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

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

FURTHER NOTICE OF PROPOSED RULEMAKING AND REPORT AND ORDER

Adopted: February 14, 2002 **Released: February 26, 2002**

Comment Date: 30 days from publication in the Federal Register
Reply Comment Date: 45 days from publication in the Federal Register

By the Commission: Chairman Powell and Commissioner Martin issuing separate statements.

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I. INTRODUCTION

1. In 1997, the Commission adopted a system under which telecommunications providers contribute to universal service based on their end-user revenues.[1] Since that time, the

[1] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8797 para. 39-40 (1997), as corrected by *Federal-State Joint Board on Universal Service*, Erratum, CC Docket No. 96-45, FCC 97-157 (rel. June 4, 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* 2000 WL 684656 (U.S. Sup. Ct. May 30, 2000) (*Universal Service Order*).

telecommunications marketplace has changed rapidly and technologies have evolved, with major developments including increased competition, migration to new products and services, and bundling of traditionally distinct services. These trends could erode the contribution base over time. In light of these trends, the Commission began a proceeding to revisit its universal service contribution methodology in May 2001.[2] Commenters have submitted a range of innovative ideas and proposals for reforming the current system, while others assert that the status quo should be maintained. We now seek to further develop the record on some of these proposals.

2. In the Further Notice of Proposed Rulemaking (Further Notice), we seek more focused comment on whether to assess contributions based on the number and capacity of connections provided to a public network, as proposed by some commenters.[3] We seek comment on whether a connection-based assessment approach would ensure the long-term stability, fairness, and efficiency of the universal service contribution system in a dynamic telecommunications marketplace. We also invite commenters to supplement the record developed in response to the *2001 Notice* with any new arguments or data regarding proposals to retain or modify the existing revenue-based system.[4] In addition, we seek additional comment in the Further Notice on reforming the contribution recovery process to make it more fair and understandable for consumers.

3. In the attached Report and Order, we adopt certain modifications to the existing system. Based on examination of the record, we conclude that these modifications are warranted because they will streamline and improve the current system without undue disruption while we consider other, more substantial reforms.

4. Whereas this proceeding concerns the Commission's methodology for assessment and recovery of universal service contributions generally, we seek comment in a companion proceeding on a different but related issue: in an evolving telecommunications marketplace, should facilities-based broadband Internet access providers be required to contribute to support universal service and, if so, on what legal basis?[5] That proceeding explores this question by seeking comment on what universal service contribution obligations providers of facilities-based broadband Internet access should have as the telecommunications market evolves, and how such obligations can be administered in an equitable and non-discriminatory manner. Commenters should be mindful of the relationship between this proceeding and the *Broadband NPRM* proceeding and, where appropriate, should address interrelated issues raised by the proposals

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[2] *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 (2001) (*2001 Notice*).

[3] *See generally* AT&T, WorldCom, Sprint, and Level 3 comments supporting connection-based assessment.

[4] *See generally* ASCENT, AT&T Wireless, PCIA, and SBC comments supporting assessment on current revenues; APCC, Excel, Iowa Utilities Board comments supporting assessment on projected revenues.

[5] *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, FCC 02-42 (rel. Feb. 15, 2002) (*Broadband NPRM*).

detailed below.

II. OVERVIEW

5. Prior to passage of the Telecommunications Act of 1996, the Commission and the states oversaw a variety of explicit and implicit subsidy programs designed to reduce the cost of telecommunications services for consumers living in high-cost areas and for eligible low-income consumers. Universal service for high-cost areas helped to ensure that consumers in those areas paid rates for services comparable to those paid by consumers in low-cost areas, and the low-income program helped to make services more affordable for low-income consumers. Ensuring the affordability and availability of telecommunications services benefited consumers, and continues to do so, by increasing subscribership levels and, consequently, the value of the Nation's communications network.

6. In section 254 of the Telecommunications Act of 1996, Congress further codified the Commission's historic commitment to ensuring the affordability and availability of telecommunications services for all Americans.[6] Specifically, section 254(d) provides that federal support mechanisms should be specific, predictable, and sufficient to preserve and advance universal service, and that telecommunications providers should contribute on an equitable and nondiscriminatory basis.[7] The Commission implemented the current contribution system in 1997.[8] This system has two distinct but related components: the assessment of contributions on telecommunications providers; and the recovery of contribution payments by providers from their customers. Contributors are assessed on the basis of their interstate and international end-user telecommunications revenues, based on a percentage or "contribution factor" that is calculated every quarter.[9] The Commission recognized in 1997 that contributors likely would recover their contributions to universal service from their end users, although they are not required to do so.[10] Contributors are permitted to do so in any equitable and non-discriminatory manner. Many contributors elect to recover their contributions from their customers through a line-item fee, while others do not have a specific line item to recover the costs and instead recover them through their rates. As discussed below, in considering possible reforms to the universal service contribution system, we may determine that it is appropriate to modify the assessment and/or the recovery components.

7. Over the last few years, important changes have occurred in the interstate telecommunications marketplace.[11] Interstate revenues grew consistently between 1984 and 1997, when the current contribution system was adopted, and such growth was expected to

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[6] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act). The 1996 Act amended the Communications Act of 1934 (Act). 47 U.S.C. §§ 151 *et seq*.

[7] 47 U.S.C. § 254(d). The Act provides that "every telecommunications carrier that provides interstate telecommunications services shall contribute," and permits the Commission to require "any other provider of telecommunications" to contribute if the public interest so requires. *Id.*; *see infra* paras. 64-68.

[8] *Universal Service Order*, 12 FCC Rcd at 8797 paras. 39-40.

[9] 47 C.F.R. § 54.709(a).

[10] *Universal Service Order*, 12 FCC Rcd at 9211-12 para. 855.

[11] *See 2001 Notice*, 16 FCC Rcd at 9899-00 paras. 12-13.

continue. Recently, however, interstate revenues have declined for interexchange carriers,[12] which are now responsible for contributing approximately 63 percent of federal universal service funding.[13] Various factors may be responsible for this decline, including migration of customers to new products and services, local exchange carrier entry into the long distance market, and related price competition. If the current methodology is not modified or replaced, this trend could erode the contribution base over time, requiring increases in the contribution factor to maintain current levels of universal service support.

8. We also have observed broader fluctuations in the contribution base. The Common Carrier Bureau recently reported that annual end-user switched interstate telecommunications revenues declined in 2000, the first time since such data has been compiled.[14] We also observed a decline in assessable revenues in the first half of 2001.[15] One analyst projected that United States long distance revenues would decline 12 percent in 2001.[16]

9. Competition in the interexchange market continues to increase. For example, Regional Bell Operating Companies (RBOCs) increasingly are providing interstate long distance service. To date, the Commission has granted RBOCs approval to offer in-region interLATA service in nine states: Arkansas, Connecticut, Massachusetts, Missouri, New York, Pennsylvania, Kansas, Oklahoma, and Texas.[17] One analyst recently reported that Verizon and SBC already have captured 25 percent of the long distance markets in New York and Texas, respectively.[18] Verizon recently reported that it is the fourth-largest residential long distance provider in the nation based on subscriber market share.[19]

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[12] *See, e.g.,* AT&T Corp., S.E.C. Form 10-Q, filed Aug. 14, 2001 (consumer services revenue declined 22.1%, or $2.2 billion, for the first six months of 2001 compared with the corresponding period in 2000) (*AT&T 2nd Quarter 2001 10-Q*); WorldCom Inc., S.E.C. Form 10-Q, filed Aug. 14, 2001 (consumer revenues, which include domestic voice communications service for consumer customers, for the first six months of 2001 decreased 6.6% over the prior year period). Sprint, on the other hand, reports modest year-to-date increases in its long distance revenues. Sprint Corp., S.E.C. Form 10-Q, filed Aug. 14, 2001 ("In the 2001 year-to-date, sales of consumer long distance services increased reflecting the success of bundled services").

[13] *See* Telecommunications Industry Revenue Report: 2001, Industry Analysis Division, Table 14 (rel. Jan. 2002).

[14] We note that revenues declined in the first half of 1999, but increased overall for the year.

[15] *See, e.g., Proposed Fourth Quarter 2001 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, 16 FCC Rcd 16281 (Com. Car. Bur. 2001) (second quarter 2001 estimate of interstate and international end-user telecommunications revenues of $19.597 billion) (*Fourth Quarter 2001 Contribution Public Notice)*; *Proposed Third Quarter 2001 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, 16 FCC Rcd 11990 (Com. Car. Bur. 2001) (first quarter 2001 estimate of interstate and international end-user telecommunications revenues of $20.141 billion) (*Third Quarter 2001 Contribution Public Notice*). We note, however, that assessable revenues increased in the third quarter of 2001. *See Proposed First Quarter 2002 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, 16 FCC Rcd 21329 (Com. Car. Bur. 2001) (*First Quarter 2002 Contribution Public Notice*).

[16] *See* COMMUNICATIONS DAILY, September 27, 2001, at 5 (citing Solomon-Wolff Associates report).

[17] Under section 271 of the Act, RBOCs are permitted to provide out-of-region interLATA long distance services. *See* 47 U.S.C. § 271.

[18] *See* Jeff May, *If you can't beat 'em, join 'em – AT&T is discussing a merger with some of its Baby Bell offspring*, THE STAR-LEDGER, Sep. 30, 2001 (quoting F. Drake Johnstone, an analyst with Davenport and Co.).

[19] *See Verizon Ranks Highest Among Residential Long-Distance Providers in Overall Customer Satisfaction Ratings*, BUSINESS WIRE, Dec. 3, 2001. Verizon recently reported, for example, that it has 2.13 million long

(continued....)

10. Because the current contribution system is based on historical revenues, some commenters contend that it creates competitive advantages for contributors with increasing interstate telecommunications revenues, while disadvantaging those with declining revenues.[20] Under the current system, contributors are assessed on revenues that they earned six months earlier.[21] As a result, contributors with increasing revenues recover contributions from a larger revenue base than the one on which they are assessed, and can pass through to their customers lower fees than competitors with declining revenues, who must recover their contributions from a declining revenue base. New entrants also may be able to undercut the prices offered by established service providers who already contribute to universal service, because they do not contribute for the first six months that they provide service due to their lack of historical revenues for that period.

11. In addition, the growth of Commercial Mobile Radio Service (CMRS) appears to be causing a significant migration of interstate telecommunications revenues from wireline to mobile wireless providers.[22] Since the current assessment system was adopted in 1997, mobile telephony[23] subscribership has increased from 55.3 million to 109.5 million subscribers, and average customer minutes of use have increased from 117 minutes per month to 255 minutes per month.[24] Consistent with these trends, mobile service is becoming a substitute for traditional wireline services such as payphones and second lines to the home,[25] and there is a small but growing number of customers who have substituted mobile wireless for their primary residential

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distance customers in New York and 475,000 in Massachusetts. *See* Mary Greczyn, *Verizon Revenue Rises, Although Economy, Attacks Trim Profits*, COMMUNICATIONS DAILY, Oct. 31, 2001.

[20] *See, e.g.,* ASCENT Comments at 4-5; AT&T Comments at 9; AT&T Wireless Comments at 4-5; Excel Comments at 6.

[21] *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 (2001) (*Quarterly Reporting Order*). The Commission recently reduced the interval between the accrual of revenues and the assessment of universal service contributions based on those revenues from 12 months to 6 months. *See infra* para. 27.

[22] *See* Shawn Young, *More Callers Cut Off Second Phone Lines for Cell Phones, Cable Modems*, THE WALL STREET JOURNAL, Nov. 15, 2001, B1 ("'Wireless substitution is now a fact,' says BellSouth Chairman and Chief Executive Duane Ackerman."). Another report states that migration to mobile services is reducing interexchange carrier minutes and revenues. *See* Andrew Backover, *AT&T Loss Reflects Long-Distance Shift, Consumers Turn To Calling Cards, Wireless*, USA TODAY, Jan. 30, 2001, at B3 (citing analyst Peter Friedland at W.R. Hambrecht). In this Further Notice, we use the term "mobile wireless" to refer to CMRS providers and not fixed wireless providers.

[23] "Mobile telephony" refers to two-way mobile voice service provided by cellular, broadband Personal Communications Service (PCS), and digital Specialized Mobile Radio (SMR) operators. It does not include other services classified as CMRS, such as paging. *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Sixth Report, 16 FCC Rcd 13350, 13354 n.8 (2001) (*Sixth CMRS Competition Report*).

[24] *See id.* at 13372; *see also Bureau Chief & Division Presentation on the Adoption of the Sixth Annual Report on State of Wireless Industry Competition*, Thomas Sugrue Opening Remarks, June 20, 2001, available at <http://wireless.fcc.gov/statements/010620cmrsSugrue_slides.ppt>.

[25] *See id.*; Shawn Young, *More Callers Cut off Second Phone Lines for Cellphones, Cable Modems*, THE WALL STREET JOURNAL, Nov. 15, 2001, at B1.

lines.[26] In addition, many customers are using their mobile service rather than interexchange service to make long distance calls: according to one report, 16 percent of customers surveyed now make most of their long distance calls using mobile services.[27] In some areas, such "technology substitution" has begun to erode revenue from interexchange services, which is currently the primary contribution source for universal service funding.[28]

12. Since 1997, marketplace developments also have blurred the distinctions between interstate/intrastate and telecommunications/non-telecommunications revenues on which the current contribution system is based. For example, carriers increasingly are bundling services together in creative ways, such as by offering flat-rate packages that include both local- and long-distance services. Virtually all of the major mobile telecommunications service providers now offer a type of Digital-One-Rate (DOR) pricing plan that allows customers to purchase a bucket of minutes on a nationwide, or nearly nationwide, network without incurring roaming or long distance charges.[29] A number of carriers, including AT&T Wireless, Verizon Wireless, and Cingular Wireless, also have begun offering regional DOR calling plans.[30] At the end of 2000, approximately 20 million mobile wireless telephone customers subscribed to calling plans that do not charge extra for long distance.[31] The availability of such plans compounds the inherent difficulty of identifying interstate revenues in a mobile environment.

13. Likewise, more and more carriers now offer bundled packages of telecommunications services and customer premises equipment (CPE) or information services. The accelerating development of new technologies like "voice over Internet" increases the strain on regulatory distinctions such as interstate/intrastate and telecommunications/non-telecommunications, and may reduce the overall amount of assessable revenues reported under the current system.[32] Additional legal, technological, and market developments that we cannot

[26] *See Sixth CMRS Competition Report*, 16 FCC Rcd at 13381 (According to a recent survey by the Yankee Group, about 3% of mobile telephone subscribers rely on their wireless phone as their only phone); *see also* Yuki Noguchi, *More Cell-Phone Users Cut Ties to Traditional Service*, WASHINGTON POST, Dec. 28, 2001, at E1, E5 ("2.2 percent of people in the United States have done away with their regular phone service and depend totally on their cell phones or other wireless devices").

[27] *See The Surveys Say Majority of U.S. Households Use Wireless Phones*, WIRELESS TODAY, Sep. 10, 2001. One analyst estimates that 20% of all outbound mobile voice minutes are used for long distance. *See* Michael Rollins, *et al.*, *Wireless by the Minute*, Equity Research, Salomon Smith Barney, Jan. 8, 2001, at 8. Sprint PCS and other mobile wireless providers market their nationwide networks as a long distance alternative. *See Sixth CMRS Competition Report*, 16 FCC Rcd at 13382-83.

[28] *See id.* at 13381-83.

[29] Paul Kagan Associates, Inc., *National Order-Rate Plans Take Off*, WIRELESS MARKET STATS, Jun. 16, 2000, at 11; *see Sixth CMRS Competition Report*, 16 FCC Rcd at 13379-80.

[30] *See* Deborah Mendez-Wilson, *Big Carriers Get Personal With Regional Calling Plans*, WIRELESS WEEK, Feb. 26, 2001, at 12; *see also Sixth CMRS Competition Report*, 16 FCC Rcd at 13380.

[31] *See* Andrew Backover, *AT&T Loss Reflects Long-Distance Shift, Consumers Turn To Calling Cards, Wireless*, USA TODAY, Jan. 30, 2001, at B3 (citing analyst Peter Friedland at W.R. Hambrecht); *see also Sixth CMRS Competition Report*, 16 FCC Rcd at 13382-83.

[32] *See* United States General Accounting Office, *Federal and State Universal Service Programs and Challenges to Funding*, GAO-02-187, at 21-23 (rel. Feb. 2002) ("IP Telephony may not be an immediate threat to federal funding of universal service but may threaten its long-term viability."); *see also Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report to Congress, 13 FCC Rcd 11501, 11508 para. 14 , 11541 para. 83 (1998) (*Report to Congress*).

foresee also could significantly impact the universal service contribution base.

14. In light of these and other changes in the telecommunications marketplace, we have recognized the need to review the current system for assessing universal service contributions. Fifty-nine parties filed comments in response to the *2001 Notice*.[33] Our examination of the record reveals a consensus that reforms are necessary, although different industry segments differ on what reforms should be undertaken.[34] Some commenters support retention of the current revenue-based assessment system.[35] Other commenters support modifying the current system, for example, by assessing contributions on projected or current revenues rather than historical revenues.[36] Still other commenters support replacing the current revenue-based assessment system with one that focuses on connections.[37]

15. Our primary goal in considering possible reforms of the current assessment system is to ensure the stability and sufficiency of the universal service fund as the marketplace continues to evolve. We also seek to identify the best means of ensuring that contributors continue to be assessed in an equitable and nondiscriminatory manner. In addition, we seek to provide certainty to market participants, and minimize the regulatory costs of complying with universal service obligations. Achievement of these goals, in turn, should benefit consumers by helping to ensure that the contribution recovery process is fair, reasonable, and readily understood by consumers.

16. In this Further Notice, we seek comment on whether to base contributions not on a contributor's revenues, but on the number and capacity of the connections it provides to a public network.[38] Under this proposal, contributions for residential, single-line business, and mobile wireless connections would be assessed on a flat, monthly basis. Contributions for multi-line business connections would be calculated to recover the remaining universal service funding needs, based on the capacity of the connections provided. In addition, we seek comment on a variant of a connection-based assessment methodology that would maintain the relative contribution burdens on different industry segments.[39] We also invite commenters to supplement the record developed in response to the *2001 Notice* with any new arguments or data regarding whether to retain or modify the existing system.[40]

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[33] Appendix B sets forth a list of parties that filed comments and reply comments.

[34] *See, e.g.,* AT&T Comments at 13; C&W Reply Comments at 4; CDD Comments at 7; Excel Comments at 6; Nextel Comments at 6; Qwest Comments at 3; SBC Comments at 4; Texas OPC and SFA Comments at 7; Verizon Comments at 5; WorldCom Comments at 14.

[35] *See generally* CTIA, Home, SBA, Time Warner, Verizon, and Verizon Wireless comments supporting retention of the current revenue-based assessment system.

[36] *See generally* ASCENT, AT&T Wireless, PCIA, and SBC comments supporting assessment on current revenues, Qwest comments supporting assessment on net-booked revenues, and APCC, Excel, and Iowa Utilities Board comments supporting assessment on projected revenues.

[37] *See generally* AT&T, WorldCom, Sprint, and Level 3 comments supporting connection-based assessment.

[38] *See* Letter from Patrick H. Merrick, Esq., AT&T, to Magalie Roman Salas, Federal Communications Commission, filed Nov. 14, 2001 (*USF Coalition Ex Parte*).

[39] *See* Sprint Comments at 8-9.

[40] *See* APCC Comments at 2; Excel Comments at 7; Iowa Utility Board Comments at 2.

17. As discussed in more detail below, a connection-based assessment may address the difficulty of applying regulatory distinctions inherent in the existing system to new services and technologies. By harmonizing the contribution system with the telecommunications marketplace, a connection-based assessment approach may help to ensure the stability and sufficiency of the universal service contribution base over time. Such an approach also may provide contributors with greater certainty, reduce administrative costs, and avoid marketplace distortions, ultimately benefiting consumers. Moreover, by eliminating some of the complexity involved with contribution recovery fees and making only one provider responsible for contributing based on a single connection, a connection-based assessment also may make the recovery process more understandable for consumers. Furthermore, by reducing costs associated with the recovery of contributions, a connection-based assessment also may reduce the total amount that consumers pay in contribution recovery fees.

18. Our experience over the last few years also has led us to reevaluate carrier recovery practices. Carriers currently have the flexibility to recover their contribution obligations in any manner that is equitable and nondiscriminatory. Some elect to recover their contributions from their customers through line-item charges, while others elect to collect their contribution requirement through their rates. Although the contribution factor is uniform for all contributors, universal service line items to consumers may vary widely among contributors, and often significantly exceed the amount of the contribution factor.[41] For example, in the second quarter of 2001, after the Commission established a contribution factor of 6.882 percent,[42] one interexchange carrier raised its residential universal service line item to 12 percent.[43] That carrier's residential line item was subsequently reduced to 9.9 percent. Another interexchange carrier increased its residential line item to 11.5 percent on January 1, 2002, even though the contribution factor recently decreased from 6.918 in the fourth quarter to 6.808 percent in the first quarter.[44]

19. Some carriers also employ different recovery methods for different customer groups, imposing universal service line-item charges on certain categories of presubscribed customers, but recovering an undisclosed amount from other customers through per-minute service rates. For example, some carriers do not recover universal service contributions from certain categories of customers, such as dial-around customers.[45] In addition, universal service line-item percentages for residential customers often are higher than those for business customers.[46] Other carriers charge customers large, up-front universal service fees that are

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[41] *See 2001 Notice*, 16 FCC Rcd at 9895 para. 5. For a comparison of contributor universal service line-item amounts, *see* <http://www.abtolls.com/compare/fees/fees.html>.

[42] *See Proposed Second Quarter 2001 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, 16 FCC Rcd 5358 (Com. Car. Bur. 2001).

[43] MCI WorldCom Tariff F.C.C. No. 1, Section C 1.061212, issued March 22, 2001.

[44] *See* Letter from Robert Quinn, Jr., AT&T, to Magalie Roman Salas, Federal Communications Commission, filed Dec. 13, 2001 (*AT&T Projected Revenue Request*); *see also* Jonathan Cox, *AT&T Will Raise Users' Phone Bills Unless U.S. Acts*, BLOOMBERG NEWS, Dec. 17, 2001. AT&T asserts that this is due to its decline in revenues and an assessment system based on historical revenues.

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

[46] *See 2001 Notice*, 16 FCC Rcd at 9895 para. 5.

unrelated to their revenues from a customer.[47] Such practices may be inexplicable to the casual observer, and may shift a disproportionate share of the cost of contributions onto certain customer classes.

