

## FCC INITIATES PROCEEDING TO REFORM THE UNIVERSAL SERVICE FUND CONTRIBUTION SYSTEM

As mandated by the Telecommunications Act of 1996 (“1996 Act” or “Act”), the universal service program attempts to promote the availability of telecommunications services at reasonable rates to all consumers, particularly those in rural, insular, low-income and high-cost areas. To that effect, Section 254 of the Act directed the Federal Communications Commission (“Commission”) to establish a regulatory scheme in which all interstate telecommunications carriers “contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established . . . to preserve and advance universal service.”<sup>1</sup>

The Commission recently released a Notice of Proposed Rulemaking (“NPRM”) on universal service, in which it requests comments on ways to streamline and reform the universal service contribution methodology and the regulation of contribution recovery methods. In the NPRM, the Commission has introduced a number of issues that will have wide-ranging effects on which service providers will be required to contribute to universal service,<sup>2</sup> the degree to which contributions will be required and the manner in which contributions may be recovered from customers.

Although it will be difficult to predict the ultimate impact of the Commission’s proposed revisions, we do know that the Commission has recently placed more emphasis on enforcement of contribution requirements. Contribution factors have increased dramatically from the inception of the universal service fund in its current form following the 1996 Act. Some of these proposals will most certainly cause it to further increase, and it appears that the ability of

---

<sup>1</sup> See 47 U.S.C. § 254(d) (2000). Under the current rules, contributions are assessed as a percentage of the contributor’s interstate and international end-user telecommunications revenues.

<sup>2</sup> Section 254(d) allows the Commission to require contribution, not just from telecommunications carriers, but from “[a]ny other provider of interstate telecommunications” (*e.g.*, private/non-common carriers) with limited exceptions. Although the Commission uses the term “carrier” throughout the NPRM, it should be noted that the principles of the NPRM apply to all telecommunications providers currently assessable under the universal service rules. However, it may be worthwhile to note the Commission’s continued use of the term “carrier” and seeming inability to discuss universal service contributions in the broader context of all providers who have been affected by this regulatory scheme designed primarily for common carriers.

providers to recover their contribution will be further constrained. However, because there is little transparency in who reports and contributes in the universal service mechanism, and because enforcement action has not been taken against parties who fail to report, it will be difficult to ascertain the ultimate impact of these revisions on the total contribution amount and therefore on future contribution factors.

Of particular importance is carriers' increased offering of bundled interstate and intrastate services, and of telecommunications and non-telecommunications services. The Commission indicates that bundling services in this way may affect providers' ability to allocate revenues properly for contribution purposes. The Commission expresses a willingness to reevaluate the exclusion of IP-based services from the universal service contribution base. This may provide a vehicle for imposing regulatory assessments on some forms of IP telephony. A dialogue on this subject may also affect the current exclusion of enhanced and information services. The Commission also discusses the regulatory status of the provision of broadband transmission service over cable. While the Commission does not draw any conclusions with respect to these services, the discussion will undoubtedly encourage some parties to raise the issue in their comments. Should the Commission determine that such services are subject to contribution for universal service, it may open the door to access charges and other regulatory assessments.

Specific issues with respect to which the Commission has proposed alternatives in the Universal Service NPRM include:

- I. **Whether and how to modify the current universal service contribution methodology.** The Commission proposes two alternative methodologies and asks whether its proposals will satisfy the Act's requirement that mechanisms be sufficient, predictable and competitively neutral. The Commission requests comment on how to move from the current assessment methodology to the proposed regimes.
  - A. **Whether to base contribution on current collected revenues rather than historical gross-billed revenues.** The Commission asks whether this alternative will simplify assessment and recovery by removing the need for complex calculations of uncollected revenues and credits and if it will eliminate concerns about the interval between reporting and assessment. The Commission recognizes that such an interval may give a competitive advantage to new entrants, whose contributions are delayed during the six month interval.
  - B. **Whether to assess the universal service contribution by a flat fee, such as with a per-line or per-account charge, using projected or historical line counts or number of accounts, reported to USAC on a quarterly or annual basis.** The flat-fee charge would be the same regardless of the level of interstate revenue or traffic associated with a given line or account. Carriers might also be required to periodically report their line counts or number of accounts. The Commission asks whether this alternative will be simpler for carriers and for USAC and

will eliminate concerns about the interval between reporting and assessment. The Commission suggest that a potential disadvantage to this method is that it will not be usage-based or competitively neutral. The Commission seeks comment on how a flat-rate assessment should be calculated, especially where there is more than one provider associated with a line, and whether such assessment should vary for different types of lines, users, service offerings or providers.

