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

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In the Matter of	)	
	)	
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

REPORT AND ORDER
AND SECOND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: December 12,2002 **Released: December 13,2002**

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-Slate ***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.' 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.' Commenters also disagree on how best to calculate assessments for higher-capacity connections.'' 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 suppon 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 suppon 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.* IO ***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." 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.

11. 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]

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[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." 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." 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,

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[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."

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 tules 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 Reconsiderotion,*** 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 Currier Bureau Announces Release of Telecommunications Reporting Worksheet (FCC Form 499-A) for*** *April 1,* ***2000 Filing*** *by AN* ***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." 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 I5 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 arid*** *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

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[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 industr 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, tiled 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 rclecommunications 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 he 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 thcir 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."

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, pachct-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.***

[35] ***See,*** *e.g.*, NRTA and OPASTCO Comments at 12 n.26 (noting that assessments could bc made on the basis of presubscribed lines). State Commissioner Jaber supports a modified connection-based mechanism that would treat customer accounts presubscribed to IXCs 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." 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 providers[61] 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

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[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

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[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

[61] *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.

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[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' reponed interstate revenues. ***See Interim CMRS Safe Harbor Order,*** 13 FCC Rcd 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."

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[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]

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[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, tiled Nov. 26,2002, at 3 (suggesting that Contributions should be based on gross-hilled 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." 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." 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." 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

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

[89] *See* USAC Comments to *2001* ***Notice*** at 12

[9"] ***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 IO-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 IO-Q, tiled 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 IO-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 **IS** 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 **380** 1-02, paras. 113-1**16.** 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 499-4 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 uarterly 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-remit 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-remit 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-remit 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-remit 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, hut 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 llexibility 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 he 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."' These concerns were shared by many commenters in this proceeding. For example, commenters expressed concern that disparate recovery of universal service contributions confuses consumers."' Other commenters suggested that the Commission require that contributing carrier line items match the contribution factor."' 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

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[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]

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

[122] Id. at 3193-94, para. 94

[123] *See* Proposed Fourth Quarter *2002* Universal Service Contribution Factor, Public Notice, CC Docket No. 96-45, DA 02-2221 (rel. Sept. I0, 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.corn (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 I, 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:llwww.mci.com/mci_service_agreement/res_most_recent_info.jsp.

[125] ***See,*** *e.g.*, BellSouth Telecommunications, Inc., Tariff FCC No. I, 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 ofapproximately 8 percent based on subscriber line charge of $6 00 per primary line per month); Pacific Bell Telephone Company Tariff FCC No. I, 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.I, issued Aug. 5, 2002, 13.2I. 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 ofapproximately 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 ofapproximately 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 IS; NASUCA Comments at I7 (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 –

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

[130] ***See,*** *e.g.*, ***Stare 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.

[124] **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 carriersmay, 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

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[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

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[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, tiled 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."' 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**

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[158] *See, e.g.,* CoSUS Comments at 2; SBC/BellSouth Comments at 5-6; *Slate 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 hilling 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

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[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 residentialisingle-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 he 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. ticd 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."' 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 pari 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.

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

[189] *See* CoSUS Reply Comments at **3**1

[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 IXCs. 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.

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[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 Resoonsible 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* 41 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. 38.

[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-hilled revenues."' 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. 25-21.

[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 conccm" 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]

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[225] 5 U.S.C. § 601(6).

[226] 5 U.S.C. § 601(4).

[221] 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, 41 1 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 ofdominance 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 Sire 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, IXCs, 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;

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[244] 13 C.F.R. § 121.201, NAICS codes 517211 and517212

[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***

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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."'*** 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*** io ***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 Radiotelphone Service that may be affected by the rules and policies adopted herein.

115. ***Air-Ground Radiorelephone 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.