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
	)	
American Public Communications Council Petition for Reconsideration	)	

ORDER ON RECONSIDERATION

Adopted: February 12, 2008 **Released: February 14, 2008**

By the Commission:

I. INTRODUCTION

1. In this Order, we grant the relief sought in the Petition filed by the American Public Communications Council (APCC) seeking modification of the Commission's March 14, 2003, order in the above-captioned dockets.[1] In that order, the Commission waived the requirements of section 54.712

[1] *See Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, American Public Communications Council, Petition for Reconsideration, filed Apr. 30, 2003 (*APCC Petition*). The Commission issued a public notice on APCC's petition on May 20, 2003. *See Petitions For Reconsideration of Action in Rulemaking Proceeding*, Public Notice, Report No. 2608 (May 20, 2003).

of its rules to permit local exchange carriers (LECs) to continue to recover certain contribution costs associated with Centrex customers on a per-line basis from multi-line business customers through the federal universal service line item.[2] For the reasons stated herein, we agree with APCC that, as applied to independent payphone service providers (PSP), the decision in the *Centrex Waiver Order* does not further the stated goal of section 276 to "promote the widespread deployment of payphone services to the general public."[3]

II. BACKGROUND

2. As the Commission has previously recognized, Congress enacted section 276 of the Telecommunications Act of 1996 to promote competition among payphone service providers and the widespread deployment of payphone services.[4] In the *Wisconsin Payphone Order*, the Commission found that to advance the statutory goals of section 276, it was appropriate to terminate the then-current system of payphone regulation and eliminate discrimination between BOC and independent payphone providers and subsidies for BOC payphones.[5] The Commission also affirmed the Wireline Competition Bureau's conclusion that section 276 requires BOCs to set their intrastate payphone line rates in compliance with the Commission's cost-based, forward-looking "new services" test.[6]

3. On December 12, 2002, the Commission adopted interim modifications to the current revenue-based universal service assessment system to ensure the sufficiency and predictability of universal service while it considers reforms to sustain the universal service fund for the long term.[7] Among other things, the Commission adopted a general rule precluding telecommunications carriers from marking up universal service line-item amounts above the relevant contribution factor.[8] The Commission concluded such action would prohibit carriers from recovering unrelated costs through universal service line items and from averaging contribution costs across all end-user customers. In addition, it would alleviate end-user confusion regarding universal service line items.[9] The Commission recognized this rule would require some carriers to implement modifications to billing systems, and therefore stated that the rule would not become effective until April 1, 2003.[10]

4. On March 14, 2003, the Commission granted certain petitions for interim waiver and petitions for reconsideration of rules recently adopted in the *Interim Contribution Methodology Order* regarding the assessment and recovery of contributions to the federal universal service support mechanisms.[11] In relevant part, the Commission granted local exchange carriers' request for an interim

[2] *See Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Order and Second Order on Reconsideration, 18 FCC Rcd 4818 (2003) (*Centrex Waiver Order*).

[3] *See APCC Petition* at 3 (citing *Wisconsin Public Service Commission Order Directing Filings*, Memorandum Opinion and Order, Bureau/CPD No. 00-01, 17 FCC Rcd 2051 (2002) (*Wisconsin Payphone Order*)); 47 U.S.C. § 276(b).

[4] *See Wisconsin Payphone Order*, 17 FCC Rcd at 2052, para. 2; *see also* 47 U.S.C. § 276(b).

[5] *See Wisconsin Payphone Order*, 17 FCC Rcd at 2052, para. 2.

[6] *Id*.

[7] *See Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952 (2002) (*Interim Contribution Methodology Order*).

[8] *See id.* at 24974-83, paras. 40-63.

[9] 47 C.F.R. § 54.712 ("[T]he amount of the federal universal service line-item charge may not exceed the interstate telecommunications portion of that customer's bill times the relevant contribution factor.").

[10] *See Interim Contribution Methodology Order*, 17 FCC Rcd at 24979, para. 52.

