

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

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

**ORDER AND ORDER ON RECONSIDERATION**

**Adopted: January 29, 2003**

**Released: January 30, 2003**

By the Commission:

**I. INTRODUCTION**

1. In this Order, we reconsider, on our own motion, the definition of “affiliate” adopted in the recent Report and Order and Second Further Notice of Proposed Rulemaking modifying rules regarding the assessment and recovery of contributions to the federal universal service

mechanisms.<sup>1</sup> Specifically, we conclude that wireless telecommunications providers are affiliated for purposes of making the single election whether to report actual interstate telecommunications revenues or use the applicable interim wireless safe harbor if one entity (1) directly or indirectly controls or has the power to control another, (2) is directly or indirectly controlled by another, (3) is directly or indirectly controlled by a third party or parties that also controls or has the power to control another, or (4) has an “identity of interest” with another contributor.<sup>2</sup> We also clarify options for the recovery of universal service contribution costs by wireless telecommunications providers that choose to report actual interstate telecommunications revenues based on a company-specific traffic study.

## II. BACKGROUND

2. The assessment and recovery of universal service contributions are governed by the statutory framework established by Congress in the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996.<sup>3</sup> Section 254(d) of the Act states that “[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.”<sup>4</sup> Consistent with Congress’s mandate, the Commission originally decided to assess contributions on gross-billed end-user telecommunications revenues.<sup>5</sup> As a result, every telecommunications carrier that provides interstate telecommunications and certain other providers of interstate telecommunications (e.g., non-common carriers) were required to contribute to universal service based on their gross-billed interstate and international end-user telecommunications revenues.<sup>6</sup>

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<sup>1</sup> See *Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing and Billing Format*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 02-329 (2002) (*Universal Service Contribution Methodology Order*).

<sup>2</sup> See 47 C.F.R. § 1.2110(c)(5).

<sup>3</sup> Communications Act of 1934, as amended, 47 U.S.C. § 254. The Telecommunications Act of 1996 amended the Communications Act of 1934. See Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act).

<sup>4</sup> 47 U.S.C. § 254(d).

<sup>5</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9206-07, paras. 843-44 (1997), as corrected by *Federal-State Joint Board on Universal Service*, Erratum, CC Docket No. 96-45, FCC 97-157 (rel. June 4, 1997), and Erratum, 13 FCC Rcd 24493 (1997), *aff’d in part, rev’d in part, remanded in part sub nom, Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5<sup>th</sup> Cir. 1999), *cert. denied*, 530 U.S. 1210 (2000), *cert. dismissed*, 531 U.S. 975 (2000) (*Universal Service Order*).

<sup>6</sup> See 47 C.F.R. §§ 54.706, 54.709.

3. In 1998, the Commission adopted rules intended to reduce administrative burdens for Commercial Mobile Radio Service (CMRS) providers.<sup>7</sup> As an alternative to reporting their actual interstate telecommunications revenues, CMRS providers were permitted to report as interstate a fixed “safe harbor” percentage of revenues.<sup>8</sup> Specifically, cellular, broadband personal communications service (PCS), and certain types of Specialized Mobile Radio (SMR) providers were permitted to assume that at least 15 percent of their cellular, broadband PCS, and SMR telecommunications revenues were interstate with the presumption of reasonableness.<sup>9</sup> CMRS providers that elected to report less than the interim safe harbor percentage were instructed to document, either through traffic studies or some other means, the method by which they arrived at their reported percentage of interstate telecommunications revenues and make that information available to the Commission or the Universal Service Administrative Company (USAC) upon request.<sup>10</sup>

4. On December 12, 2002, the Commission adopted modifications to the current revenue-based system to ensure the sufficiency and predictability of universal service while it considers reforms to sustain the universal service fund for the long term.<sup>11</sup> 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.<sup>12</sup> The Commission also revised rules governing revenue reporting by CMRS providers. The Commission increased to 28.5 percent the current interim safe harbor for cellular, broadband PCS, and certain SMR providers.<sup>13</sup> CMRS providers that do not utilize the applicable interim safe harbor will still have the option of reporting their actual interstate telecommunications revenues either through a company-specific traffic study or some other means.<sup>14</sup> The Commission also required wireless telecommunications providers to elect whether to report actual revenues or use the interim safe harbors for all affiliated entities within the same provider category.<sup>15</sup> The Commission defined “affiliate” as a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with another person, consistent with section 3(1) of the

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<sup>7</sup> *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 (1998) (*Interim CMRS Safe Harbor Order*).