20. In this Further Notice, therefore, we seek comment on how to modify our rules to ensure that carriers that elect to recover their universal service obligations from their customers do so in a manner that is reasonable, fair, and understandable. In particular, we seek comment on whether to require carriers that elect to recover through separate universal service line-item charges on any customer bill to apply a uniform line item on all customer bills. To further develop the record in the *Truth-in-Billing* proceeding, we also seek comment on whether to require carriers to describe such line-item charges on customer bills as the "Federal Universal Service Fee."[48] We seek comment on whether these proposals would help to prevent consumers from being charged excessive universal service fees, to make the recovery process more understandable for consumers, and to ensure that carriers do not recover more from certain customers or classes of customers than from others. We also seek comment on whether the proposed reforms would place significant administrative or financial burdens on contributing carriers and on the potential benefits and costs for consumers.

21. Finally, in the attached Report and Order, we adopt modifications to the current contribution assessment system that will further reduce administrative burdens for contributors and maintain the predictability and sufficiency of universal service funding during the period while we consider other, more substantial changes to the system. First, we eliminate circularity in our current assessment methodology by excluding universal service contributions from the revenue base on which contributors are assessed. Second, we streamline our rules to permit affiliated contributors that function as a single unit to report revenue data on a consolidated basis. Finally, we increase the threshold for our limited international revenue exception from eight to 12 percent.

III. BACKGROUND

22. In the *Universal Service Order*, the Commission decided to assess contributions on contributors' gross-billed end-user telecommunications revenues.[49] The Commission did so after considering the Recommended Decision of the Federal-State Joint Board on Universal Service (Joint Board) and the record developed at that time.[50] Specifically, the Commission concluded that assessment based on end-user telecommunications revenues would be competitively neutral, would be easy to administer, and would eliminate some economic distortions associated with an

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[47] 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>.

[48] *Truth-in-Billing and Billing Format*, CC Docket No. 98-170, Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 7492 (1999) (*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).

[49] *See Universal Service Order*, 12 FCC Rcd at 9206 para. 844. Section 254(d) of the Act mandates 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." *See* 47 U.S.C. § 254(d).

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

assessment based on gross telecommunications revenues.[51] At that time, the Commission declined to adopt a non-revenue-based methodology for assessing contribution obligations, expressing concern that such a methodology would require the adoption of "equivalency ratios" for calculating the contributions of providers that do not offer telecommunications on a per-line or per-minute basis.[52]

23. The Commission also 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."[53] 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, possibly resulting in fewer options for consumers.[54] Instead, the Commission allowed contributors to decide for themselves whether, how, and how much of their universal service contributions to recover from their customers.[55] 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.[56]

24. In the *Second Order on Reconsideration*, the Commission set forth the specific method of computation for universal service contributions.[57] The Commission also designated the Universal Service Administrative Company (USAC) as the entity responsible for administering the universal service support mechanisms, including billing contributors,

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

[52] *See id.* at 9201 para. 852.

[53] *See id.* at 9210-11 para. 853.

[54] *See id.*

[55] *Id.*

[56] *Id*. at 9199 para. 829, 9211 para. 855. We note that the Commission originally prohibited incumbent local exchange carriers from recovering universal service costs from end-users, and instead required incumbent local exchange carriers to recover universal service costs through access charges. *See id.* at 9200 para. 830. The United States Court of Appeals for the Fifth Circuit held that incumbent local exchange carrier recovery of universal service contributions through access charges constituted an implicit subsidy, and the Commission's rules permitting that practice to continue at an incumbent local exchange carrier's discretion violated section 254(e) of the Act. *See COMSAT Corp. v. FCC*, 250 F.3d 931, 938-40 (5th Cir. 2001). The Commission therefore amended its rules to prohibit local exchange carriers from recovering contributions to the universal service mechanisms through access charges imposed on interexchange carriers. *See* 47 C.F.R. § 69.4(d).

[57] *Changes to the Board of Directors of the National Exchange Carrier Association, Inc, CC Docket No. 97-21, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order and Second Order on Reconsideration, 12 FCC Rcd 18400 (1997) (*Second Order on Reconsideration*); *see also* 47 C.F.R. § 54.709. Section 54.709(a) provides, in relevant part, that contributions to the universal service support mechanisms shall be based on contributors' interstate and international end-user telecommunications revenues and a contribution factor determined quarterly based on information submitted by the Administrator of the fund, the Universal Service Administrative Company (USAC). The quarterly contribution factor is based on the ratio of total projected quarterly expenses of the universal service support mechanisms to total end-user telecommunications revenues. Thus, contributions are the product of a contributor's end-user telecommunications revenues multiplied by a quarterly contribution factor that is equal to the ratio of total projected quarterly expenses of the universal service support mechanisms to total end-user telecommunications revenues.

collecting contributions to the universal service support mechanisms, and disbursing universal service support funds.[58] To collect information from contributors about their end-user telecommunications revenues, the Commission required contributors to submit to USAC a Telecommunications Reporting Worksheet (Worksheet) semi-annually. Contributions were based on billed end-user telecommunications revenues from the prior year.[59] Therefore, the interval between the accrual of revenues by contributors and the assessment of universal service contributions based on those revenues was 12 months.[60]

25. In the *Truth-In-Billing* proceeding, the Commission adopted guidelines requiring carriers to use full and non-misleading labels on telephone bills that refer to line-item charges associated with federal regulatory action.[61] 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.[62] The Commission adopted truth-in-billing principles and guidelines to improve consumers' understanding of their telephone bills. In the *TIB Order and FNPRM*, the Commission sought comment on specific standard labels to be used on bills when referring to various line-item charges relating to federal regulatory action, including charges attributed to the universal service fund.[63]

26. In the *Sixteenth Order on Reconsideration*, the Commission further refined the method for calculating universal service contributions.[64] Specifically, in response to a decision of the United States Court of Appeals for the Fifth Circuit, the Commission modified the methodology for assessing contributions for the universal service support mechanisms for

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[58] *See Second Order on Reconsideration*, 12 FCC Rcd at 18423-24 para. 41; *see also* 47 C.F.R. § 54.701.

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

[60] For example, contributions based on carriers' revenues accrued in January through June of one year were assessed on carriers in January through June of the next year.

[61] *TIB Order and FNPRM*, 14 FCC Rcd at 7522-33 paras. 49-64. The Commission excluded CMRS providers from these labeling requirements. *Id.* at 7501-03 paras. 13-19. *See infra* para. 103.

[62] *See TIB Order and FNPRM*, 14 FCC Rcd at 7523-25 paras. 51-52.

[63] *Id.* at 7537 para. 71.

[64] *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 para. 15 (1999) (*Eighth Report and Order*).

schools and libraries and rural health care providers to make it consistent for all federal support mechanisms.[65] The Court of Appeals found that the Commission had exceeded its jurisdiction by assessing contributions for those programs based, in part, on the intrastate revenues of universal service contributors.[66] Accordingly, the Commission established a single contribution base for all federal universal service support mechanisms based on interstate and international end-user telecommunications revenues.

27. In order to ensure that universal service contributions are assessed on revenue data that is more reflective of current market conditions, the Commission recently 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.[67] The Commission concluded that the shortened interval allows contributions to better reflect market trends influencing carrier revenues, such as the entry of new providers into the interstate marketplace.[68]

28. The Commission also has implemented rules and guidelines meant to reduce administrative burdens for certain categories of contributors. For example, the Commission established an interim safe harbor for calculating the percentage of interstate revenues of mobile wireless telecommunications service providers for universal service contribution purposes. Instead of reporting their actual interstate and international end-user telecommunications revenues, CMRS providers may simply report a fixed percentage of revenues, which ranges from one to 15 percent.[69] In addition, our rules provide that contributors whose annual universal service contribution is expected to be less than $10,000 are not required to contribute to the universal service mechanisms, the *de minimis* exemption.[70] Our rules also provide a limited exception to universal service contribution requirements for entities with interstate end-user telecommunications revenues that constitute less than eight percent of their combined interstate and international end-user telecommunications revenues.[71] The Commission also recently developed a safe harbor for the reporting of telecommunications revenues when bundling telecommunications services with customer premises equipment or information services.[72]

[65] *Universal Service Order*, 12 FCC Rcd at 9203-05 paras. 837-841.

[66] *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d at 448 (section 254 does not unambiguously grant the FCC jurisdiction to assess intrastate revenues).

[67] *See Quarterly Reporting Order*, 16 FCC Rcd at 5748 para. 2.

[68] *See id.* at 5751 para. 9.

[69] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 21252, 21258-59 paras. 13-15 (1998) (*Interim CMRS Safe Harbor Order*).

[70] *See* 47 C.F.R. § 54.708. Section 254(d) of the Act states that the Commission may exempt a carrier or class of carriers from contributing to the universal service mechanisms "if the carrier's contribution to the preservation and advancement of universal service would be *de minimis*."

[71] *See* 47 C.F.R. § 54.706(c).

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

29. 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.[73] Among other things, the Commission sought comment on whether to modify the existing system, as well as whether to replace the current system with one that assesses contributions on the basis of a flat-fee charge, such as a per-line charge. Additionally, the Commission sought comment on whether to reform the manner in which carriers may recover their contribution costs from their customers. If carriers choose to recover universal service contributions from their customers through line items, the Commission sought comment on whether to require carriers to do so through a uniform universal service line item that corresponds to the contribution assessment.

IV. FURTHER NOTICE OF PROPOSED RULEMAKING

30. In this Further Notice, we seek further comment on whether to reform the assessment and recovery of universal service contributions. We welcome input on these proposals from all segments of the industry, consumer groups, state regulatory bodies, and state members of the Federal-State Joint Board on Universal Service (Joint Board). Based on the record in this proceeding, if a significant change in the contribution methodology seems warranted, we would refer one or more issues and the record developed in this proceeding -- through a traditional referral or some alternative means -- to the Joint Board for its input on an expedited basis. We recognize the importance of acting promptly and would take that into account in determining the appropriate role for the Joint Board.

31. First, we seek comment on a proposal to fundamentally reform the contribution assessment system by assessing contributions based on the number and capacity of connections provided to a public network. This proposal incorporates major features of a proposal submitted by commenters during the course of this proceeding, with modifications based on our examination of the record.[74] Under this proposal, residential, single-line business, and mobile wireless connections (excluding pagers) would be assessed a flat amount of $1.00 per connection, paging connections would be assessed $0.25 per connection, and the remaining universal service funding needs would be recovered through capacity-based assessments on multi-line business connections. We also seek comment on alternatives to mitigate the potential impact of transitioning to a connection-based assessment system on different industry segments, either by maintaining the current system's burden allocation, or by requiring multiple providers to contribute based on the connection provided to a particular consumer.

32. Second, we invite commenters to supplement the record developed in response to the *2001 Notice* with any new arguments or data regarding whether to retain or modify the existing system. Commenters are invited to address the relative costs and burdens on different industry segments of retaining or modifying the current system. We also invite comment on whether proposals to retain or modify the current system would serve our goals of ensuring the long-term stability, fairness, and efficiency of the universal service contribution system in a dynamic telecommunications market.[75]

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[73] *See 2001 Notice*, 16 FCC Rcd at 9892.

[74] *See USF Coalition Ex Parte*.

[75] *See supra* paras. 7-13.

33. Finally, we address the contribution recovery process. We seek comment on modifying the current system by adopting certain, narrowly tailored restrictions on the manner in which contributors recover their contributions, as well as on a proposal to change to a "collect and remit" system.

A. Contribution Assessment

1. Connection-Based Assessment

34. We seek comment on replacing the existing system with a connection-based assessment. Specifically, we seek comment on whether to assess universal service contributions based on the number and capacity of connections a contributor provides to a public network. This connection-based assessment proposal incorporates major features of a proposal submitted on the record during the course of this proceeding.[76] Below, we first address the operation of the proposed connection-based assessment methodology, including its potential impact on consumers and contributors. In this regard, we also ask for comment on alternatives to mitigate the potential impact on certain contributors of transition to a new, connection-based system by maintaining the contribution obligations of different industry segments under the current system. We then address legal issues raised by a connection-based assessment, in particular its consistency with the statutory requirement that "[e]very telecommunications carrier that provides interstate telecommunications service" contribute to universal service "on an equitable and nondiscriminatory basis."[77] We then seek comment on the potential costs and benefits of a connection-based assessment system. Finally, we address implementation issues associated with a transition to a connection-based assessment.

a. Operation of Proposed Connection-Based Assessment

35. We seek comment on the operation of a connection-based assessment methodology, which incorporates major features of certain commenters' proposals with modifications based on our examination of the record.[78] This methodology would assess universal service contributions on providers of interstate telecommunications that provide end users with a connection to a public network. Under this proposal, interstate telecommunications providers would contribute $1 per month for each residential, single-line business, and mobile wireless connection to a public network, except for pagers, which are discussed below.[79] Multi-line business connection assessments would be based on the maximum available capacity, or bandwidth, of a connection.[80] Contributions for multi-line business connections would be a residual amount calculated to meet the remaining universal service funding needs not met by contributions for

[76] *See USF Coalition Ex Parte*.

[77] *See* 47 U.S.C. § 254(d).

[78] *See supra* n. 3.

[79] *See supra* para. 17. For purposes of this discussion, fixed wireless connections are classified as either residential, single-line business, or multi-line business, as appropriate.

[80] "Maximum capacity" is used to clarify that contributors would be assessed based on the maximum amount of bandwidth they allocate to a multi-line business connection, not the actual amount of capacity used. For example, if a provider leases a facility to an end user that is capable of providing 1.544 Mbps of capacity, but the end user only used a fraction of that amount, the provider would be assessed based on the 1.544 Mbps, not the capacity actually used.

residential, single-line business, and mobile connections. A wireline and fixed wireless connection would be categorized as either residential/single-line business or multi-line business depending on whether a residential/single-business subscriber line charge (SLC) has been assigned to the connection.[81] Mobile wireless providers would contribute $1 per month for each activated handset.[82]

36. Under a connection-based assessment, local exchange carriers, interexchange carriers, and CMRS providers would contribute to universal service based on the number and capacity of end-user connections they provide to a public network. Incumbent and competitive local exchange carriers (including both wireline and fixed wireless) would contribute for the residential, single-line business, and multi-line business connections they provide to end users. Likewise, interexchange carriers would contribute for multi-line business connections, such as special access, they provide to end users. Interexchange carriers also would contribute to the extent that they operate as competitive local exchange carriers. Mobile providers would contribute for each activated handset. We note, however, the proposed connection-based assessment would have the effect of making local exchange carriers and mobile service providers responsible for a larger portion of the universal service funding, the majority of which is currently paid by interexchange carriers.[83] Below, we seek comment on the impact of a connection-based assessment on different industry sectors and on whether a connection-based assessment would be consistent with the Act.[84]

37. *Residential, Single-Line Business, and Mobile Connections*. We seek comment on whether to set a standard assessment amount for each residential, single-line business, and mobile connection to a public network and then assess the remaining universal service funding requirements on providers of multi-line business connections. Under this proposal, if a residential, single-line business, or mobile wireless customer maintains one voice line, the connecting provider would be assessed for one connection. If that customer has two voice lines from its residence, the contributor would be assessed for two connections. If a customer obtains access to a public network via two connections, one fixed connection and one activated mobile handset, two assessments would apply (the fixed service provider would contribute for its connection and the mobile service provider would contribute for its connection).

38. In particular, we seek comment on whether initially to set the standard assessment amount for providers of residential, single-line business, and mobile wireless connections (excluding pagers) at $1 per month for each connection.[85] A $1 per month assessment for each residential, single-line business, and mobile wireless connection to a public network is supported

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[81] 47 C.F.R. §§ 69.104(g), 69.152 (g). The subscriber line charge is a flat, monthly charge that incumbent local exchange carriers assess directly on end users of telecommunications service to recover a portion of their revenue assigned to the interstate jurisdiction. *Access Charge Reform, Price Cap 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*). Below, we seek comment on how carriers that do not charge a SLC would determine whether the connection is provided to a residential/single-line business customer. *See infra* para. 58.

[82] Paging providers would contribute $0.25 for each pager. *See infra* para. 39.

[83] *See infra* paras. 59-63.

[84] *See infra* paras. 59-63, 65-69.

[85] *See USF Coalition Ex Parte*.

by staff analysis showing that if providers pass through the assessment with no mark up, residential customers would pay roughly the same overall recovery fees under a per-connection assessment system as they do under the existing methodology.[86] A standard $1 per month assessment amount for residential, single-line business, and mobile wireless connections also may make a carrier's contribution obligation more predictable and understandable for consumers. In addition, by freezing at $1 per month the assessment for residential, single-line business, and mobile wireless connections for a specified period of time, we would provide contributors with greater certainty regarding their future contribution obligations.[87]

39. Under a connection-based assessment, providers of interstate paging services would also generally be subject to a flat per-connection assessment amount because paging services provide access to a public network. Recognizing the unique characteristics of paging services, we seek comment on how to assess pager connections under a connection-based assessment. In contrast to other telecommunications services, most pagers provide limited functionality, only providing customers with access to one-way communications. Pager providers currently contribute to universal service under an interim safe harbor provision that allows them to assume that interstate end-user telecommunications revenues comprise 12 percent of their total revenues.[88] Based on this safe harbor, a significant number of pager providers are not required to contribute based on the *de minimis* exception, and many have urged the Commission to be mindful of this in considering possible reforms to the current assessment methodology.[89] We seek comment on whether a $0.25 per-connection assessment on pagers would be an appropriate amount and what impact this change would have on the marketplace generally and the paging industry in particular.[90] In addition, we seek comment on the appropriate assessment amount for certain Specialized Mobile Radio providers that currently contribute based on a safe harbor of one percent of their total revenues.[91]

40. We also seek comment on whether to exempt Lifeline connections from the contribution base. The Commission's Lifeline support program is designed to increase subscribership by reducing qualifying low-income consumers' monthly basic local service charges.[92] Under the existing system, incumbent local exchange carriers may not recover universal service contributions from their Lifeline subscribers, although other carriers may do so.[93] The current methodology does not, however, exclude interstate revenues from Lifeline

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[86] *See infra* paras. 46-49.

[87] Below, we seek comment on how frequently to adjust the $1 per month assessment to reflect increases or decreases to universal service fund requirements and the number and capacity of connections. *See infra* paras. 74-75.

[88] *See Interim CMRS Safe Harbor Order*, 13 FCC Rcd at 21259-60 para. 14. As discussed below, the average pager provider currently contributes approximately $0.07 per pager. *See infra* para. 58.

[89] Small Paging Alliance Comments at 5; Letter from L. Charles Keller, Wilkinson Barker Knauer LLP, on behalf of Arch Wireless, Inc. and PCIA, to Magalie Roman Salas, Federal Communications Commission, filed Nov. 16, 2001.

[90] *See USF Coalition Ex Parte* (This amount was proposed by the USF coalition).

[91] *See Interim CMRS Safe Harbor Order*, 13 FCC Rcd at 21260 para. 15.

[92] *See Universal Service Order*, 12 FCC Rcd at 8952-53 para. 329. Lifeline customer eligibility criteria are outlined in section 54.409 of our rules. *See* 47 C.F.R. § 54.409.

[93] *See* 47 C.F.R. § 69.158, 69.131; *see also Access Charge Reform*, Sixth Report and Order in CC Docket No. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15

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customers from the contribution base. Therefore, under the current system contributors are assessed based on interstate revenues derived from Lifeline customers. Because Lifeline customers represent only a small portion of the contribution base, approximately 5.9 million[94] of 235 million residential connections and mobile wireless connections,[95] we do not believe that exempting Lifeline connections would have a significant impact on universal service funding. We seek comment on this analysis.

41. We seek comment on how to define "connection" for purposes of a connection-based assessment. The same definition of connection would apply to residential, single-line business, mobile wireless, and multi-line business connections.[96] Specifically, we seek comment on defining a "connection" as a facility that provides an end user with independent access to a public network, regardless of whether that connection is circuit-switched, packet-switched, or a leased line (*e.g.*, special access). Under this definition, each connection would be a separate assessable unit. We seek comment on this definition. We invite commenters to address whether to apply the same definition of "end user" that is applied under the existing methodology, and, if not, what definition to use.[97] Under the existing system, "end-users" include purchasers of retail interstate telecommunications or telecommunications services.[98] End users do not include entities that purchase and resell telecommunications or telecommunications services to other customers.[99] Consistent with this definition, under a per-connection assessment, telecommunications resellers could be considered providers of connections to a public network to the extent that they provide independent access to a public network. Resellers provide services to end users over infrastructure they obtain from facilities-based providers. We seek comment on this analysis.

42. We also invite commenters to address how to define "independent access." Should a connection be considered "independent" if it does not require the presence of any other activated end-user connection to provide access to a public network? Under such a definition,

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FCC Rcd 12962, 13057-58 paras. 218-220 (2000); *Multi-Association Group (MAG) Plan for Regulation of Interstate Service of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers,* CC Docket No. 00-256, Second Report and Order, *Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, Fifteenth Report and Order, *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation,* CC Docket No. 98-77, Report and Order, *Prescribing the Authorized Rate of Return for Interstate Service of Local Exchange Carriers*, CC Docket No. 98-166, Report and Order, 16 FCC Rcd 19613, 19688-89 para. 177 (2001) (*Multi-Association Group Order*).

[94] FCC, Common Carrier Bureau, Industry Analysis Division, *Universal Service Monitoring Report*, CC Docket No. 98-202, Table 2.5 (Oct. 2001) (*Monitoring Report*).

[95] *Trends in Telephone Service*, Common Carrier Bureau, Industry Analysis Division, Table 8.4 (showing approximately 125 million residential lines) (Aug. 2001) (*Trends Report*); *Sixth CMRS Competition Report*, 16 FCC Rcd at 13354 (showing 109.5 million mobile wireless subscribers).

[96] *See infra* para. 56.

[97] *See Universal Service Order*, 12 FCC Rcd at 9206-09 paras. 843-850; *see also* Instructions to FCC Form 499-Q, at 10; Instructions to FCC Form 499-A, at 15. Under the existing methodology, "end-users" include purchasers of retail interstate telecommunications or telecommunications services. *See Universal Service Order*, 12 FCC Rcd at 9207 para. 844.

[98] *See id.* at 9207 para. 844.

[99] *See id*.

for example, two activated voice-grade connections via a single loop might be deemed "independent" because each allows stand-alone access to a public network. Likewise, line-shared or line-split voice-band service and digital subscriber line (DSL) service provided over the same loop might both be deemed "independent," and therefore separately assessed, because each allows stand-alone access to a public network. On the other hand, certain information services, such as voice mail or dial-up Internet access, may not be deemed "independent" because they would not allow access to a public network without an activated voice-grade connection.[100] We seek comment on this analysis. Finally, we seek comment on how to define "public network" for the purpose of connection-based assessment.

