.S. 975 (2000) (*Universal Service Order*).

8. In addition to the specific universal service provisions of section 254, sections 201(b) and 202(a) of the Act govern carrier services and charges.¹⁶ Section 201(b) requires that all carrier charges, practices, classifications, and regulations “for and in connection with” interstate communications service be just and reasonable, and gives the Commission jurisdiction to enact rules to implement that requirement.¹⁷ Section 202(a) prohibits “unjust or unreasonable discrimination” in connection with the provision of communications services. Section 202(a) also prohibits carriers from making or giving “any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.”¹⁸

B. The Current Methodology

9. In the 1997 *Universal Service Order*, the Commission decided to assess contributions on contributors’ gross-billed end-user telecommunications revenues.¹⁹ The Commission did so after considering the Recommended Decision of the Joint Board and the record developed at that time.²⁰ Specifically, the Commission concluded that assessments based on end-user telecommunications revenues would be competitively neutral, would be easy to administer, and would eliminate some economic distortions associated with an assessment based on gross telecommunications revenues.²¹

10. In addition, the Commission declined to adopt a mandatory end-user surcharge for recovery of universal service contributions by telecommunications providers, agreeing with the state members of the Joint Board that a mandatory end-user surcharge “would dictate how carriers recover their contribution obligations and would violate Congress’s mandate.”²² The Commission expressed concern that mandating recovery through an end-user surcharge might affect contributors’ flexibility to offer, for example, bundled services or new pricing options,

¹⁶ See 47 C.F.R. §§ 201(b), 202(a).

¹⁷ 47 C.F.R. § 201(b).

¹⁸ 47 C.F.R. § 202(a).

¹⁹ See *Universal Service Order*, 12 FCC Rcd at 9206-07, paras. 843-44. Contributions for the high-cost and low-income support mechanisms were based on interstate and international end-user telecommunications revenues, while contributions for the schools and libraries and rural health care support mechanisms initially were based on intrastate, interstate, and international end-user telecommunications revenues. Following a decision by the United States Court of Appeals for the Fifth Circuit, the Commission established a single contribution base for all universal service support mechanisms based on interstate and international revenues. See *Federal-State Joint Board on Universal Service, Access Charge Reform*, Sixteenth Order on Reconsideration and Eighth Report and Order in CC Docket No. 96-45 and Sixth Report and Order in CC Docket No. 96-262, 15 FCC Rcd 1679, 1685-86, para. 15 (1999) (*Eighth Report and Order*).

²⁰ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd 87 (Jt. Bd. 1996).

²¹ *Universal Service Order*, 12 FCC Rcd at 9206-09, paras. 844-50.

²² *Id.* at 9210-11, para. 853.

possibly resulting in fewer options for consumers.²³ Instead, the Commission allowed contributors to decide for themselves whether, how, and how much of their universal service contributions to recover from their customers.²⁴ The Commission required only that contributors not shift more than an equitable share of their contributions to any customer or group of customers, and that contributors provide accurate, truthful, and complete information regarding the nature of the charge.²⁵

11. In the *Second Order on Reconsideration*, the Commission set forth the specific method of computation for universal service contributions.²⁶ The Commission also designated the Universal Service Administrative Company (USAC) as the neutral entity responsible for administering the universal service support mechanisms, including billing contributors, collecting contributions to the universal service support mechanisms, and disbursing universal service support funds.²⁷ The Commission required contributors to report their end-user telecommunications revenues to USAC on a Telecommunications Reporting Worksheet (Worksheet) semi-annually.²⁸ Contributions were based on the reporting of billed end-user

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 9199, para. 829. We note that the Commission originally prohibited incumbent local exchange carriers from recovering universal service costs from end users, and instead required incumbent local exchange carriers to recover universal service costs through access charges. *See id.* at 9200, para. 830. The United States Court of Appeals for the Fifth Circuit held that incumbent local exchange carrier recovery of universal service contributions through access charges constituted an implicit subsidy, and the Commission's rules permitting that practice to continue at an incumbent local exchange carrier's discretion violated section 254(e) of the Act. *See COMSAT Corp. v. FCC*, 250 F.3d 931, 938-40 (5th Cir. 2001). The Commission therefore amended its rules to prohibit local exchange carriers from recovering contributions to the universal service mechanisms through access charges imposed on interexchange carriers. *See* 47 C.F.R. § 69.4(d).

²⁶ *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 97-21, Report and Order and Second Order on Reconsideration, 12 FCC Rcd 18400 (1997) (*Second Order on Reconsideration*).

²⁷ *See id.* at 18423-24, para. 41; *see also* 47 C.F.R. § 54.701.

²⁸ *Second Order on Reconsideration*, 12 FCC Rcd 18400, Appendix B; *see also* 47 C.F.R. § 54.711(a) (providing that “[c]ontributions shall be calculated and filed in accordance with the Telecommunications Reporting Worksheet”); *Second Order on Reconsideration*, 12 FCC Rcd at 18424, para. 43, 18442, para. 80, 18501-02, Appendix C. The Commission adopted the Worksheet and attached it as Appendix C to the *Second Reconsideration Order*. Subsequent to its issuance of the *Second Order on Reconsideration*, in an effort to reduce administrative burdens on contributors, the Commission consolidated carrier reporting requirements. *See 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, CC Docket 98-171, Report and Order, 14 FCC Rcd 16602 (1999) (*Consolidated Reporting Order*); *see also Common Carrier Bureau Announces Release of September Version of Telecommunications Reporting Worksheet (FCC Form 499-S) for Contributions to the Universal Service Support Mechanisms*, CC Docket No. 98-171, Public Notice, DA 99-1520 (rel. July 30, 1999); *Common Carrier Bureau Announces Release of Telecommunications Reporting Worksheet (FCC Form 499-A) for April 1, 2000 Filing by All Telecommunications Carriers*, CC Docket No. 98-171, Public Notice, 15 FCC Rcd 16434 (Com. Car. Bur. 2000).

telecommunications revenues from the prior year. Therefore, the interval between the accrual of revenues by contributors and the assessment of universal service contributions based on those revenues originally was 12 months.²⁹

12. The Commission also has implemented various rules and guidelines intended to reduce administrative burdens for certain categories of contributors. For example, the Commission established interim safe harbors for wireless telecommunications providers. As an alternative to reporting their actual interstate telecommunications revenues, CMRS providers currently may report a fixed percentage of revenues ranging from one to fifteen percent of total end-user telecommunications revenues.³⁰ The Commission's rules also provide a safe harbor for the reporting of telecommunications revenues when bundling telecommunications services with customer premises equipment or information services.³¹

13. In addition, the Commission has adopted *Truth-in-Billing* rules to improve consumers' understanding of their telephone bills. These rules require, among other things, that charges on consumer wireline telephone bills "must be accompanied by a brief, clear, non-misleading, plain language description of the service or services rendered."³² In the *Truth-In-Billing* proceeding, the Commission also adopted a guideline that "line item charges associated with federal regulatory action should be identified through standard and uniform labels" used by all telecommunications providers (other than CMRS carriers).³³ In the *TIB Order and FNPRM*, the Commission focused primarily on three types of line-item charges that result from federal regulatory action: (1) universal service-related fees; (2) subscriber line charges; and (3) local number portability charges. It sought comment on specific standard labels to be used for these

²⁹ Last year, the Commission reduced the interval between the accrual of revenues by contributors and assessment of universal service contributions based on those revenues from 12 months to an average interval of six months. See *Federal-State Joint Board on Universal Service, Petition for Reconsideration filed by AT&T*, CC Docket No. 96-45, Report and Order and Order on Reconsideration, 16 FCC Rcd 5748, paras. 1-2 (2001) (*Quarterly Reporting Order*). The Commission concluded that the shortened interval allows contributions to more accurately reflect market trends influencing carrier revenues, such as the entry of new providers into the interstate marketplace. *Id.* at 5751-52, para. 9.

³⁰ See *Interim CMRS Safe Harbor Order*, 13 FCC Rcd at 21258-60, paras. 13-15. Although slightly less than a majority of CMRS providers subject to the 15 percent safe harbor avail themselves of that safe harbor, those that do represent the vast majority of revenues reported by CMRS providers in this category.

³¹ See *Policy and Rules Concerning Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended, 1998 Biennial Regulatory Review – Review of Customer Premises Equipment And Enhanced Services Unbundling Rules In the Interexchange, Exchange Access And Local Exchange Markets*, CC Docket Nos. 96-61, 98-183, Report and Order, 16 FCC Rcd 7418, 7446-48, paras. 47-54 (2001) (*Bundling Order*).

³² 47 C.F.R. § 64.2401(b).

³³ *Truth-in-Billing and Billing Format*, CC Docket No. 98-170, Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 7492, 7525-26, para. 54, 7522-25, paras. 49-53 (*TIB Order and FNPRM*), reconsideration granted in part, Order on Reconsideration, 15 FCC Rcd 6023 (2000), Errata, 15 FCC Rcd 16544 (Com. Car. Bur. 2000).

charges.³⁴

C. History of Contribution Methodology Proceeding

14. As part of its efforts to ensure the long-term stability and sufficiency of the universal service support system in an increasingly competitive marketplace, the Commission began a proceeding to revisit its universal service contribution methodology in May 2001.³⁵ In the *2001 Notice*, the Commission sought comment generally on whether and how to streamline and reform both the contribution assessment methodology and the manner in which contributors may elect to recover the costs of contributions from their customers.³⁶ Among other things, the Commission sought comment on whether to modify the existing revenue-based methodology, as well as whether to replace that methodology with one that assesses contributions on the basis of a flat-fee charge, such as a per-line charge.³⁷ The Commission also sought comment on whether to require carriers that choose to recover universal service contributions from their customers through line items to do so through a uniform universal service line item that corresponds to the contribution assessment.³⁸

15. Seeking to further develop the record regarding various proposals submitted in response to the *2001 Notice*, we released a Further Notice of Proposed Rulemaking and Report and Order in February 2002.³⁹ Specifically, we sought more focused comment on a proposal to replace the existing revenue-based assessment mechanism with one based on the number and capacity of connections provided to a public network.⁴⁰ In the *First Further Notice*, we also invited commenters to supplement the record with any new arguments or data on proposals to retain or modify the existing, revenue-based assessment methodology.⁴¹ Moreover, we sought additional comment on possible reforms to the manner in which carriers recover contribution costs from their customers.⁴²

16. Commenters responding to the *First Further Notice* generally discussed two paths for reform of the universal service contribution system: (1) modification of the existing revenue-based mechanism; or (2) adoption of a connection-based mechanism. Commenters in favor of retaining a revenue-based system, for example, have argued that the Commission should base

³⁴ See *id.* at 7523-25, paras. 51-52, 7537, para. 71.

³⁵ See *2001 Notice*, 16 FCC Rcd 9892 (2001).

³⁶ *Id.* at 9894, para. 2.

³⁷ *Id.*

³⁸ *Id.*

³⁹ See *First Further Notice*, 17 FCC Rcd at 3754, para. 2.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

contributions on collected or projected interstate and international telecommunications revenues, rather than gross-billed or historical end-user telecommunications revenues, maintaining that these measures would eliminate the need for carriers to engage in complex calculations to account for variables like uncollected revenues, credits, and the need to recover universal service contributions from a declining revenue base.⁴³ Other commenters asserted that the Commission should revisit the interim mobile wireless safe harbor in light of the significant migration of interstate telecommunications revenues from wireline to mobile wireless providers.⁴⁴

17. On the other hand, several commenters, including all of the state members of the Joint Board, asserted that the Commission should adopt some form of a connection-based mechanism.⁴⁵ The essential difference among the various connection-based proposals put forth in the record is their treatment of different industry segments and types of customers. The Coalition for Sustainable Universal Service (CoSUS), for example, proposed a connection-based system that would initially charge residential or single-line business connections, including mobile wireless connections, a flat monthly amount of \$1.00 per connection, and paging connections \$0.25 per connection, with the remaining universal service funding needs being recovered through capacity-based assessments on multi-line business connections.⁴⁶ Under the CoSUS proposal, assessment rates would be adjusted as needed to account for growth in the number and capacity of connections and universal service funding requirements.⁴⁷

18. Variations of the CoSUS connection-based proposal would fix the \$1.00 per connection charge on residential, single-line business, and wireless connections for five years,⁴⁸ or maintain the relative contribution burdens paid by the wireline and wireless industry segments based on the interim safe harbor established under the current revenue-based system.⁴⁹ The

⁴³ See, e.g., Allied Comments at 11-12; Arch Comments at 10-12; CPUC Comments at 8-9; Verizon Comments at 5; Verizon Wireless Comments at 16; Cf. FW&A Comments at 11-12; USCC Comments at 13 (arguing against the use of projected revenue data as a means to reform the contribution system).

⁴⁴ See, e.g., Allied Comments at 11; ALTS Reply Comments at 4; FW&A Comments at 9-10; NASUCA Comments at 6-7; NECA Comments at 3-4; Nebraska Comments at 5-7; NRTA and OPASTCO Comments at 11 n.25; NTCA Comments at 5-6; USCC Comments at 9-10. Several CMRS carriers, in fact, have acknowledged that the current mobile wireless safe harbor percentage may be too low. See, e.g., Letter from Mitchell F. Brecher, Counsel for TracFone Wireless, Inc., to Marlene H. Dortch, Federal Communications Commission, filed Oct. 4, 2002 (*TracFone Oct. 4 Ex Parte*); Letter from Michael Altschul, Cellular Telecommunications and Internet Association, to Marlene H. Dortch, Federal Communications Commission, filed Sep. 30, 2002 (*CTIA Traffic Studies Ex Parte*).

⁴⁵ See, e.g., Ad Hoc Comments at 2; BellSouth Reply Comments at 8-9; CoSUS Comments at 9-12; C&W Reply Comments at 7; Home et al. Comments at 3-4; ITAA Comments at 3; Qwest Reply Comments at 3; SBC Comments at 5; Sprint Comments at 2; *State Joint Board Ex Parte* at 1-3. As previously noted, NRTA and OPASTCO support a connection-based contribution mechanism. See NRTA and OPASTCO Comments at 4.

⁴⁶ See CoSUS Comments at 12-17.

⁴⁷ *Id.* at 15.

⁴⁸ See, e.g., *State Joint Board Ex Parte* at 3.

⁴⁹ See Sprint Comments at 3.

connection-based proposal jointly submitted by SBC and BellSouth would split connection-based contribution assessments between access and interstate transport providers, without distinguishing between residential and business “connections,” and assess telecommunications services not tied to connections based on revenue.⁵⁰ The SBC/BellSouth proposal also would impose assessments on all connections provided by Internet service providers, both facilities-based and non-facilities-based.⁵¹ Under an alternative version of the SBC and BellSouth proposal, connection-based assessments would only be split between the access and transport providers when the switched access and transport elements are not provided on a bundled basis (i.e., the end user does not buy switched local service and interstate long-distance service from the same carrier).⁵² Under this proposal, a revenue-based assessment would be assigned to the transport component of such a switched connection and would be recovered from both presubscribed and non-presubscribed long-distance providers based on their interstate telecommunications revenues.⁵³ Ad Hoc and AT&T also have advocated a contribution assessment methodology based on working telephone numbers and connection-based assessments for special access and private lines.⁵⁴ Still other commenters favor a connection-based mechanism that would treat presubscribed interexchange lines or customer accounts as “connections” subject to a connection-based assessment.⁵⁵

III. REPORT AND ORDER

19. As noted above, we adopt several modifications to the current revenue-based system to ensure the sufficiency and predictability of universal service while we consider reforms to sustain the universal service fund for the long term. To address concerns raised in the record that the current interim safe harbor for mobile wireless providers is inappropriate in light of changing

⁵⁰ See SBC Comments at 5. Under the SBC/BellSouth proposal, “access” services include switched access and special access over the wireline telephone network, cable telephony, wireless, one-way paging, dedicated Internet access, and a private line access link to a packet-switched data network or other network, while interstate transport services include traditional interexchange long distance service, private line transport service, packet-switched transport service, and the interstate transport associated with Internet traffic or other content provided over an Internet connection. *Id.* at 9.

⁵¹ *Id.* at 5.

⁵² See Letter from David J. Hostetter, SBC Telecommunications, Inc., and W.W. (Whit) Jordan, BellSouth Corporation, to Marlene Dortch, Federal Communications Commission, filed Nov. 5, 2002 (*SBC/BellSouth Nov. 5 Ex Parte*).

⁵³ See *id.* at 1.

⁵⁴ *Ad Hoc Oct. 3 Ex Parte* at 3; *AT&T Oct. 22 Ex Parte*.

⁵⁵ See, e.g., NRTA and OPASTCO Comments at 12 n.26 (noting that assessments could be made on the basis of presubscribed lines). State Commissioner Jaber supports a modified connection-based mechanism that would treat customer accounts presubscribed to IXC as “connections.” See *State Joint Board Ex Parte* at Attachment, page 2.

market conditions, we raise the safe harbor from 15 to 28.5 percent.⁵⁶ We establish an all-or-nothing rule for affiliated wireless telecommunications providers when determining whether to report actual interstate telecommunications revenues or to avail themselves of the wireless safe harbor percentages.⁵⁷ We also modify the current revenue-based methodology by basing contributions on a percentage of projected collected, instead of historical gross-billed, interstate and international end-user telecommunications revenues reported by contributors on a quarterly basis.⁵⁸ In light of the modifications we adopt today, we conclude that carriers may not mark up universal service line item amounts above the contribution assessment rate.⁵⁹ Finally, we revise our Lifeline rules to prohibit all Eligible Telecommunications Carriers (ETCs) from recovering contribution costs from their Lifeline customers.

A. Modified Revenue-Based Assessment Methodology

1. Mobile Wireless Safe Harbor

a. Background

20. In 1998, in response to concerns raised by certain wireless telecommunications providers regarding difficulties associated with distinguishing between their interstate and intrastate revenues, the Commission adopted interim safe harbors for CMRS providers to use when reporting interstate telecommunications revenues for universal service contribution purposes.⁶⁰ Specifically, cellular, broadband PCS, and digital SMR providers⁶¹ may assume that no more than 15 percent of their cellular, broadband PCS, and SMR telecommunications revenues are interstate.⁶² The current interim safe harbor percentage for mobile wireless providers was based on the nationwide average percentage of interstate wireline traffic reported in 1997 for purposes of the Dial Equipment Minute (DEM) weighting program, which is the predecessor of local switching support.⁶³ The current interim safe harbor percentages for paging

⁵⁶ See, e.g., *Ad Hoc Oct. 3 Ex Parte* at 7; ALTS Reply Comments at 4; FW&A Comments at 9; *Interim Revenue Coalition Ex Parte* at 2; NASUCA Comments at 6-7; Nebraska Comments at 5-7; NRTA and OPASTCO Comments at 11 n.25; Time Warner et al. Comments at 18; *USTA Oct. 21 Ex Parte* at 4.

⁵⁷ See, e.g., *Interim Revenue Coalition Ex Parte* at 2; *USTA Oct. 21 Ex Parte* at 2.

⁵⁸ See *infra* paras. 29-32.

⁵⁹ See *infra* paras. 45-51.

⁶⁰ *Id.*; see also *Interim CMRS Safe Harbor Order*, 13 FCC Rcd at 21254-58, paras. 5-12.

⁶¹ The interim safe harbor for mobile wireless providers applies to SMR providers that primarily provide wireless telephony rather than dispatch or other mobile services. A digital SMR provider operates more like a cellular provider than a SMR provider. Digital SMR service offers consumers dispatch capabilities over much broader geographic areas, along with a unique combination of fully integrated services, such as cellular and broadband PCS service. Nextel is an example of a digital SMR provider.

⁶² See *Interim CMRS Safe Harbor Order*, 13 FCC Rcd at 21258-59, para. 13.

⁶³ *Id.* at 21257, para. 11, 21259, para. 13 n.25.

providers and analog SMR providers that do not primarily provide wireless telephony are 12 percent and one percent, respectively.⁶⁴ Currently, carriers may pick and choose which affiliated legal entities report actual interstate telecommunications revenues or the safe harbor percentage of revenues, rather than making their election on a company-wide basis, including all affiliated entities.⁶⁵ An entity that elects to report a percentage of interstate telecommunications revenues that is less than the relevant “safe harbor” percentage is required to document the method used to calculate its percentage and make that information available to the Commission or USAC upon request.⁶⁶ In the current proceeding to reform the universal service contribution system, the Commission sought comment on whether to continue or modify the interim safe harbors, citing, among other things, the significant migration of interstate telecommunications revenues from wireline to mobile wireless providers.⁶⁷

b. Discussion

21. Based on the record before us, we raise the current safe harbor for mobile wireless providers from 15 percent to 28.5 percent.⁶⁸ We conclude that a 15 percent interim mobile wireless safe harbor no longer reflects the extent to which mobile wireless consumers utilize their wireless phones for interstate calls, particularly in light of the increased substitution of wireless for traditional wireline service.⁶⁹ According to revenue data included on the latest FCC Form 499-Q, it appears that 43 percent of mobile wireless filers, representing 78 percent of mobile wireless end-user telecommunications revenues, currently avail themselves of the mobile wireless safe harbor.⁷⁰ As noted by several commenters, revising the mobile wireless safe harbor is appropriate because it is no longer based on actual market conditions.⁷¹ Increasing the interim mobile wireless safe harbor will, therefore, help to ensure that universal service contributions

⁶⁴ *Id.* at 21259-60, paras. 14-15.

⁶⁵ As evidenced by FCC Form 499 filings, carriers may file actual interstate telecommunications for one affiliated legal entity, while other affiliated legal entities file revenue information based on the interim safe harbors.

⁶⁶ *Interim CMRS Safe Harbor Order*, 13 FCC Rcd at 21257-58, para. 11.

⁶⁷ *See 2001 Notice*, 16 FCC Rcd at 9904-05, para. 24; *see also First Further Notice*, 17 FCC Rcd at 3757-59, paras. 11-16.

⁶⁸ *See, e.g., CTIA Traffic Studies Ex Parte*; FW&A Comments at 9-10; NASUCA Comments at 6-7; NECA Comments at 3-4; Nebraska Comments at 5-7; Ohio PUC Reply Comments at 4; Letter from John W. Kure, Executive Director – Federal Policy and Law, Qwest Communications, to Marlene H. Dortch, Federal Communications Commission, filed Oct. 24, 2002 (*Qwest Oct. 24 Ex Parte*) at Attachment, pg. 11; *USTA Oct. 21 Ex Parte* at 2; *Verizon Oct. 29 Ex Parte* at 2; Letter from John T. Scott, III, Verizon Wireless, to William F. Maher, Federal Communications Commission, filed Nov. 27, 2002.

⁶⁹ *See CTIA Traffic Studies Ex Parte*; *see also* FW&A Comments at 9-10; NASUCA Comments at 6-7; NECA Comments; Time Warner et al. Comments at 18.

⁷⁰ We note that this calculation was made at the legal entity level and not the holding company level.

⁷¹ *See, e.g., Allied Comments* at 11; ALTS Reply Comments at 4; NASUCA Comments at 6-7; Nebraska Comments at 5-7; NRTA and OPASTCO Comments at 11 n.25.

remain equitable and non-discriminatory. Such action also will improve the near-term viability of the universal service mechanisms by ensuring that the contribution base more accurately reflects today's marketplace.

22. We increase the interim safe harbor for mobile wireless providers to 28.5 percent based on information provided in the record by the wireless industry. According to CTIA, six of its wireless service provider members have conducted traffic studies using various methodologies and assumptions. Five unnamed large national mobile wireless providers reported interstate minutes of use that range from 19.6 percent to 28.5 percent, while one niche provider, TracFone, reported interstate usage of 10 percent.⁷² Most participants in the CTIA survey utilized minutes of use as a proxy for revenues and identified the jurisdictional nature of a call based on the originating cell site and the terminating area code.⁷³ There appeared to be a split among participants as to whether to include both outgoing and incoming calls in their traffic studies. We conclude it is appropriate to revise the safe harbor for mobile wireless providers to correspond to the highest estimate of minutes of use provided by the wireless carriers. Setting the safe harbor at the high end of the range of estimates provided by the wireless studies should provide mobile wireless providers an incentive to report their actual interstate telecommunications revenues if they are able to do so.

23. The American Association of Paging Carriers (AAPC) asserted that the safe harbor for non-nationwide paging carriers should be reduced to 1 percent, but did not submit traffic studies or other data to support its assertion.⁷⁴ Therefore, we find that the record developed at this time does not support adjustment of the safe harbors for analog SMR and paging providers.⁷⁵ Accordingly, the safe harbors for analog SMR and paging providers will remain at one percent and 12 percent, respectively.

24. Mobile wireless providers availing themselves of the revised interim safe harbor will be required to report 28.5 percent of their telecommunications revenues as interstate beginning with fourth quarter 2002 revenues reported on the February 1, 2003, FCC Form 499-Q. Mobile wireless providers will still have the option of reporting their actual interstate telecommunications revenues. We note that mobile wireless providers must provide documentation to support the reporting of actual interstate telecommunications revenues upon request.

⁷² See *CTIA Traffic Studies Ex Parte* at 3-4.

⁷³ *Id.*

⁷⁴ See Letter from Kenneth Hardman, Counsel for American Association of Paging Carriers, to Marlene H. Dortch, Federal Communications Commission, filed Nov. 25, 2002. We note that the interim safe harbor for paging carriers was established based on paging carriers' reported interstate revenues. See *Interim CMRS Safe Harbor Order*, 13 FCC Red at 21260, para. 14.

⁷⁵ See Letter from Kenneth D. Patrick, Counsel for Arch Wireless Operating Company, Inc., to Marlene H. Dortch, Federal Communications Commission, filed Oct. 31, 2002.