<sup>8</sup> *See id.* at 21258-60, paras. 13-15.

<sup>9</sup> *Id.* at 21258-59, para. 13. The interim safe harbor percentages for paging providers and SMR providers that do not primarily provide wireless telephony were set at 12 percent and one percent, respectively. *See id.* at 21259-60, paras. 14-15.

<sup>10</sup> *Id.* at 21258, para. 11.

<sup>11</sup> *See Universal Service Contribution Methodology Order*.

<sup>12</sup> *See Universal Service Contribution Methodology Order* at paras. 45-63. Specifically, beginning April 1, 2003, the amount of a carrier’s federal universal service line item charge may not exceed the relevant interstate telecommunications portion of a customer’s bill times the relevant contribution factor. 47 C.F.R. § 54.712.

<sup>13</sup> *See id.* at paras. 20-27; *see also Interim CMRS Safe Harbor Order*, 13 FCC Rcd at 21258-59, paras. 13-15. The interim safe harbors for analog SMR and paging providers will remain at one percent and 12 percent, respectively. *See id.* at para. 23.

<sup>14</sup> *See Universal Service Contribution Order* at paras. 22, 24.

<sup>15</sup> *Id.* at para. 25-26.

Act.<sup>16</sup> Section 3(1) states that “the term ‘owns’ means to own an equity interest (or the equivalent thereof) of more than 10 percent.”<sup>17</sup>

### III. DISCUSSION

5. *Definition of Affiliate.* In this Order, we reconsider, on our own motion, the definition of affiliate adopted in the *Universal Service Contribution Methodology Order* for purposes of wireless providers making a single election whether to report actual interstate telecommunications revenues or use the applicable interim wireless safe harbor. We have become aware that adoption of an affiliate definition in this context that deems a ten percent interest as indicative of control would result in companies being required to make the same election merely because they are related through direct or indirect minority ownership interests of more than 10 percent. We understand that such cross-ownership is common in the wireless telecommunications industry. For example, several major national wireless telecommunications providers may be “affiliated” for purposes of the definition adopted as a result of greater than ten percent ownership interests in certain other wireless telecommunications providers. In short, the definition adopted in the *Universal Service Contribution Methodology Order* may force competing wireless telecommunications providers that are not otherwise under common control to adopt common universal service revenue reporting policies.<sup>18</sup>

6. We conclude that revising the definition of affiliate in this proceeding is necessary to achieve the goals of consistency, equity, and fairness in reporting revenues for purposes of supporting universal service. Entities that are not under common control may have different billing and administrative systems and, consequently, may have legitimate reasons to make different revenue reporting elections. The Commission previously adopted rules in the wireless auction context in order to evaluate affiliations for purposes of determining eligibility for designated entity status.<sup>19</sup> We conclude a similar approach would be reasonable for purposes of revenue reporting for universal service. We, therefore, reconsider on our own motion the definition of “affiliate” adopted in the *Universal Service Contribution Methodology Order*. We now conclude, consistent with section 1.2110(c)(5) of the Commission’s rules, that wireless telecommunications providers are affiliated for purposes of making the single election whether to report actual interstate telecommunications revenues or use the applicable interim wireless safe harbor for universal service contribution purposes if one entity (1) directly or indirectly controls or has the power to control another, (2) is directly or indirectly controlled by another, (3) is directly or indirectly controlled by a third party or parties that also controls or has the power to

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<sup>16</sup> See 47 U.S.C. § 153(1).

<sup>17</sup> See *id.*

<sup>18</sup> See Letter from Michael F. Altschul, Cellular Telecommunications & Internet Association, to Marlene H. Dortch, Federal Communications Commission, filed Jan. 16, 2003.