43. We seek comment on whether and how interstate telecommunications connections to private networks should be assessed under the connection-based assessment methodology discussed above. Under the existing system, private service providers, which provide access to private networks on a private contractual basis, are subject to contribution obligations.[101] In this regard, the Commission stated that these entities could not provide their services to others for a fee without the benefit of access to the public switched telephone network (PSTN), which is supported by universal service mechanisms.[102] Even if private service providers are not connected to the PSTN, the Commission reasoned, these entities compete with common carriers to the extent that they provide telecommunications, and therefore should contribute based on the principle of competitive neutrality.[103] We invite commenters to address whether this reasoning would be applicable under a connection-based assessment system and, if so, how to structure a definition of connection to encompass connections to private networks.

44. In addition, we seek comment on whether a connection-based assessment system would raise any of the issues that caused the Commission previously to reject a per-line assessment system. When the Commission originally adopted a revenue-based assessment system, it rejected a per-line approach, concluding that the need to establish line-equivalency ratios would make such an approach difficult to administer and could possibly result in a system that is not competitively neutral.[104] Assessment on a per-line basis would require the Commission to establish equivalency ratios for calculating assessments on contributors that do not provide service on a per-line basis.[105] For example, the Commission would have to determine how many voice-grade equivalent lines are provided over facilities such as T-1s.[106] By contrast, a connection-based approach may not require the use of equivalency ratios,[107] because the determinative factor would be whether a customer has access to a public network. Once that determination is made, an assessment amount would be assigned to the connection

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[100] *See infra* para. 66.

[101] *Universal Service Order*, 12 FCC Rcd at 9184 para. 796.

[102] *Id.*

[103] *Id.*

[104] *See id.* at 9210 para. 852.

[105] Bell South Comments at 2; SBC Comments at 15-16; *see also Universal Service Order*, 12 FCC Rcd at 9210 para. 852.

[106] *See* Dodd, Annabel Z., *The Essential Guide to Telecommunications* (2d. ed. 1999) (discussing these types of facilities).

[107] *See supra* para. 35.

based simply on whether it is a residential, single-line business, mobile wireless, or multi-line business connection. Each connection would have a separate assessment assigned to it. A residential, single-line business, or mobile wireless connection, other than pagers, would be assessed $1.00. As described more fully below, the assessment amount for multi-line business connections would be based on the maximum capacity of the connection, so it would be unnecessary to establish voice-grade equivalency ratios for such connections.[108] We seek comment on this analysis.

45. For purposes of identifying the facility that provides access to a public network in the mobile context, we also seek comment on whether to assess mobile wireless contributors based on the number of activated handsets they provide to customers.[109] Mobile service providers typically provide one independent connection to a public network over each activated handset. By focusing on activated handsets, contributions would be assessed only on those handsets that are capable of being used to make or receive interstate calls. We also note that mobile wireless carriers currently submit data to the Commission on an activated handset basis.[110] While this assessment basis may be the most equitable and administratively convenient, we encourage commenters to suggest other possible measures for mobile wireless contributors. Commenters also should address how offerings by mobile wireless providers, such as emergency-only phones, prepaid wireless services, and convention center and other temporary service arrangements, should be treated.

46. We ask commenters to provide data and analysis on the likely impact of a proposed connection-based assessment on residential customers. Preliminary staff analysis indicates that the total contribution recovery fees paid by the average household would be approximately the same under a connection-based assessment system as under the existing system. Based on publicly-available data from the year 2000, and taking into account the elimination of "circularity" from the contribution base and anticipated fund growth, staff estimates that the average household pays approximately $1.93 per month in total contribution recovery fees under the current system.[111] Based on the same data and assumptions, staff estimates that the average household likewise would pay approximately $1.93 in total contribution recovery fees under the proposed connection-based assessment system. These estimates include both mobile and fixed residential assessments for the average household, and primarily are based on publicly available data taken from Commission reports and TNS Telecommunications Bill Harvesting Data (Bill

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[108] *See infra* para. 56.

[109] *See USF Coalition Ex Parte*.

[110] *Local Competition and Broadband Reporting*, CC Docket No. 99-301, Report and Order, 15 FCC Rcd 7717, 7756-57 para. 84 (2000).

[111] For purposes of this analysis, we conservatively use an 8% contribution factor, which is based on the elimination of circularity in our methodology, and anticipated fund growth due to the implementation of recent universal service high-cost support reforms for rural and rate-of-return carriers. *See infra* paras. 113-114; *see also Multi-Association Group Order*, 16 FCC Rcd at 19688-89 para. 177 (new support mechanism to be implemented July 1, 2002); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourteenth Report and Order and Twenty-Second Order on Reconsideration, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Report and Order, 16 FCC Rcd 11244 (released May 23, 2001) (*Rural Task Force Order*). The contribution factor is likely to increase further over time as these reforms are fully implemented. The contribution factor for the first quarter of 2001 is 6.808%. *See First Quarter 2002 Contribution Public Notice* at 3.

Harvesting Data).[112] These estimates also assume that contribution costs are flowed through to all end users equally and without markup.[113] In order to determine the total contribution recovery fees paid by the average household, staff assumed that 66.7 percent of mobile wireless devices currently are subscribed to by residential customers. The staff's analysis also assumes that, under a connection-based assessment system, both residential connections and mobile wireless connections (excluding pagers) would be assessed $1.00, and pager providers would be assessed $.25 per pager. We invite comment on this analysis, and encourage commenters to provide their own analyses and supporting data.

47. We seek comment on whether this analysis reasonably approximates average household contribution obligations under the existing assessment and the potential impact on the average household of adopting a connection-based assessment. For example, because staff uses publicly available data from 2000, the analysis does not reflect any increases or decreases in revenues or the number of connections for certain types of services. We intend to incorporate more recent public data in the analysis of consumer impact as it becomes available. We seek comment on how to refine this analysis. We also seek comment on other ways to measure consumer impact.

48. We note that Verizon also submitted summary findings from a study estimating the impact of a connection-based assessment system on different percentiles of residential customers, based on usage.[114] Some of the data submitted by Verizon is subject to a Protective Order,[115] and it is unclear from the publicly-available data what assumptions Verizon has made about how a connection-based assessment system would operate. We note, however, that Verizon's study appears to support generally the conclusion that a connection-based assessment system would not significantly shift the burden of supporting universal service to or from contributors serving residential customers, although certain percentiles of residential customers would have increased contribution obligations.[116] We invite comment on Verizon's data and analysis.

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[112] Staff have relied on the following data from June 2000: *Monitoring Report* (households with phone service); *Trends Report* (residential lines, residential lines charged at non-primary subscriber line rate, residential lines charged at primary subscriber line charge); *Statistics of Communications Common Carriers 2000/2001 Edition*, Federal Communications Commission (total analog and digital residential lines); *Sixth CMRS Competition Report*, 16 FCC Rcd at 13462 (average mobile telephony bill, mobile telephony units); *Telecommunications Industry Revenues 2000*, Industry Analysis Division, Common Carrier Bureau (percent contribution base from CMRS revenues, total paging contribution base per month, percentage of end-user revenues reported as interstate and international); *ReQuest Market Monitor* (Bill Harvesting Data), TNS Telecoms (rel. Feb. 2001) (average pre-tax long-distance bill).

[113] As we note above, some carriers have line items in excess of our contribution factor. *See supra* paras. 18-19. If these mark ups were taken into account, the benefits of moving to a connection-based assessment system would be greater.

[114] *See* Letter from W. Scott Randolph, Verizon Communications, to Magalie R. Salas, Federal Communications Commission, filed Oct. 17, 2001 (*Verizon Ex Parte*). The Cambridge Strategic Management Group (CSMG) conducted the study.

[115] *See* 47 C.F.R. § 0.459. The data have been made available for public inspection subject to a Protective Order. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Protective Order, DA 01-2842 (Acc. Pol. Div. rel. Dec. 12, 2001).

[116] *See Verizon Ex Parte* at 11-12.

49. We also seek comment on the impact of this proposal on low-volume and low-income consumers. We seek comment on arguments from some parties that assessing an amount of $1 per month for each residential, single-line business, and mobile wireless connection (excluding pagers) would be overly regressive and discriminatory to low-volume users,[117] and would increase the contribution burden on low-income customers. Regarding low-income consumers, staff analysis of Bill Harvesting Data indicates that low-volume usage does not necessarily indicate a low-income customer. We also note that, because the proposal would prohibit connecting carriers from recovering universal service contributions from Lifeline customers, many low-income consumers would bear no burden for universal service contributions.[118] Lifeline customers may also benefit significantly from a connection-based assessment because they would not be assessed contribution recovery fees by long distance providers. We seek comment on this analysis.

50. *Multi-Line Business Connections*. We also seek comment on how to calculate assessments for multi-line business connections based on the capacity of those connections. Specifically, we seek comment on whether to assess multi-line business connections on a capacity basis. Commenters propose assessing multi-line business connections on a capacity basis because these connections typically provide significantly higher bandwidths than connections provided to residential, single-line business, and mobile wireless customers.[119] If multi-line business connections were not assessed on a capacity basis, a per-connection assessment would result in low-volume residential connections being assessed at the same rate as higher-volume multi-line business connections.[120] Alternatively, we seek comment on whether to assess all residential, single-line business, mobile, and multi-line business connections the same amount, regardless of the capacity of the connection.

51. We seek comment on whether contributions from providers of multi-line business connections should be a residual amount calculated to meet the remaining universal service funding needs not met by contributions for residential, single-line business, and mobile connections. This proposal would make a contributor's contribution obligation more predictable and understandable for residential, single-line business, and mobile customers, while ensuring that the residual universal service funding requirement is assessed on multi-line business connections.[121] Although specific assessment amounts for multi-line business connections may vary more than assessment amounts for residential, single-line business, and mobile connections, multi-line business assessment amounts would be reduced more frequently to account for increases in the number and capacity of connections.[122] Multi-line business customers also may be better equipped to gather necessary information to understand the basis for recovery amounts that fluctuate from quarter to quarter. We seek comment on this analysis.

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[117] Excel Comments at 4-5; NECA Comments at 6; OPASTCO Comments at 6; SBC Comments at 14; Texas OPC and CFA Comments at 6.

[118] *See supra* para. 40.

[119] *See USF Coalition Ex Parte*; WorldCom Comments at 2; Level 3 Reply Comments at 10.

[120] *See* WorldCom Comments at 18.

[121] *See supra* para. 37.

[122] *See infra* paras. 74-76 (seeking comment on whether to adjust multi-line business assessments on a quarterly basis and residential, single-line business, and mobile wireless assessments on a less frequent basis).

52. In order to determine the assessment for an individual multi-line business connection, commenters have proposed calculating the assessment based on three tiers of capacity.[123] Tier 1 would include connections provided to end users at speeds of less than 1.544 MegaBits Per Second (Mbps). In this tier, contributors would be assessed an amount equal to the base factor for each connection.[124] The "base factor" would be calculated by dividing the residual funding requirement by the total number of multi-line business capacity units reported by all contributors.[125] Tier 2 would include connections with speeds of equal to or greater than 1.544 Mbps but less than 45 Mbps. Contributors would be assessed an amount equal to five times the base factor for each connection in this tier.[126] Tier 3 would include connections with speeds of 45 Mbps and higher. In this tier, contributors would be assessed an amount equal to 40 times the base factor for each connection.[127] Under a tiered approach, contributors would simply need to know the number and maximum capacity of a connection to determine the extent of their contribution obligations. For example, assume the residual funding requirement is $4 billion, and that contributors reported 1 billion units of multi-line business capacity.[128] Dividing the total residual fund requirement by the total number of reported units of multi-line business capacity would yield a base factor of $4.00. Therefore, a Tier 1 connection would be assessed $4.00, a Tier 2 connection would be assessed $20.00, and a Tier 3 connection would be assessed $160.00. Building on this example, further assume that a contributor has a customer who purchased three T-1s, each with the maximum capacity of 1.544 Mbps, to provide service to a customer service call center. Under the tiered approach, the contributor would then be assessed a total charge of $60.00 for the connections to that customer.[129] In subsequent quarters, the base factor would be adjusted to reflect changes in the number of connections in each tier of capacity reported by contributors and changes in residual funding requirements. We seek comment generally on this proposal.

53. In particular, we seek comment on whether the proposed tiers are set at the appropriate levels and whether establishing additional tiers of capacity would be appropriate. WorldCom states that the proposed tiers are based on current market practices with regard to assessing multi-line business presubscribed interexchange carrier charges (PICCs) and SLCs.[130] The tiers also track the wireline facilities most often purchased by multi-line business customers, namely DS1, which has a capacity of 1.544 Mbps, and DS3, which has a capacity of 45 Mbps. In addition, the tiers reflect the potential efficiencies of scale gained by using higher-speed

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[123] *USF Coalition Ex Parte*. *See generally* WorldCom Comments.

[124] *Id*.

[125] *USF Coalition Ex Parte*. Total Multi-Line Business Universal Service Obligation = (X*connections in level 1)+(5X*connections in level 2)+(40X*connections in level 3), where X = the multi-line business assessment for level 1.

[126] *Id*.

[127] *Id*.

[128] To arrive at 1 billion units of capacity, we use 200 million Tier 1 connections, 80 million Tier 2 connections, and 10 million Tier 3 connections to the formula described in note 125.

[129] $60 (Fee) = $20 (5 x base factor) x 3 (number of connections in Tier 2).

[130] *See supra* para. 52.

facilities, in that they provide a discount in assessments as capacity increases.[131] We note, however, that certain facilities are designed with capacities slightly below and above these thresholds. For example, there are DS3 facilities with a capacity of 44.7 Mbps. We therefore seek comment on whether we should adopt different or additional tiers to account for alternative infrastructure. We also seek comment on whether the proposed third tier would inappropriately favor certain high-volume business customers. Because a multi-line business connection would have the same assessment regardless of how far it is above 45 Mbps, we seek comment on whether this tiered approach to multi-line business assessment may have the effect of favoring providers serving certain high-volume business customers. We also seek comment on whether three tiers would provide incentives for customers to purchase high-capacity connections, and whether this would have the effect of reducing the number of multi-line business connections and shifting contribution burdens to subscribers with lower-capacity multi-line business connections. We also seek comment on whether the multipliers assigned to the different tiers are appropriate.

54. We seek comment on whether the potential administrative benefits of a tiered approach outweigh the potential impact of such an approach on decisions to purchase additional capacity. A tiered approach would only require contributors to assign connections into three categories, as opposed to having to provide detailed information regarding each level of capacity purchased by its customers.[132] At the same time, a tiered approach for multi-line business assessment may skew marketplace behavior. Because movement to the next tier would result in a significant increase in contribution obligations, a tiered approach may deter multi-line business customers from purchasing certain thresholds of additional capacity.

55. In order to provide contributors with guidance in determining which tier of capacity to assign a multi-line business connection, we also seek comment on whether the capacity of a multi-line business connection should be measured as the maximum amount the contributor allocates to the customer or on the maximum amount the contributor could potentially provide to the customer. Under the connection-based proposal discussed above, contributors would be assessed for multi-line business connections based on the maximum amount of bandwidth they allocate to the connection, not the actual amount of capacity used.[133] While most multi-line business connections provide a specific maximum level of capacity, other connections provide customers, through contractual agreements, with the option of utilizing additional capacity on a short-term basis. For example, Centrex services offer the potential to utilize additional capacity in those instances where the demand for capacity exceeds the amount of capacity that the carrier has allocated for the customer.[134] We seek comment on how to measure capacity under these circumstances.

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[131] In its comments, WorldCom states that, if a discount were not provided to higher capacity facilities, the universal service contribution obligations associated with those facilities may exceed the cost of service. WorldCom Comments at 23.

[132] *Id.*

[133] *See supra* n. 80.

[134] For example, if a PBX switch has a 1.544 Mbps trunk, and all of that capacity is being used, the customer would be unable to make or receive phone calls. A customer that uses a Centrex switch, however, that has a 1.544 Mbps trunk in which all of the capacity is being used would be able to continue to make or receive phone calls because the carrier establishes the service with reserve capacity.

56. We seek comment on how to apply the definition of "connection" proposed above for purposes of determining assessments on multi-line business connections.[135] Under the proposed definition, the assessable unit would be defined as a facility that provides an end user with independent access to a public network, regardless of whether that connection is circuit-switched, packet-switched, or a leased line. We anticipate that the same definition would be applicable in the multi-line business context. We seek comment, however, on the need to establish a method of identifying a specific location or point at which a given multi-line business facility provides access to a public network, in order to ensure that the capacity of a multi-line business connection is measured in a competitively neutral manner. Identifying the point of access may impact the number of connections and the amount of capacity of a connection in certain multi-line business contexts. For example, Centrex and Private Branch Exchange (PBX) systems are purchased by multi-line business customers based on their projected capacity needs, and service providers aggregate capacity for both types of systems on the trunk-side of the switch.[136] The two systems are configured differently, however. Customers with Centrex systems have, for each telephone on their premises, a separate loop to the Centrex switch, which is maintained by the service provider and may be located either at the customer's premises or at the service provider's central office.[137] Customers with PBX systems, on the other hand, maintain their own facilities for internal communications and may have only a single facility maintained by the service provider that provides access to a public network. If the point of access for Centrex and PBX systems were deemed to be the trunk side of the switch, the two types of systems would be treated equally for assessment purposes. We therefore seek comment on whether we should adopt, for multi-line business connections, a method of identifying a specific location or point of access to a public network, and what that methodology should be.

57. At this time, we do not have sufficient data on universal service fees paid by the average multi-line business customer to determine the impact that a connection-based assessment approach would have on such customers. It may be, however, that a connection-based assessment initially would result in modest increases to fees paid by certain business customers and a decrease in fees paid by other customers. We ask commenters to address the likely impact of a connection-based assessment on multi-line business customers, and any costs and benefits of such impacts. We encourage commenters to submit data in support of their positions.

58. <u>*Distinguishing Between Residential/Single-Line Business and Multi-Line Business Connections*</u>. We also seek comment on whether to use a local exchange carrier's subscriber line charge (SLC) designation on a customer's bill as a proxy for determining whether a fixed connection is a residential/single-line business or multi-line business connection for assessment purposes.[138] The SLC designation is an existing one that incumbent local exchange carriers are

[135] *See supra* para. 41.

[136] *See generally*, Dodd, Annabel Z., *The Essential Guide to Telecommunications* (2d. ed. 1999) (*discussing* PBX and Centrex technology).

[137] *Id*.

[138] Subscriber line charges are charges that are assessed by local phone companies to recover some of the costs associated with providing interstate access through the local phone network. *See Access Charge Reform Order,* 12 FCC Rcd at 16007 para. 68. A residential subscriber line charge is assessed on those lines where the subscriber pays a rate that is "described as a residential rate in the local exchange service tariff," whereas a single line business subscriber line charge is assessed where the subscriber pays a rate that is "not described as a residential rate in the

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required to make based on the rate the subscriber pays for the connection. In the context of fixed connections, the local exchange carrier would most often be the connecting provider, because its infrastructure is used to obtain a connection to a public network. Therefore, local exchange carriers may be best able to determine which connections to treat as residential/single-line business connections and which to treat as multi-line business connections.[139] Additionally, local exchange carriers may be in a better position than other contributors, such as interexchange carriers, to determine which connections are provided to Lifeline customers, and thus should be exempt from assessment.[140] We note, however, that competitive local exchange carriers are not required to assess SLCs, and often have different tariff obligations than incumbent local exchange carriers. We seek comment on whether competitive local exchange carriers have sufficient information to determine which of their customers are residential or single-line businesses for purposes of determining their assessment obligation and, if not, possible alternative methods for making that determination.

59. *Contributor Impact*. We recognize that a connection-based assessment approach may affect different industry segments in different ways. Under the connection-based assessment methodology discussed above, local exchange carriers, interexchange carriers, and mobile wireless providers would contribute to universal service based on the number and capacity of end-user connections they provide to a public network.[141] This would represent a significant shifting of contribution obligations away from interexchange carriers to local exchange carriers and mobile service providers. In the third quarter of 2001, interexchange carriers were responsible for approximately 63 percent of contributions, while local exchange carriers were responsible for approximately 23 percent, and mobile wireless providers were responsible for approximately 14 percent.[142] Under the connection-based assessment proposal, staff estimates that mobile service providers initially would be responsible for approximately 24 percent of contributions,[143] so that fixed service providers, including both local exchange carriers and interexchange carriers, to the extent that they provide end-user connections, initially would be responsible for approximately 76 percent of contributions. On average, staff estimates that mobile wireless providers (excluding paging providers) currently contribute approximately $0.46 per connection,[144] pager providers currently contribute approximately $0.07 per pager,[145] and

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local exchange service tariff and does not obtain more than one such line from a particular telephone company." 47 C.F.R. §§ 69.104, 69.152.

[139] Incumbent local exchange carriers also keep track of their lines for determining which interstate access costs to recover from other charges (for example, common carrier line charges for rate-of-return carriers).

[140] *See infra* para. 94 (discussing whether to exempt Lifeline customers).

[141] *See supra* para. 36. Mobile wireless providers would contribute for each activated handset and/or pager.

[142] *See* Telecommunications Industry Revenue Report: 2001, Industry Analysis Division, Table 14 (rel. Jan. 2002).

[143] [(109.5 million handsets x $1) x 3] ÷ $1.378456 billion = 23.8%. *See First Quarter 2002 Contribution Public Notice*, DA 01-2823 (first quarter 2002 fund requirement).

[144] This number is derived by taking the average mobile telephony bill of $45.27, which appears in the *Sixth CMRS Competition Report*, and dividing that number by the current interim safe harbor of 15% and then dividing that number by the current contribution factor of 6.808%. *See Sixth CMRS Competition Report* , 16 FCC Rcd at 13462; *Interim CMRS Safe Harbor Order*, 13 FCC Rcd at 21258 para. 13; *First Quarter 2002 Contribution Public Notice*, 16 FCC Rcd at 21331.

fixed service providers (local exchange carriers and interexchange carriers) contribute approximately $1.29 per residential connection.[146] Under a connection-based assessment proposal, both fixed connections and mobile wireless connections (excluding pagers) would be assessed $1.00, and pager providers would be assessed $.25 per pager. We seek comment on what relevance, if any, these potential shifts should have for the analysis of whether to move to a connection-based assessment system. We specifically seek comment on whether minimizing the reallocation of contribution obligations among industry segments should be a goal in moving to a per-connection assessment system, and, if so, the extent to which such reallocation should be minimized. We also seek comment on whether, if we adopt a per-connection contribution approach, interim measures should be adopted to mitigate the immediate impact of a shift in contribution burdens.