25. In order to ensure that contributions remain equitable and nondiscriminatory, we also adopt an all-or-nothing rule for wireless telecommunications providers seeking to avail themselves of the safe harbors.⁷⁶ Under this rule, wireless providers will continue to be permitted to report revenues at either the legal entity level or on a consolidated basis, but will be required to decide whether to report either actual or safe harbor revenues for all of their affiliated legal entities within the same safe harbor category (i.e., 28.5 percent, 12 percent or 1 percent).⁷⁷ We conclude, in the interests of consistency, equity, and fairness, that such a contributor that chooses to determine actual interstate telecommunications revenues for one of its affiliated entities must do so for all affiliated entities within the same safe harbor category. Likewise, wireless telecommunications providers must use the safe harbor for all affiliated carriers within the same category if they choose to use it for one. As previously noted, the Commission created the interim safe harbors because wireless providers asserted at the time that they have difficulty distinguishing their interstate and intrastate revenues.⁷⁸ If a wireless telecommunications provider can and does separate its interstate revenues from intrastate revenues for universal service contribution purposes, we find that it is reasonable to presume that its affiliates subject to the same safe harbor can employ the same measures to report their interstate revenues. It is inappropriate, therefore, to allow affiliated wireless providers to “pick and choose” which entities use the interim safe harbors.

26. Beginning with the first Form 499-Q filing following the effective date of this Order, wireless providers, including mobile wireless providers, paging providers, and analog SMR providers, shall determine whether to report revenues based on the interim wireless safe harbors at the affiliated-company level, as opposed to the legal-entity level, as is the case today. Under this new requirement, if one wireless entity chooses to report and contribute based on actual interstate telecommunications revenues, all affiliated companies subject to the same safe harbor must do the same. Conversely, if one wireless entity chooses to utilize the interim safe harbors, all affiliated companies in the same safe harbor category must also use the safe harbor.⁷⁹ For purposes of this requirement and consistent with section 3(1) of the Act, we define “affiliate” as a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person.⁸⁰

⁷⁶ See, e.g., *Interim Revenue Coalition Ex Parte* at 2; *USTA Oct. 21 Ex Parte* at 2.

⁷⁷ For example, if a wireless telecommunications provider uses the interim safe harbor for its paging services, all of its affiliated legal entities must also use the safe harbor for paging services. That same wireless telecommunications provider could choose to report actual interstate telecommunications revenues for its affiliates that provide mobile wireless services.

⁷⁸ See *supra* para. 20.

⁷⁹ We note that this requirement will not impose additional reporting obligations. Contributors may continue to file by legal entity or on a consolidated basis. Contributors, however, must determine whether to report actual interstate revenues for each filer at the affiliated-entity level.

⁸⁰ 47 U.S.C. § 153(1).

27. In addition to the universal service support mechanisms, consistent with existing Commission practice, revenues reported on the Form 499-A will continue to be used in administering the Telecommunications Relay Services, North American Numbering Plan, Local Number Portability programs, as well as the regulatory fees administration program for wireline telecommunications providers.⁸¹ We can see no reason to permit carriers to use a different safe harbor for revenue reporting for purposes of these other programs. Thus, we conclude that our actions taken here to revise the interim mobile wireless safe harbor and modify the reporting of data by wireless providers on the 499-A also will apply to assessments for the mechanisms established for Telecommunications Relay Services, the North American Numbering Plan, and the Local Number Portability programs.

2. Assessment on Projected Collected Revenues

a. Background

28. Currently, universal service contributions are based on a percentage of historical gross-billed revenues.⁸² As we have previously noted, however, the telecommunications marketplace has changed rapidly as technologies have evolved since adoption of the current system in 1997.⁸³ The *2001 Notice* sought comment on whether, among other things, to assess contributions based on projected collected revenues.⁸⁴ In the *First Further Notice*, we asked commenters to supplement the record with any new arguments or data regarding proposals to modify the revenue-based system.⁸⁵ Some commenters asserted that the Commission should retain the existing system, while other commenters proposed various modifications, including reliance on current or projected revenues rather than gross-billed revenues, as well as assessment on collected or net-booked revenues.⁸⁶ Several commenters, however, indicated that modifying the existing revenue-based system would not address problems implicating the long-term sustainability of the system.⁸⁷

⁸¹ See 47 C.F.R. §§ 52.17, 52.32, 64.604(c)(5)(iii)(A). Regulatory fees for CMRS providers are based on units served, not on revenues.

⁸² See *Universal Service Order*, 12 FCC Rcd at 9206-07, paras. 843-44.

⁸³ See *First Further Notice*, 17 FCC Rcd at 3755-59, paras. 7-14.

⁸⁴ *2001 Notice*, 16 FCC Rcd at 9902-9904, paras. 18-23.

⁸⁵ See *First Further Notice*, 17 FCC Rcd at 3789-90, para. 84.

⁸⁶ See Allied Comments at 11-12; Arch Comments at 10-12; CPUC Comments at 8-9; Verizon Comments at 5; Verizon Wireless Comments at 16. See also Letter from Lawrence E. Sarjeant, United States Telecom Association, to Chairman Michael K. Powell and Commissioners Kathleen Q. Abernathy, Michael Copps, and Kevin Martin, Federal Communications Commission, filed Nov. 26, 2002, at 3 (suggesting that contributions should be based on gross-billed interstate retail revenue adjusted by a carrier-specific factor to account for non-collectible amounts).

⁸⁷ See, e.g., BellSouth Reply Comments at 5; CoSUS Reply Comments at 14-21; WorldCom Reply Comments at 6-8.

b. Discussion

29. Based on our experience with the current collection methodology, we now find it appropriate to modify this aspect of the methodology to promote competitive neutrality and to simplify the assessment and recovery of universal service contributions for carriers and consumers. We therefore conclude that, instead of assessing universal service contributions based on revenues accrued as much as six months prior, USAC will assess contributions based on projections provided by contributors of their collected end-user interstate and international telecommunications revenues for the following quarter. Because contributors will be assessed in the period for which revenues are projected, the modified methodology will eliminate the interval between the accrual of revenues and the assessment of universal service contributions based on those revenues. The modified methodology also will result in minimal changes to current reporting requirements.⁸⁸ The revised methodology therefore will base assessments on revenue data that is more reflective of current market conditions, without significantly increasing administrative costs for contributors and USAC.⁸⁹ We view this and other changes we make to the revenue-based system to be interim measures while we consider the approaches raised in the *Second Further Notice*.

30. We also conclude that the revised contribution methodology ensures that contributions to universal service support mechanisms continue to operate in a competitively neutral manner.⁹⁰ As noted by several commenters, the current contribution system based on historical revenues creates competitive advantages for new entrants and contributors with increasing interstate telecommunications revenues, while disadvantaging those carriers with declining revenues.⁹¹ Interexchange carriers, for example, which currently contribute more than 60 percent of universal service contributions, are particularly disadvantaged by the so-called “lag” that results because they have experienced sharp declines in their interstate revenues.⁹² Because contributions are assessed on revenues from six months prior, carriers with decreasing revenues must recover their contributions from a revenue base smaller than the one assessed. By basing contribution assessments on projected collected end-user interstate and international

⁸⁸ See *infra* discussion at paras. 33-37.

⁸⁹ See USAC Comments to *2001 Notice* at 12.

⁹⁰ See, e.g., CPUC Comments at 8-9; CU et al. Comments at 7; Verizon Comments at 5.

⁹¹ See, e.g., Ad Hoc Comments at 2-3; CoSUS Comments at 29-31; Sprint Comments at 2; Verizon Wireless Comments at 16.

⁹² See, e.g., Ad Hoc Comments at 2-3; C&W Reply Comments at 4; CoSUS Comments at 6-11; Sprint Comments at 2-3; WorldCom Comments at 2-3. See also AT&T Corp., S.E.C. Form 10-Q, filed Aug. 14, 2002 (consumer services revenue declined 21.6%, or \$1.7 billion, for the first six months of 2002 compared with the corresponding period in 2001) (*AT&T 2nd Quarter 2002 10-Q*); WorldCom Inc., S.E.C. Form 10-Q, filed May 15, 2002 (consumer revenues, which include domestic voice communications service for consumer customers, for the first three months of 2002 decreased 11.7% over the prior year period); Sprint Corp., S.E.C. Form 10-Q, filed Aug. 6, 2002 (voice revenues from its Global Markets Division decreased 12% in the first six-months of 2002 compared with the corresponding period in 2001).

telecommunications revenues, as opposed to historical gross-billed revenues, the modified mechanism mitigates the anti-competitive effects of the current system. This, in turn, helps to ensure the sufficiency and stability of the universal service fund.

31. Although concerns have been expressed about the potential volatility of basing contributions on projected revenues, the mechanisms we adopt today minimize such concerns. The change to a projected collected revenue approach also complements measures we take to address carrier recovery practices. As discussed below, we conclude that carriers may not recover their federal universal service contribution costs through a separate line item that includes a mark-up above the relevant contribution factor.⁹³ Contributors currently recover from consumers amounts in excess of the relevant assessment rate in part to account for the fact that they are obligated to pay universal service assessments on gross-billed revenues from up to six months prior. By eliminating the interval between the reporting of revenue and assessment on that revenue and by excluding uncollectibles from a provider's contribution obligation, we eliminate these reasons for carriers to mark up universal service charges.

32. For purposes of our revised contribution methodology, "collected end-user" revenues refers to gross-billed end-user interstate and international telecommunications revenues less estimated uncollectibles.⁹⁴ We define uncollectibles as the percentage of interstate and international telecommunications revenues that the contributor anticipates will not be collected from end-user customers.⁹⁵ Contributors must make best efforts to collect interstate and international telecommunications revenues, including any federal universal service pass-through charges, before characterizing revenues as uncollectible. As we discuss below, these projected uncollectibles will be trued up against actual uncollectibles reported on the FCC Form 499-A.⁹⁶ This percentage should be calculated in accordance with Generally Accepted Accounting Principles.⁹⁷ Contributors will report their uncollectible percent on the Form 499 filings (i.e., Forms 499-Q and 499-A), which will be modified to collect additional information about uncollectibles consistent with the rules adopted in this Order.⁹⁸

33. Because the projected collection approach we adopt is similar to the existing

⁹³ See *infra* paras. 45-55.

⁹⁴ See *2001 Notice*, 16 FCC Rcd at 9903, para. 22 n. 57.

⁹⁵ Contributors should not include so-called "unbillables" in their projections of uncollectibles. See *infra* para. 56. See also Letter from Patrick H. Merrick, AT&T to Marlene H. Dortch, Federal Communications Commission, filed Dec. 4, 2002.

⁹⁶ See *infra* paras. 36-37.

⁹⁷ General Accepted Accounting Principles (GAAP) encompasses the conventions, rules, and procedures necessary to define accepted practice in the preparation of financial statements in the United States. The Financial Accounting Standards Board (FASB) is currently the primary authority to establish GAAP for all companies. Carriers subject to the Uniform System of Accounts would derive this figure from the amount recorded in Account 5301, Uncollectible Revenue - Telecommunications. See also Qwest Comments to the *2001 Notice* at 4.

⁹⁸ See *infra* Appendix C.

contribution methodology, it will be relatively easy for both USAC and contributors to administer and implement this modification to our current methodology while we consider other reforms to the current system. Consistent with our existing policy, contributors will continue to file a Form 499-Q on a quarterly basis and the Form 499-A on an annual basis. The Commission and USAC will also continue to set contribution factors on a quarterly basis using the same timeframes as the current methodology. Under the revised methodology, however, in addition to filing the Form 499-Q to report historical gross-billed revenues from the prior quarter, contributors also will project their gross-billed and collected end-user interstate and international telecommunications revenues for the upcoming quarter. We believe that this will not be burdensome for contributors, as they need to develop such projections for their own internal business purposes. Consistent with current procedures, contributors will have the option of certifying as to the confidential nature of such projections on the FCC Form 499-Q.

34. We note that we retain the requirement for an officer to certify to the truthfulness and accuracy of the FCC Form 499-A submitted to the Administrator. We also will require an executive officer to certify that the projections of gross-billed and collected revenues included in the FCC Form 499-Q represent a good-faith estimate based on company policies and procedures. To ensure that contributors report correct information on the FCC Form 499-A, we require all contributors to maintain records and documentation to justify the information reported in the Form 499-A for three years. We also will require filers to maintain records detailing the methodology used to determine projections in the Form 499-Q for three years. Filers will be required to provide such records and documentation to the Commission and USAC upon request.⁹⁹

35. Under the modified methodology, contributors will continue to include pass-through charges, if any, as part of their projection of collected end-user revenues. In order to eliminate circularity, however, the Administrator will reduce each provider's contribution obligation by a circularity discount factor representing the provider's projected contributions to universal service in the upcoming quarter.¹⁰⁰ Prior to each quarter, we will announce a contribution factor equal to the projected universal service funding requirement for the upcoming quarter (projected revenue requirement) divided by an adjusted contribution base.¹⁰¹ As discussed below, carriers will be prohibited from marking up their federal universal service line item above this contribution factor.¹⁰² In order to calculate an individual provider's contribution, USAC then will reduce the

⁹⁹ We also note that persons willfully making false statements in the Worksheets can be punished by fine or imprisonment under title 18 of the United States Code. *See* 18 U.S.C. § 1001.

¹⁰⁰ Under current procedures, USAC excludes each contributor's actual universal service contributions from its assessable gross-billed interstate telecommunications revenues. *See First Further Notice*, 17 FCC Rcd at 3801-02, paras. 113-116. This eliminates one cause for contributors to recover amounts in excess of the contribution factor.

¹⁰¹ The adjusted contribution base will equal the total projected collected end-user interstate telecommunications revenues for the upcoming quarter reported on the FCC Form 499-Q minus the projected revenue requirement. One percent will be deducted to account for contributions that USAC cannot collect from telecommunications providers.

¹⁰² *See infra* discussion at paras. 45-51.

provider's unadjusted contribution obligation (i.e., its projected collected end-user revenues times the contribution factor) by an amount equal to its contribution obligation times the circularity discount factor. The circularity discount factor will equal one minus an amount equal to the adjusted contribution base divided by total projected end-user interstate and international telecommunication revenues. USAC will send contributors a firm bill each month based on the above-described calculation. Therefore, we do not anticipate the need for a reserve fund, because contributors will be billed monthly based on their reported projected collected revenues, the same amounts used to calculate the contribution factor.

36. Although our modified mechanism relies on the ability of contributors to project gross-billed and collected revenues on a quarterly basis, it only requires contributors to project for the upcoming quarter, which should minimize the potential for inaccurate estimates. Similar to existing policies, contributors will have an opportunity to correct their projections up to 45 days after the due date of each Form 499-Q filing and through the annual true-up process. We find it appropriate to modify the current requirement that revisions be filed by the due date of the next Form 499-Q (which effectively provides 90 days for revisions) in light of the changes to the methodology we adopt today. In particular, we believe it necessary to eliminate incentives for contributors to revise their revenue projections after the announcement of the contribution factor for the upcoming quarter in order to reduce their contribution obligations and to otherwise reduce the likelihood of a shortfall in universal service funding in a given calendar quarter. USAC will use the actual revenue data provided by contributors on the FCC Form 499-A to perform annual true-ups to the quarterly projected revenue data submitted by contributors during the prior calendar year.¹⁰³ As necessary, USAC will then refund or collect from contributors any over-payments or under-payments. If the combined quarterly projected revenues reported by a contributor are greater than those reported on its annual revenue report (Form 499-A), then a refund will be provided to the contributor based on an average of the two lowest contribution factors for the year. If the combined quarterly revenues reported by a contributor are less than those reported on its annual revenue report (Form 499-A), then USAC will collect the difference from the contributor using an average of the two highest contribution factors from that year. This approach is consistent with the existing system.¹⁰⁴

37. We direct USAC to begin implementation of the revised reporting requirements, consistent with our modifications to ensure that carriers begin contributing based on projected collected end-user revenues, in the next quarterly filing to occur on February 1, 2003. Therefore, the contribution factor for the second quarter of 2003 will be based on projected collected end-user interstate and international telecommunications revenues. As part of the transition to the modified contribution system, contributors must begin providing information concerning their projected collected end-user interstate and international telecommunications revenues (*i.e.*, anticipated end-user revenues and estimated uncollectibles) for the upcoming quarter with the

¹⁰³ See Telecommunications Reporting Worksheet, FCC Form 499-A, OMB 3060-0855 (February 2002) (FCC Form 499-A). We will revise FCC Form 499-A at a later date, consistent with the rules and policies outlined in this Order.

¹⁰⁴ See generally *Quarterly Reporting Order*, 16 FCC Rcd at 5752-53, para. 12.

filing of the modified 499-Q on February 1, 2003, to reflect projections for the second quarter of 2003. In order to provide USAC with a full year of projected revenues with which to conduct the annual true up for 2003 revenues, contributors also will be required to include projected collected revenues for the first quarter of 2003 on the 499-Q that will be filed on February 1, 2003. As discussed above, subsequent 499-Qs will only include historical revenues from the prior calendar quarter and projected revenues for the upcoming quarter. The FCC Form 499-A, which must be filed on April 1, 2003, will include historical gross-billed revenues for the period of January 2002 through December 2002. Subsequent FCC Form 499-As will include historical gross-billed revenues and actual collected end-user interstate and international telecommunications revenues for the relevant reporting year.

38. At this time, we decline to adopt a pure collect-and-remittance system, as proposed by some commenters.¹⁰⁵ Under such a system, carriers would include a prescribed universal service contribution line-item on customer bills and would only be required to remit to USAC those contributions actually collected from end-user customers. Although such a collect-and-remittance system would eliminate the need for carriers to mark-up line items to reflect uncollectibles and other factors, we share concerns about such a proposal raised in the record.¹⁰⁶

39. This form of a collect-and-remittance system would likely reduce incentives for carriers to recover universal service contributions from their customers, thereby risking the overall predictability and sufficiency of the universal service fund. Unlike the revised methodology we adopt, a provider would not be required to contribute unless the customer actually paid the universal service charge on its bill. Thus, this form of a collect-and-remittance system would relieve carriers of any risk associated with the recovery of universal service contributions, which would lessen carrier incentives to collect such charges.¹⁰⁷ This, in turn, would make it more difficult to maintain a predictable, sufficient fund. In contrast, under our modified revenue-based methodology, if a customer refuses to pay a universal service pass-through charge on its bill, but pays the remaining charges on the bill, the carrier's assessment would only be reduced by the percentage of its total revenues that it could not collect from that customer.¹⁰⁸ In addition,

¹⁰⁵ See ALTS Comments at 4; AT&T Comments at 8, 10-11; AWS Comments at 11-12; CoSUS Comments at 14; Nextel Comments at 22-23; Sprint Comments at 3; Verizon Comments at 5; Working Assets Comments at 5-6; WorldCom Comments at 7-8.

¹⁰⁶ See, e.g., ACS Reply Comments at 10 (asserting that collect and remit rewards inefficiency and unfairly shifts burden to companies that do collect); NRTA & OPASTCO Comments at 22-23 (stating that a collect and remit system threatens the sufficiency and predictability of universal service funding, and violates section 254(d) by placing contribution obligations on end-users); Texas Reply Comments at 2-3 (indicating that collect and remit system would violate section 254 of the Act by impermissibly shifting contribution obligations to end-users); USCC Comments at 13-14 (stating that a collect and remit system would lead to the demise of the federal universal service fund).

¹⁰⁷ See, e.g., ACS Reply Comments at 10; Time Warner et al. Comments at 20; USCC Comments at 13-14.

¹⁰⁸ For example, if a customer refused to pay a \$1.00 line item, but paid the remaining \$9.00 of its total \$10.00 bill, the carrier would discount its assessable revenues by its 10% uncollectible percentage. Assuming a 10 percent contribution factor, it would contribute \$0.90 for that customer (\$9.00 x .10). Under a collect and remit system, if a
(continued...)

because we would not be able to predict with accuracy how many assessments contributors would collect from end-user customers and remit to USAC in a given calendar quarter, a collect-and-remit system would create the possibility of shortfalls in the universal service fund. USAC would need to establish a significant reserve fund to account for such potential shortfalls.¹⁰⁹ This form of a collect-and-remit system would also pose complex implementation details (for example, how carriers would treat partial payment of customer bills) that we avoid by adopting our modified methodology.

B. Recovery of Universal Service Contributions

40. In this Order, we also take steps to address consumer concerns regarding disparate contributor recovery practices. We conclude that telecommunications carriers may not recover their federal universal service contribution costs through a separate line item that includes a mark up above the relevant contribution factor. Contributing carriers still will have the flexibility to recover their contribution costs through their end-user rates if they so choose and to recover any administrative or other costs they currently recover in a universal service line-item through their customer rates or through another line item.¹¹⁰ Contributors will also have the flexibility to express the line item either as a flat amount or a percentage, as long as the line item does not exceed the total amount associated with the contribution factor, or the actual percentage thereof. Consistent with the universal service goals of the Act, we also extend the prohibition on recovery of universal service contributions from Lifeline customers to all ETCs, including competitive local exchange carriers (CLECs) and CMRS providers designated as ETCs.

1. Recovery Limitations

a. Background

41. The statutory framework established by Congress in the Act governs the recovery of universal service contributions by telecommunications carriers. Sections 201(b) and 202(a) govern common carrier services and charges.¹¹¹ Section 201(b) requires that all charges, practices, classifications, and regulations “for and in connection with” interstate communications

(...continued from previous page)

customer refused to pay the \$1.00 federal universal service line item, the carrier would contribute nothing for that customer.

¹⁰⁹ In contrast, under our modified methodology, we will be able to predict with a greater degree of accuracy the total amount of contributions in a given quarter because the amount of a provider’s contribution will be based on projected collected revenues reported on the FCC Form 499-Q. Therefore, a reserve fund will not be necessary.

¹¹⁰ See 47 C.F.R. §§ 69.131, 69.158.

¹¹¹ 47 U.S.C. §§ 201(b), 202(a). Because sections 201 and 202 of the Act only apply to “common carriers” or “telecommunications carriers,” and not to the broader category of telecommunications providers that are currently subject to universal service contribution obligations pursuant to the Commission’s authority under section 254(d) of the Act, throughout this section we refer to the recovery obligations of “carriers,” not “contributors.” See *id.*; see also 47 U.S.C. §§ 153(44), 153(46).

service be just and reasonable, and gives the Commission jurisdiction to enact rules to implement that requirement.¹¹² Section 202(a) prohibits “unjust or unreasonable discrimination” in connection with the provision of communications services. Section 202(a) also prohibits providers from making or giving “any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.”

42. As discussed above, carriers currently have the flexibility to recover their contribution obligations in any manner that is equitable and nondiscriminatory.¹¹³ To the extent that carriers recover their contribution costs through a separate line item on customer bills, they must accurately describe the nature of the charge.¹¹⁴ In the *Universal Service Order*, the Commission rejected proposals to impose a mandatory end-user universal service surcharge on customer bills, stating that a mandatory surcharge might affect contributors’ flexibility to offer bundled services or new pricing options, possibly resulting in fewer options for consumers.¹¹⁵

43. In the *First Further Notice*, we sought comment on whether and how to regulate the recovery of universal service contribution costs. We also noted that, in looking at whether the current system was effective in carrying out the Act, we must balance the duty to make sure the collection process is fair and reasonable to consumers with the need to give carriers the maximum flexibility to respond to market forces.¹¹⁶ We also expressed concern that even though the contribution factor is uniform for all interstate telecommunications carriers, recovery practices vary widely among different carriers, and among different customer classes.¹¹⁷ These concerns were shared by many commenters in this proceeding. For example, commenters expressed concern that disparate recovery of universal service contributions confuses consumers.¹¹⁸ Other commenters suggested that the Commission require that contributing carrier line items match the contribution factor.¹¹⁹ Other commenters, however, urged that the Commission allow carriers to retain flexibility in their contribution recovery practices.¹²⁰

44. In the *First Further Notice*, we sought comment on proposals to reconcile concerns

¹¹² 47 U.S.C. § 201(b).

¹¹³ See *Universal Service Order* 12 FCC Rcd at 9206-07, para 844.

¹¹⁴ *Id.* at 9199, para. 829, 9211-12, para. 855.

¹¹⁵ See *id.*

¹¹⁶ See *First Further Notice*, 17 FCC Rcd at 3791, para. 89.

¹¹⁷ *Id.* at 3760-61, paras. 18-19.

¹¹⁸ See, e.g., *Ad Hoc Oct. 3 Ex Parte* at 5-6; CPUC Comments at 14; CU et al. Comments at 20-21; GSA Comments at 8-9; NASUCA Comments at 17; SBC Comments at 4; Working Assets Comments at 6.

¹¹⁹ CPUC Comments at 14; CU et al. Comments at 20; GSA Comments at 8; Home et al. Comments at 13; NASUCA at 17; Texas PUC Comments at 2; Working Assets Comments at 6.

¹²⁰ See, e.g., AT&T Comments at 7; Sprint Comments at 5; Verizon Comments at 8.

about the equity and transparency of carrier recovery practices with the need for carriers to retain flexibility to respond to market forces. Specifically, we sought comment on whether to continue providing carriers with flexibility in the recovery of universal service contribution-related costs. Alternatively, we asked whether to require carriers that elect to recover contributions through a separate line item to make that line-item amount or percentage rate uniform for all customers.¹²¹ We also sought comment on whether to continue allowing carriers to mark up their universal service line items to account for uncollectibles and administrative costs. In addition, we sought comment on whether to require carriers that elect to impose a separate universal service line-item charge to describe the line item as the “Federal Universal Service Fee.” Finally, we asked whether to prohibit all telecommunications carriers from recovering universal service costs from Lifeline customers.¹²²

b. Discussion

45. In this Order, consistent with the goals of the Act and this Commission for universal service, we adopt rules related to contribution recovery that will ensure that federal universal service line items on customer bills accurately reflect the extent of a carrier’s contribution obligations, while at the same time maximizing fairness and flexibility for carriers. First, in light of the modifications to the contribution methodology adopted herein, beginning April 1, 2003, carriers may not mark up universal service line-item amounts above the relevant contribution factor. Second, we extend our current prohibition on the recovery of contribution costs from Lifeline customers to all ETCs.