[11] *See Centrex Waiver Order*, 18 FCC Rcd 4818.

waiver of section 54.712 of the Commission's rules to permit such carriers to continue to recover certain contribution costs associated with Centrex customers on a per-line basis from multi-line business customers through the federal universal service line item.[12] The Commission's action permitted local exchange carriers that utilize the presubscribed interexchange carrier charge (PICC) equivalency ratios when recovering universal service contribution costs from Centrex customers to recover a share of their contributions associated with the subscriber line charge for a specific Centrex line from their multi-line business customers in a given state.[13]

III. DISCUSSION

5. In this Order, we grant the petition for reconsideration filed by APCC. We find that APCC has demonstrated that, as applied to PSPs, the Commission's action in the *Centrex Waiver Order* unfairly burdens PSPs and is inconsistent with Congress' desire to "promote the widespread deployment of payphone services to the benefit of the general public."[14]

6. In its petition, APCC provides data from BOC tariffs that show, absent our decision in the *Centrex Waiver Order*, PSPs would pay less in the USF contribution pass-through charges.[15] In one example, the additional USF pass-through assessed as a result of the *Centrex Waiver Order* results in an approximate 39 percent markup of the line item.[16] APCC contends that this evidences the extent of the "Centrex subsidy portion of the [federal] USF."[17] APCC further contends that this result is contrary to Commission precedent as established in the *Wisconsin Payphone Order*. Specifically, APCC asserts that in the *Wisconsin Payphone Order*, the Commission "specifically rejected an argument that BOC payphone line rates 'may include subsidies for other BOC services.'"[18]

7. As stated above, our actions in the *Wisconsin Payphone Order* were taken to ensure that Congress' pro-competitive statutory goals were realized.[19] Subsequent to the *Wisconsin Payphone Order*, the Commission, in the *Centrex Waiver Order,* determined that incumbent LECs could, on an interim basis, continue to recover universal service contributions costs associated with Centrex customers on a per-line basis from multi-line business customers through the federal universal service line item.[20] We agree with APCC that this action contravenes our goal to advance the pro-competitive statutory aims of section 276, as enunciated in the *Wisconsin Payphone Order* and further explained in the *PICC Order*.[21] As the Commission noted in those orders, in implementing section 276, the Commission required that payphone line rates be cost-based.[22] In the *PICC Order,* the Commission, elaborating on the requirement that payphone rates be cost-based, held that incumbent LECs could not charge payphone providers the multi-line business (MLB) PICC, because that charge does not recover the costs of the lines upon which

[12] *Id*. at 4821-22, paras. 3-9.

[13] *Id*. at 4821-22, para.8.

[14] *See* 47 U.S.C. § 276(b)(1).

[15] *APCC Petition* at n.12.

[16] *Id*.

[17] *Id*. at 5.

[18] *Id*. at 3 (citing *Wisconsin Payphone Order* at 2068-69, paras. 55-56).

[19] *See supra* para. 2.

[20] *Centrex Waiver Order*, 18 FCC Rcd at 4821-22, paras. 3-9.

[21] *See supra* para. 2; *see also* Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, CC Docket Nos. 96-262, 94-1, *Order on Reconsideration*, 18 FCC Rcd 12626, 12629, para. 8 (2003) (*PICC Order*) (exempting payphone lines from PICCs).

[22] *Id.*

it is assessed but instead allows incumbent LECs to make up a common-line revenue shortage associated with residential and single-line business lines.[23] The Commission noted that, even though the PICC does not subsidize the LEC's payphone service it would be inappropriate to assess PICCs on PSPs because imposition of the PICC may limit the deployment of payphone services that fulfill the universal service function intended by section 276.[24]

8. We conclude here that allowing for an upward adjustment of the universal service line-item to compensate for the Commission's treatment of Centrex services results in charges associated with payphone lines that are not cost-based. As such, application of the Centrex-adjusted portion of the universal service line item to PSPs would, like the application of the PICC, be inconsistent with Congress' direction in 276(b). We therefore conclude that LECs may not charge additional USF line-item amounts related to the Centrex adjustments to PSPs. As a result, section 54.712 of our rules, which addresses contribution recovery of universal service costs from end users, applies to PSPs.[25]

9. In order to give effect to our decision in this order, PSPs should identify themselves within 30 calendar days to their respective underlying LEC so the LEC can ensure its compliance with this order. We also provide LECs with 90 days after the effective date of this order to ensure their compliance with the decision contained herein.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED that pursuant to the authority contained in Sections 1, 4(i), 4(j), 201(b), 202(a), 254, and 276 of the Communications Act of 1934, as amended, 47 USC §§ 151, 154(i), 154(j), 201(b), 202(a), 254, and 276, the Petition for Reconsideration filed by the American Public Communication Council, IS HEREBY GRANTED to the extent provided herein.

11. IT IS FURTHER ORDERED that, pursuant to section 408 of the Communications Act of 1934, as amended, 47 U.S.C. § 408, this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

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[23] *See PICC Order*, 18 FCC Rcd at 12629, paras. 7-8.

[24] *See PICC Order*, 18 FCC Rcd at 12629, para. 8.

[25] 47 C.F.R. § 54.712 (limiting the amount a contributor may recover through its federal universal service line item to the interstate telecommunications portion of the customer's bill times the relevant contribution factor).