60. Sprint supports adoption of a connection-based assessment methodology, but proposes to calculate different per-connection assessments for fixed and mobile subscribers.[147] The principal purpose of Sprint's proposal is to move to a connection-based assessment system but maintain the relative contribution burdens on different industry segments (mobile wireless, local exchange carrier, and interexchange carrier) under the existing, revenue-based assessment system. Sprint's proposal would operate as follows.[148] First, Sprint proposes that an "interstate allocator" be calculated for each industry segment (mobile wireless, local exchange carrier, and interexchange carrier) based on the proportion of each industry sector's interstate revenues to its total revenues.[149] Sprint proposes to base the "interstate allocators" on the interstate revenues currently reported by industry segments.[150] Second, the interstate allocator for each industry segment then would be multiplied by total revenues for that industry segment to determine the interstate revenues in that industry segment that will be considered in determining the universal service per-connection charge.[151] Third, the sum of interstate revenues for the fixed and mobile industry segments would be divided by the then-applicable universal service funding

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[145] This number is derived by taking the average paging bill of $8.00, which appears in comments filed by Arch Wireless, Inc., and dividing that number by the current paging service interim safe harbor of 12% and then dividing that number by the current contribution factor of 6.808%. *See* Arch Wireless Comments at 5; *see also Interim CMRS Safe Harbor Order*, 13 FCC Rcd at 21259 para. 14; *First Quarter 2002 Contribution Public Notice*, 16 FCC Rcd at 21331.

[146] Based on staff analysis of publicly-available data as of June 30, 2000. *See supra* n. 112.

[147] Sprint Comments at Attachment A.

[148] *See* Letter from Pete Sywenki, Sprint, to Magalie Roman Salas, Federal Communications Commission, filed Aug. 8, 2001 (*Sprint Ex Parte*).

[149] *See* Sprint Comments at 8-9; *Sprint Ex Parte* at 4. Sprint uses the term "wireless," which it defines to include CMRS. *See* Sprint Comments at 8, n. 14. Although Sprint does not address the treatment of fixed wireless connections under its proposal, we note that providers of fixed wireless local exchange service are classified as local exchange carriers under the Act and the Commission's rules.

[150] Sprint Comments at 8-12. Sprint proposes dividing carriers into distinct industry segments, such as wireless carriers, local exchange carriers, and interexchange carriers. A percentage of revenues that represent that segment's interstate revenues would then be determined based on Form 499 filings. Based on Sprint's estimates, the current percentage for each industry segment is: local exchange carriers – 15%; interexchange carriers – 74%; and wireless providers – 15%. Contributors would report interstate revenues based on those percentages. *Id.*

[151] *See id.* at 9; *Sprint Ex Parte* at 4.

requirement to arrive at a contribution factor.[152] The contribution factor would be multiplied by the total universal service funding requirement for each industry segment to determine the dollar amount due from fixed and mobile contributors. Finally, the contribution requirements for the fixed and mobile industry segments would be divided by total fixed and mobile subscriber lines, respectively, to obtain the per-connection contribution charges for fixed and mobile subscribers.[153] Using this approach, Sprint estimates that there would be an assessment of $2.01 per month for each fixed connection and $0.46 per month for each mobile connection.[154] We note that Sprint's $2.01 estimate assumes that all residential, single-line business, and multi-line business connections would be assessed the same amount per connection, although Sprint entertains the possibility of assessing high capacity multi-line business connections on some multiple of the assessment for residential and single-line business connections.[155]

61. We seek comment on the approach described by Sprint. In particular, we seek comment on whether basing per-connection contribution obligations on the proportion of industry interstate revenues currently reported by the different industry segments would be equitable, non-discriminatory, and competitively neutral. Would the preservation of existing proportions of interstate revenues in a connection-based assessment system import distortions currently present in the revenue-based system? The percentage of interstate revenues reported by the mobile wireless industry under the current system is largely a function of interim safe harbors adopted by the Commission.[156] Under Sprint's approach, this method of reporting would continue for some period of time, such as three to five years, regardless of increases and decreases in the proportion of revenues that are interstate for different segments of the industry.[157] In the event we determine that we should assess contributions based on connections rather than interstate telecommunications revenues, we seek comment on whether it is appropriate to freeze the interstate revenue percentages of different industry segments based on the previous revenue-based system as proposed by Sprint. We also seek comment on whether such disparate treatment could provide certain categories of contributors with a cost advantage over other categories of contributors, potentially creating uneconomic incentives for customers to migrate to certain types of services.[158] We seek comment on these issues.

62. Some commenters are concerned that a connection-based approach would shift from interexchange carriers to local exchange carriers some of the burden associated with contributing to the fund.[159] We seek comment below on the legal implications of this shift. Specifically, we seek comment on whether a connection-based assessment would be consistent

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[152] *See id.* at 4.

[153] *Id.* Sprint supports a "collect-and-remit" methodology for the assessment and recovery of universal service contributions under which the connecting carrier would collect the per-connection charge from subscribers and remit those amounts to the fund administrator. *See* Sprint Reply Comments at 4-6. Below, we discuss a collect-and-remit proposal in more detail. *See infra* paras. 101-102.

[154] *See Sprint Ex Parte* at 4.

[155] Sprint Reply Comments at 7.

[156] *Interim CMRS Safe Harbor Order*, 13 FCC Rcd at 21258-59 paras. 13-15.

[157] *See* Sprint Comments at 12.

[158] *See id.* at 11-12.

[159] Cingular Comments at 6; NECA Comments at 5; OPASTCO Comments at 6; Verizon Reply Comments at 2.

with the general requirement that "[e]very telecommunications carrier that provides interstate telecommunications service" contribute to universal service.[160] One way to address this concern would be to divide the proposed per-connection assessment among more than one wireline or fixed wireless entity, or to assess on an entity other than the connecting provider. For example, one option would be to require presubscribed interexchange carriers to contribute for their presubscribed residential and single-line business customers, and require local exchange carriers to contribute only for those customers that do not have a presubscribed interexchange carrier.[161] We seek comment on whether this approach addresses these legal concerns, and on other ways of addressing this issue.

63. Although such an approach may more closely maintain the relative contribution burdens of different segments of the telecommunications industry, it may reduce the potential administrative benefits of changing to a connection-based system. As discussed above, we believe that a connection-based assessment would potentially simplify the current assessment system and reduce overall administrative burdens, benefiting both contributors and customers.[162] This is because only one entity would contribute for a single connection under the connection-based assessment. In addition, interexchange carriers may not have the necessary information to determine whether a customer has a residential/single-line business connection. Some also argue that they lack the information necessary to exempt Lifeline customers.[163] In addition, it may be difficult to determine who should contribute when a customer selects multiple interexchange carriers.[164] We seek comment on these issues. Do the potential benefits of assessing more than one entity, or an entity other than the connecting provider, for a connection outweigh the increased administrative problems and burdens of such approaches?

b. Legal Authority

64. ***Background***. Congress established a statutory framework in the Act governing the assessment of universal service contributions.[165] Section 254(d) of the Act mandates 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."[166] Section 3 of the Act defines a telecommunications carrier as "any provider of

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[160] *See infra* paras. 65-67.

[161] AT&T Reply Comments at 14. Commenters that favor a connection-based assessment generally prefer having the local exchange carrier be the contributor. Sprint Comments at 14; WorldCom Comments at 21; AT&T Reply Comments at 13-14.

[162] *See infra* para. 71.

[163] *See infra* at para. 94. We note, however, that AT&T recently reported that it does not recover universal service contributions from Lifeline customers. *See* Susan McGovern, *AT&T Boosts Subscriber Charges to Recoup USF Contributions*, TR DAILY, at 3 (Jan. 3, 2002).

[164] A customer could have more than one interexchange carrier if, for example, it selected one for interLATA services and another for intraLATA services.

[165] *See* 47 U.S.C. § 254.

[166] 47 U.S.C. § 254(d); *see also* 47 U.S.C.§ 254(b)(4), (5) (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

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telecommunications services...," and "telecommunications service" as the "offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used."[167] Section 3 of the Act defines "telecommunications" as "transmission, between or among points specified by the user, of information of the user's choosing without change in the form or content of the information as sent and received."[168] In the *Universal Service Order*, the Commission interpreted this statutory language as imposing a mandatory contribution requirement on all telecommunications carriers that provide interstate telecommunications services.[169] Section 254 states, however, that "[t]he Commission may exempt a carrier or class of carriers from this requirement if the carrier's telecommunications activities are limited to such an extent that the level of such carrier's contribution to the preservation and advancement of universal service would be de minimis."[170] In section 254, Congress also provided the Commission with discretion to require "[a]ny other provider of interstate telecommunications" to contribute to universal service if the public interest so requires.[171]

65. Discussion. We seek comment on whether a connection-based assessment satisfies each element of the requirement in section 254(d) of the Act 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."[172] First, we seek comment on whether the connection-based assessment methodology described above would be consistent with the requirement that providers of "*interstate* telecommunications services" contribute to universal service.[173] As the Commission previously has concluded, providers of connections to the public switched network are providers of interstate telecommunications services because end-user connections to the public switched network have an interstate component.[174] Therefore, under our current universal service rules, local exchange carriers contribute to universal service based in part on their subscriber line charges, which constitute interstate end-user telecommunications revenues. Likewise, connections provided by interexchange carriers, such as special access, may have an interstate component.[175] In addition, as evidenced by the

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mechanisms should be competitively neutral, neither unfairly advantaging nor disadvantaging particular service providers or technologies. *Universal Service Order*, 12 FCC Rcd at 8801-03 paras. 46-51.

[167] *See* 47 U.S.C. § 153(44), (46).

[168] *See* 47 U.S.C. § 153(43).

[169] *See Universal Service Order*, 12 FCC Rcd at 9173 para. 777; *see also* 47 C.F.R. § 54.706.

[170] 47 U.S.C. § 254(d).

[171] *Id.*

[172] *Id.*

[173] *See id.* (emphasis added).

[174] *MTS and WATS Market Structure*, CC Docket No. 78-72, Third Report and Order, 93 FCC 2d 241, 260-262 paras. 56-62 (1983), *aff'd in part, remanded in part Nat'l Ass'n of Regulatory Utility Commissioners v. Federal Communication Commission*, 737 F.2d 1095, 1111-1115 (1984), *cert. denied* 469 U.S. 1227 (1985).

[175] 47 C.F.R. § 36.154(a) (treating a special access or private line as interstate if interstate traffic constitutes more than 10 percent of the total traffic on the line).

regulatory structure established in section 332(c) of the Act,[176] wireless service providers offer telecommunications services that "by their nature operate without regard to state lines" and thus have an interstate component.[177] We therefore seek comment on whether it would be reasonable to conclude that, because the proposed definition of connection includes access to a public network, a wireless or wireline connection inherently contains an interstate component sufficient to satisfy this requirement of the Act.

66. Second, we seek comment on whether the connection-based assessment methodology described in this Further Notice would be consistent with the Act's requirement that "*every* telecommunications carrier that provides interstate telecommunications service shall contribute[.]"[178] It appears that the vast majority of telecommunications carriers that provide interstate telecommunications service also provide connections to a public network.[179] Interexchange carriers, for example, would contribute to the extent that they provide connections to a public network. Interexchange carriers act as connecting providers for certain multi-line business customers and would contribute for those connections. Interexchange carriers also may serve as competitive local exchange carriers and many do. We seek comment on this analysis. To the extent that providers of interstate telecommunications services, such as pure resellers of interexchange services, do not provide connections to a public network, we seek comment on whether to subject such carriers to a minimum contribution requirement and, if so, what a minimum contribution requirement would entail. Below, we also seek comment on whether such non-connection-based providers could be exempted from contributing under a revised *de minimis* exemption.[180]

67. Third, we seek comment on whether the connection-based assessment methodology described above would be "equitable and nondiscriminatory" for purposes of section 254(d).[181] In addition, we seek comment on whether such an approach would be consistent with the principle of competitive neutrality, which the Commission stated in the *Universal Service Order* would guide its determinations about both disbursements and contributions.[182] Under a connection-based assessment, all contributions would be based on the number and capacity of connections provided to end users. Contributors competing in the same market segments would be subject to equivalent contribution requirements. For example, two voice-grade connections provided by the same or different carriers would be subject to two assessments. In addition, a

[176] 47 U.S.C. § 332(c).

[177] *See* H.R. Rep. 103-111 at 260 (1993) (In adopting section 332(c)(3) Congress stated "[m]obile services, by their nature, operate without regard to state lines").

[178] 47 U.S.C. § 254(d) (emphasis added).

[179] *See, e.g.,* Edie Herman, *Competitors, Business Users Propose Special Access Standards*, COMMUNICATION DAILY, Jan. 23, 2002, at 1 (According to Verizon, long-distance companies, competitive local exchange carriers, incumbent local exchange carriers, competitive access providers (CAPs), and even end users themselves compete with one another to provide special access to end users.).

[180] *See infra* para. 68.

[181] 47 U.S.C. § 254(d). In *Texas Office of Public Utility Counsel v. FCC*, the Court of Appeals held that when analyzing whether a methodology is "equitable" we should consider the "fairness in the allocation of contribution duties." *See Texas Office of Public Utility Counsel v. FCC*, 183 F.3d at 434.

[182] *Universal Service Order*, 12 FCC Rcd at 8802 para. 49.

connection-based assessment would not distinguish between particular classes of service providers or the technologies used in providing services.[183] A wireless connection and a wireline connection, for example, would be subject to the same assessment. Furthermore, because connections, rather than the services provided over such connections, would be assessed, this approach would not disadvantage providers of services that do not provide separate and independent connections to a public network. For example, if a customer purchases both a voice-grade connection and an information service, such as voice-mail or dial-up Internet access, only the voice-grade connection would be subject to a per-connection assessment. Such an information service would not be subject to a separate assessment regardless of whether it is provided by the carrier that also provides the voice-grade connection or is provided by an independent information service provider. This is because the information service does not provide access to a public network that is independent from the voice-grade connection.[184] In short, a connection-based assessment may mitigate any disparate treatment that could occur as a result of a contribution methodology based on the type of provider or service offering.[185] We seek comment on this analysis.

68. Section 254(d) provides the Commission authority to exempt carriers or classes of carriers if the carriers' telecommunications activities are limited to such an extent that their contribution would be *de minimis*.[186] Under section 54.708 of the Commission's rules, interstate telecommunications service providers whose annual universal service contributions are expected to be less than $10,000 are not required to contribute to the universal service mechanisms.[187] In support of its decision to adopt the *de minimis* exemption, the Commission reasoned that compliance costs associated with contributing to the universal service mechanisms should not exceed contribution amounts.[188] We seek comment on whether to establish a *de minimis* exemption should the Commission adopt the proposed methodology. We acknowledge, for example, that there are certain non-connection-based interstate telecommunications service providers, such as exclusive providers of pre-paid calling cards or dial-around services, that would not contribute under the proposed methodology. We seek comment on whether the level of contributions obtained from interstate telecommunications service providers that do not provide any connections to a public network would in fact be *de minimis* and in accordance with section 254(d) of the Act.[189] We also request comment on whether the administrative costs incurred by such non-connection-based providers likely would exceed current or future contribution amounts.

69. We also seek comment on the extent to which the proposed methodology would require the Commission to exercise its permissive authority over "other providers of interstate telecommunications" and, if so, whether exercise of such authority is warranted. In section 254,

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[183] WorldCom Comments at 18.

[184] *See supra* para. 42.

[185] *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d at 434.

[186] 47 U.S.C. § 254(d).

[187] *See* 47 C.F.R. § 54.708.

[188] *See Federal-State Joint Board on Universal Service*, Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 5318, 5465 para. 295 (1997).

[189] *See* 47 U.S.C. § 254(d); *supra* para. 64.

Congress provided the Commission with discretion to require "[a]ny other provider of interstate telecommunications" to contribute to universal service if the public interest so requires.[190] Providers of telecommunications include, for example, private service providers that offer service to others for a fee and payphone aggregators. The Commission has exercised this authority to require private service providers that offer interstate telecommunications to others for a fee and payphone aggregators to contribute to universal service.[191] Under a connection-based assessment, there may be instances in which a provider of connections to a public network is not a provider of interstate telecommunications services, but instead is a provider of interstate telecommunications.[192]

c. Potential Costs and Benefits of Connection-Based Assessment

70. We recognize that assessing contributions based on the number and capacity of connections provided to a public network represents a significant departure from the current methodology and therefore seek comment on the potential costs and benefits of connection-based assessment. We particularly seek comment from those states that have implemented a per-connection or per-line contribution methodology.[193]

71. Our examination of the record reveals a number of potential benefits to a connection-based assessment methodology. Because the number of connections historically has been more stable than interstate revenues, a connection-based assessment may provide a more predictable and sufficient funding source for universal service.[194] A connection-based assessment approach would not require carriers to distinguish between interstate and intrastate revenues, or telecommunications and non-telecommunications services, distinctions that do not apply easily or naturally outside of the traditional wireline context, and may become more and more difficult to apply as the marketplace evolves. Instead, any entity that provides an end user with a connection to a public network would be required to contribute to universal service. We seek comment on whether a connection-based assessment would ensure that contribution obligations are applied in a fair and predictable manner to all interstate telecommunications providers, and would safeguard the long-term viability of universal service. By making the assessment system more consistent with the current marketplace and more adaptable to future changes in the marketplace, a connection-based assessment may alleviate the need for interim "safe harbors" and other measures that ultimately could lead to uncertainty among interstate telecommunications providers and potentially distort the competitive marketplace.

72. A connection-based assessment also may increase the overall efficiency of the contribution assessment system by making only one provider responsible for contributing based on a single connection. Under the existing system, consumers pay contribution recovery fees to

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[190] 47 U.S.C. § 254(d).

[191] *See* 47 C.F.R. § 54.706(c); *see also Universal Service Order*, 12 FCC Rcd at 9183-84 paras. 794-96.

[192] The Commission has sought comment in a companion proceeding on whether facilities-based broadband Internet access providers should be required to contribute to support universal service and, if so, on what legal basis. *See Broadband NPRM*, FCC 02-42 at paras. 64-83; *see also Report to Congress*, 13 FCC Rcd at 11532 para. 69 (discussing Commission's permissive authority over providers of telecommunications).

[193] For example, Arizona, Idaho, and Kentucky have systems that incorporate a per-line assessment.

[194] *See Trends in Telephone Service*, Industry Analysis Division, Common Carrier Bureau, December 2000, Table 17.1 (subscribership); *see also supra* para. 8.

multiple providers, regardless of how many connections or lines they purchase. For example, such fees generally appear on both local and long distance bills for the same line. By making only one provider responsible for contributing based on a single connection, a connection-based assessment may increase the efficiency of the recovery process. In addition, because the connecting provider is an entity that has a more direct relationship with the end user, it should be in a better position than other providers to identify the assessable connections. As a result, such a proposal could reduce the total amount that most consumers currently pay in contribution recovery fees. A connection-based system also may eliminate some of the complexity involved with these fees, making the contribution recovery process more understandable. We seek comment on these potential benefits.

73. We also seek comment on the potential costs of adopting a connection-based assessment, and how such costs should be balanced against the potential benefits. A connection-based assessment could, for example, result in increased contribution obligations for certain industry segments. Above, we seek comment on whether minimizing the reallocation of contribution obligations among industry segments should be a goal in moving to a per-connection assessment system.[195] A connection-based assessment also could result in increased contribution obligations for connections provided to certain categories of customers (for example, for connections provided to certain low-volume users).[196] In addition, a connection-based assessment would result in modified reporting obligations for contributors.[197] Finally, adoption of a per-connection assessment potentially could lead to a new set of definitional challenges as the marketplace evolves in the future. We seek comment on the potential costs associated with such effects, whether they outweigh the potential benefits of a connection-based assessment, and to what extent other policy measures might mitigate these costs.

d. Implementation Issues

74. _Accounting for Growth_. Under the existing revenue-based assessment system, the contribution factor changes each quarter to reflect increases or decreases in reported revenues and total universal service funding requirements. We seek comment on how to address growth in the number and capacity of connections and/or funding requirements in the event that we adopt a connection-based assessment system. In particular, we request comment on whether the proposed flat assessment rates on residential, single-line business, and mobile wireless connections should be adjusted periodically for increases or decreases in connections and/or funding requirements. Based on projections provided by commenters to the *2001 Notice*, the number of connections is expected to increase for the foreseeable future.[198] Therefore, if we were not to adjust the proposed flat assessment rates for residential, single-line business, and mobile wireless connections, the overall proportion of universal service funding requirements met by assessments on such connections might increase over time, with a corresponding decrease in the residual proportion met by assessments on multi-line business connections.[199]

[195] *See supra* para. 59.

[196] *See supra* para. 49.

[197] *See infra* paras. 76-79.

[198] *Verizon Ex Parte*; AT&T Comments at 13.

[199] *USF Coalition Ex Parte*.

75. We invite commenters to suggest methods for implementing any proposed adjustments to the proposed flat assessment rates for residential, single-line business, and mobile wireless connections. We also seek comment on how frequently any such adjustments should be made. For example, if the total number of connections and capacity units were to increase three percent in a given year and the universal service funding requirement were to stay the same, the proposed $1.00 flat assessment rate for residential, single-line business, and mobile wireless connections (excluding pagers), as well as the proposed $0.25 flat rate for pagers, likewise could be decreased by three percent.[200] We also seek comment on how to account for the possibility of different growth rates for different types of connections. If, for example, the total number of connections and capacity units were to increase three percent in a given year, with a growth rate of five percent for residential, single-line business, and mobile wireless connections and of two and one-half percent for multi-line business connections, the per-unit assessment rate for all connections would decrease, but the overall proportion of universal service funding requirements met by multi-line business connections would decrease slightly, whereas the proportion met by residential, single-line business, and mobile wireless connections would increase slightly.[201] We invite commenters to suggest alternative methodologies to account for increases or decreases in the number and capacity of connections and/or funding requirements.

76. Reporting Requirements. We seek comment on how often contributors should report the number and capacity of their connections under a connection-based assessment methodology. Below, we seek comment on requiring contributors to report the number and capacity of their connections on a monthly basis. We also invite commenters to propose alternative reporting requirements under a connection-based assessment. We particularly seek comment from contributors that are "small business concerns" under the Small Business Act.

77. Contributors currently report their gross-billed interstate end-user telecommunications revenues five times per year -- on a quarterly basis on the Form 499-Q and on an annual basis on the Form 499-A. Contributors are billed for their universal service contribution obligations on a monthly basis. On the Form 499-Q, contributors report gross-billed revenues from the prior quarter and are assessed on those revenues in the next quarter. Under the current system, there is a six-month interval between the accrual of revenues and assessment based on those revenues. Revenues reported on the Form 499-A are used to perform true-ups to account for discrepancies between an individual contributor's annual and quarterly revenue data and to determine assessments for the Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and regulatory fees administration programs.