46. Although the contribution factor is uniform for all contributors, universal service line items currently vary widely among carriers, and often significantly exceed the amount of the contribution factor. The contribution factor for the fourth quarter of 2002 is approximately 7.28 percent, but the federal universal service line items assessed on residential customers by the three largest interexchange carriers significantly exceed this amount.¹²³ Interexchange carriers have attributed this difference to the lag between the reporting and assessment of revenues, uncollectibles, and administrative costs. Moreover, carriers may charge their business customers lower line items than they charge residential consumers, even though the assessment rate is uniform.¹²⁴

¹²¹ See *First Further Notice*, 17 FCC Rcd at 3794, paras. 95-96.

¹²² *Id.* at 3793-94, para. 94.

¹²³ See *Proposed Fourth Quarter 2002 Universal Service Contribution Factor*, Public Notice, CC Docket No. 96-45, DA 02-2221 (rel. Sept. 10, 2002) (*Fourth Quarter 2002 Contribution Public Notice*) (providing second quarter 2002 estimate of interstate and international end-user telecommunications revenues of \$18.488 billion).

¹²⁴ See, e.g., <http://www.att.com> (AT&T’s “Universal Connectivity Charge” for residential customers is 11 percent, while its charge for business customers is 9.6 percent); Sprint Terms and Conditions of Service, available at <http://www.sprint.com> (Sprint’s “Carrier Universal Service Charge” for residential customers is 9.6 percent, while its charge for business customers is 8.3 percent); MCI General Service Agreements, available at <http://www.mci.com> (MCI’s “Federal Universal Service Fee” for residential customers is 9.9 percent, while its

(continued....)

47. Such practices are not, however, confined to the major interexchange carriers. An analysis of federal universal service line-item charges across industry segments reveals that such charges often bear little or no relationship to the amount of the assessment. For example, several mobile wireless providers include flat universal service line-item charges on customer bills that bear little or no apparent relationship to an individual customer's interstate calling or the amount of interstate telecommunications revenues the mobile telecommunications carrier reports to USAC, the fund administrator. In addition, some incumbent LECs have flat federal universal service line-item charges that exceed the product of their subscriber line charge and the relevant contribution factor.¹²⁵ Several carriers also charge customers large, up-front universal service fees that are apparently unrelated to the amount of their assessment for that customer.¹²⁶ In addition, some interexchange carriers entirely exempt specific customers or customer classes, such as dial-around customers, from universal service pass-through charges.¹²⁷

48. We acknowledge that carriers in the past may have marked up their universal service line items above the relevant assessment amount to account for uncollectibles and other factors. We are concerned, however, that the flexibility provided under our current rules may have enabled some companies to include other completely unrelated costs in their federal universal service line items. Some commenters, for example, allege that carriers include service-related costs in their federal universal service line items in order to reduce their service-related charges.¹²⁸

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charge for small business customers is 9.3 percent). Effective January 1, 2003, MCI has announced plans to further increase its Federal Universal Service Fee for residential customers from 9.9 percent to 10.5 percent. *See* http://www.mci.com/mci_service_agreement/res_most_recent_info.jsp.

¹²⁵ *See, e.g.*, BellSouth Telecommunications, Inc., Tariff FCC No. 1, Sections 4.7(A), issued Jun. 17, 2002, 4.7(E), issued Sep. 16, 2002 (\$0.48 per line per month "Federal Universal Service Charge" for residential customers equivalent to an assessment rate of approximately 8 percent based on subscriber line charge of \$6.00 per primary line per month); Pacific Bell Telephone Company Tariff FCC No. 1, Sections 4.7(A), issued Jun. 17, 2002, 4.7(G), issued Sep. 16, 2002 (\$0.42 per line per month "Federal Universal Service Fee" for residential customers in California equivalent to an assessment rate of approximately 9.38 percent based on subscriber line charge of \$4.48 per line per month); Qwest Corporation Tariff FCC No. 1, Sections 4.7.1, issued Aug. 5, 2002, 13.21, issued Jun. 18, 2002 (\$0.56 per line per month "Federal Universal Service End User Charge" for residential customers in Iowa equivalent to an assessment rate of approximately 11.5 percent based on subscriber line charge of \$4.87 per line per month); Verizon Tariff F.C.C. No. 1, Sections 4.1.7.1(A), issued Jun. 28, 2002, 4.1.7.1(H), issued Oct. 15, 2002 (\$0.59 per line per month "Federal Universal Service Fund" surcharge for residential customers in the District of Columbia equivalent to an assessment rate of approximately 15.28 percent based on subscriber line charge of \$3.86 per line per month).

¹²⁶ Under one carrier's surcharge, a customer that makes a \$0.19 one minute call would be charged a \$1.20 (or over 600%) universal service fee. For examples of such practices visit <<http://www.1010phonerates.com>>.

¹²⁷ *See* Susan McGovern, *AT&T Boosts Subscriber Charges to Recoup USF Contributions*, TR DAILY, Jan. 3, 2002, at 3.

¹²⁸ *See, e.g.*, Ad Hoc Comments at 19-21; CU et al. Comments at 18; NASUCA Comments at 17 (asserting that carriers "game" their universal service fund line-items).

49. Based on our experience over the course of the last three years, we believe it is necessary to provide greater clarity about the practices we deem reasonable to protect consumers. In light of the changes to the contribution methodology adopted herein, we conclude that the practice of marking up federal universal service line-item charges above the relevant assessment amount will be prohibited prospectively. We reject proposals to address such practices on a case-by-case basis through enforcement proceedings.¹²⁹ Using our enforcement authority to address such a systemic problem would not be an efficient use of the Commission's resources. We conclude that a rule of general application will be far more effective in ensuring that such practices do not occur in the future after we have adjusted our contribution methodology. Once carriers' contributions are assessed on the basis of projected collected interstate and international revenues, carriers may not mark up federal universal service line-item charges above the relevant contribution factor. This position is supported by the state members of the Joint Board, as well as a number of commenters.¹³⁰ Any carrier that applies a federal universal service line-item charge above the relevant assessment amount could be subject to enforcement action for violating the rules we adopt herein.

50. The elimination of mark-ups in carrier universal service line items will also alleviate end-user confusion regarding the universal service line item. Specifically, the amount of a carrier's federal universal service line item will not exceed the relevant interstate telecommunications portion of the bill times the relevant contribution factor. This result should eliminate a significant portion of the consumer frustration and confusion pertaining to universal service line items. This requirement also should foster a more competitive market by better enabling customers to comparison shop among carriers. This furthers our goal of promoting transparency for the end user in order to facilitate informed customer choice.

51. Therefore, beginning April 1, 2003, carriers that elect to recover their contribution costs through a separate line item may not mark up the line item above the relevant contribution factor. To the extent that a carrier recovers its contribution costs through a line item, that line item may not exceed the relevant assessment rate. So, for example, if the contribution factor is 7.28 percent, a carrier's federal universal service line-item cannot exceed 7.28 percent of the total amount of the interstate portion of charges for telecommunications service on each customer's bill.¹³¹ Likewise, if a carrier chooses to express its federal universal service line-item charge as a flat amount, that amount may not exceed the interstate telecommunications portion of the bill times the relevant contribution factor. In addition, we no longer will permit carriers –

¹²⁹ See, e.g., Time Warner et al. Comments at 25-26.

¹³⁰ See, e.g., *State Joint Board Ex Parte* at 3.

¹³¹ For local exchange carriers, the subscriber line charge represents the interstate portion of the bill. For interexchange carriers, all charges associated with interstate calling are interstate. For CMRS providers, the portion of the total bill that is deemed interstate will depend on whether the carrier reports actual revenues or utilizes the safe harbor. For wireless telecommunications providers that avail themselves of the interim safe harbors, the interstate telecommunications portion of the bill would equal the relevant safe harbor percentage times the total amount of telecommunications charges on the bill.

whether wireline or wireless – to average contribution costs across all end-user customers when establishing federal universal service line-item amounts.¹³² Similarly, because customers of Lifeline services do not generate assessable interstate telecommunications revenues for ETCs, the relevant assessment rate and contribution amounts recovered from such customers would be zero.

52. We recognize that these changes may require modifications in billing practices for certain carriers. Accordingly, this requirement will not become effective until April 1, 2003. We will monitor closely carrier compliance with these new requirements and will take appropriate action if it appears carriers are not complying with our rules.

53. We stress that this rule only applies to carriers that choose to recover their contribution costs through a line item. Carriers will continue to have flexibility to recover their contribution costs through their rates or through a line item.¹³³ In this way, we accommodate entities such as payphone and prepaid wireless providers that are unable, for practical or business reasons, to recover universal service contribution costs through a line item. In addition, carriers will have the flexibility to express the line item either as a flat amount or as a percentage, as long as the line item does not exceed the interstate telecommunications portion of a customer's bill times the relevant contribution factor.

54. We have taken steps in this Order to address some of the reasons for mark-ups to federal universal service line-item charges by eliminating the interval between the accrual and assessment of revenues and allowing carriers to reduce their assessable revenues by an uncollectible percentage.¹³⁴ We also previously have eliminated circularity from contribution assessment by excluding contributors' actual universal service contributions from their assessable revenues base.¹³⁵ We acknowledge that contributors may continue to incur some administrative costs associated with the collection of the universal service charges from end users that may not be recovered through a federal universal service line item. We clarify that we do not believe it appropriate for carriers to characterize these administrative and other costs as regulatory fees or universal service charges after April 1, 2003. These costs, in our view, are no different than other costs associated with the business of providing telecommunications service and may be recovered through rates or other line item charges. We conclude it is unreasonable to describe an amount as a universal service regulatory fee when that amount varies from the

¹³² Carriers may charge all their end-user customers the same flat federal universal service line-item charge so long as that amount does not exceed the contribution factor times the interstate telecommunications revenues derived from any individual customer.

¹³³ We note that incumbent local exchange carriers are required to recover their federal universal service contribution costs through a line item, which may be combined for billing purposes with another rate element. *See* 47 C.F.R. §§ 69.131, 69.158.

¹³⁴ *See supra* paras. 29-32.

¹³⁵ *See First Further Notice*, 17 FCC Rcd at 3801, para. 113. We now instead exclude contributors' projected contributions in order to address the circularity issue. *See supra* para. 35.

contribution factor mandated by the regulator. Carriers, therefore, may not include administrative costs in line items that are characterized as federal universal service contribution recovery charges. In particular, a carrier may not describe an amount as a regulatory fee relating to universal service when that amount exceeds the contribution factor times the interstate telecommunications revenues on the customer's bill after April 1, 2003.

55. Carriers that are not rate-regulated by this Commission, namely interexchange carriers, CMRS providers, and competitive local exchange carriers, will have the same flexibility that exists today to recover legitimate administrative and other related costs. In particular, such costs can always be recovered through these carriers' rates or through other line items. The rule that we adopt today does not prevent any legitimate cost recovery. Administrative costs of incumbent local exchange carriers (ILECs) subject to rate-of-return regulation solely related to implementation and compliance with the contribution methodology will be included in their cost accounting and therefore will be part of their end-user revenue requirement. As for carriers subject to price cap regulation, we do not anticipate that administrative costs associated with our contribution methodology will be extraordinary.¹³⁶ Nothing in this Order modifies our existing Truth-in-Billing requirements.¹³⁷

56. We are not persuaded by AT&T's argument that it has no means to recover certain contribution costs it categorizes as "unbillable." AT&T has argued that it is unable to recover its universal service contribution costs when certain local exchange carriers perform billing functions on its behalf, but do not include a universal service line-item charge on AT&T's portion of the bill.¹³⁸ For example, AT&T states that it is prevented from including a separate universal service line-item charge on the bills of presubscribed customers served by certain rural LECs.¹³⁹ Likewise, AT&T states that it is unable to pass through universal service contribution costs when Regional Bell Operating Companies and other incumbent LECs bill on AT&T's behalf for dial-around, collect calling, and other "casual" calling services on customer accounts for which AT&T is not the presubscribed interexchange carrier.¹⁴⁰

57. We reiterate that carriers, such as AT&T, that are not rate regulated remain free to recover fully their universal service contributions from their customers. Indeed, we note that other interexchange carriers dispute AT&T's argument that such amounts cannot be

¹³⁶ See 47 C.F.R. § 61.45(d)(1)(vi).

¹³⁷ See *TIB Order and NPRM*, 14 FCC Rcd 7510, para. 28, 7516, para. 37, 7522-25, paras. 49-53. See also 47 C.F.R. § 64.2401.

¹³⁸ See Letter from Patrick H. Merrick, AT&T, to Marlene H. Dortch, Federal Communications Commission, filed Dec. 4, 2002 at 4 (*AT&T Dec. 4 Ex Parte*). But see Letter from Marybeth M. Banks, Sprint, to Marlene H. Dortch, Federal Communications Commission, filed Dec. 3, 2002 (*Sprint Dec. 3 Ex Parte*).

¹³⁹ See *AT&T Dec. 4 Ex Parte* at 4.

¹⁴⁰ *Id.*

recovered.¹⁴¹ Therefore, we conclude there is no need to permit carriers to treat such revenues as “uncollectibles.”¹⁴² Our decision to continue to assess such interstate revenues is competitively neutral, because all carriers will be assessed at the same contribution factor for such revenues and will be subject to the same contribution recovery limitations. Moreover, we have concerns with any approach that would remove a significant amount of revenues from the contribution base for business reasons that are within a contributor’s control.

58. We find that, in such instances, interexchange carriers may, consistent with sections 201 and 254(g), charge customers a combined charge that includes service-related and federal universal service recovery charges. Thus, for example, if a customer’s long-distance charges totaled \$15 and the contribution factor was 10 percent, the interexchange carrier could direct the LEC to bill the customer one \$16.50 charge. The label for the combined charge, however, must not indicate that the charge consists solely of a federal universal service charge and must not otherwise be misleading. The interexchange carrier must also inform customers of the component amounts of the combined charge upon request and retain documentation of the component amounts for three years. We also find that it would be unreasonable for a LEC, when it is performing a billing and collection function for an interexchange carrier, to refuse to implement in a timely manner any rate changes necessitated by the imposition of such combined interexchange carrier charges.

59. In addition, AT&T has asserted that it may be prevented by existing contracts from recovering its universal service contributions from certain business customers.¹⁴³ We find that the recovery limitations adopted herein constitute a change in universal service policy that was not anticipated at the time existing contracts were signed. Therefore, we conclude contributors should be afforded a fresh look at existing contracts and may be permitted to renegotiate contractual terms that prohibit the pass through of universal service recovery charges.

60. We emphasize that the rules we adopt today do not require the filing of new tariffs, but may result in revisions to existing tariffs. We note that the Commission has detariffed most interstate services offered by interexchange carriers.¹⁴⁴ Further, CLECs and CMRS providers do

¹⁴¹ See *Sprint Dec. 3 Ex Parte* at 3.

¹⁴² If a carrier believes that it has special circumstances that warrant deviation from the rules, that carrier may request a waiver of the Commission’s rules. See 47 C.F.R. § 1.3.

¹⁴³ See *id.*

¹⁴⁴ See *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934*, CC Docket No. 96-61, Order on Reconsideration, 12 FCC Rcd 15014 (1997); *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934*, CC Docket No. 96-61, Second Order on Reconsideration and Erratum, 14 FCC Rcd 6004 (1999); *Domestic, Interexchange Carrier Detariffing Order Takes Effect*, CC Docket No. 96-61, Public Notice, DA 00-1028 (Com. Car. Bur. May 9, 2000); *MCI WorldCom, Inc. v. FCC*, 209 F.3d 760 (D.C. Cir. 2000); *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934*, CC Docket No. 96-61, Order, 15 FCC Rcd 22321 (2001); see also *2000 Biennial Regulatory Review, Policy and Rules Concerning the International, Interexchange Marketplace, IB Docket No. 00-*

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not tariff their federal universal service line items with the Commission.

61. Because carriers cannot include mark ups in their federal universal service line item, we need not address whether such charges should be uniform across customer classes. We also need not adopt an interim safe harbor for mark ups.

62. Consistent with the record developed in this proceeding, we prohibit all eligible telecommunications carriers from recovering contribution costs from their Lifeline customers.¹⁴⁵ Under our current rules, ILECs may not recover universal service contributions from Lifeline customers, while other carriers may do so.¹⁴⁶ We find that extending the prohibition on recovery of universal service contributions from Lifeline customers to all ETCs, including CLECs and CMRS providers designated as ETCs, will promote equitable and nondiscriminatory contributions, consistent with section 254 of the Act. Prohibiting recovery of universal service contributions from Lifeline customers also helps to increase subscribership by reducing qualifying low-income consumers' monthly basic local service charges, consistent with our rules.¹⁴⁷ We also conclude that our actions here further the universal service goals of the Act by helping to ensure that low-income consumers have access to telecommunications and information services.¹⁴⁸

63. While we believe that the adoption of rules in this Order will greatly reduce the amount of customer confusion surrounding contribution recovery issues, the Consumer and Governmental Affairs Bureau will continue to monitor complaints and consumer calls received on this topic. In addition, the Consumer and Governmental Affairs Bureau will continue its educational and outreach programs regarding federal universal service.¹⁴⁹ We expect the

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202, Report and Order, 16 FCC Rcd 10647 (2001) (requiring mandatory detariffing of international interexchange services provided by non-dominant providers with limited exceptions for dial-around, local exchange carrier implemented services, inbound collect calling, and on-demand Mobile Satellite Systems).

¹⁴⁵ See, e.g., ACS Reply Comments at 10-11; NRTA and OPASTCO Comments at 23-24; Ohio PUC Reply Comments at 7; Texas Reply Comments at 1.

¹⁴⁶ See generally *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket Nos. 96-45 & 00-256, Fourteenth Report and Order and Twenty-Second Order on Reconsideration and Report and Order, 16 FCC Rcd 11244 (2001) (*Rural Task Force Order*).

¹⁴⁷ See 47 C.F.R. §§ 54.401, 54.403.

¹⁴⁸ 47 U.S.C. § 254(b).

¹⁴⁹ The Consumer and Governmental Affairs Bureau currently conducts outreach directed at educating consumers about all aspects of the Commission's universal service programs, including the contribution recovery process. For example, the Consumer and Governmental Affairs Bureau operates two consumer centers that consumers can contact to obtain information on the Commission's universal service programs. The consumer centers may be reached at 1-888-CALL-FCC (1-888-225-5322) (voice) or 1-888-TELL-FCC (1-888-835-5322) (TTY). The Consumer and Governmental Affairs Bureau also provides fact sheets on universal service issues through the Commission's website. See <http://www.fcc.gov/cgb>.

Consumer and Governmental Affairs Bureau will educate consumers about the new rules adopted in this order. In this way we can monitor whether the policy goal of fostering competition through consumer choice is being met. If we observe a sustained marked increase in consumer complaints regarding the recovery of carrier contribution costs, we may revisit this issue at that time.

2. Labeling of Line-Item Charges

a. Background

64. The Commission's Truth-in-Billing rules require that consumer bills be clearly organized, clearly identify the service provider, highlight any new providers, and contain clear and conspicuous disclosure of information the consumer may need to make inquiries about or contest charges.¹⁵⁰ In the *First Further Notice*, we sought comment on various potential modifications to our Truth-in-Billing rules, such as whether to require carriers that elect to impose a separate line-item charge on customer bills to recover their contribution costs to describe the line item as the "Federal Universal Service Fee."¹⁵¹

b. Discussion

65. At this time, we decline to mandate a specific label for federal universal service line-items pursuant to our Truth-in-Billing rules. We will monitor how the reforms we adopt today affect carrier recovery practices and will take further action if necessary.

IV. SECOND FURTHER NOTICE OF PROPOSED RULEMAKING

66. In this *Second Further Notice*, we seek to further refine the record in this proceeding. We are hopeful that we will adopt additional modifications to our contribution methodology to ensure the continued viability of universal service as the marketplace continues to develop.

67. First, we ask commenters to discuss whether the changes to the revenue-based methodology adopted herein are sufficient to ensure the long-term viability of universal service as the telecommunications marketplace evolves. Should any additional modifications to the revenue-based system be made? For example, we seek comment on whether bundling of local and long distance services raises any unique problems for wireline carriers in identifying interstate telecommunications revenues and how such problems should be addressed.

68. In addition, although we have increased the mobile wireless safe harbor to 28.5 percent, we note that some commenters assert that, using certain methodologies, mobile wireless carriers are capable of determining their actual interstate end-user telecommunications

¹⁵⁰ See 47 C.F.R. § 64.2401.

¹⁵¹ See *First Further Notice*, 17 FCC Rcd at 3797-98, para. 103.

revenues.¹⁵² If a revenue-based system is retained, we seek comment on whether we should abolish the safe harbor for mobile wireless carriers and, if so, how such carriers should determine their actual interstate end-user telecommunications revenues.¹⁵³ We specifically seek comment on whether minutes of use is an appropriate proxy for determining interstate revenues for mobile wireless providers. We also request comment on whether the originating cell site and the terminating area code or NPA of a call reasonably approximates the jurisdictional nature of traffic for reporting purposes. In addition, we seek comment on whether it would be appropriate to include both outgoing and incoming calls in mobile wireless provider traffic studies and whether and how to include roaming and international minutes in such studies. We seek comment on burdens presented by proposed methodologies to determine interstate revenues and particularly invite comment from smaller mobile wireless providers on whether they face unique difficulties in identifying interstate telecommunications revenues. We also ask commenters to discuss whether other CMRS carriers, such as paging and analog SMR carriers,¹⁵⁴ are able to determine their actual interstate end-user telecommunications revenues and whether those safe harbors should also be abolished. We seek comment on how eliminating the safe harbors would affect wireless carriers whose contributions to universal service are *de minimis*.

69. Although the actions taken today will improve the operation of our revenue-based methodology in the near term, we remain concerned that any contribution system based on interstate telecommunications revenues will be dependent on the ability of contributors to distinguish between interstate and intrastate telecommunications and non-telecommunications revenues.¹⁵⁵ Several commenters have argued that a connection-based mechanism may be the best alternative to ensure the long-term viability of the Commission's universal service mechanisms as the telecommunications marketplace continues to evolve.¹⁵⁶ We, therefore, seek additional comment on three specific connection-based proposals.

70. In the *First Further Notice*, we sought comment on a specific proposal to base contributions on the number and capacity of connections a contributor provides to interstate networks, rather than revenues.¹⁵⁷ Since that time, a number of parties across various industry segments, as well as four out of five state members of the Joint Board, have supported adoption

¹⁵² See, e.g., USCC Comments at 9-10; Letter from Mitchell F. Brecher, counsel for TracFone Wireless, Inc., to Marlene H. Dortch, Federal Communications Commission, filed Dec. 5, 2002; Letter from L. Charles Keller, counsel for Verizon Wireless, to Marlene H. Dortch, Federal Communications Commission, filed Oct. 28, 2002; *CTIA Traffic Studies Ex Parte*.

¹⁵³ See *id.* at 3-4.

¹⁵⁴ See *supra* para. 20.

¹⁵⁵ See discussion *supra* para. 3. See also Ad Hoc Comments at 2; CompTel Comments at 2; CoSUS Comments at 18-23; WorldCom Comments at 2-5

¹⁵⁶ See, e.g., Ad Hoc Comments at 2-3; C&W Reply Comments at 4-5; CoSUS Comments at 9-10; ITAA Comments at 3-5; SBC Comments at 3-5; Qwest Reply Comments at 9.

¹⁵⁷ See *First Further Notice*, 17 FCC Rcd at 3754, para. 2.

of a connection-based assessment methodology and have proposed their own variations of connection-based proposals.¹⁵⁸ Proponents of a connection-based methodology argue that such a system would provide a sufficient and predictable funding source for universal service in a telecommunications marketplace increasingly characterized by new and innovative bundles of intrastate and interstate telecommunications and non-telecommunications products and services, and increased competition between wireline and wireless technology platforms.¹⁵⁹ These commenters point out that the number of connections historically has been more stable than end-user interstate telecommunications revenues.¹⁶⁰ Commenters also point out that connection-based assessments would eliminate the need for contributors to distinguish between interstate and intrastate revenues, or revenues from telecommunications and non-telecommunications services, as is required under the current methodology.¹⁶¹ These commenters therefore argue that connection-based assessments would better accommodate new services and technologies as they develop. Such a framework also may be more economically efficient than the current revenue-based methodology, because connection-based assessments are less likely to create inefficient incentives for end users to curtail their usage of interstate telecommunications networks.

71. The proponents of certain connection-based proposals argue that their proposals would be consistent with the requirement of section 254(d) that every telecommunications carrier that provides interstate telecommunications services contribute to the Commission's universal service mechanisms on an equitable and nondiscriminatory basis. However, several other parties have expressed concerns that such proposals in the record would be inconsistent with this statutory mandate.¹⁶² We specifically take note of arguments that specific connection-based proposals in the record may be inconsistent with section 254(d)'s requirement that every provider of interstate telecommunications service contribute on an equitable basis.¹⁶³

72. We conclude it is appropriate to further develop the record on aspects of certain proposals to assess universal service contributions on the number and capacity of connections. We also conclude it is appropriate to continue refining our analysis of the potential impacts on contributors, and, ultimately, consumers, of the various proposals. In this *Second Further Notice*, we seek comment on specific measures the Commission could take to ensure that a connection-based contribution methodology would be consistent with the Act. First, we seek

¹⁵⁸ See, e.g., CoSUS Comments at 2; SBC/BellSouth Comments at 5-6; *State Joint Board Ex Parte* at 2-3.