**II. Whether market conditions necessitate changes in the Commission's various exceptions for contribution to universal service.**

- A. How to allocate revenues for bundled intrastate/interstate services and telecommunications/non-telecommunications services.** The Commission suggests that bundling services may affect carriers' ability to allocate interstate telecommunications revenues properly for contribution purposes, and notes that certain IP-based services, such as voice over internet, could be characterized as telecommunications services and fall within the Act's mandatory requirement to contribute to universal service. This could increase the number of providers required to contribute and increase the amount current contributors must pay into the fund.
- B. Whether to modify or eliminate the *de minimis* exception.** The Commission notes that the *de minimis* exception exists because compliance costs should not exceed contribution amounts, and asks whether the exception should be reduced or eliminated due to decreasing compliance costs. The Commission seeks comment from *de minimis* carriers on the administrative burdens associated with requiring them to contribute. It also asks whether and how carriers should true-up contribution amounts to reflect changes in their *de minimis* status during the relevant reporting period.
- C. Whether to modify the safe harbor for reporting wireless revenues.** The Commission suggests that an increase in the use of wireless services and bundled local and long distance wireless offerings may cause the actual percentage of interstate wireless telecommunications revenues to exceed the Commission's interim safe harbor percentages.
- D. Whether to modify the international revenues exception.** A provider is not required to contribute to universal service based on its international revenues if its interstate end-user telecommunications revenues constitute less than eight percent of its combined interstate and international end-user telecommunications revenues. The Commission notes that this exception was implemented so that a provider's universal service contribution would not exceed its amount of interstate end-user telecommunications revenues, and asks whether increases in the

contribution factor indicate a need to increase the percentage threshold. The Commission requests comment on how to implement the exception should it adopt a flat-fee assessment.

- III. **How to ensure fund sufficiency under the proposed assessment methodologies.** The Commission notes that it cannot accurately predict collected revenues, line counts or accounts in each quarter, as required by the streamlined proposals, and seeks comment on which of the proposals is more likely to result in a shortfall in the fund and the likely magnitude of such a shortfall. The Commission asks whether these proposals will satisfy the Act's requirement that mechanisms be sufficient and predictable.
- A. **Whether a reserve should be established to guard against unexpected shortfalls.** The Commission requests comment as to the appropriate size of such a reserve, factors impacting its size, and how it should be collected and maintained.
- B. **Alternative methods to ensure fund sufficiency.** Currently, USAC allocates collected contributions into separate accounts for the different universal service mechanisms. The Commission asks whether it should be able to cover a shortfall using available funds from a different account.
- C. **What methodology to use for estimating collected revenues, line counts or accounts to set the quarterly contribution factor.** The Commission asks whether estimates should be based on historical data or future projections. As an alternative, the Commission asks whether to instead base assessments on the carriers' own estimates of collected revenues, line counts or accounts.
- IV. **Whether these proposals will reduce carrier reporting requirements.** The Commission asks whether reporting requirements should be modified consistent with the proposals—for example, should carriers report on a quarterly or annual basis—and seeks comment on administrative burdens the changes will impose. The Commission notes that FCC Form 499-A is also used for Telecommunications Relay Service, North American Numbering Plan, Local Number Portability and regulatory fee administration, and seeks comment on the impact of changes in the reporting requirement on these programs.
- V. **Whether additional enforcement and auditing is necessary.** The Commission asks whether USAC should have additional oversight responsibilities to monitor carrier compliance with reporting and contribution requirements, and requests proposals that will minimize the potential for carrier gaming. The Commission requests comment on the extent to which fund sufficiency could be affected by a carrier's ability to underreport in the early months of a reporting period to reduce contribution obligations.

- VI. **Whether to regulate recovery of universal service contributions.** If a carrier chooses to recover its contributions through a line-item surcharge on customer bills, the Commission proposes requiring a uniform line-item labeled “Federal Universal Service Charge” in an amount corresponding to the prescribed percentage, per-line or per-account assessment established by the Commission on a quarterly basis. The Commission seeks comment on whether uniformity in line-item recovery will benefit consumers, whether the approach will prevent carriers from recovering more than their obligation deriving from that customer and whether it will result in simpler bills. The Commission also seeks comment on disadvantages to such an approach, including whether it imposes costs that outweigh its benefits, and whether it will unnecessarily reduce carriers’ pricing flexibility and result in fewer options for consumers.
- A. **Whether carriers should be prohibited from recovering from Lifeline customers.**
- B. **Whether proposed recovery limits will affect existing ILEC recovery guidelines.**
- C. **Whether the Commission has the legal authority to impose constraints on contribution recovery.** The Commission seeks comment on whether sections 4(i), 201, 202 or 254 of the Act provide sufficient authority to adopt these proposals, whether the proposals raise First Amendment or other constitutional concerns, and whether the proposals are consistent with the Commission’s other policies and regulations. The Commission asks whether recovery limits are consistent with section 254(d)’s requirement that every telecommunications carrier contribute to universal service.

The Commission has addressed a broad range of issues in the Universal Service NPRM, with far-reaching implications for all telecommunications providers. Comments on the NPRM are due June 25, 2001; reply comments are due July 9, 2001. If you have any questions about the Universal Service NPRM, or about the Commission’s universal service program, please call Stephen Bell or Jennifer McCarthy in our Washington, D.C., office at (202) 328-8000.

May 29, 2001