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[200] Excluding pagers for purposes of this example, assume that there are 250 million residential, single-line business, and mobile wireless connections assessed at $1.00 per connection, a residual funding requirement of $4 billion, and 1 billion units of multi-line business capacity, so that the base factor for multi-line business units is $4.00. In addition, assume a total connection growth rate of 3%, and that the total funding requirement stays the same. The assessment rate for residential, single-line business, and mobile wireless connections would be decreased to $0.97. Assuming that multi-line business connections increased at the same 3% rate as residential, single-line business, and mobile wireless connections, the base factor for multi-line business connections likewise would decrease to approximately $3.88.

[201] Building on the example above, a total of 262,500,000 residential, single-line business, and mobile wireless connections would be assessed $1.95 per connection or a total of $254,625,000, and a total of 1.025 billion multi-line business capacity units would be assessed a residual funding requirement of $3,995,375,000, with the base factor decreasing to approximately $3.90. *See supra* n. 200.

78. We seek comment on requiring contributors to report the number and capacity of their connections on a monthly basis. We specifically seek comment on the operation of a monthly reporting system. Under this approach, contributors could report the number and capacity of their connections on a monthly basis on a new Form 499-M, which the contributor would use to calculate its contribution amount as of the last day of the prior month. Each month contributors would receive a fill-in-the-blank bill from USAC and would remit their contribution based on the number and capacity of their end-user connections in service as of the end of the prior month. Therefore, the new Form 499-M would serve both as a contributor's monthly bill and its reporting obligation. The Commission would announce the per-connection multipliers for multi-line business connections prior to each quarter and those multipliers would appear each quarter on an updated, downloadable form that would appear on USAC's website.[202] The Commission also would periodically announce adjustments to the per-connection assessment for residential, single-line business, and mobile wireless connections if necessary to reflect, for example, increases or decreases in the number and capacity of connections.[203] The Commission would use the data submitted on a monthly basis when determining the base factor for determining multi-line business assessments for the upcoming quarter. Assuming that contributors would continue reporting revenues on an annual basis for the Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and regulatory fees administration programs, this approach would result in contributors submitting thirteen filings per year.

79. We seek comment on the costs and benefits of a monthly reporting obligation. Monthly reporting would almost entirely eliminate the current six-month interval between reporting and assessment. This would address concerns that the current six-month interval between the accrual of revenues and the assessment of contributions based on those revenues creates competitive advantages for contributors with increasing interstate telecommunications revenues, while disadvantaging those with declining revenues. Although contributors would have to report more frequently under a monthly reporting requirement than under the current system, their overall reporting burdens may be significantly reduced because they would only be required to report the number and capacity of the connections they provide, rather than their interstate telecommunications revenues. In addition, a contributor's reporting obligation and its bill would be combined. We also note that several states with universal service programs currently provide for monthly reporting.[204]

80. The increased prevalence of customer migration between contributors, or "churn," is another reason for proposing to require contributors to report on a monthly basis. As competition for telecommunication services increases, customer churn is likely to occur more often, as evidenced by the increasingly high churn rates experienced by interexchange carriers over the last two decades.[205] We seek comment on how to address customer churn that occurs within a given month. No commenters proposed a method for addressing this issue in the record to the *2001 Notice*. We seek comment, for example, on a proposal to simply assess contributors

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[202] For example, in early June, the Commission would announce the per-connection multipliers for the third calendar quarter. On August 15, carriers would remit contributions based on connections at the end of July.

[203] *See supra* paras. 74-75.

[204] *See* <http://www.necaservices.com/content/stfund.htm#top>. States include Arizona, Kentucky, and Oklahoma.

[205] *Trends Report 2000,* Tables 10.1- 10.16.

for connections they have as of the last day of the prior month. We also seek comment on other possible ways of addressing this issue.

81. In the event that we adopt a monthly reporting requirement that combines a contributor's monthly bill and reporting obligation, we seek comment on whether a reserve fund should be established. A reserve fund would be established to protect against occasional shortfalls in universal service funding. As discussed above, the number and capacity of connections historically has been more stable than revenues and is projected to grow in the foreseeable future.[206] Therefore, a reserve fund may not be necessary under a connection-based assessment.[207] We seek comment on this analysis.

82. As discussed above, the revenue information currently reported on an annual basis in FCC Form 499-A also is used for the Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and regulatory fees administration programs.[208] These three programs rely on similar revenue classifications as the existing universal service methodology. For example, revenues reported for purposes of assessments for Telecommunications Relay Services are interstate end-user telecommunications revenues.[209] The Commission has discretion under the Act to recover costs associated with these programs in any reasonable manner.[210] Both the Local Number Portability and North American Numbering Plan programs provide the Commission discretion in establishing the funding mechanism, with the main requirement being that the Commission does so in a competitively-neutral manner.[211] The Telecommunications Relay Services program requires the Commission to recover the costs associated with providing such services on a cost-causative basis.[212] We therefore seek comment on the appropriate revenue information that should be reported on a revised Form 499-A in the event that we adopt a connection-based assessment system. Should contributors continue reporting interstate gross-billed end-user telecommunications revenues on an annual basis? In addition, we seek comment on the potential administrative and financial impact of reporting such other information in addition to connection/capacity information. We also seek comment on alternative ways to calculate contributions for these programs. We seek comment, for example, on having contributors report types of revenue information they currently report to other government agencies, such as the Securities and Exchange Commission (SEC), thereby lessening the burden of reporting information on the Form 499-A separately in addition to information submitted on the proposed 499-M. We seek comment on whether the types of information reported to the SEC and other government agencies would be appropriate for determining

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[206] *See supra* paras. 71, 74-75.

[207] By contrast, a reserve fund would need to be established under a current revenue-based assessment. *See infra* para. 87.

[208] *See 2001 Notice*, 16 FCC Rcd at 9909 para. 38. Carriers currently report this information on the FCC Form 499-A.

[209] *See* 47 C.F.R. § 64.604(c)(iii)(A). Both the Local Number Portability and the North American Numbering Plan also rely on end-user telecommunications revenues, but do not distinguish between interstate and intrastate. *See* 47 C.F.R. §§ 52.17, 52.32.

[210] *See* 47 U.S.C. §§ 225(b)(2), 251(e)(2).

[211] *See id.* at § 251(e).

[212] *See id.* at §§ 225(b)(2). If costs, therefore, are caused by interstate telecommunications relay services, then such costs shall be recovered from the interstate jurisdiction.

assessments to the above programs. We also seek comment on how contributors that do not report to the SEC and other government agencies would report under these programs. Alternatively, we seek comment on possibly including the costs of these programs in a per-connection fee should we ultimately decide to adopt a connection-based assessment system. Commenters should address whether changes in information submitted would be inconsistent with any statutory or other requirements for these non-universal service programs.

83. Transition. As discussed above, a connection-based methodology would constitute a significant change from the current system. In the event that we adopt a connection-based assessment, we seek comment on whether it can be implemented immediately, or whether a transition period would be necessary. In this regard, the USF Coalition proposed a 12-month transition period for implementation of a connection-based assessment for multi-line business connections, but proposed to implement immediately a $1.00 per-connection assessment for residential, single-line business, and mobile wireless connections (excluding pagers), and a $0.25 per-connection assessment for pagers.[213] Should we employ a transition period for implementing part or all of a connection-based assessment? During such a transition period, contributors could be required to continue reporting revenue data and contributing based on the current system,[214] while also reporting data based on the new methodology. A transition period may delay realization of the potential benefits of a new, connection-based approach, and temporarily increase administrative burdens by imposing dual reporting requirements. On the other hand, it might enable contributors and USAC to prepare for implementation of the new mechanism.[215] A transition period also may provide additional time for contributors to update their billing and accounting systems to accommodate changes.[216] If we conclude that a transition period is necessary, we seek comment on the appropriate length of the transition and on how to phase in the proposed methodology over the transition period.[217]

2. Revenue-Based Assessment

84. In the *2001 Notice*, we sought broad comment on whether to retain or modify the existing revenue-based assessment system.[218] The *2001 Notice* generated a significant record on this issue, with some commenters advocating retention of the existing system, and others proposing various modifications, including reliance on current or projected revenues rather than historical revenues, as well as assessment on collected or net-booked revenues rather than gross-billed revenues.[219] All of these proposals remain under consideration, and we invite commenters to supplement the record with any new arguments or data regarding them. Commenters are invited to address the relative costs and burdens on different industry segments of retaining or modifying the current system. We also invite comment on whether proposals to retain or modify

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[213] *See USF Coalition Ex Parte*.

[214] EPIK Comments at 6; USAC Comments at 27.

[215] *Id.*

[216] WorldCom Comments at 21.

[217] BTNA Comments at 6-7; SBC Comments at 9; AOL/Time-Warner Reply Comments at 4; WorldCom Reply Comments at 24.

[218] *See 2001 Notice*, 16 FCC Rcd at 9905-06.

[219] *See supra* n.4.

the current system would serve our goals of ensuring the long-term stability, fairness, and efficiency of the universal service contribution system in a dynamic telecommunications market.[220]

85. For example, some commenters argue that we should modify the current system to rely on projected revenue data, to address the concern that reliance on historical revenue data from six months earlier benefits new entrants and contributors with increasing assessable revenues, while disadvantaging contributors with declining revenues.[221] This approach could help to address the concerns of some commenters regarding the impact on certain contributors of reliance on historical revenues, and make contribution assessments more reflective of current market conditions.[222] On the other hand, it raises some concerns. Reporting projected revenues may be more administratively burdensome for contributors than reporting historical revenues. New enforcement mechanisms might be necessary to ensure that contributors do not under- or over-project revenues in order to minimize their contribution obligations. In addition, projected revenues are likely to fluctuate more than historical revenues, resulting in greater variance in the contribution factor from quarter to quarter. This could lead to increased customer confusion and make it more difficult for contributors to account for contribution obligations in their business plans.

86. More importantly, however, a projected-revenue assessment methodology may not address the broader concerns raised in the record as to the long-term viability of a revenue-based assessment system. One such concern is that the current system places most of the burden of universal service funding on traditional long distance revenues, which may decline in the future due to increased competition, migration to new products and services, and other factors.[223] As discussed above, this trend could erode the contribution base over time and correspondingly accelerate the increase in the contribution factor and in the universal service line items and other recovery fees imposed by interexchange carriers and other contributors to recover their contribution requirements from end users. Furthermore, reliance on projected revenues would not address the current assessment system's reliance on regulatory distinctions between interstate/intrastate and telecommunications/non-telecommunications revenues. Many commenters argue that such distinctions do not apply well outside of the traditional wireline context, and that the difficulty of applying them to new products and services could lead to a patchwork contribution system that distorts competition by imposing different requirements on competing providers, or by unduly influencing providers' choices as to how to package a particular service.[224]

87. A current-revenue assessment methodology could have similar benefits to a projected-revenue assessment methodology. Like a projected-revenue assessment methodology, however, it would raise some new concerns. For example, because USAC would not know

[220] *See supra* paras. 7-13.

[221] *See, e.g.,* ASCENT Comments at 4-5; AT&T Comments at 9; AT&T Wireless Comments at 4-5; Excel Comments at 6.

[222] *Id*.

[223] *See supra* paras. 7-13.

[224] *See, e.g.,* Ad Hoc Comments at 19-24; AT&T Comments at 2, 12-13; Cable & Wireless Reply Comments at 4; Level 3 Reply Comments at 5-6; SBC Comments at 4; Sprint Comments at 4; WorldCom Comments at 3, 13-14.

exactly how much would be contributed during a given period, establishment of a substantial reserve fund might be necessary in order to avoid universal service funding shortfalls, necessitating increased collections from contributors. In addition, a current-revenue assessment methodology could require monthly rather than quarterly reporting of revenues, which could be administratively burdensome, especially for small carriers. Moreover, a current-revenue assessment methodology likewise may fail to address the broader concerns raised in the record as to the long-term viability of a revenue-based assessment system.

88. To the extent that commenters wish to supplement the record developed in response to the *2001 Notice* regarding retention or modification of the revenue-based assessment mechanism, they should provide specific data or analysis showing the costs and benefits of such an approach. We also seek comment on whether to provide contributors with a one-time opportunity to elect whether to report and be assessed on current or projected revenue, instead of historical revenue.[225] Commenters should address the potential costs and benefits of an optional approach and whether such an approach would be consistent with section 254 of the Act.[226] Commenters are also invited to address other issues relating to implementation of a modified revenue-based assessment approach.

B. Recovery of Universal Service Contributions from End Users

89. In considering reforms to the universal service contribution recovery process, we seek to ensure that this process is reasonable, fair, and understandable for consumers, while maintaining the flexibility that providers of interstate telecommunications services may need in recovering the costs of their contributions. We also seek to ensure that telecommunications carriers' recovery practices are within the bounds of reasonableness that Congress established in sections 201 and 202.[227] As stated above, our consideration of reforms to the contribution recovery process is independent of our consideration of changes to the assessment system.[228] Commenters are encouraged to consider recovery reforms independent of and/or in the context of both the existing assessment system and the connection-based assessment system discussed above. We also invite commenters to address whether adoption of a connection-based assessment system is likely to make the recovery process more reasonable, fair, and understandable for consumers, and how this should influence our consideration of possible limitations on recovery practices.[229]

90. A statutory framework established by Congress in the Act governs the recovery of universal service contributions by telecommunications service providers.[230] Sections 201(b) and 202(a) of the Act govern common carrier services and charges.[231] Section 201(b) requires that

[225] We note that AT&T recently filed a request to contribute to universal service based on its projected revenues, instead of contributing to universal service based on historical revenues. *See AT&T Projected Revenue Request.*

[226] *See* 47 U.S.C. § 254.

[227] *Id.* at §§ 201, 202.

[228] *See supra* para. 6.

[229] *See supra* para. 72.

[230] *See* 47 U.S.C. §§ 201, 202.

[231] *See id.* at §§ 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

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all 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.[232] Section 202(a) of the Act 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."[233]

91. The Commission has previously identified concerns regarding contribution recovery practices employed by contributing carriers.[234] For example, although the contribution factor is uniform for all interstate telecommunications carriers, universal service line items on customers' bills may vary widely among different carriers, and among different customer classes of individual carriers.[235] In the *2001 Notice*, we sought comment on specific proposals to limit contribution recovery practices, such as requiring contributing carriers that elect to impose a line item to do so on a uniform basis.[236] In response to those proposals, some commenters informed the Commission of their experiences with carrier recovery practices. One commenter expressed concern regarding the inclusion of service-related charges in universal service line items.[237] Other commenters expressed concern that disparate recovery of universal service contributions impairs the ability of consumers to make decisions regarding per-minute rates.[238] These commenters suggest that the Commission ban the use of line items for recovery of universal service contribution obligations[239] or, alternatively, require that contributing carrier line items match the quarterly contribution factor.[240] Other commenters, however, urge that the Commission allow carriers to retain flexibility in their contribution recovery practices.[241] These commenters point out that each carrier faces unique business circumstances that result in variations in the amount they recover for universal service. Such circumstances include

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subject to universal service contribution obligations pursuant to the Commission's authority under section 254(d) of the Act, throughout this section of the Further Notice we refer to the recovery obligations of "carriers," not "contributors." *See id.*; *see also* 47 U.S.C. §§ 153(44), 153(46).

[232] 47 U.S.C. § 201(b).

[233] 47 U.S.C. § 202(a).

[234] *See TIB Order and FNPRM*, 14 FCC Rcd at 7522-37 paras. 49-71.

[235] *See supra* paras. 18-19.

[236] *See 2001 Notice*, 16 FCC Rcd 9892, para. 42 (the reprint of this item in the FCC Record inadvertently omitted this page. Commenters should refer to the version that is available on the Commission's website at <http://www.fcc.gov/Bureaus/Common_Carrier/Notices/2001/fcc01145.doc>.

[237] Western Kentucky University Comments at 2.

[238] NASUCA Comments at 10; Texas OPC and CFA at 3-4.

[239] *Id*.

[240] Ad Hoc Comments at 35; AOL/Time Warner Reply Comments at 5.

[241] IDT Comments at 6; VarTec Comments at 4; BellSouth Reply Comments at 5; CompTel Reply Comments at 3; Z-Tel Reply Comments at 4.

uncollectibles, declining revenues, and administrative costs.[242] They further assert that because there is competition for telecommunications services, the marketplace will prevent those carriers that elect to recover contributions through a line item from over-charging their customers.[243]

92. We seek comment on possible alternative methods of addressing these competing concerns. First, we could adopt certain modifications that seek to address those aspects of carrier recovery practices that may be inconsistent with the requirements in sections 201(b) and 202(a) of the Act and may lead to customer confusion. Alternatively, we could adopt a more fundamental change, a collect-and-remit system, which would require carriers to only remit those contributions actually collected from their end users, but which would also remove the flexibility that carriers are currently afforded in deciding how to recover their contribution obligations. Additionally, or alternatively, the Commission could address consumer confusion that arises due to varying line-item labels. Labeling issues would be addressed in the *Truth-in-Billing* proceeding.

93. We emphasize that nothing in these proposals would require new tariff filings. We note that the Commission has recently detariffed most interstate services offered by interexchange carriers.[244] Further, competitive local exchange carriers and CMRS providers are prohibited from filing tariffs. Only incumbent local exchange carriers currently file tariffs and, consistent with our current rules, we would not prevent local exchange carriers from combining recovery fees with other end-user retail rate elements.[245] We seek comment, however, on whether any of the proposals to modify carrier recovery practices would impact those carriers not currently subject to rate regulation and how to address any such impact.

94. If, as proposed above, we exempt Lifeline connections from the contribution base, we seek comment on whether to also prohibit carriers from recovering contribution costs from Lifeline customers.[246] Under the current methodology, incumbent local exchange carriers may not recover universal service contributions from their Lifeline subscribers.[247] These restrictions, however, do not extend to interexchange carriers, competitive local exchange carriers, and

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[242] AT&T Comments at 7-8; IDT Comments at 6; VarTec Comments at 4; Bell South Reply Comments at 5; CompTel Comments at 3; Z-Tel Reply Comments at 4.

[243] CTIA Comments at 11; PCIA Reply Comments at 7.

[244] *See Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 245(g) of the Communications Act of 1934*, CC Docket No. 96-61, Order on Reconsideration, 12 FCC 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 245(g) of the Communications Act of 1934*, CC Docket No. 96-61, Order, 15 FCC Rcd 22,321 (2001); *see also 2000 Biennial Regulatory Review, Policy and Rules Concerning the International, Interexchange Marketplace, IB Docket No. 00-202, 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).

[245] *See* 47 C.F.R. §§ 69.131, 69.158.

[246] *See supra* para. 40.

[247] *See* 47 C.F.R. § 69.158, 69.131.

CMRS providers (although some voluntarily do not recover from Lifeline customers). We seek comment on whether to extend this restriction to such carriers.

1. Universal Service Contribution Recovery Proposals

a. Carrier Flexibility

95. We seek comment on whether to continue providing carriers with flexibility in the recovery of universal service contribution-related costs, but to adopt certain modifications to address those aspects of carrier recovery practices that may be inconsistent with the requirements in sections 201(b) and 202(a) of the Act and may lead to customer confusion. We specifically invite comment on 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. We also seek comment on requiring carriers that recover contributions through a separate line item to make "mark-up" percentages uniform across all customers and classes of customers.[248] In addition, we seek comment on establishing a uniform safe harbor line-item mark-up amount for carriers to use if they so choose. Under these proposals, carriers would retain the flexibility to recover their universal service contributions from end users either through service rates or through a line item on end-user bills.[249] Moreover, carriers still would have some flexibility in how much they may recover from customers. The proposals may help to ensure, however, that contribution recovery practices are consistent with the just and reasonable requirements in section 201 of the Act and the non-discrimination requirements of section 202 of the Act.[250]

96. Under the first proposal, if a carrier elects to recover its contributions through a separate line item on any customer bill, that carrier would be required to do so in a non-discriminatory manner by making the separate line item uniform for all customers. For example, if the Commission were to adopt a connection-based methodology for assessment, a carrier would be required to have the same line-item amount for each residential connection to a public network. Different categories of connections would be assigned different line-item amounts. Thus, under the tiered capacity approach, a Tier Three multi-line business connection would have a different line item than a Tier One multi-line business connection. Alternatively, if the Commission maintains the current revenue-based assessment system, and a carrier chooses to recover a specific percentage amount from one set of customers (for example, residential customers), it would be required to apply that same percentage to other customers (for example, business customers).

97. The proposed limitation would elaborate on obligations that common carriers already have under sections 201(b) and 202(a) of the Act not to shift more than an equitable

[248] By "mark up," we mean amounts recovered through universal service line items that are in addition to the then-applicable contribution factor. So, for example, we propose to require contributors that choose to mark-up one customer's line item 5% to mark-up all line items by 5%. As discussed in the *2001 Notice*, such mark ups typically are used to account for administrative costs and other variables. *See 2001 Notice*, 16 FCC Rcd at 9895 para. 4.

[249] We note that incumbent local exchange carriers may recover universal service contributions only through explicit, interstate end user charges. *See* 47 C.F.R. § 69.4(d). Such charges may be assessed on a per-line basis or as a percentage of interstate retail revenues, and at the option of the local exchange carrier may be combined for billing purposes with other end user retail rate elements. *See* 47 C.F.R. §§ 69.131, 69.158.

[250] *See* 47 U.S.C. §§ 201, 202; *see also Universal Service Order*, 12 FCC Rcd at 9199 para. 829, 9211 para. 855.

share of their contributions to any customer or group of customers.[251] We seek comment on whether such a recovery limitation would address commenters' concerns that certain customers or classes of customers are being charged excessively for carrier universal service contributions.[252]

98. We also seek comment on whether to require carriers to make mark-up amounts uniform across all customers and classes of customers. The uniform mark up would be a percentage amount applied by the carrier to all universal service contribution amounts that appear as line items on customer bills. Carriers could be required to report the amount of their percentage mark-up to the Commission on the current Form 499 or on the proposed new Form 499-M to document the method by which they arrive at their reported mark-up amount, and to submit such documentation, upon request, to USAC.[253] The amount of a carrier's mark-up could be reviewed on a case-by-case basis either in an audit or enforcement context. Such a requirement may respond to concerns that some carriers recover a disproportionate amount of contribution-related costs from certain customers or categories of customers.[254] We are aware of no cost justification for such recovery practices, which may be inconsistent with sections 201 and 202 of the Act. This proposal would not limit the amount of a contribution mark-up, thereby allowing carriers the flexibility to develop a line-item mark up that reflects their unique circumstances.[255] We seek comment on this proposal.