¹⁵⁹ See CoSUS Reply Comments at 19-20; Sprint Reply Comments at 4; WorldCom Reply Comments at 6-7.

¹⁶⁰ See, e.g., Ad Hoc Comments at 2-3; CoSUS Comments at 36-38; Sprint Comments at 4. See also Universal Service Monitoring Report, Federal and State Staff for the Federal-State Joint Board on Universal Service, Table 6.1 (Oct. 2002) (*Joint Board Monitoring Report*) (showing growth in households from 78 million in 1982 to 102 million in 2001).

¹⁶¹ See CompTel Comments at 2; C&W Reply Comments at 5-6; NRTA and OPASTCO Comments at 4-5.

¹⁶² See 47 U.S.C. § 254(d).

¹⁶³ See, e.g., ACS Reply Comments at 8-9; Arch Reply Comments at 7; Verizon Reply Comments at 5.

comment on a contribution methodology that would impose a minimum contribution obligation on all interstate telecommunications carriers, and a flat charge for each end-user connection, depending on the nature or capacity of the connection. Next, we seek comment on a proposal to assess all connections based purely on capacity (without regard to distinctions between residential/single-line business and multi-line business connections), and share contribution obligations for each switched end-user connection between access and transport providers. Finally, we seek comment on a proposal to assess providers of switched connections based on their number of working telephone numbers.

73. We invite commenters to discuss potential advantages and disadvantages of each approach, and whether each satisfies the requirements of section 254 that “[e]very telecommunications carrier that provides interstate telecommunications services . . . contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient [universal service support] mechanisms.”¹⁶⁴ We urge commenters to submit data and analysis on assessment levels under each approach. We further request comment on the relative contribution obligations of different industry segments under each approach. We ask commenters to address the potential impacts of the different methodologies on consumers, both generally and also on residential consumers that place no long-distance calls.¹⁶⁵ What would be the impact of each of the proposals on the average residential customer and on residential customers generally? Would the typical residential customer pay more, less, or approximately the same amount of pass-through charges to different carriers than they do today?

74. Commenters should also describe and estimate the costs associated with the implementation of each proposal, including the cost of any necessary billing system changes. We also invite comment on the reporting obligations associated with each of the proposals discussed below and ask that commenters quantify, to the extent possible, the burdens associated with each proposal and compare the relative burdens. We seek comment on whether it would be appropriate to require contributors to report their number and capacity of end-user connections and/or numbers on a monthly basis, or whether less frequent reporting would be adequate. We particularly invite comment on the potential administrative burdens associated with each of these proposals from entities that are “small business concerns” under the Small Business Act. We also seek comment on whether to continue basing contributions to the Telecommunications Relay Service, Numbering Administration, Local Number Portability and wireline regulatory fees programs on annual revenue data, or whether contributions to these mechanisms also should be based on connections and/or numbers.

¹⁶⁴ 47 U.S.C. § 254(d).

¹⁶⁵ Currently, residential consumers that have no interstate long-distance charges on their wireline bills typically pay universal service line items ranging from approximately \$0.42 to \$0.59 per line per month, based on the subscriber line charge on their local bills. *See, e.g.*, Pacific Bell Telephone Company Tariff F.C.C. No. 1, Sections 4.7(A), issued Jun. 17, 2002, 4.7(G), issued Sep. 16, 2002; Verizon Tariff F.C.C. No. 1, Sections 4.1.7.1(A), issued Jun. 28, 2002, 4.1.7.1(H), issued Oct. 15, 2002.

A. Connections-Based Methodology with Mandatory Minimum Obligation

75. Under the first approach, every telecommunications carrier that provides interstate telecommunications services would be subject to a mandatory minimum annual contribution, except to the extent that the provider's contribution is *de minimis*. A provider's contribution would be *de minimis* if the provider received less than \$100,000 in annual interstate telecommunications revenues. Residential, single-line business, payphone, mobile wireless, and pager connections would be assessed a flat monthly fee (Lifeline connections would be exempt), and a residual amount would be assessed on multi-line business connections. Providers initially would be assessed \$1.00 per month for each residential, single-line business, payphone, and mobile wireless connection, and \$0.10 and \$0.20 per month, respectively, for each one-way and two-way pager connection. Multi-line business connections would be assessed at varying amounts based on their classification into different tiers of capacity, at levels sufficient to cover residual funding requirements. The capacity of a connection would be defined as the maximum capacity that the end user has ordered onto its premises in a given month, regardless of the facility used to provide that connection.¹⁶⁶

76. Connections would be defined as facilities that provide end users with access to an interstate public or private network, regardless of whether the connection is circuit-switched, packet-switched, wireline or wireless, or leased line.¹⁶⁷ International-only and intrastate-only connections would be exempt, because they do not have an interstate component.¹⁶⁸ In the case of a prepaid wireless connection, a connection would be defined as an activated handset that is either usable by a customer on the last calendar day of the month, or, if a provider cannot determine whether a handset is usable by a customer on the last calendar day of the month, one that has sent or received a call during the calendar month.¹⁶⁹ PBX connections would be assessed based on capacity as with any other multi-line business connection, while Centrex connections would be assessed at one-ninth the rate of a Tier 1 connection.¹⁷⁰ Private service providers that provide interstate connections solely to meet their internal needs (i.e., self-providers) would not be required to contribute under this methodology.¹⁷¹ Whether and how

¹⁶⁶ See CoSUS Comments at 14.

¹⁶⁷ Under this definition, a cable telephony provider that provides a voice connection to a public or private interstate network would be assessed for that connection.

¹⁶⁸ See Letter from David Sieradzki, Counsel for BT North America, to Marlene Dortch, Federal Communications Commission, filed Oct. 23, 2002 (*BTNA Oct. 23 Ex Parte*).

¹⁶⁹ This definition takes into account providers such as TracFone, which cannot determine the number of handsets that may be used by customers at a point in time, because customers purchase cards that provide minutes of use in conjunction with a purchased handset. TracFone is, however, able to determine whether connections have been used in a given month. See *TracFone Oct. 4 Ex Parte*.

¹⁷⁰ See CoSUS Comments at 56.

¹⁷¹ This is consistent with our current policy. In the *Universal Service Order*, the Commission reasoned that, for self-providers of interstate telecommunications, telecommunications is incidental to their primary non-telecommunications business. See *Universal Service Order*, 12 FCC Rcd 9185, para. 799.

connections that provide broadband Internet access—whether over cable modems, satellites, wireless, or wireline technology—would be assessed would be deferred pending action in the current proceeding regarding classification of wireline broadband Internet access.¹⁷²

77. Under this approach, each provider would report monthly the number of its connections as of the last day of the previous month to the Administrator and remit payments on a monthly billing cycle. Consistent with the revised methodology we adopt today, each contributor would be permitted to adjust its monthly contribution obligation to account for the percentage of monthly telecommunications revenues that the contributor anticipates would not be collected from end users. Providers would continue to report telecommunications revenues annually for purposes of determining whether a filer is subject to minimum contribution obligations or qualifies for the *de minimis* exemption. The annual FCC Form 499-A revenue filing would also be used to calculate contributions for Telecommunications Relay Service, Numbering Administration, Local Number Portability, and regulatory fees, which would continue to be assessed using the revenue-based methodology.¹⁷³ The FCC Form 499-A also would continue to be used for true-up purposes if, for example, uncollectible rates reported on a monthly or quarterly basis are reconciled with actual uncollectibles reported on an annual basis. There would be a one-year transition period to allow providers to modify billing systems, and to allow the Administrator time to compile data necessary to finalize the calculation of initial assessment rates. Assessments for residential, single-line business, payphone, pager, and mobile wireless connections could be adjusted annually, while assessment levels for multi-line business connections could be adjusted quarterly to account for fluctuations in demand on the fund and the number and capacity of connections.¹⁷⁴

78. We seek comment generally on the benefits and drawbacks of this proposal. We also seek comment in particular on the following aspects of this approach. First, we seek comment on the operation of a minimum contribution requirement. Under one variation, telecommunications providers would continue reporting their annual interstate telecommunications revenues on the FCC Form 499-A.¹⁷⁵ If a telecommunications provider

¹⁷² See *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Universal Service Obligations of Broadband Providers*, CC Docket No. 02-33, Notice of Proposed Rulemaking, 17 FCC Rcd 3019 (2002) (*Broadband NPRM*).

¹⁷³ We note that CMRS providers pay regulatory fees on a per-unit basis.

¹⁷⁴ A local exchange carrier's Subscriber Line Charge (SLC) designation on a customer's bill would serve to determine whether a fixed connection were a residential/single-line business or multi-line business connection. SLCs are charges that are assessed by local phone companies to recover some or all of the costs associated with providing interstate access through the local phone network. See *Access Charge Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-262, 94-1, 91-213, and 95-72, First Report and Order, 12 FCC Rcd 15982, 16007, para. 68 (1997) (*Access Charge Reform Order*). The SLC designation would not be used for purposes of determining assessments for payphone connections.

¹⁷⁵ See generally 47 C.F.R. § 54.711 (outlining contributor reporting requirements); FCC Form 499-A.

reports annual interstate telecommunications revenues greater than or equal to \$100,000 on the Form 499-A, regardless of whether it provides connections, it would be subject to a minimum total annual contribution obligation equal to a flat percentage of its annual interstate telecommunications revenues, such as, for example, one percent.¹⁷⁶ The minimum requirement would be based on all interstate telecommunications revenues, not end-user telecommunications revenues. Thus, wholesale carriers would be required to contribute directly to universal service. Providers of connections could offset their connection-based assessments against their minimum contribution. If, however, the annual interstate telecommunications revenues of a provider as reported on the FCC Form 499-A were less than \$100,000, it would be exempt from either revenue-based or connection-based contribution obligations. We seek comment on this proposal. We seek comment on whether it is reasonable to make \$100,000 the threshold for determining *de minimis* status, and whether one percent or some other percentage of interstate telecommunications revenues should form the basis of the minimum contribution requirement.

79. We recognize that a minimum contribution requirement based on all interstate telecommunications revenues may lead to the “double-counting” of revenues. In the *Universal Service Order*, the Commission declined to count wholesale revenues in the contribution base, reasoning that counting such revenues would competitively disadvantage resellers.¹⁷⁷ The Commission stated that because resellers would likely be charged a pass-through by the underlying facilities-based carriers, and would, in turn, pass that increased cost to customers, resellers would likely be required to sell total services at a higher cost than would their facilities-based competitors, whose prices would incorporate only one assessment.¹⁷⁸ We seek comment on how to address this potential competitive issue consistent with section 254(d).

80. We also seek comment on an alternative form of minimum contribution obligation on the basis of revenue-based tiers, whereby contributors would be assessed at increasing percentages of telecommunications revenues, or increasing flat-fee amounts, tied to their level of interstate telecommunications revenues. We seek comment on the appropriate number of tiers, and the revenue ranges within each tier. We seek comment on whether such a tiered structure may create incentives to mischaracterize revenues in order to be assessed at a lower tier, and if so, how such incentives may be minimized.

81. In addition, we seek comment on the appropriate assessment levels for multi-line business connections based on capacity. Specifically, we seek comment on the following four-tier structure:

¹⁷⁶ Mobile wireless providers would be permitted to use a safe harbor under which they would assume for reporting purposes that 28.5 percent of telecommunications revenues are interstate, though such providers could report based on a different percentage based on actual interstate revenues. Wireless telecommunications providers also would have the option of using the interim safe harbors of 12 percent and one percent for pager providers and analog SMR providers, respectively.

¹⁷⁷ See *Universal Service Order*, 12 FCC Rcd at 9206-07, paras. 843-47.

¹⁷⁸ *Id.*

Tier	Capacity	Assessment x Tier 1 Rate
Tier 1	Up to 725 Kbps	1
Tier 2	726 Kbps - 5 Mbps	16
Tier 3	5.01 Mbps - 90 Mbps	224
Tier 4	Greater than 90 Mbps	336

Multi-line business connections with maximum capacity up to 725 Kbps would be assessed at the Tier 1 rate; multi-line business connections with maximum capacity between 726 Kbps and 5 Mbps would be assessed at 16 times the Tier 1 rate; and so on. We invite commenters to submit a projection of the Tier 1 rate under this proposed methodology, and to submit data supporting such a projection.

82. Unlike the CoSUS proposal submitted in the record, which contained three tiers,¹⁷⁹ this methodology would add a fourth tier in order to more equitably assess higher-bandwidth connections and reduce the impact of changing to a connection-based methodology on small multi-line business customers. For example, while the CoSUS plan would assess an OC-3 connection with a capacity of 155.52 Mbps, or 2016 times the capacity of a voice-grade connection, at 40 times the Tier 1 rate, this plan would assess such a connection at the rate of 336 times the rate of a voice-grade connection. We seek comment on whether such modifications to the CoSUS plan would help to mitigate potentially inequitable burdens on small businesses by ensuring that higher capacity connections typically sold to larger businesses are assessed at a rate that reflects to a greater degree their increased capacity. We also seek comment on whether these factors approximately reflect market pricing of various typical services such as T-1, DS-3, and OC-3. Further, we seek comment on whether there may be instances in which a given tier inappropriately encompasses categories of connections that provide quite different levels of connectivity to interstate networks. For example, both a fractional T-1 connection with a maximum capacity of 768 Mbps and a T-1 with a capacity of 1.544 Mbps would fall within the second tier and would therefore be assessed at the same rate, despite the difference in capacity. We seek comment on the treatment under this approach of these and other services, and whether the assessment rates for each tier are reasonable in light of the goals and mandates of the statute.

83. We seek comment on the capacity ranges for each tier. As the Commission recognized in the *First Further Notice*, because movement to an adjacent tier would result in a significant increase in contribution obligations, a tiered approach potentially could deter some multi-line business customers from purchasing certain thresholds of additional capacity.¹⁸⁰ We seek comment specifically on whether, in order to minimize possible market distortions, the ranges of these four capacity tiers would result in more common service offerings falling within

¹⁷⁹ CoSUS proposed a first tier for connections with a capacity of less than 1.5 Mbps; a second tier for connections with capacity between 1.5 Mbps and 45 Mbps; and a third tier for connections with a capacity of at least 45 Mbps. See CoSUS Comments at 14. The tiers under that plan would be assessed, respectively, at the Tier 1 level, five times the Tier 1 level, and 40 times the Tier 1 level. See *id.* at 66.

¹⁸⁰ See *First Further Notice*, 17 FCC Rcd at 3775, para. 54; USCC Comments at 3-4; Verizon Comments at 12.

a given tier. For example, a typical T-1 connection with a maximum downstream capacity of 1.544 Mbps should fall well within the parameter of the second tier, well below the upper range of 5 Mbps and sufficiently higher than the lower threshold of 726 Kbps. We seek comment on whether locating the break points in this manner would ensure that a higher or lower tier will not unexpectedly capture a common service offering if a given provider offers it with slightly different capacity.

84. We also seek comment on the impact of this proposal on residential customers. If the single-line connection rate were set at \$1.00 per month, would residential households, as a whole, pay more, less, or about the same as they would under the newly modified revenue-based system? What percentage of households would pay more under a \$1.00 single-line connection approach than they would under the revenue-based approach? Would \$1.00 be the appropriate monthly assessment level for single-line connections?

85. We recognize that this proposal would require new regulatory reporting requirements. We urge commenters to quantify the cost of changes to carrier billing systems and other costs associated with implementation of a new reporting requirement.

B. Splitting Connection-Based Contributions Between Switched Transport and Access Providers

86. Second, we seek comment on the benefits and drawbacks of a system that would split connection-based contribution assessments between switched access and interstate transport providers, would assess access providers for non-switched connections, and would assess interstate telecommunications services not directly tied to connections based on revenues.¹⁸¹ Under such a system, CMRS providers and wireline carriers that provide both local and interexchange services to the end user would be assessed two units per connection (one for access and one for transport), while a LEC that does not provide interexchange service would be assessed one unit, and the interexchange carrier serving the customer would be assessed one unit. We invite commenters to project what the monthly per unit assessment rate would be under this proposal.

87. This proposal is similar to that proposed by SBC/BellSouth, although we do not propose at this time to directly assess information service providers.¹⁸² Connections would be defined as facilities that provide end users with access to an interstate public or private network, regardless of whether the connection is circuit-switched, packet-switched, wireline or wireless,

¹⁸¹ See SBC Comments at 2, 7-12. We note that we are not proposing to directly assess Information Service Providers, as proposed by SBC and BellSouth. In addition, as originally proposed, the SBC/BellSouth proposal would have assessed both access and transport providers for non-switched connections. In their latest proposal, SBC and BellSouth only propose to assess transport providers for switched connections. *SBC/BellSouth Nov. 5 Ex Parte* at 3.

¹⁸² See SBC/BellSouth Comments at 8-9.

or leased line.¹⁸³ Assessments would not distinguish between residential and business connections, but rather would be based purely on capacity. As a result, assessments on a typical residential connection would be higher than under the first proposal discussed above. Under this proposal, there would be different capacity tiers for different types of connections, as with the connection-based approach described above.¹⁸⁴ One-way pagers would be treated as one-half of an access connection, and two-way pagers would be deemed to be one access connection. Centrex lines would be assessed at the rate of one-ninth that of PBX lines, consistent with treatment of Centrex and PBX under our current rules.¹⁸⁵ Intrastate-only and international-only connections would be excluded from the contribution base. Self-providers would be exempt from contribution, and there would be a *de minimis* exemption similar to that described above, such that a provider would be *de minimis* if it received less than \$100,000 in annual interstate telecommunications revenues.

88. We seek comment on the overall feasibility of this approach. We specifically seek comment on claims by interexchange carriers that they do not have access to information needed to determine their switched transport-related contribution obligation under such a system.¹⁸⁶ Several commenters argue that this information sharing has the potential to create the sort of inefficiencies and increased transaction costs that were associated with implementing the Presubscribed Interexchange Carrier Charge (PICC), which the Commission ultimately found problematic.¹⁸⁷ We seek comment on whether such a proposal could be structured in a manner that creates incentives for the local exchange carrier to share connection information with the transport provider in a timely fashion. We also seek comment on whether such information sharing could lead to inequities among providers, in that LECs that also provide long-distance service would not have to incur the administrative costs of sharing information that a traditional stand-alone IXC would incur. We seek comment on the treatment of Lifeline connections under

¹⁸³ This definition could be modified depending on which version of this proposal is adopted.

¹⁸⁴ We note that SBC and BellSouth recently have proposed using up to 14 capacity tiers. *See SBC Oct. 10 Ex Parte*.

¹⁸⁵ *See* 47 C.F.R. §§ 69.158, 69.153(e); NRTA and OPASTCO Comments at 19-20; Verizon Comments at 12; Texas Comments at 5.

¹⁸⁶ According to CoSUS, interexchange carriers “do not, as a routine part of their commercial operations, have the information about their customers’ end user access connections necessary to report and pay [universal service fund] contributions under SBC-BellSouth, but would have to obtain that information from the [local exchange carrier].” *See* Letter from John T. Nakahata, Counsel to the Coalition for Sustainable Universal Service, to Marlene Dortch, Federal Communications Commission, filed Sep. 9, 2002 (*CoSUS Sep. 9 Ex Parte*).

¹⁸⁷ *See, e.g.,* CoSUS Reply Comments at 30-33; Sprint Reply Comments at 18. The *CALLS Order* eliminated residential and single-line business PICCs. *See Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers*, CC Docket Nos. 96-262 and 94-1, Sixth Report and Order, *Low-Volume Long Distance Users*, CC Docket No. 99-249, Report and Order, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Eleventh Report and Order, 15 FCC Rcd 12962, 12991, para. 76 (*CALLS Order*) (subsequent history omitted). In that Order, the Commission acknowledged the inefficiencies and increased transactional costs associated with assessing interexchange carriers based on presubscribed lines. *Id.* at 12991-94, paras. 76-81.

such a proposal, in light of commenters' statements that IXCs do not know which of their customers are Lifeline customers.¹⁸⁸ We invite commenters to provide detailed information on the costs associated with such data-sharing, and to address whether systems could be devised, and under what time frame, to facilitate necessary information sharing. Furthermore, we seek comment on the treatment under this approach of customers that make no long-distance calls in a given month, because many IXCs do not currently bill such customers on a monthly basis.¹⁸⁹

89. As originally proposed by SBC/BellSouth, a revenue-based assessment would be applied only to IXCs that do not provide the transport portion of a switched connection on a presubscribed basis (*e.g.*, dial-around providers).¹⁹⁰ We specifically seek comment on whether this approach would create disincentives for certain categories of customers, such as high volume users, to use such non-presubscribed services. We seek comment on whether this approach would be competitively neutral. We also seek comment on the frequency of such revenue-based reporting, and how to calculate such revenue-based assessments.

90. We seek comment on the impact of this proposal on different categories of customers. Would residential households, as a whole, pay more, less, or about the same as they would under the revenue-based system? What percentage of residential households would pay more under this approach compared to the revenue-based methodology?

91. We recognize that this proposal would require new regulatory reporting requirements. We urge commenters to quantify the costs of charges to carrier billing systems and other costs associated with implementation of a new reporting requirement.

92. We also seek comment on two alternatives to this proposal that would assess wireline switched access and transport providers partly on a connection basis, and partly on a revenue basis.¹⁹¹ Under the first of these alternatives, wireline switched access providers would be assessed on the basis of the number and capacity of connections, and wireline switched transport providers (including both presubscribed and non-presubscribed long-distance providers) would be assessed on the basis of interstate end-user revenues. The second alternative, however, would only split assessments between switched access and transport providers when the access and transport elements are not provided by the same wireline carrier.¹⁹² Under this second alternative, the presubscribed transport provider that does not also provide the access element of a connection would be assessed on a revenue basis, as would the non-presubscribed transport provider. The switched access provider would be assessed the full connection-based charge (for both access and transport) when it provides both the interstate access and transport elements.

¹⁸⁸ See, *e.g.*, Sprint Reply Comments at 18-19.

¹⁸⁹ See CoSUS Reply Comments at 31.

¹⁹⁰ See SBC Comments at 11.

¹⁹¹ Under these alternatives, CMRS providers would be assessed purely on a connection basis.

¹⁹² See SBC/BellSouth Nov. 5 Ex Parte.

Thus, under either of these alternatives, only the access provider would be assessed for non-switched connections, and providers of non-presubscribed services would be assessed on a revenue basis.

93. Under the first of these alternatives, a capacity-based assessment would be assigned to each end-user connection. In order to calculate assessments under this system, the capacity-based assessment assigned to each wireline switched end-user connection would be divided equally between the access provider and the transport provider.¹⁹³ The transport portion of the capacity-based assessment would be the basis for determining the total amount that would be recovered from all switched long-distance providers on a revenue basis. For example, in order to determine revenue-based assessments for switched long-distance providers on an annual basis, the Commission would divide the projected revenue requirement for the universal service mechanisms in the upcoming calendar year by the total projected number of capacity units (including non-switched capacity units) for the upcoming calendar year in order to determine a monthly assessment per capacity unit. That rate would then be multiplied by the total number of switched capacity units, resulting in the monthly total switched connection assessment. The total switched long-distance revenues as reported on the FCC Form 499-A, divided into an amount equal to half the total switched connection assessment,¹⁹⁴ would result in a revenue-based contribution factor for all switched transport providers, and those providers would be assessed monthly on that factor, multiplied by one twelfth of their annual interstate end-user telecommunications revenues.

94. We also seek comment on the second alternative, which would only split connection-based assessments between interstate switched access and transport providers when the access and transport elements are not provided by the same carrier.¹⁹⁵ Under this second proposal, the switched access provider would be assessed the full connection-based charge when it provides both the interstate access and transport elements.¹⁹⁶

95. We seek comment on how such approaches might work, and the benefits and drawbacks of each. In particular, we seek comment on whether these alternative approaches would avoid some of the difficulties commenters have cited regarding the sharing of information between LECs and IXC. We also seek comment on whether this proposal potentially would place traditional long distance providers at a competitive disadvantage when competing against integrated providers of local and long distance. We seek comment on whether continuing to assess a major segment of the industry on the basis of revenues would adequately address our concerns about the difficulties associated with distinguishing interstate from non-interstate

¹⁹³ For switched connections, the number of access and transport connections would be the same.

¹⁹⁴ Half the switched connection assessment would equal 12 times the projected switched capacity units times the assessment rate, divided by 2.

¹⁹⁵ *See id.*

¹⁹⁶ *Id.*

revenues, and other potential long-term problems associated with a revenue-based methodology.¹⁹⁷ We invite comment on whether high-volume users would have incentives to purchase bundled local and long-distance service in order to avoid revenue-based assessments. We seek comment on how frequently the Commission should determine revenue-based assessment rates for switched transport providers and what reporting obligations would be necessary to calculate such assessments. We also seek comment on whether such a proposal would increase the administrative costs associated with complying with universal service contribution obligations. In addition, we seek comment on the likely impact of these two alternatives on residential customers.

C. Telephone Number-Based Assessments

96. Third, we seek comment on the benefits and drawbacks of proposals to assess connections on the basis of telephone numbers. AT&T and Ad Hoc recently proposed a methodology that would assess providers on the basis of telephone numbers assigned to end users (assigned numbers), while assessing special access and private lines that do not have assigned numbers on the basis of the capacity of those end-user connections.¹⁹⁸ We seek comment on whether such a system would provide a sufficient and sustainable basis for funding universal service. We also ask whether the plan might encourage public policy goals such as the conservation and optimization of existing telephone number resources.¹⁹⁹ We seek comment on whether a telephone number-based methodology would address some of the concerns expressed by commenters regarding a connection-based approach. For instance, some commenters argue that a flat-fee connection-based approach would be an illegal assessment on intrastate revenues under section 2(b), because connections provide, in part, intrastate access.²⁰⁰ We seek comment on whether the Commission's exclusive jurisdiction over numbering resources addresses section 2(b) concerns raised by some commenters.²⁰¹ We also seek comment on whether, in conjunction with this telephone number-based approach, we should impose a minimum contribution obligation on all providers.²⁰²

97. We seek comment on how to implement a telephone number-based methodology.

¹⁹⁷ See *supra* paras. 3-4.