99. To assist carriers in determining the amount of their percentage line-item mark up, we also seek comment on whether to establish an interim percentage safe harbor reflecting average carrier costs incurred in the recovery of universal service contributions.[256] Under such a proposal, a mark up no greater than the interim percentage safe harbor could be treated as presumptively reasonable. As discussed above, carriers could be permitted to recover contribution-related costs through a line item in excess of the interim safe harbor amount, but would be required to document the method by which they arrive at their reported amount and submit such documentation, upon request, to USAC. Commenters also should address the appropriate methodology for calculating such a safe harbor. We seek comment, for example, on whether to base an interim safe-harbor percentage on an analysis of publicly-available data on telecommunications industry administrative costs and uncollectibles taken from Securities and Exchange Commission (SEC) filings and other public sources.

100. We also seek comment on whether it would be a violation of the Act or Commission rules for carriers to collect more from their customers than they remit to the universal service fund, and, if so, whether to prohibit carriers from recovering amounts in excess

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[251] *See supra* paras. 89-90; *see also Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Second Recommended Decision, 13 FCC Rcd 24744, 24771 para. 69 (Jt. Bd. 1997).

[252] *See, e.g.,* NASUCA Comments at 15.

[253] *See supra* paras. 76-82.

[254] *See* Texas OPC and CFA Comments at 6. We previously have observed, for example, that the amount of the mark up on residential customer line items often is significantly higher than the mark up on business customer line items. *See 2001 Notice*, 16 FCC Rcd at 9896 para. 5.

[255] *See* BellSouth Reply Comments at 5; IDT Reply Comments at 6; VarTec Comments at 4.

[256] *See* WorldCom Reply Comments at 27-29.

of their actual contributions, as proposed by some commenters.[257] One way of addressing this concern would be to prevent carriers from marking up their line items above the relevant contribution amount to recover administrative costs, uncollectibles, or other contribution-related costs. If, for example, we adopted an assessment amount for residential connections of $1.00 per connection, carriers would only be permitted to recover through a line item of $1.00 per residential connection.[258] Likewise, if we adopt a contribution factor of seven percent, carriers would only be permitted to have a seven-percent line item. Several commenters expressed concerns with such a limitation.[259] We seek comment on these concerns. In addition, we request comment on whether additional measures should be taken to ensure that carriers recover their contribution obligations in a fair and non-discriminatory manner. For example, we seek comment on whether to require carriers to recover universal service contributions in their rates, as proposed by some commenters.[260] We also seek comment on whether it might be appropriate to adopt recovery limitations for carriers that are dominant under our rules, while providing non-dominant carriers with continued flexibility in contribution recovery practices.[261]

b. Collect and Remit

101. We also seek comment on whether to replace the current universal service contribution methodology with a "collect and remit" system.[262] 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. Adoption of a collect-and-remit system would impact not only the recovery element of the universal service mechanism, but also the assessment element. Under a collect-and-remit system, if a customer fails to pay a bill, the carrier would not be required to contribute to universal service for that customer. Thus, a collect-and-remit system would relieve carriers of any risk associated with the recovery of universal service contributions.[263] Accordingly, advocates of such a system argue that it would eliminate the need to mark-up line items to reflect uncollectibles and other factors.[264] We seek comment on which carrier costs would be eliminated if a collect-and-remit system were adopted. Would such a system help to address commenters' concerns regarding the reasonableness, fairness, and transparency of the current recovery process? We also seek comment on whether, in the event that we do adopt a collect-and-remit system, it would be appropriate to continue permitting carriers to mark-up contribution

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[257] *See* Ad Hoc Comments at 34-35; AOL Reply Comments at 5; CDD Reply Comments at 7.

[258] *See 2001 Notice*, 16 FCC Rcd 9892, para. 42 (the reprint of this item in the FCC Record inadvertently omitted this page. Commenters should refer to the version that is available on the Commission's website at <http://www.fcc.gov/Bureaus/Common_Carrier/Notices/2001/fcc01145.doc>).

[259] *See, e.g.*, ASCENT Comments at 2; BTNA Reply Comments at 5-6; CompTel Comments at 3-5; CTIA Comments at 11-12; PCIA Reply Comments at 7; USTA Reply Comments at 8.

[260] *See, e.g.,* NASUCA Comments at 9-15; Texas OPC and CFA Comments at 3-6; West Virginia Consumer Advocate Comments at 5.

[261] *See Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, CC Docket No. 01-337, Notice of Proposed Rulemaking, FCC 01-360, at para. 5 (rel. Dec. 20, 2001).

[262] *See, e.g., USF Coalition Ex Parte*.

[263] *See* AT&T Comments at 3-7.

[264] *See* ASCENT Comments at 2-3; AT&T Comments at 7-8; IDT Comments at 3; SBC Comments at 7-8; Sprint Comments at 10; PCIA Reply Comments at 6.

amounts recovered through line items to reflect contribution-related costs that they continue to incur.

102. There are additional issues, however, regarding a collect-and-remit system. Because a collect-and-remit system would appear to effectively shift contribution obligations from carriers to their end-user customers, it may 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 current system, a provider would not be required to contribute unless the customer paid the charge on its bill. Moreover, because USAC likely would not be able to predict with complete accuracy how many assessments actually would be collected in a given period, a collect-and-remit system would create the possibility of shortfalls in the universal service fund. USAC presumably would need to establish a significant reserve fund to account for such potential shortfalls. It also is unclear how a collect-and-remit system could be implemented, for example how carriers would treat partial payment of customer bills. An additional concern is whether a shift in contribution obligations from carriers to customers may contradict section 254(d) of the Act, which seemingly places the burden of contributing on "[e]very telecommunications carrier that provides interstate telecommunications services" and not on end users.[265] We seek comment on this analysis, and ask commenters that support a collect-and-remit system to address each of these issues.

2. Labeling the Line Item

103. In its *Truth-in-Billing* proceeding, the Commission issued a Further Notice of Proposed Rulemaking in 1999 seeking comment on the appropriate label to identify various charges relating to federal regulatory action on consumers' bills.[266] The Commission tentatively concluded that uniformity in labeling would better enable consumers to understand the charges and provide them a basis for comparison amongst providers.[267] At that time, the Commission excluded CMRS providers from these labeling requirements, but indicated that, should it adopt uniform labels for charges resulting from federal regulatory action, it would include CMRS providers to ensure consistency and understandability for consumers.[268] We now seek comment on 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."[269] Many commenters support this proposal, stating that a uniform line-item description is warranted in view of confusion created by varying provider practices.[270] We invite commenters to address the need for a uniform line-item description and to provide specific examples of varying provider practices and how they lead to customer confusion. We also invite comment on

[265] *See* 47 U.S.C. § 254(d); *2001 Notice*, 16 FCC Rcd at 9911 paras. 48-49; *see also Universal Service Order*, 12 FCC Rcd at 9201 para. 853 ("we agree with the Joint Board and reject commenters' suggestions that the Commission mandate that carriers recover contributions through an end-user surcharge").

[266] *TIB Order and FNPRM*, 14 FCC Rcd at 7537 para. 71.

[267] *Id*.

[268] *Id*. at 7502 para. 18.

[269] *See* WorldCom Comments at 31.

[270] *See* CDD Comments at 8; Cingular Comments at 10; Florida State University Comments at 2; Home Comments at 8; Iowa Utilities Board Comments at 3; *but see* CompTel Comments at 6; CTIA Comments at 11-13; PCIA Reply Comments at 7-9.

whether requirements that labels on line-item charges relating to federal regulatory action be standard should be extended to CMRS providers. Additionally, we seek comment on permitting carriers to abbreviate the words in this description to address commenters' concerns that the proposed description exceeds the character limit in carrier billing systems.[271]

104. We recognize that certain commenters argue that mandating a uniform description for universal service contribution line items on customer bills would violate the First Amendment of the United States Constitution.[272] We note, however, that under certain circumstances speech may be regulated without running afoul of the First Amendment. In determining whether government regulation of commercial speech violates the First Amendment, courts apply a four-part test.[273] First, the court determines whether the expression is protected by the First Amendment.[274] For commercial speech to be afforded First Amendment protections, it must concern lawful activity and not be misleading.[275] Second, the court determines whether the government has a substantial interest in support of its regulation.[276] Third, the court determines whether the restriction on commercial speech directly and materially advances that interest.[277] Finally, the regulation may be no more extensive than necessary to serve that interest.[278] We seek comment on whether a requirement that carriers label their separate federal universal service line item on customer bills as the "Federal Universal Service Fee" would pass this four-part test.

105. First, we seek comment on whether the expression in question is protected by the First Amendment. Are some carriers' line items sufficiently confusing as to become misleading for purposes of the First Amendment standard?[279] Commenters that believe carrier line items are misleading are invited to provide specific examples of such line items.

106. Assuming that the labeling of line items is afforded First Amendment protections as lawful and non-misleading commercial speech, we next seek comment on whether the Commission's interest in requiring a uniform description of the federal universal service line item is substantial. The Commission has responsibility under the Act to ensure that consumers are able to make intelligent and well-informed commercial decisions in the increasingly competitive telecommunications market that the 1996 Act is intended to foster.[280] Even though

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[271] So, for example, a carrier could call the Federal Universal Service Fee the "Fed. Univ. Service Fee" or the "Fed. Universal Serv. Fee." *See* Cingular Comments at 10; Sprint Reply Comments at 16; WorldCom Comments at 31.

[272] *See e.g.,* CompTel Reply Comments at 6; CTIA Reply Comments at 8; WorldCom Comments at 31. *See* U.S. CONST. amend. I.

[273] *See Lorillard Tobacco Co. v. Reilly*, 121 S. Ct. 2404, 2421-22 (2001) (*Lorillard*) (citing *Central Hudson Gas & Electric Corp. v. Public Service Commission*, 447 U.S. 557, 563-564 (1980) (*Central Hudson*)).

[274] *Lorillard*, 121 S. Ct. at 2421.

[275] *Id.*

[276] *Id.*

[277] *Id.*

[278] *Id.*

[279] In the *Truth-in-Billing* proceeding, the Commission stated that line-item charges are being labeled in ways that could mislead consumers by detracting from their ability to fully understand the charges appearing on their monthly bills. *See TIB Order and FNPRM*, 14 FCC Rcd at 7531 para. 61.

[280] 47 U.S.C. §§ 201, 202.

the Commission currently has a guideline that requires telecommunications carriers to use standardized labels to identify charges resulting from regulatory action, commenters indicate that the labeling of federal universal service line items varies by carrier.[281] We seek comment on the extent to which the labeling of line items varies by carrier and invite commenters to provide examples of such variance. We also seek comment on whether the lack of uniform descriptions and the disparate recovery of universal service contributions from consumers may make comparison-shopping difficult for consumers. In addition, we seek comment on whether the Commission's interest would be substantial if we choose to adopt limitations on carrier mark-ups to universal service contribution line items that appear on end-user bills.[282] We seek comment on this analysis.

107. Third, we seek comment on whether a uniform labeling requirement would directly and materially advance the Commission's interest. We specifically invite comment on whether a uniform line-item description would ensure that the label describing the recovery of federal universal service contributions is consistent, understandable, and does not confuse or mislead consumers. Would uniform labeling better ensure that carriers provide consumers with information that will enable them to better understand their telecommunications bills?

108. Finally, we seek comment on whether a limitation on labeling such line items would be no more extensive than necessary to serve the Commission's interest in prohibiting misleading federal universal service related charges. This prong requires a reasonable fit between regulatory ends and means: "[n]ot necessarily the single best disposition but one whose scope is 'in proportion to the interest served.'"[283] A uniform labeling requirement would require that carriers describe the separate federal universal service line item on customer bills as the "Federal Universal Service Fee." We invite commenters to address concerns that a uniform labeling requirement would unnecessarily limit or censor truthful, non-misleading commercial speech.[284] For example, would a uniform labeling requirement limit a carrier's ability to provide additional information to its customers regarding the nature and purpose of the charge?[285] Moreover, would such a regulation limit carrier speech relating to other charges on customer bills? We seek comment on whether the proposed regulation would be valid under the scrutiny that is afforded restrictions on commercial speech.

109. We also seek comment on specific consumer outreach efforts that would help to make the universal service contribution recovery process more understandable for consumers. The Commission's Consumer Information Bureau currently conducts outreach directed at educating consumers about all aspects of the Commission's universal service programs,

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[281] *See TIB Order and FNPRM,* 14 FCC Rcd at 7523; *see also* ACUTA Comments at 3; Brown University Comments at 3; Florida State University Comments at 2; NASUCA Comments at 3, 19; Western Kentucky University Comments at 2.

[282] *See supra* paras. 95-100.

[283] *See Board of Trustees v. Fox*, 492 U.S. 469, 480 (1989) (citing *In re R.M.J.*, 455 U.S. 191, 203 (1982)); *see also Ward v. Rock Against Racism*, 109 S. Ct. 2746, 2758 (1989) (a regulation is narrowly tailored if the government interest would be achieved less effectively without the regulation).

[284] *See* CTIA Comments at 13. *See also 44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484 (1996) (restrictions on speech that ban truthful, non-misleading commercial speech about a lawful product cannot withstand scrutiny under the First Amendment).

[285] *See TIB Order and FNPRM*, 14 FCC Rcd at 7533 para. 64.

including the contribution recovery process.[286] We seek comment on whether to expand the Consumer Information Bureau's outreach efforts. We invite commenters to propose specific outreach efforts the Consumer Information Bureau could undertake, either on its own, or in conjunction with carriers and other stakeholders. In the interim, the Consumer Information Bureau will continue its educational and outreach programs regarding federal universal service.

V. REPORT AND ORDER

110. In the *2001 Notice*, we recognized the need to reassess periodically the current contribution methodology to ensure that it remains consistent with the goals of the Act as the telecommunications marketplace evolves. Although we are seeking more focused comment on specific proposals to reform the Commission's universal service contribution methodology, we conclude that certain modifications to the current revenue-based contribution assessment methodology should be adopted now to ensure that the goals of the Act are maintained in the short term. Specifically, the measures we adopt in this Order will ensure that universal service funding remains specific and predictable while we consider whether to implement more substantial changes to the contribution methodology. In addition, these modifications will ensure that the recovery of universal service contributions is more understandable for consumers. These measures also will further reduce the regulatory costs of complying with universal service obligations and will ensure that the assessment of contributions remains equitable and nondiscriminatory.

111. First, we revise the Commission's rules to exclude universal service contributions from a contributor's assessable gross-billed interstate telecommunications revenues. This modification addresses "circularity" in the current methodology that may cause contributors to mark-up line items. Second, we amend the rules to permit contributors to submit revenue data on a consolidated basis on behalf of commonly-owned subsidiaries. Third, we increase from eight to 12 percent the amount of domestic interstate revenues a contributor may have and still qualify for the limited international revenue exception to our universal service contribution requirements.

A. Eliminating Circularity

1. Background

112. Contributors currently are required to contribute to universal service based on gross-billed interstate telecommunications revenues, including revenues from charges identified on a bill as recovering contributions to the universal service support mechanisms.[287] This requirement is meant to ensure that such revenues are properly reported and included in contributors' contribution bases, and to make it easier for the Commission to verify that

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[286] For example, the Consumer Information 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 Information Bureau also provides fact sheets on universal service issues through the Commission's website. *See* <http://www.fcc.gov/cib>.

[287] *See* FCC Form 499-A, at line 403 ("Itemized charges levied by the reporting entity in order to recover contributions to state and federal universal service support mechanisms should be classified as end-user billed revenues and should be reported on Line (403)").

contributors are not over-recovering universal service contributions from subscribers.[288] Commenters, however, have indicated that they increase their universal service line items above the contribution factor in part to account for the inclusion of universal service line-item revenues in their contribution bases.[289] Such "circularity" leads to inflation in universal service line items, which adds to customer confusion regarding the reasons for mark ups. To address the problem of "circularity," we proposed to impute pass-through charges for all contributors and remove the imputed amounts from each contributor's contribution base.[290] Two commenters supported the removal of universal service contributions from the contribution base, and no commenter opposed this proposal.[291]

2. Discussion

113. We adopt our proposal to eliminate "circularity" from contribution assessments by excluding each contributor's actual universal service contributions from its assessable gross-billed interstate telecommunications revenues. Although the elimination of circularity will reduce the contribution base and therefore will result in an increase to the contribution factor, this measure will eliminate one cause for contributors to recover amounts in excess of the contribution factor.

114. We clarify how the exclusion of contributor contributions from the contribution base will operate in practice. Contributors will continue to file the Form 499-Q with their gross-billed interstate telecommunications revenues from the prior quarter. As discussed above, a contributor's reported gross-billed interstate telecommunications revenues from the prior quarter serve as the basis for its contributions in the next quarter. USAC will subtract from a contributor's contribution base in the upcoming quarter those amounts contributed to universal

[288] *See 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, CC Docket No. 98-171, Notice of Proposed Rulemaking and Notice of Inquiry, 13 FCC Rcd 19295, 19307 para. 22 (1998).

[289] *See, e.g.*, *AT&T Projected Revenue Request*. For example, assume a carrier receives $100 in gross-billed interstate telecommunications revenues, including revenues from the recovery of universal service contributions, in a particular reporting period. If the contribution factor for that period is 7%, the carrier's contribution would be $7. If the carrier then passed through that $7 assessment to its end-user customers and the carrier's other revenues remained stable, in the next reporting cycle that carrier would report $107 in gross-billed interstate revenues. Assuming the contribution factor remains at 7%, the carrier's contribution in the next period would increase to $7.49. In order to include this entire amount in a line item on customer bills, the carrier would need to increase its universal service line item above the current contribution factor. In the example provided, the carrier would need a contribution line item of 7.49% to recover all of its contribution costs through a line item. We acknowledge that if total universal service costs remained constant and the contribution base increased, the contribution factor would in fact decrease. *See Federal-State Joint Board on Universal Service, Division Announces Release of Revised Universal Service Worksheet, FCC Form 457, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, Twenty-First Order on Reconsideration in CC Docket No. 96-45, and Memorandum Opinion and Order in CC Docket Nos. 96-45, 97-21, and 98-171, 15 FCC Rcd 12050, 12058-59 (2000) (*Twenty-First Order on Reconsideration*). As a practical matter, however, because the growth in total program costs has outpaced growth in the contribution base, the contribution factor has increased over time.

[290] *See 2001 Notice*, 16 FCC Rcd at 9903 para. 22 n. 57.

[291] *See* Bahr Comments at 2-7; Letter from Jamie M. Tan, SBC Telecommunications, Inc., to Magalie Roman Salas, Federal Communications Commission, filed Dec. 14, 2001, at 5.

service in the prior quarter.[292] Contributions will be credited in the quarter in which they are received by USAC. We direct USAC to begin excluding carrier contributions from the contribution base in the third quarter of 2002.

115. We note that excluding actual contributions from a contributor's contribution base is distinguishable from previously-rejected proposals to entirely exclude contributor-imposed universal service charges from the contribution base.[293] If we excluded contributor-imposed universal service charges from the contribution base, contributors could reduce their contribution obligations by reducing the recovery of costs through service-related charges and increasing the recovery of costs through universal service charges.[294] Excluding contributor-imposed universal service line-item charges also would create incentives for contributors that currently recover their universal service contributions through their rates to alter their business plans and recover such contributions through a line item. By only excluding from the contribution base amounts actually contributed to universal service, we avoid creating such incentives, provide contributors with a real choice of recovery methodologies, and maintain competitive neutrality.

B. Consolidated Form 499 Filing for Certain Contributors

1. Background

116. To collect information from contributors about their end-user telecommunications revenues, the Commission requires contributors to submit to USAC the Telecommunications Worksheet (Worksheet), also known as Form 499-A and Form 499-Q, five times per year.[295] In addition to collecting revenue information for universal service contribution purposes, the Worksheet also collects revenue information for regulatory fee collection, the Telecommunications Relay Services Fund, the cost recovery mechanism for administration of the North American Numbering Plan, and Local Number Portability.[296] Contributors also use the Worksheet to report contact information regarding their agents for service of process in the District of Columbia, as well as to provide registration information to enable the Commission to monitor contributor activity, especially with regard to "slamming."[297] Contact information included in the Worksheet also enables the Commission to confirm contributor compliance with obligations under the Communications Assistance for Law Enforcement Act (CALEA).[298]

117. The instructions for the Worksheet require that each legal entity (defined as

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[292] We clarify that fees and other charges associated with late payments are not contributions to universal service, and therefore will not included in amounts subtracted from a contributor's contribution base for purposes of eliminating circularity.

[293] *See Twenty-First Order on Reconsideration*, 15 FCC Rcd at 12058-60 paras. 13-15.

[294] *See id.* at 12059 para. 15.

[295] The Form 499-A is filed annually, while the Form 499-Q is filed quarterly.

[296] *See Consolidated Reporting Order*, 14 FCC Rcd 16602.

[297] *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers*, CC Docket No. 94-129, Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996, 16025-26 (2001). The term "slamming" refers to unauthorized changes to a customer's presubscribed carrier.

[298] *See* 47 C.F.R. § 64.2103.

entities with separate articles of incorporation) submit a separate Worksheet.[299] The purpose of this requirement is to ensure, among other things, that: (1) the filed information may be confirmed, if necessary, by a company's accounting books; (2) the officer filing the information is familiar with such information; (3) there is a contact person for each entity; (4) contributors will be able to document and respond to all slamming complaints; and (5) there is no disruption to the Commission's universal service, Telecommunications Relay Services, Local Number Portability, North American Numbering Plan Administration, and regulatory fees programs.

118. In certain circumstances, however, this requirement may result in requiring a single contributor to file multiple separate Worksheets. This may happen when a contributor's corporate structure contains several separate legal entities, even if the contributor itself functions as a single entity. In particular, some wireless contributors obtain licenses in the names of affiliates, subsidiaries, and other related legal entities even if the company actually functions as a single entity in all other respects. Accordingly, such a company must file separate Worksheets for each of its subsidiaries five times per year, even though the company functions as a single entity. This separate filing requirement may even result in a contributor having to artificially divide its whole company revenues into separate revenue amounts for each of its subsidiaries, solely for Worksheet reporting purposes. Verizon Wireless, for example, reports that, as a result of the quarterly filing requirement, it will allocate approximately 4,700 additional hours each year to prepare and submit 700 forms on behalf of 140 separate corporate subsidiaries.[300] A number of commenters asked the Commission to eliminate the separate reporting requirements for affiliated entities.[301]

2. Discussion

119. We agree with commenters that we should streamline the reporting requirements to permit contributors to submit revenue data on a consolidated basis under certain circumstances. We therefore modify our reporting requirements to enable contributors meeting certain criteria to file the Worksheet on a consolidated basis. The criteria we adopt for permitting consolidated filings are designed to ensure that a contributor actually functions as a single entity, and to obtain essential revenue and contact information from such a contributor. The ability to file a consolidated Worksheet may substantially decrease the administrative burdens on some contributors. For example, it may ameliorate the need of some contributors to artificially divide their whole company revenues into separate revenue amounts for their subsidiaries solely for Worksheet reporting purposes. We anticipate that many wireless contributors will qualify and choose to file the Worksheet on a consolidated basis. Furthermore, this revision may dramatically decrease the number of Worksheets filed with USAC, thereby reducing the administrative burden on the Commission's data collection agent and fund administrators. Most importantly, permitting contributors to have the option of filing on a consolidated basis will have no negative impact on the integrity of the information contained in the Worksheet.

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[299] *See* Instructions to FCC Form 499-A at 7; *see also Second Order on Reconsideration*, 12 FCC Rcd at 18512, Appendix C.

[300] *See* Verizon Wireless Comments at 18.

[301] *See* CTIA Comments at 11; Cingular Comments at 8; Nextel Comments at 12; PCIA Reply Comments at 9; USAC Reply Comments at 22; Verizon Wireless Comments at 18.

120. Under the modified reporting requirements we adopt here, consolidated filing will be permitted only if the filing entity certifies that all of the following conditions are met:

(1) A single entity oversees the management of the affiliated systems;
(2) A single entity sends bills to customers and these bills identify a single entity (or trade name) as the service provider, rather than identifying the individual legal entities;
(3) All revenues are posted to a single general ledger;
(4) To the extent that separate revenue and expense accounts exist, they are derived from one consolidated set of books and the consolidated filing must cover all revenues contained in the consolidated books;
(5) Customers have a single point of contact;
(6) The consolidated filer acknowledges that process served on the consolidated filer would represent process served on any or all of the affiliated legal entities;
(7) The consolidated filer agrees to document and resolve all slamming complaints that might be served on either the filing entity or any of the affiliated legal entities;[302]
(8) The consolidated filer obtains a separate FCC Registration Number (FRN) from those assigned to its affiliated legal entities;
(9) The consolidated filer acknowledges that its obligations with regard to universal service, Telecommunications Relay Services, Local Number Portability, the North American Numbering Plan, and regulatory fees will be based on the data provided in consolidated Worksheet filings, that it bears the responsibility to satisfy those obligations, and that all legal entities covered by the filing are jointly and severally liable for such obligations; and
(10) The consolidated filer acknowledges that it: (A) was not insolvent on the date it undertook to make payments on a consolidated basis or on the date of actual payments to universal service, Telecommunications Relay Services, Local Number Portability, the North American Numbering Plan, and regulatory fees, and did not become insolvent as a result of such undertaking or payments; (B) was not left with unreasonably small capital as a result of such undertaking or payments; and (C) was not left unable to pay debts as they matured as a result of such undertaking or payments.[303]

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

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

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

accepting such consolidated Worksheets in the second quarter of 2002.

122. We also amend section 54.702 by deleting subsection 54.702(f) of our rules. Under section 54.702(f) of our rules, USAC is required to periodically compare information from "Telecommunications Relay Services Fund Worksheets" with information submitted on "Universal Service Worksheets."[304] In 1999, however, the Commission established the FCC Form 499 Telecommunications Reporting Worksheet, which consolidated reporting requirements for the universal service mechanisms, the Telecommunications Relay Services Fund, the cost recovery mechanism for administration of the North American Numbering Plan, and the cost recovery mechanism for administration of long-term number portability.[305] As a result, section 54.702(f) was made obsolete, but inadvertently was not deleted at that time. Accordingly, we delete it now.

C. Limited International Revenues Exception

1. Background

123. Under section 54.706(c) of the Commission's rules, a provider of interstate and international telecommunications is not required to contribute based on its international telecommunications end-user revenues if its interstate telecommunications end-user revenues constitute less than eight percent of its combined interstate and international end-user telecommunications revenues.[306] The rule is intended to exclude from the contribution base the international end-user telecommunications revenues of any telecommunications provider whose annual contribution, based on the provider's interstate and international end-user telecommunications revenues, would exceed the amount of its interstate end-user telecommunications revenues.[307] The Commission concluded that the rule is consistent with the determination of the United States Court of Appeals for the Fifth Circuit that requiring a carrier to pay more universal service contributions than it derives from interstate revenues violates the requirement in section 254(d) of the Act that universal service contributions be equitable and nondiscriminatory.[308]

124. In the *2001 Notice*, we sought comment on whether to increase the percentage of interstate end-user telecommunications revenues a contributor could have and still qualify for the limited international revenues exception to our universal service contribution requirements.[309] Several parties submitted comments in support of increasing the current percentage.[310] No party submitted comments opposing such a measure.

[304] *See* 47 C.F.R. § 54.702.

[305] *See Consolidated Reporting Order*, 14 FCC Rcd 16602.

[306] *See* 47 C.F.R. § 54.706(c); *see also Eighth Report and Order*, 15 FCC Rcd at 1687 para. 19.

[307] *Id.*

[308] *See id.* (citing *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d at 434-35).

[309] *See 2001 Notice*, 16 FCC Rcd at 9907 para. 32.

[310] *See* BTNA Comments 2-4; Lockheed Comments at 4-9; Loral Reply Comments a 3-4; Primus Comments at 3-4; Verestar Reply Comments at 3.

2. Discussion

125. We conclude that the limited international revenues exception should be increased from eight to 12 percent, while we consider whether to move away from a revenue-based assessment system altogether. Consistent with section 254(d) of the Act, we conclude that raising the threshold to 12 percent will ensure that a contributor's universal service contribution does not exceed the amount of its interstate end-user telecommunications revenues by providing a margin of safety to account for any possible increases to the contribution factor over time. When the limited international revenues exception was implemented in November 1999, the universal service contribution factor was 5.8995 percent,[311] and the Commission anticipated that the universal service contribution factor would not exceed eight percent in the near future. The Commission recently established a universal service contribution factor of 6.808 percent.[312] As a result of many factors, including possible decreases in assessable revenues and increases in universal service funding requirements over time, modest increases to the contribution factor may occur in the foreseeable future.[313] If the universal service contribution factor increases to eight percent, a contributor may become obligated to contribute to the universal service mechanisms an amount that exceeds the amount of its interstate end-user telecommunications revenues. With the elimination of "circularity" and anticipated implementation of interstate access support for non-price cap carriers, Commission staff projects that the contribution factor may exceed 8 percent in 2002.[314] This projection is predicated on the removal of prior period universal service contributions from the contribution base, the continuation of the current assessment system based on revenues, anticipated growth in the universal service mechanisms, and continued modest growth in assessable interstate end-user telecommunications revenues. Large-scale migration to services that are not easy to categorize by jurisdiction or marketplace disruptions, such as a prolonged recession, may result in additional increases to the contribution factor over time. We therefore conclude that increasing the threshold to qualify for the international revenues exception to 12 percent will ensure that contributors are not required to contribute more to universal service than they derive from interstate end-user telecommunications revenues. We direct USAC to begin applying the higher threshold to qualify for the international revenues exception in the second quarter of 2002.

126. We conclude that the modified rule is consistent with the requirement in section 254(d) that universal service support be sufficient. Increasing the interstate revenue threshold from eight percent to 12 percent to qualify for the limited international revenues exception will exclude only slightly more international revenues from the contribution base. Based on revenue data reported for the third quarter of 2001, Commission staff projects that increasing the interstate revenue threshold to 12 percent would result in less than a 0.5 percent reduction in the contribution base. The relatively small amount of additional international revenue that will be

[311] *See Proposed Fourth Quarter 1999 Universal Service Contribution Factor for November and December 1999, CC Docket No. 96-45*, Public Notice, DA 99-2109 (Com. Car. Bur. rel. Oct. 8, 1999).

[312] *See First Quarter 2002 Contribution Public Notice*, 16 FCC Rcd 21329.

[313] We recently have observed periodic decreases in assessable interstate and international end-user telecommunications revenues. We also recently have implemented reforms to certain universal service support mechanisms, which will result in increased funding requirements over time. *See, e.g., Multi-Association Group Order*, 16 FCC Rcd at 19613 para. 1; *Rural Task Force Order*, 16 FCC Rcd 11244.

[314] *See supra* n. 111.

excluded from the contribution base should not dramatically affect the level of the quarterly contribution factor or the ability of providers to meet their contribution obligations.

127. We decline to increase the threshold above 12 percent or to exclude international revenues from the contribution requirement altogether.[315] As the Commission previously has observed, under section 254(d) of the Act, all interstate telecommunications providers are required to contribute without regard to whether their revenues are interstate or international.[316] The Act requires only that contributions be equitable and nondiscriminatory, and specific, predictable, and sufficient. As the Commission previously concluded, the modified international revenues exception satisfies each of these requirements.[317] We therefore see no reason to further broaden the exception at this time.

128. Our adoption of a 12 percent threshold to qualify for the limited international revenues exception should not be taken as an indication that we expect the contribution factor to rise to that level in the near future. To the contrary, we choose 12 percent because it will provide for a more than adequate margin of safety if the current contribution factor increases over time. Moreover, we seek comment on measures in the Further Notice that are intended to address some of the underlying causes of increases to the contribution factor. In the event that the contribution factor increases or decreases significantly, the Commission could revise the 12 percent threshold to a more appropriate level.[318]

VI. PROCEDURAL ISSUES

A. Ex Parte Presentations

129. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules.[319]

B. Initial Paperwork Reduction Act of 1995 Analysis

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

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[315] *See* BTNA Comments at 2; Lockheed Martin Comments at 9; Loral Reply Comments at 4; Primus Comments at 4.

[316] *See Eighth Report and Order*, 15 FCC Rcd at 1688 para. 22. We note that, under section 254(d) of the Act, the Commission may exempt a carrier or class of carriers from contribution requirements if the carrier's contribution would be *de minimis*. *See* 47 U.S.C. § 254(d).

[317] *See Eighth Report and Order*, 15 FCC Rcd at 1688-90 paras. 21-26.

[318] We note that, if we adopt a per-connection assessment, a limited international revenue exception would no longer be necessary. Under the proposal discussed in greater detail above, a carrier would contribute based on its connections to a public network and therefore no longer would need to distinguish between international and interstate revenues. *See supra* paras. 41-44.

[319] *See generally* 47 C.F.R. §§ 1.1202, 1.1203, 1.1206(a).

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

C. Initial Regulatory Flexibility Act Analysis

131. As required by the Regulatory Flexibility Act (RFA),[320] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice provided below in section VI.D. The Commission will send a copy of the Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[321] In addition, the Further Notice and IRFA (or summaries thereof) will be published in the Federal Register.[322]

1. Need for and Objectives of the Proposed Rules

132. Over the last few years, important changes have occurred in the interstate telecommunications marketplace.[323] Recently, interstate revenues have declined for certain interexchange carriers, who are now responsible for contributing approximately 63 percent of federal universal service funding. We observed a decline in assessable revenues in the first half of 2001.[324] One analyst projects that United States long distance revenues will decline 12 percent in 2001.[325] Various factors may be responsible for this decline, including migration of customers to new products and services, local exchange carrier entry into the long distance market, and related price competition. This trend could erode the contribution base over time, requiring increases in the contribution factor.

133. Additionally, since 1997, marketplace developments also have blurred the distinctions between interstate/intrastate and telecommunications/non-telecommunications revenues on which the current contribution system is based. Carriers increasingly are bundling services together in creative ways, for example by offering flat-rate packages that include both

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[320] *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).

[321] *See* 5 U.S.C. § 603(a).

[322] See *id*.

[323] *See 2001 Notice*, 16 FCC Rcd at 9899 paras. 12-13.

[324] *See, e.g., Fourth Quarter 2001 Contribution Public Notice*, 16 FCC Rcd 11990 (second quarter 2001 estimate of interstate and international end-user telecommunications revenues of $19.597 billion); *Third Quarter 2001 Contribution Public Notice*, 16 FCC Rcd 11990 (first quarter 2001 estimate of interstate and international end-user telecommunications revenues of $20.141 billion).

[325] *See* COMMUNICATIONS DAILY, September 27, 2001, at 5 (citing Solomon-Wolff Associates report).

local and long distance services. Virtually all of the major mobile telecommunications service providers now offer a type of Digital-One-Rate (DOR) pricing plan that allows customers to purchase a bucket of minutes on a nationwide, or nearly nationwide, network without incurring roaming or long distance charges.[326] A number of carriers, including AT&T Wireless, Verizon Wireless, and Cingular Wireless, also have begun offering regional DOR calling plans.[327] At the end of 2000, approximately 20 million mobile telephone customers subscribed to calling plans that offer free nationwide long distance.[328] The availability of such plans compounds the inherent difficulty of identifying interstate revenues in a mobile environment. Traditional wireline providers also are increasingly offering bundled rates for packages of local and long distance services.[329]

134. Likewise, more and more carriers now offer bundled packages of telecommunications services and customer premises equipment (CPE) or information services. The accelerating development of new technologies like "voice over Internet" increases the strain on regulatory distinctions such as interstate/intrastate and telecommunications/non-telecommunications, and may reduce the overall amount of assessable revenues reported under the current system.[330] Additional legal, technological, and market developments that we cannot foresee now also could significantly impact the universal service contribution base.

135. In light of these and other changes in the telecommunications marketplace, the Commission has recognized the need to review the current system for assessing universal service contributions. Our examination of the record reveals a consensus that reforms are necessary, although different industry segments differ on what reforms should be undertaken.[331] Our primary goal is to ensure the stability and sufficiency of the universal service fund as the marketplace continues to evolve. We also seek to identify the best means of ensuring that contributors continue to be assessed in an equitable and nondiscriminatory manner, and recover their contributions in ways that are fair and understandable for consumers. In addition, we seek to provide certainty to market participants, and minimize the regulatory costs of complying with universal service obligations.

2. Legal Basis

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

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[326] Paul Kagan Associates, Inc., National Order-Rate Plans Take Off, WIRELESS MARKET STATS, Jun. 16, 2000, at 11. *See Sixth CMRS Competition Report*, 16 FCC Rcd at 13377-78.

[327] *See* Deborah Mendez-Wilson, Big Carriers Get Personal With Regional Calling Plans, WIRELESS WEEK, Feb. 26, 2001, at 12; *see also Sixth CMRS Competition Report*, 16 FCC Rcd at 13378.

[328] *See* Andrew Backover, *AT&T Loss Reflects Long-Distance Shift, Consumers Turn To Calling Cards, Wireless*, USA TODAY, Jan. 30, 2001, at B3 (citing analyst Peter Friedland at W.R. Hambrecht); *see also Sixth CMRS Competition Report*, 16 FCC Rcd at 13381-82.

[329] *See supra* para. 13.

[330] *See Report to Congress*, 13 FCC Rcd at 11508 para. 14 , 11541 para. 83.

[331] *See, e.g.,* AT&T Comments at 13; Cable and Wireless Reply Comments at 4; Center for Digital Democracy Comments at 7; Excel Comments at 6; Nextel Comments at 6; Qwest Comments at 3; SBC Comments at 4; Texas OPC and CFA Comments at 7; Verizon Comments at 5; WorldCom Comments at 14.

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

137. The Commission's contributor reporting requirements apply to a wide range of entities, including all telecommunications carriers and other providers of interstate telecommunications services that offer telecommunications services for a fee.[332] Thus, we expect that the proposal in this proceeding could have a significant economic impact on a substantial number of small entities. Of the estimated 5,000 filers of the Telecommunications Reporting Worksheet, FCC Form 499, we do not know precisely how many are small entities, but we offer below some estimates of the number of small entities within each of several major carrier-type categories.

138. To estimate the number of small entities that could be affected by these proposed rules, we first consider the statutory definition of "small entity" under the RFA. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[333] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[334] A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[335]

139. The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees.[336] We first discuss the number of small telephone companies falling within these SIC categories, then attempt to refine further those estimates to correspond with the categories of telecommunications companies that are commonly used under our rules.

140. 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."[337] The SBA's Office of Advocacy

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[332] 47 C.F.R. §§ 52.17 (applying to all telecommunications carriers), 54.703 (applying to every telecommunications carrier that provides interstate telecommunications services, every provider of interstate telecommunications that offers telecommunications for a fee on a non-common carrier basis, and certain payphone providers), *and* 64.604(c)(4)(iii)(A) (applying to every carrier providing interstate telecommunications services). We note that the Commission's rules for universal service exempt certain small contributors, *i.e.*, contributors that have revenue below a stated threshold. 47 C.F.R. § 54.705.

[333] 5 U.S.C. § 601(6).

[334] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, 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(s) in the Federal Register." *Id.*

[335] Small Business Act, 15 U.S.C. § 632.

[336] 13 C.F.R. § 121.201. Categories 4812 and 4813 have recently been reclassified as NAICS codes 513321, 513322, 51331, and 51334.

[337] 5 U.S.C. § 601(3).

contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.[338] We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

141. The most reliable source of information regarding the total numbers of common carrier and related providers nationwide, including the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Trends in Telephone Service* report.[339] According to data in the most recent report, there are 4,822 interstate carriers. These carriers include, *inter alia*, incumbent local exchange carriers, competitive local exchange carriers, competitive access providers, interexchange carriers, other wireline carriers and service providers (including shared-tenant service providers and private carriers), operator service providers, pay telephone operators, providers of telephone toll service, wireless carriers and services providers, and resellers.

142. *Total Number of Telephone Companies Affected.* The United States Bureau of the Census ("the Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.[340] This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated."[341] For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the decisions and rules adopted in this Order.

143. *Wireline Carriers and Service Providers.* SBA has developed a definition of small entities for telephone communications companies other than radiotelephone companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992.[342] According to SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons.[343]

[338] Letter from Jere W. Glover, SBA, to Chmn. William E. Kennard, FCC, dated May 27, 1999. The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." *See* 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent local exchange carriers in its regulatory flexibility analyses. *See, e.g.*, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 16144-45 (1996).

[339] *Trends Report*, Table 16.3.

[340] United States Department of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size, at Firm Size 1-123 (1995) ("1992 Census").

[341] 15 U.S.C. § 632(a)(1).

[342] 1992 Census, *supra*, at Firm Size 1-123.

[343] 13 C.F.R. § 121.201, SIC Code 4813.

All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rules adopted in this Order.

144. *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 telephone communications companies other than radiotelephone (wireless) companies.[344] The most reliable source of information regarding the number of these carriers nationwide of which we are aware appears to be the data that we collect annually on the Form 499-A. According to our most recent data, there are 1,335 incumbent LECs, 349 CAPs, 204 IXCs, 21 OSPs, 758 payphone providers and 541 resellers.[345] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,335 incumbent LECs, 349 CAPs, 204 IXCs, 21 OSPs, 758 payphone providers, and 541 resellers that may be affected by the decisions and rules adopted in this Order.

145. *Cellular Licensees*. Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. The applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons.[346] According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.[347] Even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. According to the most recent *Trends Report*, 806 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data.[348] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and are unable at this time to estimate

[344] 13 C.F.R. § 121.201, SIC Code 4813.

[345] *See Trends Report*, 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) (total of 129 for both).

[346] 13 C.F.R. § 121.201, SIC code 4812.

[347] 1992 Census, Series UC92-S-1, at Table 5, SIC code 4812.

[348] *Trends Report*, Table 16.3.

with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. We estimate that there are fewer than 806 small cellular service carriers that may be affected by the proposed rules, if adopted.

146. *220 MHz Radio Service -- Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone Communications companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons.[349] According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.[350] If this general ratio continues in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

147. *220 MHz Radio Service -- Phase II Licensees.* The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order*, we adopted criteria for defining small and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[351] We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years.[352] The SBA has approved these definitions.[353] An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.[354] Two auctions of Phase II licenses have been conducted. In the first auction, nine hundred and eight (908) licenses were auctioned in 3 different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: one of the Nationwide licenses, 67% of the Regional licenses, and 54% of the EA licenses. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158

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[349] 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) code 4812.

[350] U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S-1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms; 1992, SIC code 4812 (issued May 1995).

[351] 220 MHz Third Report and Order, 12 FCC Rcd 10943, 11068-70, at paras. 291- 295 (1997).

[352] *Id.* at 11068-69 para. 291.

[353] *See* Letter from A. Alvarez, Administrator, SBA, to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC (Jan. 6, 1998).

[354] *See generally* Public Notice, "220 MHz Service Auction Closes," Report No. WT 98-36 (Wireless Telecommunications Bureau, October 23, 1998).

licenses.[355]

148. *Private and Common Carrier Paging.* In the Paging *Third Report and Order*, we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[356] We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years.[357] The SBA has approved these definitions.[358] An auction of Metropolitan Economic Area (MEA) licenses commenced on February 24, 2000, and closed on March 2, 2000.[359] Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. At present, there are approximately 24,000 Private-Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to the most recent *Trends Report*, 427 carriers reported that they were engaged in the provision of paging and messaging services.[360] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and therefore are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 427 small paging carriers that may be affected by the decisions and rules adopted in this Order. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

149. *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 less than $40 million in the three previous calendar years.[361] For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[362] These regulations defining "small entity" in the

[355] Public Notice, "FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made," Report No. AUC-18-H, DA No. 99-229 (Wireless Telecom. Bur. Jan. 22, 1999).

[356] *220 MHz Third Report and Order*, 12 FCC Rcd 10943, 11068-70, at paragraph 291-295 (1997).

[357] *220 MHz Third Report and Order*, 12 FCC Rcd 11068-69, at paragraph 291 (1997).

[358] *See* Letter from A. Alvarez, Administrator, SBA, to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC (January 6, 1998).

[359] *See generally* Public Notice, "220 MHz Service Auction Closes," Report No. WT 98-36 (Wireless Telecommunications Bureau (October 23, 1998).

[360] *Trends Report*, Table 16.3.

[361] *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*, FCC 96-278, WT Docket No. 96-59 Sections 57-60 (released June 24, 1996), 61 FR 33859 (July 1, 1996); *see also* 47 C.F.R. § 24.720(b).

[362] *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*, FCC 96-278, WT Docket No. 96-59 Sections 60 (released June 24, 1996), 61 FR 33859 (July 1, 1996)

context of broadband PCS auctions have been approved by the SBA.[363] 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% of the 1,479 licenses for Blocks D, E, and F.[364] On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses; there were 48 small business winning bidders. Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, plus the 48 winning bidders in the re-auction, for a total of 231 small entity PCS providers as defined by the SBA and the Commission's auction rules. 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.

150. *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*.[365] 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 IRFA, 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.

151. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.[366] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).[367] We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no

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[363] *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 (1994).

[364] FCC News, *Broadband PCS, D, E and F Block Auction Closes,* No. 71744 (released January 14, 1997).

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

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

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

more than 1,500 persons.[368] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

152. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service.[369] We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.[370] 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.