¹⁹⁸ See *AT&T Oct. 22 Ex Parte; Ad Hoc Oct. 3 Ex Parte*. “Assigned numbers” are defined as “numbers working in the Public Switched Telephone Network under an agreement such as a contract or tariff at the request of specific end users or customers for their use” See 47 C.F.R. § 52.15(f)(1)(iii).

¹⁹⁹ See *AT&T Oct. 22 Ex Parte; Ad Hoc Oct. 3 Ex Parte*.

²⁰⁰ See, e.g., Verizon Wireless Comments at 7-9; 47 U.S.C. § 2(b)(1) (“[N]othing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier . . .”).

²⁰¹ See 47 U.S.C. § 251(e)(1) (“The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States.”) See also *AT&T Oct. 22 Ex Parte*.

²⁰² See *supra* at paras. 78, 80.

We also invite commenters to estimate assessment rates under this proposal. We seek comment on how multi-line switched business services such as Centrex and PBX, as well as 500, 900, and distinctive ring numbers, should be treated under a telephone number-based approach.²⁰³ We also seek comment on whether to assess telephone numbers associated with pagers at a lower level. If certain telephone numbers associated with specific types of services, such as electronic fax services, should be treated differently, we ask commenters to address how we would identify such telephone numbers. We seek comment on how a telephone number-based methodology would assess ported telephone numbers. In addition, we seek comment on whether it would be appropriate to assign lower telephone number-based assessment rates to local exchange carriers that do not participate in 1,000 block number pooling. We ask commenters to discuss whether seasonal-use telephone numbers and telephone numbers assigned for a customer's intermittent or cyclical use should be assessed and, if so, at what charge. We seek comment on whether working, rather than assigned, toll free numbers should be assessed.²⁰⁴ We ask commenters to discuss whether the Responsible Organizations should be assessed for toll free numbers and whether we could assess such entities if they are neither telecommunications carriers nor providers of telecommunications.²⁰⁵

98. We seek comment on the relative impact of a telephone number-based methodology on carriers that provide connections with smaller amounts of capacity, such as those provided to residential and single-line business users, compared to providers of higher-capacity connections to large multi-line businesses or providers of smaller-capacity connections to large businesses with heavily used toll free numbers (e.g., a national retail catalog company). We also seek comment on whether there are any numbers associated with special access and private lines that could be assessed. If not, we ask commenters to discuss whether special access and private lines should be assessed based on the capacity of the connection, and whether doing so would sufficiently offset possible inequities related to differences of capacity. We particularly seek comment on that aspect of the Ad Hoc and AT&T proposal that would assess non-switched multi-line business connections based on three tiers of capacity with the same multipliers proposed by CoSUS.²⁰⁶ We seek comment on whether these multipliers would unfairly advantage contributors that provide high-capacity connections, and whether an increased number of tiers or different tier levels may reduce such an advantage. Alternatively, we seek comment on whether to categorize connections into the same four tiers described above, based on

²⁰³ See *AT&T Oct. 22 Ex Parte*.

²⁰⁴ A toll-free number has working status if it is "loaded in the Service Control Points and is being utilized to complete toll free service calls." See 47 C.F.R. § 52.105(a)(9). A toll-free number is assigned when it has "specific subscriber routing information entered by the Responsible Organization in the Service Management System database and is pending activation in the Service Control Points." See 47 C.F.R. § 52.103(a)(1).

²⁰⁵ A Responsible Organization is the "entity chosen by a toll-free subscriber to manage and administer the appropriate records in the toll free Service Management System for the toll free subscriber." See 47 C.F.R. § 52.101(b).

²⁰⁶ See *Ad Hoc Oct. 3 Ex Parte* at 3 n.7.

capacity.²⁰⁷ We invite commenters to address in detail how such a plan might work, and note potential advantages and disadvantages.

99. Further, we seek comment on whether a methodology basing assessments on telephone numbers would be easier for the Administrator to implement and audit than other connection-based proposals in the record. We also seek comment regarding the process for contributors to report telephone numbers under a telephone number-based methodology. Section 52.15(f)(6) of our current rules requires telecommunications carriers that receive numbering resources to file forecast and utilization reports twice per year.²⁰⁸ These reports include the number of assigned telephone numbers.²⁰⁹ This proposal therefore could rely upon existing reporting requirements. We seek comment on whether this semi-annual reporting requirement would be sufficient for universal service purposes. For example, would these reports adequately identify a telecommunications carrier that receives a telephone number from a non-carrier? We seek comment on whether contributors should be required to submit additional documentation, such as the nature of the service provided via the telephone number, or report more frequently, perhaps on a monthly basis. We seek comment on other mechanisms that could be used to identify the number of telephone numbers that have been assigned to particular carriers. We ask that commenters quantify the costs of changes to any carrier billing systems and other costs associated with implementing this proposal.

100. As with the other proposals, we also seek comment on the impact of this proposal on different categories of customers. Would residential households, as a whole, pay more, less, or about the same as they would under a revenue-based system? What percentage of residential households would pay more under this approach, compared to the revenue-based methodology?

V. PROCEDURAL MATTERS

A. Final Regulatory Flexibility Analysis

101. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),²¹⁰ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *First Further Notice*.²¹¹ The Commission sought written public comment on the proposals in the *First Further Notice*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.²¹² To the extent that any statement in this FRFA is perceived as creating

²⁰⁷ See *supra* para. 7.

²⁰⁸ See 47 C.F.R. § 52.15(f)(6).

²⁰⁹ *Id.*

²¹⁰ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

²¹¹ See *First Further Notice*, 17 FCC Rcd at 3808-18, paras. 131-161.

²¹² See 5 U.S.C. § 604.

ambiguity with respect to our rules or statements made in preceding sections of this Order, the rules and statements set forth in those preceding sections shall be controlling.

1. Need for, and Objectives of, the Report and Order

102. In this Order, we take interim measures to maintain the viability of universal service in the near term -- a fundamental goal of this Commission -- while we consider further long-term reforms. First, we increase to 28.5 percent the current interim safe harbor that allows cellular, broadband PCS, and certain specialized SMRS providers to assume that 15 percent of their telecommunications revenues are interstate.²¹³ We also will require wireless telecommunications providers to make a single election whether to report actual revenues or to use the revised safe harbor for all affiliated entities within the same safe harbor category.²¹⁴ In addition, we seek to improve competitive neutrality among contributors by modifying the existing revenue-based methodology to require universal service contributions based on contributor provided projections of collected end-user interstate telecommunications revenues, instead of historical gross-billed revenues.²¹⁵ We conclude that our actions to modify the current revenue-based contribution methodology will sustain the universal service fund and increase the predictability of support in the near term, while we continue to examine more fundamental reforms.

103. We also take steps to protect consumers from unjust and unreasonable universal service contribution recovery practices.²¹⁶ Specifically, we conclude that telecommunications carriers may not recover their federal universal service contribution costs through a separate line item that includes a mark up above the relevant contribution factor. Limiting the federal universal service line-item charge to an amount that does not exceed the contribution factor, set quarterly by the Commission, will increase billing transparency and decrease confusion for consumers about the amount of universal service contributions that are passed through by carriers. Carriers will continue to have the flexibility to recover legitimate administrative costs from consumers through other means. We find that our modified contribution methodology will simplify the assessment and recovery of universal service contributions for all carriers and consumers, including small entities.

2. Summary of Significant Issues Raised by Public Comments In Response to the IRFA

104. The Commission received no comments specifically addressing the IRFA. We did receive, however, some general small entity-related comments. Some commenters, for

²¹³ See *supra* paras. 21-24.

²¹⁴ *Id.* at paras. 25-27.

²¹⁵ *Id.* at paras. 29-32.

²¹⁶ See *generally* discussion *supra* at Part III.B.

example, asserted that a connection-based methodology would be inequitable and burdensome for small businesses, particularly with respect to assessment of multi-line business connections based on the proposed tiers of capacity outlined in the *First Further Notice*.²¹⁷ Commenters also expressed general concerns about carrier recovery practices.²¹⁸ Other commenters maintained that a *de minimis* exemption was essential to any contribution system adopted by the Commission.²¹⁹ In this Order, we modify the existing methodology; therefore, issues raised with respect to the impact of a connection-based assessment on small entity concerns are not directly implicated by our actions taken today. We do note, however, that the Commission, concurrent with the issuance of the Order adopted a *Second Further Notice* that seeks comment on specific aspects of three connection-based proposals in the record. To the extent that commenters continue to have small entity-related concerns, they may submit comments in response to the *Second Further Notice*, as discussed in detail below.²²⁰

105. In the Order, we adopt certain modifications to the existing methodology.²²¹ As noted in the Order, we, among other things, have adopted rules related to contribution recovery that will increase billing transparency and decrease confusion for all consumers, including small entities, about the amount of universal service contributions that are passed through by carriers, while maximizing fairness and flexibility for carriers.²²² By allowing carriers to contribute based on projections of their collected end-user revenues, we eliminate one of the major reasons for carriers to recover amounts in excess of the relevant assessment rate.²²³ We prohibit carriers from marking up federal universal service line items above the contribution factor. These actions address small entity concerns regarding recovery practices. We have also retained the *de minimis* exemption to ensure that compliance costs associated with contributing to universal service do not exceed actual contribution amounts.

3. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

106. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.²²⁴ The

²¹⁷ See, e.g., Allied Comments at 2-4; ASCENT Reply Comments at 2-4; Beacon Comments at 5; ITA Reply Comments at 4.

²¹⁸ See, e.g., CPUC Comments at 14; CU et al. Comments at 20-21; NASUCA Comments at 17; Texas Reply Comments at 2.

²¹⁹ See, e.g., AAPC Comments at 10; Allied Comments at 9; ITA Reply Comments at 6-7; NECA Comments at 7-8; Teletouch Comments at 10.

²²⁰ See *infra* paras. 137-140.

²²¹ See generally discussion *supra* Part III.A.

²²² *Id.* at Part III.B.

²²³ *Id.* at Part III.A.

²²⁴ 5 U.S.C. § 604(a)(3).

RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."²²⁵ A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."²²⁶ Nationwide, as of 1992, there were approximately 275,801 small organizations.²²⁷ "Small governmental jurisdiction"²²⁸ generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."²²⁹ As of 1992, there were approximately 85,006 governmental entities, total, in the United States.²³⁰ This number includes 38,978 cities, counties, and towns; of these, 37,566, or 96%, have populations of fewer than 50,000.²³¹ The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96%) are small entities. In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities.²³² Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).²³³

107. We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."²³⁴ The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope.²³⁵

²²⁵ 5 U.S.C. § 601(6).

²²⁶ 5 U.S.C. § 601(4).

²²⁷ U.S. Department of Commerce, Bureau of the Census, 1992 Economic Census, Table 6 (special tabulation of data under contract to the Office of Advocacy of the U.S. Small Business Administration).

²²⁸ 47 C.F.R. § 1.1162.

²²⁹ 5 U.S.C. § 601(5).

²³⁰ U.S. Department of Commerce, Bureau of the Census, 1992 Census of Governments.

²³¹ *Id.*

²³² 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition in the Federal Register."

²³³ 15 U.S.C. § 632.

²³⁴ *Id.*

²³⁵ See Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to Chairman William E. Kennard, Federal Communications Commission (May 27, 1999). The Small Business Act contains a definition of "small business

(continued...)

We have therefore included small incumbent local exchange carriers in this FRFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

108. *Wireline Carriers and Service Providers (Wired Telecommunications Carriers)*.²³⁶ The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1500 or fewer employees.²³⁷ According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year.²³⁸ Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more.²³⁹ Thus, under this size standard, the great majority of firms can be considered small.

109. *Local Exchange Carriers, Interexchange Carriers, Competitive Access Providers, Operator Service Providers, Payphone Providers, and Resellers*. Neither the Commission nor SBA has developed a definition particular to small local exchange carriers (LECs), interexchange carriers (IXCs), competitive access providers (CAPs), operator service providers (OSPs), payphone providers or resellers. The closest applicable definition for these carrier-types under SBA rules is for Wired Telecommunications Carriers.²⁴⁰ Under that SBA definition, such a business is small if it has 1,500 or fewer employees.²⁴¹ According to our most recent data, there are 1,329 incumbent LECs, 532 CAPs, 229 IXCs, 22 OSPs, 936 payphone providers and 710 resellers.²⁴² Of these, an estimated 1,024 incumbent LECs, 411 CAPs, 181 IXCs, 20 OSPs, 933 payphone providers, and 669 resellers reported that they have 1,500 or fewer employees; 305 incumbent LECs, 121 CAPs, 48 IXCs, 2 OSPs, 3 payphone providers, and 41 resellers reported that, alone or in combination with affiliates, they have more than 1,500 employees.²⁴³

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concern," which the RFA incorporates into its own definition of "small business." See 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

²³⁶ For the limited purposes of this FRFA, we will use the term "Wired Telecommunications Carriers" to connote wireline carriers and service providers.

²³⁷ 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 513310.

²³⁸ U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Employment Size of Firms Subject to Federal Income Tax: 1997," Table 5, NAICS code 513310 (issued Oct. 2000).

²³⁹ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

²⁴⁰ NAICS code 513310.

²⁴¹ 13 C.F.R. § 121.201, NAICS codes 513310 and 513330.

²⁴² FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service (May 2002), (*Trends in Telephone Report*) at Table 16.3. The total for resellers includes both toll resellers and local resellers. The category for CAPs also includes competitive local exchange carriers (CLECs).

²⁴³ See *Trends in Telephone Report* at Table 5.3.

We do not have data specifying the number of these carriers that are not independently owned and operated, and therefore we are unable to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, most incumbent LECs, IXC's, CAPs, OSPs, payphone providers and resellers are small entities that may be affected by the decisions and rules adopted in this Order.

110. *Wireless Service Providers.* The SBA has size standards for wireless small businesses within the two separate Economic Census categories of Paging and of Cellular and Other Wireless Telecommunications. For both of those categories, the SBA considers a business to be small if it has 1,500 or fewer employees.²⁴⁴ According to the most recent *Trends in Telephone Report* data, 1,761 companies reported that they were engaged in the provision of wireless service.²⁴⁵ Of these 1,761 companies, an estimated 1,175 reported that they have 1,500 or fewer employees and 586 reported that, alone or in combination with affiliates, they have more than 1,500 employees.²⁴⁶ Consequently, we estimate that most wireless service providers are small entities that may be affected by the rules adopted herein.

111. *Broadband Personal Communications Service (PCS).* The broadband PCS spectrum is divided into six frequency designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of \$40 million or less in the three previous calendar years.²⁴⁷ For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.²⁴⁸ These standards defining "small entity" in the context of broadband PCS auctions have been approved by the SBA.²⁴⁹ No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.²⁵⁰ On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses;

²⁴⁴ 13 C.F.R. § 121.201, NAICS codes 517211 and 517212.

²⁴⁵ *Trends in Telephone Report* at Table 5.3.

²⁴⁶ *Id.*

²⁴⁷ See *Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, Report and Order, WT Docket No. 96-59, Report and Order, 11 FCC Rcd 7824, paras. 57-60 (1996), 61 Fed. Reg. 33859 (July 1, 1996); see also 47 C.F.R. § 24.720(b).

²⁴⁸ See *Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, Report and Order, WT Docket No. 96-59, 11 FCC Rcd 7824, paras. 57-60 (1996), 61 Fed. Reg. 33859 (July 1, 1996).

²⁴⁹ See, e.g., *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fifth Report and Order, 9 FCC Rcd 5532, 5581-84, paras. 115-17 (1994).

²⁵⁰ FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (rel. Jan. 14, 1997); see also *Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications*

(continued....)

there were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as “small” or “very small businesses.” Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders, the 93 qualifying bidders in the D, E, and F blocks, the 48 winning bidders in the 1999 re-auction, and the 29 winning bidders in the 2001 re-auction, for a total of 260 small entity broadband PCS providers, as defined by the SBA small business size standards and the Commission's auction rules. Consequently, we estimate that 260 broadband PCS providers are small entities that may be affected by the rules and policies adopted herein.

112. *Narrowband PCS.* To date, two auctions of narrowband PCS licenses have been conducted. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. For purposes of the two auctions that have already been held, small businesses were defined as entities with average gross revenues for the prior three calendar years of \$40 million or less. To ensure meaningful participation of small business entities in the auctions, the Commission adopted a two-tiered definition of small businesses in the *Narrowband PCS Second Report and Order*.²⁵¹ A small business is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million. A very small business is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million. These definitions have been approved by the SBA. In the future, the Commission will auction 459 licenses to serve MTAs and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future auctions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission's Rules. The Commission assumes, for purposes of this FRFA, that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

113. *Specialized Mobile Radio (SMR).* The Commission awards "small entity" and "very small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years, or that had revenues of no more than \$3

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Services (PCS) Licensees, WT Docket No. 97-82, Second Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 16436 (1997), 62 Fed. Reg. 55348 (Oct. 24, 1997).

²⁵¹ *Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS*, Docket No. ET 92-100, Docket No. PP 93-253, Second Report and Order and Second Further Notice of Proposed Rulemaking, 15 FCC Rcd 10456 (2000).

million in each of the three previous calendar years, respectively.²⁵² In the context of both the 800 MHz and 900 MHz SMR service, the definitions of "small entity" and "very small entity" have been approved by the SBA. These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. We assume, for our purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small and very small entities in the 900 MHz auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small and very small entities won 263 licenses. In the 800 MHz SMR auction, 38 of the 524 licenses won were won by small and very small entities. Consequently, we estimate that there are 301 or fewer small entity SMR licensees in the 800 MHz and 900 MHz bands that may be affected by the rules and policies adopted herein.

114. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.²⁵³ A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).²⁵⁴ For purposes of this FRFA, we will use the SBA's size standard applicable to wireless service providers, *supra* -- an entity employing no more than 1,500 persons.²⁵⁵ There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA's size standard. Consequently, we estimate that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

115. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service.²⁵⁶ For purposes of this FRFA, we will use the SBA's size standard applicable to wireless service providers, *supra* -- an entity employing no more than 1,500 persons.²⁵⁷ There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

4. Description of Projected Reporting, Recordkeeping, and Other

²⁵² 47 C.F.R. § 90.814.

²⁵³ The service is defined in section 22.99 of the Commission's Rules. 47 C.F.R. § 22.99.

²⁵⁴ BETRS is defined in sections 22.757 and 22.759 of the Commission's Rules. 47 C.F.R. §§ 22.757, 22.759.

²⁵⁵ 13 C.F.R. § 121.201, NAICS codes 513321, 513322.

²⁵⁶ The service is defined in section 22.99 of the Commission's Rules. 47 C.F.R. § 22.99.

²⁵⁷ 13 C.F.R. § 121.201, NAICS codes 513321, 513322.

Compliance Requirements

116. Pursuant to the Order, contributions to the Commission's universal service will be based on projections provided by contributors of their collected end-user interstate and international telecommunications revenues (*i.e.*, end-user telecommunications revenues less estimated uncollectibles).²⁵⁸ As noted in the Order, the modified methodology will result in minimal changes to current reporting requirements.²⁵⁹ Because the projected collection approach we adopt is similar to the existing contribution methodology, it will be relatively easy for both USAC and contributors to administer and implement this modification to our current methodology while we consider other reforms to the current system. Consistent with our existing policy, contributors will continue to file a Form 499-Q on a quarterly basis and the Form 499-A on an annual basis. The Commission and USAC will also continue to set contribution factors on a quarterly basis using the same timeframes as the current methodology. Under the revised methodology, however, in addition to filing the Form 499-Q to report historical gross-billed revenues from the prior quarter, contributors also will project their gross-billed and collected end-user interstate and international telecommunications revenues for the upcoming quarter. We believe that this will not be burdensome for contributors, as they need to develop such projections for their own internal business purposes. Consistent with current procedures, contributors will have the option of certifying as to the confidential nature of such projections on the FCC Form 499-Q.

117. As noted in the Order, we retain the requirement for an officer to certify to the truthfulness and accuracy of the FCC Form 499-A submitted to the Administrator.²⁶⁰ We also will require an officer to certify that the projections of revenue and uncollectibles included in the FCC Form 499-Q represent a good-faith estimate based on company policies and procedures. To ensure the contributors report correct information on the FCC Form 499-A, we require all contributors to maintain records and documentation to justify the information reported in the Form 499-A for three years. We also will require filers to maintain records detailing the methodology used to determine projections in the Form 499-Q for three years. Filers will be required to provide such records and documentation to the Commission and USAC upon request.²⁶¹

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

118. The RFA requires an agency to describe any significant alternatives that it has

²⁵⁸ See *supra* paras. 29-32.

²⁵⁹ *Id.* at paras. 33-37.

²⁶⁰ *Id.* at para. 34.

²⁶¹ We also note that persons willfully making false statements in the Worksheets can be punished by fine or imprisonment under title 18 of the United States Code. See 18 U.S.C. § 1001.

considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.”²⁶²

119. The Commission has taken numerous steps to minimize significant economic impact on small entities in adopting modifications to the revenue-based methodology for assessing and recovering contributions to the federal universal service mechanisms. In modifying the existing contribution system, we have adopted rules related to contribution recovery that will increase billing transparency and decrease confusion for consumers about the amount of universal service contributions that are passed through by carriers, while ensuring that carriers continue to have the flexibility to recover legitimate administrative costs from consumers through other means.²⁶³ By allowing carriers to contribute based on projected collected end-user revenues, we eliminate one of the major reasons for carriers to recover amounts in excess of the relevant assessment rate. In light of these changes, we prohibit carriers from marking up federal universal service line items above the contribution factor. These actions address small entity concerns regarding recovery practices. We have also retained the *de minimis* exemption to ensure that compliance costs associated with contributing to universal service do not exceed actual contribution amounts. Consistent with the views expressed by many commenters, including small entity commenters, we find that the alternatives to revise or eliminate the *de minimis exemption* are not supported by the record developed at this time.²⁶⁴

120. As discussed in the Order, we have also considered various alternative proposals on how to reform the universal service contribution system.²⁶⁵ We conclude that the modifications to the current revenue-based contribution methodology, as adopted in the Order will maintain the viability of universal service in the near term, while we continue to examine reforms that are more fundamental based on proposals submitted in the record in this proceeding.

6. Report to Congress

121. The Commission will send a copy of the Order, including the FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.²⁶⁶ In addition, the Commission will send a copy of the Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this Order and FRFA (or summaries thereof) will also

²⁶² 5 U.S.C. § 603(c)(1)-(4).

²⁶³ See *supra* para. 2; see generally discussion *supra* at Part III.B.

²⁶⁴ See, e.g., Allied Comments at 9; CPC Comments at 14-15; ITA Reply Comments at 6-7; NECA Comments 7-8.

²⁶⁵ See generally discussion *supra* at Part III.

²⁶⁶ See 5 U.S.C. § 801(a)(1)(A).

be published in the Federal Register.²⁶⁷

B. Paperwork Reduction Act Analysis

122. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose new or modified reporting and recordkeeping requirements or burdens on the public. Implementation of these new or modified reported and recordkeeping requirements will be subject to approval by the Office of Management and Budget (OMB) as prescribed by the Act, and will go into effect upon announcement in the Federal Register of OMB approval.

C. Initial Regulatory Flexibility Act Analysis

123. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) on the possible significant economic impact on small entities of policies and rules proposed in this Second Further Notice of Proposed Rulemaking. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Second Further Notice* provided below in section V.E.

1. Need for and Objectives of the Proposed Rules

124. The assessment and recovery of universal service contributions are governed by the statutory framework established by Congress in the Act.²⁶⁸ Section 254(b) instructs the Commission to establish universal service support mechanisms with the goal of ensuring the delivery of affordable telecommunications services to all Americans, including consumers in high-cost areas, low-income consumers, eligible schools and libraries, and rural health care providers.²⁶⁹ Section 254(d) of the Act states that “[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.”²⁷⁰

125. Consistent with section 254 of the Act and as noted in the Order, today we take interim measures to maintain the viability of universal service in the near term -- a fundamental

²⁶⁷ See 5 U.S.C. § 604(b).

²⁶⁸ See 47 U.S.C. §§ 201, 202, 254.

²⁶⁹ 47 U.S.C. § 254(b).

²⁷⁰ 47 U.S.C. § 254(d). See also 47 U.S.C. § 254(b)(4), (5) (providing that Commission policy on universal service shall be based, in part, on the principles that contributions should be equitable and nondiscriminatory, and support mechanisms should be specific, predictable, and sufficient). The Commission adopted the additional principle that federal support mechanisms should be competitively neutral, neither unfairly advantaging nor disadvantaging particular service providers or technologies. See *Universal Service Order*, 12 FCC Rcd at 8801-03, paras. 46-51.

goal of this Commission -- while we consider further long-term reforms.²⁷¹ As discussed in further detail in the Order, although the interim measures we adopt today will improve the current contribution methodology, they do not address our concerns regarding the long-term viability of any revenue-based system.²⁷² We therefore conclude that it is appropriate to further study long-term reforms of the contribution methodology.

126. Therefore, in this *Second Further Notice*, we seek comment on specific aspects of three connection-based proposals in the record.²⁷³ First, we ask for comment on a proposed contribution methodology that would impose a minimum contribution obligation on all interstate telecommunications carriers and flat charge for each end-user connection depending on the nature or capacity of the connection. Next, we seek comment on a proposal to assess all connections based purely on capacity. Under this proposal, contribution obligations for each switched end-user connection would be shared between access and transport providers. Finally, we seek comment on a proposal to assess providers of switched connections based on their working telephone numbers.

2. Legal Basis

127. The legal basis as proposed for this *Second Further Notice* is contained in sections 4(i), 4(j), 201-205, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 4(i), 4(j), 201-205, 254, 403.

3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

128. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.²⁷⁴ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."²⁷⁵ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities.²⁷⁶ Under the Small Business Act, a "small business concern" is one that: (1) is

²⁷¹ See generally discussion *supra* at Parts I & III.

²⁷² See *supra* paras. 3-4.

²⁷³ See *supra* at Part IV.

²⁷⁴ 5 U.S.C. § 604(a)(3).

²⁷⁵ 5 U.S.C. § 601(6).

²⁷⁶ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition in the Federal Register."

independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).²⁷⁷

129. We have described in detail, *supra*, in the Final Regulatory Flexibility Analysis, the categories of entities that may be directly affected by any rules or proposals adopted in our efforts to reform the universal service contribution system.²⁷⁸ For this Initial Regulatory Flexibility Analysis, we hereby incorporate those entity descriptions by reference.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

130. Should the Commission decide that fundamental reform of the existing contribution methodology is needed, the associated rule changes potentially could modify the reporting and recordkeeping requirements of telecommunications service providers regulated under the Communications Act. Under a connection-based mechanism, we potentially could require telecommunications service providers to file additional and/or different monthly or quarterly reports.²⁷⁹ Any such reporting requirements potentially could require the use of professional skills, including legal and accounting expertise. Without more data, we cannot accurately estimate the cost of compliance by small telecommunications service providers. In this IFRA, we therefore seek comment on the frequency with which carriers should submit reports to USAC, the types of burdens carriers will face in periodically submitting reports to USAC, and whether the costs of such reporting are outweighed by the potential benefits of the possible reforms.²⁸⁰ Entities, especially small businesses and small entities, more generally, are encouraged to quantify the costs and benefits of the reporting requirement proposals.

5. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

131. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.²⁸¹

²⁷⁷ 15 U.S.C. § 632.

²⁷⁸ *See supra* paras. 108-115.

²⁷⁹ *See supra* at paras. 77-78.

²⁸⁰ *Id.*

²⁸¹ 5 U.S.C. § 603(c).

132. The *Second Further Notice* seeks comment on a number of connection-based alternatives to modify the existing contribution methodology system. Although the proponents of specific connection-based proposals argue that they would be consistent with the requirements of section 254(d) of the Act that every telecommunications carrier that provides interstate telecommunications services contribute to the Commission's universal service mechanisms on an equitable and nondiscriminatory basis, several other parties have expressed concerns that the connection-based proposals in the record would be inconsistent with the statutory mandate.²⁸² We specifically take note of those commenters that argue that the connection-based proposals in the record would result in inequitable contributions.²⁸³

133. We therefore believe it is appropriate to further develop the record on aspects of certain proposals to assess universal service contributions at least in part on the number and capacity of connections. We also believe it is appropriate to continue refining our analysis of the potential impacts on consumers and contributors, including small entities, of adopting such a methodology. In this *Second Further Notice*, we seek comment on specific measures the Commission could take to ensure that a connection-based contribution methodology would be consistent with these statutory mandates. The Commission will also consider additional significant alternatives developed in the record.

134. Wherever possible, the *Second Further Notice* seeks comment on how to reduce the administrative burden and cost of compliance for small telecommunications service providers. For example, we seek comment on the operation of a *de minimis* exemption under the various connections-based proposals. We also seek comment on the appropriate frequency and content of reporting under a connection-based methodology. We specifically seek comment from contributors that are small entities under the Small Business Act.

6. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

135. None.

D. Initial Paperwork Reduction Act of 1995 Analysis

136. The *Second Further Notice* contains either a proposed or modified information collection. As part of a continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this Further Notice, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due at the same time as other comments on the *Second Further Notice*; OMB comments are due 60 days from the date of publication of the *Second Further Notice* in the Federal Register. Comments should

²⁸² See generally discussion *supra* at Part I.

²⁸³ See generally discussion *supra* at Part IV.

address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

E. Comment Filing Procedures

137. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments 30 days or fewer from publication in the Federal Register, and reply comments 60 days or fewer from publication in the Federal Register. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.²⁸⁴

138. Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

139. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

²⁸⁴ See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24,121 (1998).

140. Parties also must send three paper copies of their filing to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street S.W., Room 5-B540, Washington, D.C. 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20054.

F. Ex Parte Presentations

141. This is a permit but disclose rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules.²⁸⁵

VI. ORDERING CLAUSES

142. Accordingly, IT IS ORDERED THAT, pursuant to the authority contained in sections 1-4, 201-205, 214, 218-220, 254, 403, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 214, 218-220, 254, 403, and 405, this REPORT AND ORDER IS ADOPTED.

143. IT IS FURTHER ORDERED that Part 54 of the Commission's rules, 47 C.F.R. Part 54, IS AMENDED as set forth in Appendix A hereto, effective 30 days after their publication in the Federal Register. The collections of information contained within are contingent upon approval by the Office of Management and Budget.

144. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this REPORT AND ORDER, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

145. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 4(i), 4(j), 201-205, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 201-205, 254, and 403, this Second Further Notice of Proposed Rulemaking IS ADOPTED.

²⁸⁵ See generally 47 C.F.R. §§ 1.1202, 1.1203, 1.1203, and 1.1206.

146. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Second Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A – FINAL RULES

Part 54 of the Code of Federal Regulations is amended as follows:

PART 54—UNIVERSAL SERVICE**Subpart H—Administration**

1. Amend section 54.706 to revise paragraphs (b) and (c) as follows:

§ 54.706 Contributions

(a) * * *

(b) Prior to April 1, 2003, except as provided in paragraph (c) of this section, every telecommunications carrier that provides interstate telecommunications services, every provider of interstate telecommunications that offers telecommunications for a fee on a non-common carrier basis, and every payphone provider that is an aggregator shall contribute to the federal universal service support mechanisms on the basis of its interstate and international end-user telecommunications revenues, net of prior period actual contributions. Beginning April 1, 2003, except as provided in paragraph (c), every such provider shall contribute on the basis of its projected collected interstate and international end-user telecommunications revenues, net of projected contributions.

(c) Prior to April 1, 2003, any entity required to contribute to the federal universal service support mechanisms whose interstate end-user telecommunications revenues comprise less than

12 percent of its combined interstate and international end-user telecommunications revenues shall contribute to the federal universal service support mechanisms for high cost areas, low-income consumers, schools and libraries, and rural health care providers based only on such entity's interstate end-user telecommunications revenues, net of prior period actual contributions. Beginning April 1, 2003, any entity required to contribute to the federal universal service support mechanisms whose projected collected interstate end-user telecommunications revenues comprise less than 12 percent of its combined projected collected interstate and international end-user telecommunications revenues shall contribute based only on such entity's projected collected interstate end-user telecommunications revenues, net of projected contributions. For purposes of this paragraph, an "entity" shall refer to the entity that is subject to the universal service reporting requirements in 47 CFR 54.711 and shall include all of that entity's affiliated providers of telecommunications services.

* * * * *

2. Amend section 54.709 to revise paragraphs (a), (a)(1), and the first sentence of paragraph (a)(2) as follows:

§ 54.709 Computations of required contributions to universal service support mechanisms.

(a) Prior to April 1, 2003, contributions to the universal service support mechanisms shall be based on contributors' end-user telecommunications revenues and on a contribution factor

determined quarterly by the Commission. Contributions to the mechanisms beginning April 1, 2003 shall be based on contributors' projected collected end-user telecommunications revenues, and on a contribution factor determined quarterly by the Commission.

(1) For funding the federal universal service support mechanisms prior to April 1, 2003, the subject revenues will be contributors' interstate and international revenues derived from domestic end users for telecommunications or telecommunications services, net of prior period actual contributions. Beginning April 1, 2003, the subject revenues will be contributors' projected collected interstate and international revenues derived from domestic end users for telecommunications or telecommunications services, net of projected contributions.

(2) Prior to April 1, 2003, the quarterly universal service contribution factor shall be determined by the Commission based on the ratio of total projected quarterly expenses of the universal service support mechanisms to the total end-user interstate and international telecommunications revenues, net of prior period actual contributions. Beginning April 1, 2003, the quarterly universal service contribution factor shall be determined by the Commission based on the ratio of total projected quarterly expenses of the universal service support mechanisms to the total projected collected end-user interstate and international telecommunications revenues, net of projected contributions. * * *

3. Amend section 54.711 to revise paragraph (a) as follows:

§ 54.711 Contributor reporting requirements.

(a) Contributions shall be calculated and filed in accordance with the Telecommunications Reporting Worksheet which shall be published in the Federal Register. The Telecommunications Reporting Worksheet sets forth information that the contributor must submit to the Administrator on a quarterly and annual basis. The Commission shall announce by Public Notice published in the Federal Register and on its website the manner of payment and dates by which payments must be made. An executive officer of the contributor must certify to the truth and accuracy of historical data included in the Telecommunications Reporting Worksheet, and that any projections in the Telecommunications Reporting Worksheet represent a good-faith estimate based on the contributor's policies and procedures. The Commission or the Administrator may verify any information contained in the Telecommunications Reporting Worksheet. Contributors shall maintain records and documentation to justify information reported in the Telecommunications Reporting Worksheet, including the methodology used to determine projections, for three years and shall provide such records and documentation to the Commission or the Administrator upon request. Inaccurate or untruthful information contained in the Telecommunications Reporting Worksheet may lead to prosecution under the criminal provisions of Title 18 of the United States Code. The Administrator shall advise the Commission of any enforcement issues that arise and provide any suggested response.

* * * * *

4. Add section 54.712 to subpart H as follows:

§ 54.712 Carrier recovery of universal service costs from end-users.

(a) Federal universal service contribution costs may be recovered through interstate telecommunications-related charges to end users. If a telecommunications carrier chooses to recover its federal universal service contribution costs through a line item on a customer's bill, as of April 1, 2003, the amount of the federal universal service line-item charge may not exceed the interstate telecommunications portion of that customer's bill times the relevant contribution factor.

(b) Eligible telecommunications carriers may not recover federal universal service contribution costs from Lifeline customers.

APPENDIX B

**PARTIES FILING COMMENTS AND REPLY COMMENTS
IN CC DOCKET NOS. 96-45, 98-171, 90-571, 92-237, 99-200-95-116, 98-170**

Comments:**Commenters****Abbreviation**

Ad Hoc Telecommunications Users Committee	Ad Hoc
Alaska Telephone Association	ATA
Allied Personal Communications Industry Association of California	Allied
AOL Time Warner Inc.	AOL
American Association of Paging Carriers	AAPC
American Mobile Telecommunications Assoc. Inc.	AMTA
American Public Communications Council	APCC
Arch Wireless, Inc.	Arch
Association of Communications Enterprises	ASCENT
AT&T Corp.	AT&T
AT&T Wireless Services, Inc.	AWS
BBG Communications, Inc.	BBG
Beacon Telecommunications Advisors, LLC	Beacon
BellSouth Corporation	BellSouth
BT North America Inc.	BTNA
California Public Utilities Commission and The People of the State of California	CPUC
Coalition for Sustainable Universal Service	CoSUS
Competitive Telecommunications Association	CompTel
Concerned Paging Carriers	CPC
Consumer's Union, Texas Office of Public Utility Counsel, Consumer Federation of America Appalachian People's Action Coalition, Center for Digital Democracy, Edgemont Neighborhood Coalition, and Migrant Legal Action Program	CU et al.
ePHONE Telecom, Inc.	ePHONE
Fred Williamson and Associates, Inc.	FW&A
General Services Administration	GSA
Home Telephone Company, Inc., Bluffton Telephone Co., Inc.,	

Hargray Telephone Co., Inc.,	
Chesnee Telephone Co.,	
Chester Telephone Co.,	
Lockhart Telephone Co., Inc.	
Ridgeway Telephone Co., Inc.	
Farmers Telephone Co., Inc.	
Palmetto Rural Telephone Cooperative, Inc.	
PBT Telecom, Inc.	
Piedmont Rural Telephone Cooperative, Inc.	
Sandhill Telephone Cooperative, Inc.	
Sandwich Isles Communications, Inc.	
Yukon Telephone Co., Inc.	Home et al.
Information Technology Association of America	ITAA
National Association of State Utility Consumer Advocates	NASUCA
National Exchange Carrier Association, Inc.	NECA
National Rural Telecom Association and the Organization for Promotion and Advancement of Small Telecom Companies	NRTA and OPASTCO
National Telecommunications Cooperative Association	NTCA
Nebraska Independent Companies	Nebraska
Nextel Communications, Inc.	Nextel
OnStar Corporation	OnStar
PaeTec Communications, Inc.	PaeTec
Rural Cellular Association, The	RCA
Rural Independent Competitive Alliance, The	RICA
SBC Communications Inc.	SBC
Sprint Corporation	Sprint
Texas, State of	Texas
Teletouch Communications, Inc.	Teletouch
Time Warner Telecom, XO Communications, and Allegiance Telecom	Time Warner et al.
TracFone Wireless, Inc.	TracFone
United States Cellular Corporation	USCC
United States Telecom Association	USTA
Verizon telephone companies	Verizon
Verizon Wireless	Verizon Wireless
Vincent J. Stoneking	V. Stoneking
Virgin Mobile USA, LLC	Virgin Mobile
VoiceStream Wireless Corporation	VoiceStream
Western Wireless Corporation	Western
Working Assets Funding Service, Inc.	Working Assets
WorldCom, Inc.	WorldCom

Reply Comments:**Reply Commenters****Abbreviation**

Alaska Communications Systems	ACS
AOL Time Warner Inc.	AOL
American Library Associations	ALA
American Public Communications Council	APCC
Arch Wireless	Arch
Association of Communications Enterprises	ASCENT
Association for Local Telecommunications Services	ALTS
BellSouth Corporation	BellSouth
BT North America	BTNA
Cable & Wireless USA, Inc.	C&W
Coalition for Sustainable Universal Service	CoSUS
Concerned Paging Carriers	
AirCall, Inc	
The Beeper People, Inc.	
Business Service Center, Inc.	
Com-Nav Inc., d/b/a Radio Telephone of Maine	
Cook telecom, Inc., Lubbock Radio Paging Service, Inc.	
Mobile Phone of Texas, Inc.	
Mobilpage, Inc.	
Omnicom Paging Plus, LLC	
Page-All, LLC	
Professional Answering Service, Inc.	
RCC Inc., d/b/a/ Radio Comm. Co.	
RediCall Communications Co.	
Robert F. Ryder d/b/a Radio Paging Service	
Salisbury Mobile Telephone, Inc.	
SEMA-PHOON, Inc. d/b/a/ R.A. Communications	
Starpage, Inc.	CPC
Consumers Union	
Texas Office of Public Utility Counsel	
Consumer Federal of America	
Appalachian People's Action Coalition	
Center for Digital Democracy	
Edgemont Neighborhood Coalition	
Migrant Legal Action Program	CU
Earthlink, Inc.	Earthlink
Industrial Telecommunications Association, Inc.	ITA
Information Technology Association of America	ITAA
National ALEC Association/Prepaid Communications	

Association	NALA
National Rural Telecom Association	
Organization for the Promotion and Advancement Of Small Telecommunications Companies	NRTA and OPASTCO
National Telecommunications Cooperative Association	NTCA
Nextel Communications, Inc.	Nextel
Public Utilities Commission of Ohio	Ohio PUC
OnStar Corporation	OnStar
Qwest Communications International Inc.	Qwest
SBC Communications Inc.	SBC
Sprint Corporation	Sprint
Southern Communications Services, Inc. d/b/a Southern LINC	Southern
Texas, State of	Texas
TracFone Wireless, Inc.	TracFone
United States Cellular Corporation	USCC
Verizon	Verizon
Verizon Wireless	Verizon Wireless
Voice on the Net Coalition	VON
Voicestream Wireless Corporation	Voicestream
Warriner, Gesinger & Associations, LLC	Warriner et al.
WebLink Wireless, Inc.	WebLink
Western Alliance	Western Alliance
Worldcom, Inc.	Worldcom

APPENDIX C
REVISED FORM 499-Q AND INSTRUCTIONS

The form and attached instructions that follow have not yet been approved by OMB and have been attached for informational purposes.

FCC Form 499-Q Telecommunications Reporting Worksheet

Quarterly Filing for Universal Service Contributors

>>> Please read instructions before completing <<

Pending OMB Approval

Block 1: Contributor Identification Information		101	Filer 499 ID
102 Legal name of reporting entity			
103 IRS employer identification number			
104 Name telecommunications service provider is doing business as			
105 Holding company [All affiliated companies should show same name here.]			
106 FCC Registration Number (FRN)			
107 Complete mailing address of reporting entity's corporate headquarters			

Block 2: Contact Information	
108 Person who completed this worksheet	
109 Telephone number of this person	() -
110 Fax number of this person	() -
111 E-mail of this person	
112 Billing address and billing contact person: [Bills for Universal Service contributions will be sent to this address.]	

Block 3: Contributor Historical and Projected Revenue Information				
113 Year of historical revenue information	2002	114 Filing Due	February 1, 2003	
Fourth Quarter 2002 (October 1 through December 31) historical billed revenues with no allowance or deductions for uncollectibles. See instructions.		Total Revenues (a)	Interstate Revenues (b)	International Revenues (c)
115 Telecommunications provided to other universal service contributors for resale				
116 End-user telecommunications revenues including any pass-through charges for universal service contributions, but excluding international-to-international revenues				
117 All other goods and services			Column (b) and (c) not requested	
118 Gross-billed revenues from all sources [sum of above]			for Lines 117 and 118	
119 interstate and international telecommunications revenues including any pass-through charges for universal service contributions, but excluding international-to-international revenues				
120 First Quarter 2003 (January 1 through March 31) projected collected end-user interstate and international telecommunications revenues including any pass-through charges for universal service contributions, but excluding international-to-international revenues				
121 Second Quarter 2003 (April 1 through June 30) projected gross-billed end-user interstate and international telecommunications revenues including any pass-through charges for universal service contributions, but excluding international-to-international revenues				
122 Second Quarter 2003 (April 1 through June 30) projected collected end-user interstate and international telecommunications revenues including any pass-through charges for universal service contributions, but excluding international-to-international revenues				

Block 4: CERTIFICATION: to be signed by an officer of the reporting entity	
123 I certify that the revenue data contained herein is privileged and confidential and that public disclosure of such information would likely cause substantial harm to the competitive position of the company. I request nondisclosure of the revenue information contained herein pursuant to sections 0.459, 52.17, 54.711 and 64.604 of the Commission's Rules. <input type="checkbox"/>	
I certify that I am an officer of the above-named reporting entity, that I have examined the foregoing report and to the best of my knowledge, information and belief, all statements of fact contained in this Worksheet are true, that said Worksheet is an accurate statement of the affairs of the above-named company for the quarter and that the projections of gross-billed and collected revenues represent a good-faith estimate based on company procedures and policies.	
124 Signature	
125 Printed name of officer	
126 Position with reporting entity	
127 Date	
128 This filing is: <input checked="" type="checkbox"/> Original filing <input type="checkbox"/> Revised filing [revisions due within 45 days of original filing deadline]	

Do not mail checks with this form. Send this form to: Form 499 c/o NECA, 80 South Jefferson Road, Whippany, N.J. 07981
 For additional information regarding this worksheet contact: Telecommunications Reporting Worksheet Info: (973) 560-4460 or via e-mail: Form499@neca.org

PERSONS WILLFULLY MAKING FALSE STATEMENTS IN THE WORKSHEET CAN BE PUNISHED BY FINE OR IMPRISONMENT UNDER TITLE 18 OF THE UNITED STATES CODE, 18 U.S.C. §1001

FCC Form 499-Q, February 2003

Pending Approval by OMB

Estimated Average Burden Hours Per Response: 10 Hours

Telecommunications Reporting Worksheet, FCC Form 499-Q

Instructions for Completing the Quarterly Worksheet for Filing Contributions to Universal Service Support Mechanisms

* * * * *

NOTICE TO INDIVIDUALS: Sections 54.706, 54.711, and 54.713 of the Federal Communications Commission's rules require all telecommunications carriers providing interstate telecommunications services, providers of interstate telecommunications that offer interstate telecommunications for a fee on a non-common carrier basis, and payphone providers that are aggregators to contribute to universal service and file this Telecommunications Reporting Worksheet (FCC Form 499-Q) on February 1, May 1, August 1, and November 1, each year. 47 C.F.R. §§ 54.706, 54.711, 54.713. This collection of information stems from the Commission's authority under Section 254 of the Communications Act of 1934, as amended, 47 U.S.C. § 254. The data in the Worksheet will be used to calculate contributions to the universal service support mechanisms. Selected information provided in the Worksheet will be made available to the public in a manner consistent with the Commission's rules.

We have estimated that each response to this collection of information will take, on average, 10.0 hours. Our estimate includes the time to read the instructions, look through existing records, gather and maintain the required data, project growth or decline in revenues, and actually complete and review the form or response. If you have any comments on this estimate, or how we can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, AMD-PERM, Washington, D.C. 20554, Paperwork Reduction Project (3060-0855). We also will accept your comments via the Internet if you send them to jboley@fcc.gov. Please DO NOT SEND COMPLETED WORKSHEETS TO THIS ADDRESS.

Remember -- You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid Office of Management and Budget (OMB) control number. This collection has been assigned an OMB control number of 3060-0855.

The Commission is authorized under the Communications Act of 1934, as amended, to collect the information we request in this form. We will use the information that you provide to determine contribution amounts. If we believe there may be a violation or potential violation of a statute or a Commission regulation, rule, or order, your Worksheet may be referred to the Federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing the statute, rule, regulation, or order. In certain cases, the information in your Worksheet may be disclosed to the Department of Justice, court, or other adjudicative body when (a) the Commission; or (b) any employee of the Commission; or (c) the United States government, is a party to a proceeding before the body or has an interest in the proceeding.

With the exception of your employer identification number, if you do not provide the information we request on the Worksheet, the Commission may consider you in violation of sections 1.47, 52.17, 52.32, 54.713, and 64.604 of the Commission's rules. 47 C.F.R. §§ 1.47, 52.17, 52.32, 54.713, and 64.604.

The foregoing Notice is required by the Privacy Act of 1974, P.L. 93-579, December 31, 1974, 5 U.S.C. § 552(a)(e)(3), and the Paperwork Reduction Act of 1995, P.L. No. 104-13, 44 U.S.C. § 3501, *et seq.*

* * * * *

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I. Introduction

As required under the Communications Act of 1934, as amended,¹ the Commission has established procedures to finance universal service support mechanisms. To accomplish this Congressionally-directed objective, contributions are collected from telecommunications carriers providing interstate telecommunications and certain other providers of interstate telecommunications. This Worksheet sets forth information that the contributor must submit, so that the administrator of the universal service support mechanisms may calculate and assess contributions.²

II. Filing Requirements and General Instructions

A. Who Must File

All providers of interstate telecommunications within the United States,³ with very limited exceptions, must file an FCC Form 499-Q Telecommunications Reporting Worksheet.⁴

For purposes of determining whether an entity provides telecommunications, please note that the term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received. For the purpose of filing, the term "interstate telecommunications" includes, but is not limited to, the following types of services: wireless telephony, including cellular and personal communications services (PCS); paging and messaging services; dispatch services; mobile radio services; operator services; access to interexchange service; special access; wide area telecommunications services (WATS); subscriber toll-free services; 900 services; message telephone services (MTS); private line; telex; telegraph; video services; satellite services; and resale services. Note, for example, that all incumbent and competitive local exchange carriers provide access to an interstate public network and, therefore, provide interstate telecommunications.

Note also that entities must file this Worksheet, and are subject to universal service contribution requirements, if they offer interstate telecommunications for a fee to the public even if only a narrow or limited class of users could utilize the services. Included are entities that provide interstate

¹ 47 U.S.C. §§ 151 *et seq.*

² On March 9, 2001, the Commission modified its rules to base universal service contributions on information reported on quarterly Telecommunications Reporting Worksheet filings, with an annual true-up based on information reported on annual Telecommunications Reporting Worksheets. *Federal-State Joint Board on Universal Service; Petition for Reconsideration filed by AT&T*, CC Docket No. 96-45, FCC 01-85 (rel. Mar. 14, 2001). See also *1998 Biennial Regulatory Review -- Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, Report and Order, FCC 99-175, CC Docket No. 98-171 (rel. Jul. 14, 1999) (*Contributor Reporting Requirements Order*).

³ For this purpose, the United States is defined as the contiguous United States, Alaska, Hawaii, American Samoa, Baker Island, Guam, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Island, Navassa Island, the Northern Mariana Islands, Palmyra, Puerto Rico, the U.S. Virgin Islands, and Wake Island.

⁴ Section 254(d) applies not only to "every telecommunications carrier that provides interstate telecommunications services" but also to certain "other provider[s] of interstate telecommunications." 47 U.S.C. § 254(d) (emphasis added). Solely for the purposes of these Instructions, we use the terms "telecommunications services" and "telecommunications" interchangeably, unless otherwise specified. For more information on these terms, see 47 U.S.C. §§ 3(43), (46); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997) (Universal Service Order).

telecommunications to entities other than themselves for a fee on a private, contractual basis. In addition, owners of pay telephones, sometimes referred to as "pay telephone aggregators," must file this Worksheet if they do not qualify for the *de minimis* exemption under the Commission's universal service rules.⁵

The following three sections list types of telecommunications providers that are not required to file the Form 499-Q. Note that such entities are treated as end users by their underlying carriers and therefore may be subject to pass-through charges.

1. Universal service exemption for *de minimis* telecommunications providers

Section 54.708 of the Commission's rules states that telecommunications carriers and telecommunications providers are not required to contribute directly to the universal service support mechanisms for a given year if their contribution for that year is less than \$10,000.⁶ Thus, potential contributors whose contribution to the universal service support mechanisms would be *de minimis* under the universal service rules are not required to file the Worksheet (FCC Form 499-Q) or contribute directly to universal service. Telecommunications carriers and other telecommunications providers should complete the table contained in Figure 1 to determine whether they meet the *de minimis* standard. To complete Figure 1, potential filers and all affiliates must first complete block 3 of the Worksheet and enter the amounts from Line 122(b) and 122(c) in Figure 1.