153. *Specialized Mobile Radio (SMR).* Pursuant to 47 CFR Section 90.814(b)(1), the Commission has defined "small business" for purposes of auctioning 900 MHz SMR licenses, 800 MHz SMR licenses for the upper 200 channels, and 800 MHz SMR licenses for the lower 230 channels on the 800 MHz band, as a firm that has had average annual gross revenues of $15 million or less in the three preceding calendar years.[371] The SBA has approved this small business size standard for the 800 MHz and 900 MHz auctions. Sixty winning bidders for geographic area licenses in the 900 MHz SMR band qualified as small business under the $15 million size standard. The auction of the 525 800 MHz SMR geographic area licenses for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten winning bidders for geographic area licenses for the upper 200 channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. An auction of 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000 and was completed on September 1, 2000. Of the 1,050 licenses offered in that auction, 1,030 licenses were sold. Eleven winning bidders for licenses for the General Category channels in the 800 MHz SMR band qualified as small business under the $15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 EA licenses in the lower 80 channels of the 800 MHz SMR service were sold. Of the 22 winning bidders, 19 claimed small business status. In addition, there are numerous incumbent site-by-site SMR licenses on the 800 and 900 MHz band.

154. 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 purposes of this FRFA, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA.

155. For geographic area licenses in the 900 MHz SMR band, there are 60 who qualified as small entities. For the 800 MHz SMR's, 38 are small or very small entities.

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

156. Should the Commission decide that fundamental reform of the existing

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[368] 13 C.F.R. § 121.201, SIC code 4812.

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

[370] 13 C.F.R. § 121.201, SIC code 4812.

[371] 47 C.F.R. § 90.814(b)(1).

contribution methodology is needed, the associated rule changes potentially could modify the reporting and recordkeeping requirements of telecommunications service providers regulated under the Communications Act. As discussed previously, we potentially could require telecommunications service providers to file additional and/or different monthly or quarterly reports.[372] Any such reporting requirements potentially could require the use of professional skills, including legal and accounting expertise. Without more data, we cannot accurately estimate the cost of compliance by small telecommunications service providers. In this Further Notice, we therefore seek comment on the frequency with which carriers should submit reports to USAC, the types of burdens carriers will face in periodically submitting reports to USAC, and whether the costs of such reporting are outweighed by the potential benefits of the possible reforms. Entities, especially small businesses, are encouraged to quantify the costs and benefits of the reporting requirement proposals.

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

157. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[373]

158. As discussed previously, this Further Notice seeks comment on how to streamline and reform both the manner in which the Commission assesses carrier contributions to the universal service fund and the manner in which carriers may recover those costs from their customers. We seek more focused comment on whether to assess contributions based on the number and capacity of connections provided to a public network, as proposed by some commenters.[374] A connection-based assessment approach may address the difficulty of applying regulatory distinctions inherent in the existing system to new services and technologies. By harmonizing the contribution system with the telecommunications marketplace, a connection-based assessment approach may help to ensure the stability and sufficiency of the universal service contribution base over time. We also invite commenters to supplement the record developed in response to the *2001 Notice* with any new arguments or data regarding whether to retain or modify the existing revenue-based system. For example, some commenters suggest that we retain or modify slightly the existing system.[375] In addition, we seek additional comment in the Further Notice on reforming the contribution recovery process to make it more fair and understandable for consumers.

159. Wherever possible, the Further Notice seeks comment on how to reduce the

[372] *See supra* paras. 76-82.

[373] 5 U.S.C. § 603(c).

[374] *See generally* AT&T, WorldCom, Sprint, and Level 3 comments supporting connection-based assessment.

[375] *See generally* ASCENT, AT&T Wireless, PCIA, and SBC comments supporting assessment on current revenues, APCC, Excel, and Iowa Utilities Board comments supporting assessment on projected revenues.

administrative burden and cost of compliance for small telecommunications service providers. We seek comment, for example, on the appropriate frequency and content of reporting under a connection-based methodology. We particularly seek comment from contributors that are "small business concerns" under the Small Business Act.

160. Contributors currently report their gross-billed interstate end-user telecommunications revenues on a quarterly basis on the Form 499-Q. We seek comment on requiring contributors to report the number and capacity of their connections on a monthly basis.[376] Under this proposal, each month contributors would receive a fill-in-the-blank bill from USAC and would remit their contribution based on the number and capacity of their end-user connections in service as of the end of the prior month. Therefore, the proposed new Form 499-M would serve both as a contributor's monthly bill and its reporting obligation. Although contributors would have to report more frequently under this proposal than under the current system, their overall reporting burdens may be significantly reduced because they would only be required to report the number and capacity of the connections they provide, rather than their interstate telecommunications revenues. In addition, a contributor's reporting obligation and its bill would become one in the same. We also seek comment on whether requiring only one entity to contribute for a connection would ease some of the administrative burdens associated with compliance.[377] Last, we also seek comment on an alternative that might assist small entities: how to craft a *de minimis* exemption should the Commission choose to adopt a connection-based system.[378]

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

161. None.

D. Comment Filing Procedures

162. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments 30 days or fewer from publication in the Federal Register, and reply comments 45 days or fewer from publication in the Federal Register. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.[379]

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

[376] *See supra* paras. 76-82.

[377] *See supra* para. 63.

[378] *See supra* para. 68.

[379] *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24,121 (1998).

ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address." A sample form and directions will be sent in reply.

164. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Acting Secretary, William F. Caton, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

165. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Sheryl Todd, Accounting Policy Division, 445 12th Street, S.W., Washington, D.C. 20554. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible format using Word or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number, in this case CC Docket No. 96-45, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy - Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12st Street, S.W., Room CYB402, Washington, D.C. 20554.

166. Written comments by the public on the proposed and/or modified information collections are due on or before thirty days after the date of publication in the Federal Register. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before 60 days after date of publication in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, S.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Jeanette Thornton, OMB Desk Officer, 10236 NEOB, 725 - 17th Street, N.W., Washington, D.C. 20503 or via the Internet to JeanetteThornto@omb.eop.gov.

E. Final Regulatory Flexibility Act Analysis

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

167. As required by the Regulatory Flexibility Act (RFA),[380] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *2001 Notice*.[381] The Commission sought written public comment on the proposals in the *2001 Notice*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[382]

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[380] *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).

[381] *2001 Notice*, 16 FCC Rcd at 9912-20.

[382] *See* 5 U.S.C. § 604.

168. In this Order, we adopt modifications to our current contribution methodology, which will further refine and streamline the assessment of universal service contributions. First, we amend the rules governing submission of FCC Form 499 to permit contributors to exclude universal service contributions from their assessable gross-billed interstate telecommunications revenues.[383] This modification addresses "circularity" in our current methodology that may cause contributors to mark-up line items. Second, we amend our rules to permit contributors to submit revenue data on a consolidated basis on behalf of commonly-owned subsidiaries.[384] This modification will allow certain carriers to reduce the burdens associated with complying with the reporting requirements of the universal service fund. Third, we increase from eight to 12 percent the amount of domestic interstate revenues a contributor may have and still qualify for the limited international revenue exception to our universal service contribution requirements.[385] Examination of the record in this proceeding demonstrates the need for these modifications, which address specific concerns raised by commenters to the *2001 Notice*.[386]

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

169. The Commission received comments related to the needs of small local telephone companies. In particular, the Small Business Administration's Office of Advocacy suggested that the Commission should retain the current contribution methodology to avoid raising the administrative costs on small businesses associated with compliance.[387] While we retain the current methodology, we note that the Commission, concurrent with the issuance of the Order adopted a Further Notice that seeks comment on a specific plan to fundamentally reform the contribution methodology. The proposed methodology detailed in the Further Notice may result in a program with significantly reduced administrative burdens.[388]

170. In the Order, however, the Commission adopts certain modifications to the existing methodology. In particular, the Commission adopts a proposal suggested by many wireless carriers to allow certain contributors to file on a consolidated basis, which should alleviate some of the administrative burden associated with complying with the universal service fund.[389] Additionally, the Commission's reform of the limited international revenue exception should help continue to ensure that contributors are not required to contribute more to universal service than they derive from interstate end-user telecommunications revenues.[390] The

[383] *See Order* at IV.A.

[384] *Id*. at IV.B.

[385] *Id*. at IV.C.

[386] Bahr Comments at 2-7 (discussing circularity); BTNA Comments at 2-4, Lockheed Comments at 4-9, Loral Reply Comments at 3-4 (discussing limited international revenue exception); Verizon Wireless Comments at 18, CTIA Comments at 11, Cingular Comments at 8, Nextel Comments at 12; PCIA Reply Comments at 9 (discussing consolidated filing).

[387] SBA Reply Comments at 4.

[388] Ad Hoc Comments at 27-33; AT&T Comments at 13; Nextel Comments at 8; Sprint Comments at 12; Telstar Reply Comments at 7; WorldCom reply Comments at 22.

[389] Cingular Comments at 8; Nextel Comments at 12; Verizon Wireless Comments at 18; WorldCom Reply Comments at 27.

[390] BTNA Comments at 2.

Commission has through these modifications minimized potential burdens raised by its existing contribution methodology, including the burdens on small entity carriers.

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

171. 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.[391] The RFA generally defines "small entity" as having the same meaning as the term "small business," "small organization," and "small governmental jurisdiction."[392] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities.[393] 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 SBA.[394]

172. We have described in detail in the Initial Regulatory Flexibility Analysis in this proceeding the categories of entities that may be directly affected by our proposals.[395] For this Final Regulatory flexibility Analysis, we hereby incorporate those entity descriptions by reference.

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

173. Pursuant to the Order, the only new reporting requirement is that we amend our rules to permit contributors to submit revenue data on a consolidated basis on behalf of commonly-owned subsidiaries.[396] The Commission based its decision in part on the fact that the reduction in administrative costs for these carriers would be significant. We therefore find that this change amounts to a positive compliance change for carriers, including small entity carriers.

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

174. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification,

[391] 5 U.S.C. § 604(a)(3).

[392] 5 U.S.C. § 601(6).

[393] 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."

[394] 15 U.S.C. § 632.

[395] *See supra* paragraphs 142-155.

[396] *Id*. at IV.B.

consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[397]

175. The Commission has taken numerous steps to minimize significant economic impacts on small entities of modifying the universal service contribution methodology adopted in this Order. By eliminating circularity that exists under the current contribution methodology, we reduce one cause for contributors to recover amounts in excess of the current contribution factor and will help address consumer concerns regarding the disparate recovery of universal service contributions through line items.[398] Further, by amending our rules to permit contributors to submit revenue data on a consolidated basis on behalf of commonly-owned subsidiaries, we substantially decrease the administrative burdens of some contributors.[399] We anticipate that many wireless contributors, for example, will choose to file on a consolidated basis. Finally, by increasing the international revenue exception from eight percent to 12 percent, we ensure that a contributor's universal service obligation does not exceed the amount of its interstate end-user telecommunications revenues.[400]

6. Report to Congress

176. The Commission will send a copy of this Order, including the FRFA analysis, in a report to be sent to Congress pursuant to the Congressional Review Act.[401] In addition, the Commission will send a copy of this Order, including this FRFA analysis, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this Order and FRFA analysis (or summaries thereof) also will be published in the Federal Register.[402]

7. Paperwork Reduction Act Analysis

177. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose no new or modified reporting and recordkeeping requirements or burdens on the public. Implementation of these new or modified reported and recordkeeping requirements will be subject to approval by the Office of Management and Budget (OMB) as prescribed by the Act, and will go into effect upon announcement in the Federal Register of OMB approval.

VII. ORDERING CLAUSES

178. Accordingly, for the above stated reasons:

179. IT IS ORDERED that, pursuant to the authority contained in sections 4(i), 4(j), 254, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j),

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[397] 5 U.S.C. § 603(c).

[398] *See supra* Section V.A.

[399] *See supra* V.B.

[400] *See supra* V.C.

[401] *See* 5 U.S.C. § 801(a)(1)(A).

[402] *See* 5 U.S.C. § 604(b).

254, 303(r) this Report and Order IS ADOPTED. The collections of information contained within this Order are contingent upon approval by the Office of Management and Budget. The Commission will publish a notice announcing the effective date of the collections of information.

180. IT IS FURTHER ORDERED that Part 54 of the Commission's rules, 47 C.F.R. Part 54, IS AMENDED as set forth in Appendix A attached hereto, effective thirty (30) days after the publication of this REPORT AND ORDER in the Federal Register.

181. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order to the Chief Counsel for Advocacy of the Small Business Administration.

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

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

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX A – FINAL RULES

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

PART 54 – UNIVERSAL SERVICE

Subpart H -- Administration

1. Section 54.702 is amended by deleting paragraph (f).

2. Section 54.706 is amended by revising paragraphs (b) and (c) as follows:

§ 54.706 Contributions

(a) * * *
(b) Except as provided in paragraph (c) of this section, every telecommunications carrier that provides interstate telecommunications services, every provider of interstate telecommunications that offers telecommunications for a fee on a non-common carrier basis, and every payphone provider that is an aggregator shall contribute to the federal universal service support mechanisms on the basis of its interstate and international end-user telecommunications revenues, net of prior period actual contributions.
(c) Any entity required to contribute to the federal universal service support mechanisms whose interstate end-user telecommunications revenues comprise less than 12 percent of its combined interstate and international end-user telecommunications revenues shall contribute to the federal universal service support mechanisms for high cost areas, low-income consumers, schools and libraries, and rural health care providers based only on such entity's interstate end-user telecommunications revenues, net of prior period actual contributions. For purposes of this paragraph, an "entity" shall refer to the entity that is subject to the universal service reporting requirements in 47 C.F.R. 54.711 and shall include all of that entity's affiliated providers of telecommunications services.

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3. Section 54.709 is amended by revising paragraph (a), paragraph (a)(1) and the first sentence of paragraph (a)(2) to read as follows:

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

(a) Contributions to the universal service support mechanisms shall be based on contributors' end-user telecommunications revenues and a contribution factor determined quarterly by the Commission.
(1) For funding the federal universal service support mechanisms, the subject revenues will be contributors' interstate and international revenues derived from domestic end users for telecommunications or telecommunications services, net of prior period actual contributions.
(2) The quarterly universal service contribution factor shall be determined by the Commission based on the ratio of total projected quarterly expenses of the universal service support

mechanisms to the total end-user interstate and international telecommunications revenues, net of prior period actual contributions. * * *

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APPENDIX B

LIST OF PARTIES FILING COMMENTS AND REPLY COMMENTS

Commenter	**Abbreviation**
ACUTA, Inc.	ACUTA **(late file, rec'd 7/2)**
Ad Hoc Telecommunications	Ad Hoc
American Mobile Telecommunications Association, Inc.	AMTA
American Public Communications Council, The	APCC
Arch Wireless, Inc.	Arch
Association of Communications Enterprises, The	ASCENT
AT&T Corp.	AT&T
AT&T Wireless Services, Inc.	AT&T Wireless
Bahr, Susan (small wireline and wireless carriers)	Law Office of Susan Bahr
BBG Communications, Inc.	BBG
BellSouth Corporation	Bell South
Brown University	Brown
BT North America Inc.	BT
Cellular Telecommunications & Internet Association	CTIA
Center for Digital Democracy, The Edgemont Neighborhood Coalition Migrant Legal Action Program	CDD et al.
Cingular Wireless LLC	Cingular
EPIK Communications	EPIK
Excel Communications, Inc.	Excel
Florida State University	Florida U
Home Telephone Company, Inc.	Home Telephone Company
IDT Corporation	IDT
Iowa Utilities Board	IUB
Lockheed Martin Global Telecommunications, LLC	Lockheed Martin
National Exchange Carrier Association, Inc.	NECA
National Association of State Utility Consumer Advocates	
National Telephone Cooperative Association	NTCA **(late filed, rec'd 7/2)**
Nextel Communications, Inc.	Nextel
Organization for the Promotion and Advancement of Small Telecommunications Companies	OPASTCO
Primus Telecommunications, Inc.	Primus
Qwest Communications International, Inc.	Qwest
Rural Cellular Association	RCA
SBC Communications, Inc.	SBC
Small Paging Carrier Alliance	Small Paging Alliance
Sprint Corporation	Sprint
Telstar International, Inc	Telstar
Teltronic, Inc. ERC Communications, Huffman Communications,	26 De Minimis Carriers

Commenter	Abbreviation
South Plains Communications,	
Mobile Relays, Inc.,	
Megahertz Technology, Inc.,	
Electrocomm – Michigan, Inc.,	
Net Wave Communications, Inc.,	
Two Way Radio Service, Inc.,	
Taxi Systems, Inc.,	
Allcomm Wireless, Inc.,	
Electrocom, Inc.,	
Telecom Network, Inc.,	
General Communications Systems, Inc.,	
Wireless Solutions,	
DW Communications, Inc.	
Applied Technology Group, Inc.,	
John Mitchell Company,	
Collins Communications,	
Rayfield Communications, Inc.,	
Technical Electronics, Inc.	
Reed Enterprises,	
Tri-State Communications,	
Mobilcomm, Inc.	
Texas Office of Public Utility Counsel	
The Consumer Federation of America	
Consumers Union	
AOL/Time-Warner Telecom	AOL/Time-Warner
Universal Service Administrative Company, The	USAC
United States Telecom Association	USTA
VarTec Telecom, Inc.	VarTec
Verestar, Inc.	Verestar **(late filed, rec'd 7/2)**
Verizon	
Verizon Wireless	
Western Kentucky University	
West Virginia Consumer Advocate	
WorldCom, Inc.	WorldCom
Z-Tel Communications, Inc. Z-Tel	

Reply Commenter	**Abbreviation**
American Public Communications Council, The	APCC
AOL Time Warner, Inc.	
Arch Wireless, Inc.	Arch Wireless
Association of Communications Enterprises, The	ASCENT
AT&T Corp.	AT&T
BellSouth Corporation	Bell South
BT North America, Inc.	BT
Cable & Wireless USA	Cable & Wireless
California Public Utilities Commission and the People of the State of California	CPUC * **filed late on 8/2/01**

Cbeyond Communications, LLC	Cbeyond
Cellular Telecommunications & Internet Association	CTIA
Center for Digital Democracy	CDD
Cingular Wireless LLC	Cingular
Competitive Telecommunications Association	CompTel
Dobson Communications Corporation	Dobson
iBasis, Inc.	iBasis
Level 3 Communications, LLC	Level 3
Loral Space & Communications Ltd.	Loral
National Exchange Carrier Association, The	NECA
National Cable & Telecommunications Association, The	NCTA
Office on Advocacy of the United States Small Business Administration, The	SBA
Personal Communications Industry Association, The	PCIA
Qwest Communications International, Inc.	Qwest
SBC Communications, Inc.	SBC
Sprint Corporation	Sprint
Telstar International, Inc.	Telstar
Teltronic, Inc., ERC Communications, Huffman Communications, South Plains Communications, Mobile Relays, Inc., Megahertz Technology, Inc. Electrocomm – Michigan, Inc. Net Wave Communications, Inc. Two Way Radio Services, Inc. Taxi Systems, Inc. T.W.R. Communications Taxi Equipment Company, Inc. Allcomm Wireless, Inc. Electrocom, Inc. Telecom Network, Inc. General Communications Systems, Inc. Wireless Solutions, DW Communications, Inc., Applied Technology Group, Inc. John Mitchell Company, Collins Communications, Rayfield Communications, Inc. Technical Electronics, Inc. Reed Enterprises, Tri-State Communications, Mobilcomm, Inc.	26 De Minimis Carriers
Texas Office of Public Utility Counsel, The Consumer Federation of America and Consumer Union	
United States Telecom Association, The	USTA

Universal Service Administrative Company	USAC
Verizon Wireless	
Verizon Telephone Companies, The	Verizon
Verestar, Inc.	Verestar
WorldCom, Inc.	WorldCom
Z-Tel Communications, Inc.	Z-Tel

SEPARATE STATEMENT OF CHAIRMAN MICHAEL K. POWELL

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

I write separately to underscore my support for this *Further Notice* and to express the urgency with which I feel we must move forward in this proceeding.

In light of market trends such as the overall decline in interstate revenues and the bundling of services, this *Further Notice* seeks additional comment on how we might reform the system of assessment and recovery of universal service contributions to ensure that this system remains equitable and nondiscriminatory, as the statute demands. The questions we ask in this item cover a wide range of approaches, including whether to assess contributions on carriers based on the number and capacity of connections they provide to customers, rather than on the interstate revenues they earn.

But the urgency for making progress arises not from the specific proposals upon which we seek comment, but from the pressing need to adopt *some* reform by which we can exert more discipline over the manner in which carriers pass on their contributions to consumers. At present, carriers have flexibility – some would say too much – over how they recover costs from their customers This fact has led some consumers and policymakers to level strong accusations that carriers are charging too much, are concentrating such recovery on customers with the fewest competitive choices, or are otherwise abusing their entitlement to recovery. This has caused considerable consumer frustration and led some consumers to question unnecessarily the value and fairness of the universal service programs mandated by the Act.

Thus, delay in completion of this proceeding also would delay benefits to consumers and to the viability of universal service that will accrue once we take steps to make assessment and recovery more justifiable and sustainable. If I were persuaded that the infirmities of the current system could not be corrected in a way that is equitable and nondiscriminatory among contributing carriers, I would not feel the same urgency to move forward in this proceeding. But luckily, there are a number of approaches upon which we seek comment in this *Notice* that I believe may cure these infirmities. And so I strongly encourage participants in this proceeding to help the Commission complete this important task.

In the meantime, I would remind carriers choosing to recover their contributions from end users that the Commission is not without authority to prosecute abuses of such recovery. At a minimum, section 201(b) of the Act requires that all rates, terms and conditions of common carrier service are just and reasonable, and I believe that requirement extends to carriers' use of line items to recover universal service contributions. I therefore ask carriers to be mindful of such requirements as we strive to finalize reform of the universal service contribution system.

SEPARATE STATEMENT OF
COMMISSIONER KEVIN J . MARTIN

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

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

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

While we consider these comprehensive reforms, however, I believe it may be important to take some immediate steps. For example, AT&T has complained that assessing contribution obligations on past revenues, as the system currently does, unfairly penalizes carriers with declining revenues and unfairly benefits those with increasing revenues. I believe we should take action on AT&T's waiver request, which seeks to allow AT&T to pay its contributions based on projected rather than past revenue. Whether we make changes along these lines or some other alterations to the current system, I believe some short term adjustments may be warranted.

I also wish to highlight one issue for comment. In weighing the various proposals, we must make sure that "[a]ll providers of telecommunications services . . . make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service." 47 U.S.C. § 254(b)(4). We must also follow the Court of Appeals for the Fifth Circuit's holding that the Communications Act prohibits the Commission from assessing contributions on intrastate revenue. *See Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 448 (5th Cir. 1999). I thus think it is crucial that parties comment on how the different proposals comply with both of these limitations.

Finally, I wish to emphasize the importance of participation by the states in this proceeding. We welcome comments from the state commissions, and we have committed to seeking input from the Universal Service Joint Board before making any

significant changes to the contribution methodology. I am confident that we could do so in a manner that does not cause any unnecessary delay.