Telecommunications providers that do not file this Worksheet because their contributions would be *de minimis* should retain Figure 1 and documentation of their contribution base revenues for three years and may be required to provide it to the administrator or FCC upon request.

⁵ 47 C.F.R. § 54.708. *See also* Figure 1.

⁶ 47 C.F.R. § 54.708.

Figure 1: Table to determine if a contributor meets the *de minimis* standard for purposes of universal service contribution

1	Interstate contribution base for the quarter for filer (amount reportable on filer's Form 499-Q; Line 122(b))	\$
2	International contribution base for the quarter for filer (amount reportable on filer's Form 499-Q; Line 122(c))	\$
3	Interstate contribution base for the quarter for all affiliates* (total of amounts reportable on Form 499-Q; Line 1220(b) for all affiliates of the filer)	\$
4	International contribution base for the quarter for all affiliates (total of amounts reportable on Form 499-Q; Line 122(e) for all affiliates of the filer)	\$
5	Consolidated interstate contribution base: Line (1) + Line (3)	\$
6	Consolidated international contribution base: Line (2) + Line (4)	\$
7	Total potential contribution base for filer and its affiliates: Line (5) + Line (6)	\$
8	Combined interstate contribution base as a percentage of total potential contribution base: Line (5) / Line (7)	%
9	Interstate contribution base for filer from Line (1)	\$
10	If the amount in Line (8) is equal to or greater than 12%, enter into Line (10) the international contribution base for the filer from Line (2). If the amount on Line (8) is less than 12%, enter \$0	\$
11	Revenue base for the filer for the quarter for determining contributions to universal service support mechanisms: Line (9) + Line (10)	\$
12	Actual contributions to federal universal service support mechanisms made in the calendar quarter for which revenues are being reported.	\$
13	Contribution base: Line (11) – Line (12)	\$
14		4
15	Annualized contribution base; Line (13) multiplied by Line (14)	
16	Estimation factor for determining whether to file a 499-Q	0.095*
17	Estimated annual contribution: amount in Line (15) multiplied by Line (16)	\$

* An affiliate is a "person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person." See 47 U.S.C. § 153(1).

** The estimation factor is higher than the contribution factor announced for the first quarter of 2003. See *Public Notice*, DA 02-3387. Actual contribution factors for 2003 may increase or decrease depending on quarterly changes in program costs and the contribution base. Filers whose actual contribution requirements total less than \$10,000 for the calendar year will be treated as *de minimis* and will receive refunds, if necessary. Filers whose actual contribution requirements total \$10,000 or more are required to contribute to the universal service support mechanisms and must file this Worksheet.

2. Exception for government, broadcasters, schools, and libraries

Certain entities are explicitly exempted from contributing directly to the universal service support mechanisms and need not file this Worksheet. Government entities that purchase telecommunications services in bulk on behalf of themselves, *e.g.*, state networks for schools and libraries, are not required to file or contribute directly to universal service. Public safety and local governmental entities licensed under Subpart B of Part 90 of the Commission's rules are not required to file or contribute directly to universal service. Similarly, if an entity provides interstate telecommunications exclusively to public safety or government entities and does not offer services to others, that entity is not required to file or contribute directly to universal service. In addition, broadcasters, non-profit schools, non-profit libraries, non-profit colleges, non-profit universities, and non-profit health care providers are not required to file the Worksheet or contribute directly to universal service.

3. Exception for systems integrators and self providers

Systems integrators that derive less than five percent of their systems integration revenues from the resale of telecommunications are not required to file or contribute directly to universal service. Systems integrators are providers of integrated packages of services and products that may include the provision of computer capabilities, interstate telecommunications services, remote data processing services, back-office data processing, management of customer relationships with underlying carriers and vendors, provision of telecommunications and computer equipment, equipment maintenance, help desk functions, and other services and products). Legal entities that provide services only to themselves or to commonly owned affiliates need not file.

B. Filing by Legal Entity

Each legal entity that provides interstate telecommunications service for a fee, including each affiliate or subsidiary of an entity, must complete separately and file a copy of the attached Telecommunications Reporting Worksheet, except as provided for below. Entities that have distinct articles of incorporation are separate legal entities. Each affiliate or subsidiary should identify their ultimate controlling parent or entity on Block 1 Line (105) -- Holding Company.

Consolidated filing will be permitted only if the filing entity certifies that all of the following conditions are met:⁷

- (1) A single entity oversees the management of the affiliated systems;
- (2) A single entity sends bills to customers and these bills identify a single entity (or trade name) as the service provider, rather than identifying the individual legal entities;
- (3) All revenues are posted to a single general ledger;

⁷ *Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review - Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans With Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing and Billing Format*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Further Notice of Proposed Rulemaking and Report and Order, FCC 02-43 (rel. Feb. 26, 2002).

- (4) To the extent that separate revenue and expense accounts exist, they are derived from one consolidated set of books and the consolidated filing must cover all revenues contained in the consolidated books;
- (5) Customers have a single point of contact;
- (6) The consolidated filer acknowledges that process served on the consolidated filer would represent process served on any or all of the affiliated legal entities;
- (7) The consolidated filer agrees to document and resolve all slamming complaints that might be served on either the filing entity or any of the affiliated legal entities;⁸
- (8) The consolidated filer obtains a separate FCC Registration Number (FRN) from those assigned to its affiliated legal entities;
- (9) The consolidated filer acknowledges that its obligations with regard to universal service, Telecommunications Relay Services, Local Number Portability, the North American Numbering Plan, and regulatory fees will be based on the data provided in consolidated Worksheet filings, that it bears the responsibility to satisfy those obligations, and that all legal entities covered by the filing are jointly and severally liable for such obligations; and
- (10) The consolidated filer acknowledges that it: (A) was not insolvent on the date it undertook to make payments on a consolidated basis or on the date of actual payments to universal service, Telecommunications Relay Services, Local Number Portability, the North American Numbering Plan, and regulatory fees, and did not become insolvent as a result of such undertaking or payments; (B) was not left with unreasonably small capital as a result of such undertaking or payments; and (C) was not left unable to pay debts as they matured as a result of such undertaking or payments.⁹

Each year, entities choosing to file on a consolidated basis must file a statement certifying that they meet all of the above conditions. Such certification also must include: (1) a list of the legal names of all legal entities that are covered by the filing; (2) the Form 499 identification numbers of all legal entities that are covered by the filing; (3) the consolidated filer's FRN; and (4) for wireless carriers, a list of all radio licenses (call signs) issued to each legal entity covered by the filing. Consolidated filers should file this certification with the Commission's Data Collection Agent. Furthermore, a contributor choosing to file on a consolidated basis should recognize that any penalties associated with failure to pay or with underpayment of any of its obligations will be assessed on the total revenue reported on the consolidated basis, rather than on a separate legal entity basis.

⁸ A CMRS carrier that is not subject to certain slamming regulations is not required to certify that it will document and resolve all slamming complaints that might be served on either the filing entity or any of its affiliated legal entities that also are not subject to the slamming regulations.

⁹ For purposes of this certification, the term "insolvent" means either unable to pay debts when due or having liabilities greater than assets. *See* 11 U.S.C. § 101(32).

C. When and Where to File

Figure 2 provides the filing schedule and relevant filing addresses. If a filing date is a holiday (as defined in Section 1.4(e)(1) of the Commission's rules), Worksheets are due the next business day.

Figure 2: Filing schedule

When to file	What to file	Where to file *
February 1 of each year	Completed Form 499-Q containing revenue information for October 1 through December 31 of the prior calendar year and projections for April 1 through June 30**	Form 499 Data Collection Agent Attn: Cristy Dolechal 80 South Jefferson Rd. Whippany, NJ 07981
April 1 of each year	Completed Form 499-A containing revenue information for January 1 through December 31 of the prior calendar year	Form 499 Data Collection Agent (address above)
May 1 of each year	Completed Form 499-Q containing revenue information for January 1 through March 31 and projections for July 1 through September 30	Form 499 Data Collection Agent (address above)
August 1 of each year	Completed Form 499-Q containing revenue information for April 1 through June 30 and projections for October 1 through December 31	Form 499 Data Collection Agent (address above)
November 1 of each year	Completed Form 499-Q containing revenue information for July 1 through September 30 and projections for January 1 through March 31 of the coming year	Form 499 Data Collection Agent (address above)
<p>* Do not send universal service contributions with this Worksheet or to the above address. The universal service administrator will calculate the amount of contribution due and send a bill to the billing contact person and billing address identified in Line (112) of the Form 499-Q.</p> <p>** The February 1, 2003 filing also includes projections for the first calendar quarter of 2003.</p>		

D. Rounding of Numbers and Negative Numbers

All information provided in the Worksheet should be neatly printed in ink or typed. Please provide an original officer signature in ink in Line (124).

Dollar Amounts. Reported revenues in Block 3 that are greater than a thousand dollars may be rounded to the nearest thousand dollars. Regardless of rounding, **all dollar amounts must be reported in whole dollars.** For example, \$2,271,881.93 could be reported as \$2,271,882 or as \$2,272,000, but could not be reported as \$2272 thousand, \$2,270,000.00 or \$2.272 million. Please enter \$0 in any line for which the contributor had no revenues for the year.

Negative Numbers. Contributors are directed to provide billed revenues on Lines (115) through (119) and (121) without subtracting any expenses, allowances for uncollectibles or settlement payments and without making out-of-period adjustments. The amount of projected uncollectibles (the difference between Line (119) and Line (120) and the difference between Line (121) and Line (122)) cannot exceed projected billings. Therefore, do not enter negative numbers on the form.

E. Obligation to File Revisions

Line (128) provides check boxes to show whether the Worksheet is the original filing or a revised filing for the quarter. A contributor must file a revised 499-Q Worksheet if it discovers an error in the data that it reports' *i.e.*, if the filer discovers that it omitted or misclassified a major category of revenue. However, revised filings must be made within 45 calendar days of the original filing date. In general, the historical revenues contained in the quarterly filings will be based on unaudited books from a point in time and the projections will represent the filer's expectations as of a point in time. Contributors need not file revisions to the Form 499-Q as a result of ordinary accounting adjustments such as out-of-period adjustments. Revenue information from the Form 499-A will be used to ensure that contributions for the whole year are based on all subject revenues for the year.

Contributors should not file a revised Form 499-Q Telecommunications Reporting Worksheet to reflect mergers, acquisitions, or sales of operating units. In the event that a contributor that filed a Form 499-Q no longer exists, the successor company to the contributor's assets or operations is responsible for continuing to make payments, if any, for the funding period and must notify the Commission's Data Collection Agent.

F. Compliance

Failure to file the Telecommunications Reporting Worksheet or to pay contributions in a timely fashion may subject entities to the enforcement provisions of the Communications Act and any other applicable law. In addition, telecommunications providers may be billed by the administrators for reasonable costs, including interest and administrative costs that are caused by late, inaccurate, or untruthful filing of the Worksheet or overdue contributions.¹⁰

¹⁰ See 47 C.F.R. § 54.713.

III. Specific Instructions

A. Block 1: Contributor Identification Information

Block 1 of the Telecommunications Reporting Worksheet requires identification information.

Line (101) -- enter the "Filer 499 ID" number for the filing entity. This code is assigned by the Commission's Data Collection Agent after a company files its first FCC Form 499-A. Filer 499 IDs for current filers can be found at <http://gullfoss2.fcc.gov/cib/form499/499a.cfm> or in the FCC report *Telecommunications Provider Locator*, which is available on the Commission's web site at www.fcc.gov/ccb/stats. This code should be entered at the top of any cover letter or supporting documentation. New filers are assigned Filer 499 ID numbers after a completed Form 499-A Telecommunications Reporting Worksheet is received by the data collection agent.

Line (102) -- enter the legal name of the filer as it appears on articles of incorporation and other legal documents. Each legal entity must file a separate Worksheet unless affiliated entities are filing on a consolidated basis.¹¹

Line (103) -- provide the Internal Revenue Service (IRS) employer identification number (EIN) for the filer. This should be the same EIN that the company uses to file federal excise taxes or income taxes, if the filer offers services subject to those taxes. The EIN is also known as the taxpayer identification number (TIN) or for individuals as the social security number (SSN).

Line (104) -- provide the principal name under which the company conducts telecommunications activities. This would typically be the name that appears on customer bills, or the name used when service representatives answer customer inquiries.

Line (105) -- **use this block to provide a common identifier for all affiliated filers.** Typically, this would be the name of the filer's holding company or controlling entity, if any. The common name used by all affiliates need not be a common carrier. All reporting affiliates or commonly controlled entities should have the **identical** name appearing on line (106). An affiliate is a "person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person."¹²

Line (106) -- provide the FCC Registration Number (FRN). The FRN is a ten digit number that includes a check-digit. The FRN is used to identify an entity within all Commission Licensing/Filing systems and RAMIS (the Commission's Revenue Accounting Management Information System.) This number is assigned by CORES (the Commission Registration System) and can be obtained at <https://gullfoss2.fcc.gov/cores/CoresHome.html>. For assistance, contact the CORES help desk at (877) 480-3201 or by e-mail at CORES@fcc.gov.

Line (107) -- enter the complete mailing address of the corporate headquarters of the reporting entity.

¹¹ See Section II-B, page 6, for information on making consolidated filings.

¹² See 47 U.S.C. § 153(1).

B. Block 2: Contact Information

Lines (108-111) -- enter the name, telephone number, fax number, and e-mail address of the person who filled out the Form 499-Q. This should be a person who can provide clarifications or additional information, and, if necessary, who could serve as the first point of contact in the event that either the Commission or an administrator should choose to verify or audit information provided in the Telecommunications Reporting Worksheet.

Line (112) -- provide a billing contact person name and address for administrators to send billing information for contributions to the universal service fund. Information on establishing electronic fund transfer and bills for universal service will be sent to this address unless other arrangements are made via written request.

C. Block 3: Contributor Revenue Information

Line (113) – enter the year for which revenue information is being filed.

Line (114) – check the appropriate box to indicate the calendar quarters for which historical and projected revenue information are being reported.

Lines (115-120) contain detailed revenue data.

1. Separating Revenue from Service Provided to Other Universal Service Contributors for Resale [Line (115)] from End-User Telecommunications Revenues [Line (116)] (carrier's carrier vs. end user)

In the Telecommunications Reporting Worksheet, filers must report revenues using two broad categories: (1) Revenues from other contributors to the federal universal service support mechanisms; and, (2) Revenues from all other sources. Taken together, these revenues should include all revenues billed to customers and should include all revenues on the reporting entities' books of account.

For the purposes of this Worksheet, "Revenues from services provided for resale by other contributors to federal universal service support mechanisms" are revenues from services provided by underlying carriers to other entities that currently are contributors to federal universal service support mechanisms and that are resold in the form of telecommunications. Such revenues are referred to herein as "carrier's carrier revenues" or "revenues from resellers." Revenues from all other sources consist primarily of revenues from services provided to end users, referred to here as "end-user revenues." This latter category includes non-telecommunications revenues

For the purpose of completing Line (115), a "reseller" is a telecommunications carrier or telecommunications provider that: 1) incorporates purchased telecommunications services into its own telecommunications offerings; and 2) can reasonably be expected to contribute to federal universal service support mechanisms based on revenues from such offerings when provided to end users.

Each filer should have documented procedures to ensure that it reports as "revenues from resellers" only revenues from entities that reasonably would be expected to contribute to support universal service. The procedures should include but not be limited to maintaining the following information on resellers: Filer 499 ID; legal name; address; name of a contact person; and phone number of the contact person. The filer should verify that each reseller will: 1) resell the filer's services in the form of telecommunications; and

2) contribute directly to the federal universal service support mechanisms. If the filer does not have independent reason to know that the reseller satisfies these criteria, it should obtain a signed statement certifying that these criteria are met. Current contributors to universal service are identified at <http://gullfoss2.fcc.gov/cib/form499/499a.cfm>.

Note: For the purposes of filling out this Worksheet -- and for calculating contributions to the universal service support mechanisms -- certain telecommunications carriers and service providers may be exempt from contribution to the universal service support mechanisms. These exempt entities, including "international only" and "intrastate only" carriers and carriers that meet the *de minimis* universal service threshold, should not be treated as resellers for the purpose of reporting revenues on Line (115). That is, filers that are underlying carriers should report revenues derived from the provision of telecommunications to exempt carriers and providers (including services provided to entities that are *de minimis* for universal service purposes) on Line (116). Underlying carriers must contribute to the universal service support mechanisms on the basis of such revenues.

2. Column (a) - total revenues

The reporting entity must report gross revenues from all sources, including nonregulated and non-telecommunications services on Lines (115) through (117) and these must add to total gross revenues as reported on Line (118). Gross revenues should include revenues derived from the activation and provision of interstate, international, and intrastate telecommunications and non-telecommunications services. Gross revenues consist of total revenues billed to customers during the filing period with no allowances for uncollectibles, settlements, or out-of-period adjustments. Gross billed revenues may be distinct from booked revenues. NECA pool companies should report the actual gross billed revenues (CABS Revenues) reported to the NECA pool and not settlement revenues received from the pool.

Where two contributors have merged prior to the filing date, the successor company should report total revenues for the reporting period for all predecessor operations. The two contributors, however, should continue to report separately if each maintains separate corporate identities and continues to operate.¹³ Where an entity obtains, through purchase or transfer, the telecommunications operations or customer base of a telecommunications provider during a quarter, it must report all telecommunications revenues associated with such operations or customer base including revenues billed in the quarter prior to the date of acquisition.

Gross revenues also should include any surcharges on telecommunications services that are billed to the customer and either retained by the contributor or remitted to a non-government third party under contract. Gross revenues should exclude taxes and any surcharges that are not recorded on the company books as revenues but which instead are remitted to government bodies. Note that any charge included on the customer bill and represented to recover or collect contributions to federal or state universal service support mechanisms must be included in Line (116). Other surcharges treated as revenue should be included in the revenue categories on which the surcharges were levied.

For international services, gross revenues consist of gross revenues billed by U.S. contributors with no allowances for settlement payments. International settlement receipts for foreign billed service should not be included in revenues.

¹³ See also Section II-E, above.

If you have any revenue for Lines (115) and (116), you may not omit the dollar amounts from column (a) even if 100% of the revenue is for interstate or international service.

3. Column (b) and (c) - interstate & international

Columns (b) and (c) are provided to identify the part of gross revenues that arise from interstate and international service for Lines (115) and (116). Intrastate telecommunications means communications or transmission between points within the same State, Territory, or possession of the United States, or the District of Columbia. Interstate and international telecommunications means communications or transmission between a point in one State, Territory, possession of the United States or the District of Columbia and a point outside that State, Territory, possession of the United States or the District of Columbia. Revenues from services offered under interstate tariffs, such as revenues from federal subscriber line charges and from federally tariffed local number portability surcharges, should be identified as interstate revenues.

For example, if a prepaid calling card provider collects a fixed amount of revenue per minute of traffic, and 65 percent of minutes are interstate, then interstate revenues would include 65 percent of the end-user revenue. Similarly, if a LEC bills local measured service charges for calls that originate in one state and terminate in another, these billings should be classified as interstate even though the charges are covered by a state tariff and the revenues are included in a local service account. Note that under the Commission's rules, if over ten percent of the traffic carried over a private or WATS line is interstate, then the revenues and costs generated by the entire line are classified as interstate.¹⁴ In general, flat-rated unbundled network access elements should be classified according to the regulatory agency that has primary jurisdiction over the contracts. Amounts billed to customers to recover federal universal service contribution obligations should be attributed as either interstate or international revenues, as appropriate, but no portion of such amounts may be reported as intrastate revenues.

In many cases, interstate and international revenues cannot be determined directly from corporate books of account or subsidiary records. Filers that cannot derive interstate and international revenues or that cannot derive the line-by-line revenue breakdowns may provide on the Worksheet good faith estimates of these figures. Information supporting good faith estimates must be made available to either the FCC or to the Universal Service Administrator upon request. For convenience, calculated interstate and international revenue amounts that are greater than one thousand dollars may be rounded to the nearest thousand dollars. Please enter zero dollars in column (b) or column (c) if, and only if, there were no interstate or international revenues for the line for the reporting period.

¹⁴ See 47 C.F.R. § 36.154(a).

Pursuant to FCC orders,¹⁵ wireless telecommunications providers may utilize the following safe harbor percentages of interstate revenues associated with wireless services normally reported on Line (309) of the Form 499-A and included on Line (115) of the Form 499-Q, and on Line (409) and Line (410) of the Form 499-A and included on Line (116) of the Form 499-Q:

- 28.5% of cellular and broadband PCS telecommunications revenues
- 12% of paging revenues
- 1% of analog SMR dispatch revenues

Wireless telecommunications providers that choose to avail themselves of these safe harbor percentages for interstate revenue may assume that the FCC will not find it necessary to review or question the data underlying their reported percentages. All affiliated wireless telecommunications providers must make a single election whether to report actual revenues or to use the revised safe harbor within the same safe harbor category. So, for example, if in a given period a wireless telecommunications provider reports actual interstate revenues for its cellular and broadband PCS telecommunications services, all of its affiliated legal entities must also report actual interstate telecommunications revenues for cellular and broadband PCS offerings. The same wireless telecommunications provider and all affiliates, however, could use the safe harbor for paging services.

These safe harbor percentages may not be applied to universal service pass-through charges, fixed local service revenues, or toll service charges. All filers must report the actual amount of interstate and international revenues for these services. For example, toll charges for itemized calls appearing on mobile telephone customer bills should be reported as intrastate, interstate or international based on the origination and termination points of the calls. Thus, for example, if a filer uses the safe harbor percentage for wireless revenues and has separate charges only for international calls, it would report as interstate 28.5% of its cellular wireless revenues on Line (116) column (b) and it would report as international 100% of its revenues associated with international calls on Line (116) column (c). As a result, the total of revenues identified as interstate and international in columns (b) and (c) on FCC Form 499-Q Line (116) would exceed 28.5% of the amount reported in Line (116) column (a).

4. Explanation of historical revenue categories

Total gross revenue reported on Line (118) should equal the total of the detail amounts reported on Lines (115) through (117).

Line (115) -- Revenues from services provided to other universal service contributors for resale. This line should contain revenues from telecommunications services provided to resellers (*i.e.*, telecommunications revenue derived from other universal service contributors). This category comprises what is commonly-referred to as “carrier’s carrier revenues.” Filers may wish to consult the instructions for Form 499-A, Lines (303) through (314), when calculating this figure.

Line (116) -- Universal service contribution base revenues. This line should contain end-user telecommunications revenues (*i.e.*, telecommunications revenues derived from entities that do not contribute directly to universal service), except for revenue from international calls that both originate and terminate in

¹⁵ *Federal-State Joint Board on Universal Service*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-45, 13 FCC Rcd 21252, 21258-60 (1998); *Federal-State Joint Board on Universal Service 1998 Biennial Regulatory Review on Streamlined Contributor Reporting Requirements* Report and Order and Second Further Notice of Proposed Rulemaking, FCC 02-329 (rel. Dec. 13, 2002) (*Contribution Methodology Order*).

foreign points. Filers may wish to consult the instructions for Form 499-A, Line (420), when calculating this figure.

Line (117) -- Other revenue that should not be reported in the universal service contribution base. This line should contain revenue from international calls that both originate and terminate in foreign points and revenues that are reportable on Form 499-A, Line (418).

Line (117) should include all non-telecommunications service revenues on the reporting entity's books as well as some revenues that are derived from telecommunications-related functions but that should not be included in the universal service or other fund contribution bases. For example, information services offering a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications are not included in the universal service or other fund contribution bases. Information services do not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service. Information services also are called enhanced services because they are offered over common carrier transmission facilities used in interstate communications and employ computer processing applications that act on the format, content, code, protocol, or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information. For example, call moderation and call transcription services are information services. These services are exempt from contribution requirements and should be reported on line (117). Line (117) should include revenues from published directory and carrier billing and collection services. Line (117) should include revenues from the sale, lease, installation, maintenance, or insurance of customer premises equipment (CPE), inside wiring charges, inside wiring maintenance insurance. Line (117) should include the sale or lease of transmission equipment, such as dark fiber, that is not provided as part of a telecommunications service. Line (117) should include revenues from providing open video systems (OVS), cable leased access, and direct broadcast satellite (DBS) services. Line (117) should include late payment charges and charges (penalties) imposed by the company for customer checks returned for non-payment. Line (117) should include revenues from telecommunications services provided in a foreign country where the traffic does not transit the United States or where the carrier is providing service as a foreign carrier, *i.e.*, a carrier licensed in that country.

Line (118) -- Gross billed revenues from all sources. This line should equal the sum of revenues by type of service reported on Lines (115) through (117).

As noted above, for further detail on the types of revenues that should be reported on Lines (115) through (117), filers may wish to consult the Instructions for the Form 499-A, available at the Commission's web site (www.fcc.gov/formpage.html).

5. Projected gross billed end-user interstate and international revenues

The projection quarter is the calendar quarter that starts two months after the filing date and finishes 5 months after the filing date. Line (121) should contain projected gross-billed end-user interstate and international revenues, including any pass-through charges for federal universal service contributions. These amounts should be the amounts that the filer anticipates reporting on Line (116), column (b) and column (c), in the Form 499-Q filing due six months after the present filing date. In order to estimate these amounts, the filer could review the amounts they are reporting on Line (116) in the instant filing and amounts reported in recent filings. In addition, filers could take into account general business conditions, new contracts covering the projection period, pricing trends, marketing programs, expansion plans, and other relevant information. Filers must develop good faith projections based on company procedures and

policies. If the filer anticipates that revenues are as likely to increase as decrease, then it may copy the historic values from Line (116) to use as its projections for Line (121) or it could develop projections by trending historic values from previous quarterly filings. Filers need not make projections for Line (121) column (a).

Line (119) should contain projected gross-billed end-user interstate and international revenues, including any pass-through charges for federal universal service contributions for January 1, 2003 through March 31, 2003. These projections should be made using the same procedures as are used for making the projections on Line (121).

6. Projected collected end-user interstate and international revenues

Line (122) should show the interstate and international revenues that the filer anticipates collecting from customers during the projection quarter. For this purpose “collected end-user” revenues refers to gross-billed end-user interstate and international telecommunications revenues, including any pass-through charges for federal universal service contributions, less estimated uncollectibles.¹⁶ We define uncollectibles as the percentage of interstate and international telecommunications revenues that the contributor anticipates will not be collected from end-user customers. This percentage should be calculated in accordance with Generally Accepted Accounting Principles.¹⁷ Filers that use the accrual method of accounting should use the percentage of billed revenues that they recognize currently as a reserve for uncollectibles in their books of accounts. Carriers that use the cash method of accounting should base this percentage on a comparison of actual collections and billed revenues, with the periods chosen to allow for the average delay between when services are billed and when payments are received. The amounts shown on Line (122) should be the amounts on Line (121) reduced by the percentage of uncollectibles.

Line (120) should show the interstate and international revenues that the filer anticipates collecting from customers during for January 1, 2003 through March 31, 2003. These projections should be made using the same procedures as are used for making the projections on Line (121).

Filers will be billed based on the amounts reported on Line (122). Any revisions to these amounts must be filed within 45 calendar days. No adjustments to billings will be made during the quarter to reflect actual levels of billed service and actual collection rates. The administrator will use the actual revenue data provided by contributors on the FCC Form 499-A to perform annual true-ups to the quarterly projected revenue data submitted by contributors during the prior calendar year.¹⁸ As necessary, the administrator will then refund or collect from contributors any over-payments or under-payments. If the combined quarterly projected revenues reported by a contributor are greater than those reported on its annual revenue report (Form 499-A), then a refund will be provided to the contributor based on an

¹⁶ *Federal-State Joint Board on Universal Service*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-45, 13 FCC Red 21252, 21258-60 (1998); *Contribution Methodology Order*, para 32.

¹⁷ General Accepted Accounting Principles (GAAP) encompasses the conventions, rules, and procedures necessary to define accepted practice in the preparation of financial statements in the United States. The Financial Accounting Standards Board (FASB) is currently the primary authority to establish GAAP for all companies. Carriers subject to the Uniform System of Accounts would derive this figure from the amount recorded in Account 5301, Uncollectible Revenue - Telecommunications.

¹⁸ See Telecommunications Reporting Worksheet, FCC Form 499-A, OMB 3060-0855 (February 2002) (FCC Form 499-A).

average of the two lowest contribution factors for the year. If the combined quarterly revenues reported by a contributor are less than those reported on its annual revenue report (Form 499-A), then administrator will collect the difference from the contributor using an average of the two highest contribution factors from that year.

Filers are required to maintain records and documentation to justify the information reported on the Telecommunications Reporting Worksheet for three years. Filers also must maintain records detailing the methodology used to determine projections reported on the Telecommunications Reporting Worksheet. Upon request, filers may be required to provide such records and documentation to the Commission or to the administrator.

D. Block 4: Certification.

Line (123) -- Filers may use the box in Line (123) to request nondisclosure of the revenue information contained on the Telecommunications Reporting Worksheet. By checking this box, the officer of the company signing the Worksheet certifies that the information contained on the Worksheet is privileged or confidential commercial or financial information and that disclosure of such information would likely cause substantial harm to the competitive position of the company filing the Worksheet. This box may be checked in lieu of submitting a separate request for confidentiality pursuant to section 0.459 of the Commission's rules.¹⁹ All decisions regarding disclosure of company-specific information will be made by the Commission. The Commission regularly makes publicly available the names (and Block 1 and 2 contact information) of the entities that file the Telecommunications Reporting Worksheet.

Lines (124) through (127) -- An officer of the reporting entity must examine the data provided in the Telecommunications Reporting Worksheet and certify that the information provided therein is accurate and that projections provided therein represent good faith estimates based on company procedures and policies. An officer is a person who occupies a position specified in the corporate by-laws (or partnership agreement), and would typically be president, vice president for operations, vice president for finance, comptroller, treasurer, or a comparable position. If the reporting entity is a sole proprietorship, the owner must sign the certification. The signature on Line (124) must be in ink.

A person who willfully makes false statements on the Worksheet can be punished by fine or imprisonment under title 18 of the United States Code.²⁰

Line (128) -- Indicate whether this filing is an original filing or a revised filing.²¹

¹⁹ 47 C.F.R. § 0.459. *See also Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, Report and Order, FCC 98-184, GC Docket No. 96-55 (rel. Aug. 1998) (listing the showings required in a request that information be withheld and stating that the Commission may defer action on such requests until a formal request for public inspection has been made).

²⁰ *See* 18 U.S.C. § 1001.

²¹ *See* Section II-E.

Reminders

- Filers are required to maintain records and documentation to justify information reported on the Telecommunications Reporting Worksheet for three years. Filers also must maintain records detailing the methodology used to determine projections reported on the Telecommunications Reporting Worksheet. Upon request, filers may be required to provide such records and documentation to the Commission or to the administrator.
- Is the filer affiliated with another telecommunications provider? Each legal entity must file separately unless they qualify for filing on a consolidated basis. *See* Section II-B. Each affiliate or subsidiary must show the same holding company name on Line (105).
- Provide data for all lines that apply. Show a zero for services for which the contributor had no revenues for the filing period.
- Contributors to universal service support mechanisms must make five FCC Form 499 filings each year. *See* Figure 2.
- Wherever possible, revenue information should be taken from the contributors' financial records. Filers also must provide projected revenue information on Line (119) through Line (122).
- The Worksheet must be signed by an officer of the reporting entity. An officer is a person who occupies a position specified in the corporate by laws (or partnership agreement), and would typically be president, vice president for operations, comptroller, treasurer, or a comparable position.
- Do not mail the Worksheet to the FCC. *See* Section II-C for filing instructions.
- Note that Form 499 is one of several forms that telecommunications carriers and other providers of interstate telecommunications may need to file. Information concerning common filing requirements for such providers may be found on the FCC web site, at www.fcc.gov/wcb/filing.html.

If you have questions about the Worksheet or the instructions, you may contact:

Form 499 Telecommunications Reporting Worksheet Information	Form499@neca.org (973) 560-4460
Wireline Competition Bureau Industry Analysis and Technology Division TTY	(202) 418-0940 (202) 418-0484

If you have questions regarding contribution amounts, billing procedures or the mechanisms, you may contact:

Universal Service Administration	(202) 776-0200
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**SEPARATE STATEMENT OF
CHAIRMAN MICHAEL K. POWELL**

Re: Federal-State Board on Universal Service et al., CC Docket Nos. 96-45 et al.

The Act demands that this Commission take responsible steps to ensure that our universal service contribution system remains equitable and nondiscriminatory. This item meets that test. The measures we adopt today, however, are interim. Make no mistake, during this interim period, the migration of traditional telecommunications services to digital platforms will continue to occur – and at a gathering speed. The resulting bundles of innovative telecommunications and information services will continue to stress our current revenues-based contribution system if we do not act. For this reason, among others, we must challenge ourselves to reform the contribution system in creative ways. I believe that it remains our long-term goal and is in the best interest of American consumers that we migrate to a connection-based contribution system. I write separately today to underscore this point.

Universal service contribution policy cannot remain static. Guided – indeed commanded - by the statute, we must ensure that it evolves as telecommunications technology and markets change. The foundation the Commission has built needs to be refined to account for technological substitution and the realities of a competitive market. The actions we take today represent a timely effort to recalibrate the current revenue-based system to reflect better the growth of wireless services and improve competitive neutrality among contributors by basing contributions on projections of collected revenues. At the same time, we take action to protect consumers from unjust and unreasonable recovery practices by increasing the transparency of universal service line items on customer bills. These are prudent first steps.

We must never forget, however, that the cost of these programs ultimately is borne by American consumers. Failure to engage in reform may jeopardize the stability and sufficiency of the fund and impose unfair burdens on certain classes of carriers and their customers. By asking more questions and seeking specific comment on the assumptions that underlie each proposed contribution methodology, including connection-based systems, we will be able to refine the record in this proceeding and take further steps to ensure the long-term viability of universal service. I also recognize that some of my colleagues have suggested that the Commission address the universal service contribution requirements for broadband platforms in this proceeding. I believe, however, that such a decision must be made in the context of the Commission's pending proceeding concerning the appropriate statutory classification for broadband services. I wish to emphasize that adopting a connections-based approach to universal service contributions does not automatically mean that broadband platforms will be assessed. Rather, a connections-based approach provides a rational, simplified mechanism for addressing the disparity that currently exists between DSL and cable modem platforms. In the end, a functioning broadband market and principles of technological neutrality require that consumer choices for broadband services should not be skewed by artificial regulatory requirements.

Finally, I look forward to working with my federal and state colleagues to establish an equitable and nondiscriminatory contribution system that provides for specific, predictable, and sufficient funding to preserve and advance universal service.

**SEPARATE STATEMENT OF
COMMISSIONER KATHLEEN Q. ABERNATHY**

*Re: Federal-State Joint Board on Universal Service, et al., Report and Order and
Second Further Notice of Proposed Rulemaking, CC Docket Nos. 96-45 et al.*

Today's Order represents an important step in our effort to overhaul the contribution methodology for the federal universal service support mechanisms. But much work remains. While the interim measures we are adopting will help alleviate some of the inequities associated with our existing contribution rules, they do not address the fundamental shifts in the communications marketplace that call into question the long-term viability of a revenue-based contribution scheme. Most significantly, the increasing prevalence of bundling — of interstate and intrastate services, on the one hand, and of telecommunications services, information services, and customer premises equipment, on the other — tentatively persuades me that a connection-based contribution methodology would best promote the critical statutory objective of preserving and advancing universal service.

Commission staff have exhaustively combed through the existing record in an effort to develop an assessment methodology based (at least in part) on physical connections to interstate networks. I commend them for their efforts. Introducing a connections-based component to our contribution methodology will bolster the stability of universal service funding. We must also ensure that all carriers will contribute on an equitable and nondiscriminatory basis, as section 254(d) requires, and that any new regime will not impose undue administrative burdens and transaction costs. On the current record, the Commission was unable to conclude that any connection-based proposal satisfies all of these objectives. Moreover, legitimate concerns have been raised about our ability to gauge the likely consumer impact of leading proposals — which were being tweaked almost daily — without additional data and analysis. But I am optimistic that the proposals described in the Further Notice, together with the input we expect to receive from commenters, will enable the Commission to implement more comprehensive reforms in the coming year.

I understand that not all of my colleagues are persuaded at this juncture that a pure revenue-based methodology is unsustainable. Nor am I completely certain myself. But it seems increasingly clear that any methodology that assesses contributions based solely on revenues from end-user interstate telecommunications services is fundamentally incompatible with the direction of the communications industry. I have often spoken about the need for our regulations to keep up with the rapidly changing pace of technologies and markets. This is a perfect example: There is no question that the industry is moving headlong from a marketplace dominated by distinct offerings of local and long distance services to one in which bundles of any-distance telecommunications services are becoming the norm (for wireless) or at least commonplace (for wireline). And in this new environment, telecommunications services are increasingly being packaged with information services and CPE.

Some argue that instead of giving up on a revenue-based methodology, we can ensure sustainable support by assessing the telecommunications component of information services and

adopting additional revenue-allocation rules for bundled services. But that is easier said than done.¹ When a telecom carrier offers, for example, an integrated bundle of local and long distance voice services plus broadband Internet access for a single monthly price, it is not clear how the Commission could accurately assess the revenues attributable to the interstate voice service and to the telecommunications component of the information service. By the same token, when cable modem providers offer broadband services, the fact that most do not separately provide broadband transmission services would make it very difficult to segregate the revenues attributable to the telecommunications portion of the information service. These line-drawing conundrums will become even more problematic as bundled service offerings become more varied and complex. As a result, providers will have the opportunity and incentive to contribute less than their fair share by understating the portion of their bundled offering that is attributable to an interstate telecommunications service.

The upshot, I fear, will be a continued decline in the reported base of interstate telecommunications service revenues — and a corresponding increase in the contribution factor. If, on the other hand, providers of end-user connections to interstate networks contributed based on these connections, rather than on a portion of their revenues, all of these intractable revenue-allocation issues would disappear.

Finally, although the Commission did not raise the question of assessing contributions on broadband Internet access services in this proceeding (it is raised in the pending *Wireline Broadband* rulemaking), some of my colleagues have suggested resolving that issue now. I do not think it would be appropriate to do so until we complete our analysis of the statutory classification of wireline broadband services, which bears directly on our authority to assess contributions. I would also like to have a better sense of whether the Commission will adopt a connection-based approach before deciding whether and how broadband providers should contribute, because the merits of separately assessing the telecommunications component of broadband services may differ in that case. I would have taken a more limited step in this interim period, however, by exempting from assessment any DSL transmission service provided to ISPs, pending the outcome of the *Wireline Broadband* proceeding. There are two reasons for doing so. First, the fact that LECs providing DSL service currently contribute to universal service, while cable modem providers do not, creates an obvious competitive distortion. We should either assess both broadband platforms or neither. Second, the Commission already has determined in another context that incumbent LECs' sale of bulk DSL transmission services are properly considered wholesale telecommunications services,² and it seems logical to treat those services as wholesale — and thus not subject to any contribution obligation — for universal service purposes as well. I regret that the Commission was unable to agree on a means of ending the DSL/cable modem contribution disparity, but I am hopeful that we will do so in the *Wireline Broadband* proceeding.

¹ Others argue that we should preserve a revenue-based methodology *without* assessing the telecommunications functionality underlying information services, but that would seem to be a recipe for sky-high contribution factors going forward.

² *Deployment of Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Second Report and Order, 14 FCC Rcd 19237 (1999) (*AOL Bulk Services Order*).

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: Federal-State Joint Board on Universal Service

I am pleased that the Commission is taking interim steps toward ensuring that every carrier contributes on an equitable and nondiscriminatory basis to universal service. Without today's action, consumers of long-distance services would have seen a significant increase on their bills as of April 1.

Notwithstanding the actions we take today, we must continue to look for long-term solutions that will put the fund on a solid footing to preserve and advance universal service. In the abstract, I find much to recommend a revenue-based system. It is undoubtedly equitable and nondiscriminatory for those who use the network more to contribute more to further the goals of universal service. That being said, I am fully cognizant of the pressures on our revenue-based system that are detailed in our decision today. For that reason, I am willing to consider changing our methodology for assessing carrier contributions to the universal service fund. Before I would agree to any paradigm shift in our methodology and the attendant administrative costs, however, I want to be certain that our methodology meets the statutory requirements and is administratively workable.

I also urge the Commission to address expeditiously the issue of broadband providers' contribution to universal service. I am disappointed that the current disparity under which DSL providers contribute and cable modem providers do not will continue for an indefinite period of time. When the Commission finally addresses this issue, I hope we will do so in a manner that does not narrow the contribution base and undermine the sufficiency of the fund. We must also work to avoid a system that opens the door to regulatory arbitrage or distortions in the market. I would also stress my belief that broadband will satisfy the statutory criteria for inclusion in the list of supported services in the near future.

As we move forward with this contribution methodology proceeding, let us also recognize that taking action on the contribution side is only half of the equation. The Commission and the Federal-State Joint Board on Universal Service must also address distribution issues if we are to confront all of the pressures on the fund. That means we must complete such proceedings as the current one on portability of universal service in markets with competition.

Finally, I hope we will work closely with our state colleagues as partners on these universal service issues. The statute makes clear that Federal and State governments each have a significant role to play in preserving and advancing universal service. It is only through a cooperative effort that we will meet our statutory obligation to ensure that all Americans, no matter who they are or where they live, have access to reasonably comparable services at reasonably comparable rates. Each and every American should have access to the best, most accessible, and cost-effective communications system in the world. In this modern era, that is a fundamental right.

**STATEMENT OF
COMMISSIONER KEVIN J. MARTIN**

Re: Federal-State Joint Board on Universal Service, CC Docket No. 96-45;

1998 Biennial Regulatory Review—Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, CC Docket No. 98-171;

Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, CC Docket No. 90-571;

Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size CC Docket No. 92-237 NSD File No. L-00-72;

Number Resource Optimization CC Docket No. 99-200; Telephone Number Portability CC Docket No. 95-116; Truth-in-Billing and Billing Format CC Docket No. 98-170.

Good item.¹

¹ See Appendix A. Separate Statement of Commissioner Kevin J. Martin, Federal-State Joint Board on Universal Service, Further Notice of Proposed Rulemaking and Report and Order, CC Docket 96-45, *et. al* (rel. February 14, 2002); Separate Statement of Commissioner Kevin J. Martin, Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (rel. June 13, 2002); Separate Statement of Commissioner Kevin J. Martin, Schools and Libraries Universal Service Support Mechanism: CC Docket No. 02-6 (rel. June 13, 2002).

Appendix A**SEPARATE STATEMENT OF
COMMISSIONER KEVIN J. MARTIN**

Re: Federal-State Joint Board on Universal Service, Further Notice of Proposed Rulemaking and Report and Order, CC Docket No. 96-45 et al.

I am pleased to join in approving this item, which seeks comment on proposals to alter our universal service contribution methodology. Maintaining the stability of the universal service contribution system is one of the Commission's most important responsibilities. Congress codified this responsibility in section 254 of the Telecommunications Act of 1996, which requires the Commission to, among other things, ensure there are specific, predictable, and sufficient support mechanisms to preserve and advance universal service. *See* 47 U.S.C. § 254(b)(5). I am firmly committed to carrying out this directive and to fulfilling Congress' goals of ensuring affordable telecommunications services and access to advanced services in all regions of the nation. *See id.* § 254(b).

To fulfill this responsibility, the Commission today issues a notice reevaluating the contribution methodology. As consumers migrate to new products and services, we may need new methods for assessing universal service contributions. Accordingly, I welcome consideration of novel and different proposals of how to assess universal service contributions.

While we consider these comprehensive reforms, however, I believe it may be important to take some immediate steps. For example, AT&T has complained that assessing contribution obligations on past revenues, as the system currently does, unfairly penalizes carriers with declining revenues and unfairly benefits those with increasing revenues. I believe we should take action on AT&T's waiver request, which seeks to allow AT&T to pay its contributions based on projected rather than past revenue. Whether we make changes along these lines or some other alterations to the current system, I believe some short term adjustments may be warranted. I also wish to highlight one issue for comment. In weighing the various proposals, we must make sure that "[a]ll providers of telecommunications services . . . make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service." 47 U.S.C. § 254(b)(4). We must also follow the Court of Appeals for the Fifth Circuit's holding that the Communications Act prohibits the Commission from assessing contributions on intrastate revenue. *See Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 448 (5th Cir. 1999). I thus think it is crucial that parties comment on how the different proposals comply with both of these limitations.

Finally, I wish to emphasize the importance of participation by the states in this proceeding. We welcome comments from the state commissions, and we have committed to seeking input from the Universal Service Joint Board before making any significant changes to the contribution methodology. I am confident that we could do so in a manner that does not cause any unnecessary delay.

STATEMENT OF COMMISSIONER KEVIN J. MARTIN, APPROVING IN PART
AND DISSENTING IN PART

Re: Schools and Libraries Universal Service Support Mechanism - - CC Docket No. 02- 6

At the outset, I want to reaffirm my support for the universal service program and the critical function it serves to ensure access for consumers in rural and high cost areas, and promote access to advanced services for schools, libraries, and health care service providers in rural areas.

I am pleased that the Commission has clarified that effective no later than second quarter 2003 any unused funds from the schools and libraries support mechanism in any given year will be carried forward for disbursement in subsequent funding years. The schools and libraries program has been instrumental in facilitating access to advanced services. Today's action will help us ensure that schools and libraries will be able to use the funding available under the existing \$2.25 billion annual cap.

I am also pleased that the Commission is moving forward today to take action to stabilize the universal service contribution factor for consumers. I agree with the majority's decision to blunt the impact of spikes in the universal service contribution factor. I have concerns, however, regarding the methodology used to achieve this result. I would have taken a different path to achieve relief for consumers while providing greater market certainty and ensuring that we achieve our mutual goal of protecting the continuing health and sustainability of the universal service fund.

Some of the systemic problems of our universal service contribution methodology are not new. Back in April 2001, the Commission outlined these issues and sought comment on various potential solutions. For example, the Commission acknowledged the inequities in the universal service contribution system of declining revenues for certain wireline interexchange carriers, as well as the potential impact that the growth in the wireless telecommunications sector may be having on the fund.

At that time, the Commission adopted a Notice of Proposed Rulemaking that acknowledged the inequities of the current system and sought comment on specific proposals to address comprehensive reform of the universal service contribution system. Eight months later, with no permanent relief in sight, AT& T presented this Commission with a request to help level the playing field on contributions to the universal service fund made by its over 50 million long distance customers. For example, AT& T customers now face a monthly federal universal service fund surcharge that stands at over 11%, while customers of new entrant long- distance providers pay at or below the FCC contribution rate set within the 7% range. I supported taking action on their petition at that time and today.¹

¹ See Separate Statement of Commissioner Kevin J. Martin, Federal-State Joint Board on Universal Service: CC Docket No. 96-45 (rel. June 13, 2002).

I support the Commission's efforts to address the long-term issues created by a converging and competitive marketplace. I look forward to working with my colleagues to establish an equitable and nondiscriminatory contribution system that provides for specific, predictable and sufficient funding to preserve and advance universal service.

At its heart, today's decision takes unused money from the schools and libraries program to stem the growth of the contribution factor while the Commission grapples with long term solutions.

I would have preferred to put in place medium term remedies to address some of these contribution methodology issues (e. g., declining revenues and the potential impact that growth of the wireless telecommunications sector has on the fund). While we continue to address the long term issues, I believe we should address the various inequities that require certain service providers and their customers to bear a disproportionate share of funding the universal service system. Especially since demand for the school and libraries program has always exceeded the cap, I believe we should have taken these steps first before taking any unused monies.

I believe it is incumbent upon us to have taken steps immediately available that could both minimize the impact of any increase on consumers and address potential inequities in our current system prior to taking some of today's actions.

Accordingly, I approve in part and dissent in part from the order.

STATEMENT OF COMMISSIONER KEVIN J. MARTIN

Re: Federal-State Joint Board on Universal Service; CC Docket No. 96-45
AT&T Petition For Waiver

I disagree with today's decision by the Wireline Competition Bureau to deny AT&T's request to contribute to universal service based on its projected, rather than its historical, revenues.

Under the FCC's rules that govern universal service contributions, carrier payments to the fund are based on a snapshot of interstate revenues during the previous six months. Over time, increased competition, regional Bell company entry into the interexchange market, and changes in the marketplace have continued to reduce the interstate revenues of the traditional interexchange carriers.

The Commission's rules now place certain interexchange carriers—such as AT&T that face declining revenues at a distinct competitive disadvantage. To comply with the Commission's rules, carriers with declining interstate revenues must collect a greater share of universal service contributions from a shrinking customer base. In particular, consumers of these long distance carriers have been required to contribute a disproportionate and inequitable share to ensure the preservation and advancement of universal service. AT&T's long distance customers, for example, now face a monthly federal universal service fund surcharge that stands at over 11%, while the FCC's contribution rate is set within the 7% range. While AT&T's customers bear this burden, customers of new entrant long-distance providers (e.g., Bell operating companies) have the unfair benefit of supporting the fund at or below the FCC contribution rate.

I am concerned that the Commission has been aware of the magnitude of this problem for quite some time and yet has failed to act. In April 2001, the Commission adopted a Notice of Proposed Rulemaking that acknowledged the inequities of the current system and sought comment on specific proposals to address comprehensive reform of the universal service contribution system. Eight months later, with no permanent relief in sight, AT&T filed its petition for waiver for an immediate interim fix so that it could contribute to universal service based on projected revenues.

I supported granting AT&T's waiver last December and would have supported granting all similarly situated carriers similar relief. Granting the waiver would have, at a minimum, provided immediate relief for at least 50 million long distance customers nationwide while the Commission continued to deliberate on a more permanent solution to the contribution methodology issue. In addition, it would have set the groundwork for creating a more equitable contribution system by closing the gap on the contribution obligations of different service providers and their end-user customers. This measure would have also brought us one step closer to establishing a more level playing field for contributions amongst carriers providing interstate services in the marketplace.

In my view, by waiting six months to address AT&T's waiver request the Commission has created greater uncertainty in the marketplace and has exacerbated an already troublesome situation. With each passing day, AT&T's competitive disadvantage resulting from universal service contributions grows as the Bell Operating Companies continue to receive 271 long distance authority throughout the country and gain significant long distance market share. In general, I support Commission's policies that encourage service providers to compete for service offerings based on market factors such as price, service quality, and convenience but do not favor policies that advantage certain competitors through distortions and loopholes in our regulatory framework.

Unfortunately, I am not as confident that a permanent solution is right around the corner. I would have therefore granted AT&T's petition for waiver last December and would do so again now.

Maintaining a specific, predictable and sufficient universal service funding mechanism is a vital responsibility of the Commission. I support the Commission's efforts to address the long-term issues created by a converging and competitive marketplace. I do not believe, however, that we should stop making on-going adjustments to the current mechanism to address competitive inequities while we spend months and/or years grappling with the longer term problems. I believe we have a duty to address such immediate and mid term problems as well as the long term ones.

Accordingly, I disagree with the result of the Bureau's Order.