<sup>19</sup> See *Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures*, Third Report and Order and Second Further Notice of Proposed Rulemaking, WT Docket No. 97-82, 13 FCC Rcd 10274 (1997).

control another, or (4) has an “identity of interest” with another contributor.<sup>20</sup>

7. *CMRS Actual Interstate Revenues.* We note that some parties have suggested two different readings of the Commission’s universal service contribution cost recovery limitations for wireless telecommunications providers that choose to report their actual interstate telecommunications revenues based on a company-specific traffic study.<sup>21</sup> Specifically, AT&T and WorldCom read the requirement that telecommunications carriers cannot mark up the universal service line item above the relevant contribution factor to mean that wireless carriers that do not utilize the interim safe harbors must conduct traffic studies on a customer-by-customer basis when recovering contribution costs through a line item.<sup>22</sup> CTIA, on the other hand, reads this requirement to allow wireless carriers that report revenues based on a company-specific traffic study to use the same company-specific percentage to determine interstate revenues to compute contribution recovery line items.<sup>23</sup>

8. We disagree with AT&T and WorldCom’s reading of the interim requirement. Because we recognize that some CMRS providers during this interim period may not have the capability to determine their interstate telecommunications revenues on a customer-by-customer basis, we will allow CMRS providers to report their interstate telecommunications revenues based on a company-specific traffic study. The interstate telecommunications portion of each customer’s bill would equal the company-specific percentage based on its traffic study times the total telecommunications charges on the bill.<sup>24</sup> Accordingly, if such providers choose to recover their contributions through a line item, their line items must not exceed the interstate telecommunications portion of each customer’s bill, as described above, times the contribution factor. Just as the Commission did not eliminate the option of reporting actual interstate telecommunications revenues either through a company-specific traffic study or some other means,<sup>25</sup> the Commission did not intend to preclude wireless telecommunications providers from continuing to recover contribution costs in a manner that is consistent with the way in which companies report revenues to USAC.<sup>26</sup> We therefore disagree with AT&T and WorldCom that

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<sup>20</sup> Section 1.2110(c)(5) of the Commission’s rules clarifies how the affiliation rules are applied in practice, including through the use of examples.

<sup>21</sup> See Letter from Michael Altschul, Cellular Telecommunications & Internet Association, to Marlene H. Dortch, Federal Communications Commission, filed January 16, 2003 (*CTIA Ex Parte*), and Letter from Robert W. Quinn, AT&T and Richard S. Whitt, WorldCom, to Marlene Dortch, Federal Communications Commission, filed January 24, 2003 (*AT&T/WorldCom Ex Parte*).

<sup>22</sup> *AT&T/WorldCom Ex Parte* at 2.

<sup>23</sup> *CTIA Ex Parte* at 1.

<sup>24</sup> For wireless telecommunications providers that avail themselves of the interim safe harbors, the interstate telecommunications portion of the bill would equal the relevant safe harbor percentage times the total amount of telecommunications charges on the bill. See *Universal Service Contribution Methodology Order* at para. 51, n. 131.

<sup>25</sup> See *id.* at para. 24 (“Mobile wireless providers will still have the option of reporting their actual interstate telecommunications revenues.”). See also *Interim CMRS Safe Harbor Order*, 13 FCC Rcd at 21258, para. 11.

<sup>26</sup> For example, wireless providers that report using the safe harbor percentage would recover amounts from all of their customers based on the safe harbor percentage. Likewise, wireless providers that report using a company-

the recovery limitations adopted in the *Universal Service Contribution Order* should be read so narrowly as to require CMRS providers to conduct traffic studies on a customer-by-customer basis to calculate contribution recovery line items.<sup>27</sup>

#### IV. ORDERING CLAUSE

9. Accordingly, IT IS ORDERED, pursuant to sections 1-4, 201-202, 254, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-202, 254, and 405 and section 1.108 of the Commission's rules, 47 C.F.R. § 1.108, this ORDER AND ORDER ON RECONSIDERATION is ADOPTED.

10. IT IS FURTHER ORDERED, pursuant to section 553(d)(3) of the Administrative Procedure Act, 5 U.S.C. § 554(d)(3), that this ORDER AND ORDER ON RECONSIDERATION shall become effective upon publication in the Federal Register.<sup>28</sup>

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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specific percentage based on a traffic study would recover amounts from all of their customers based on that percentage.

<sup>27</sup> See *AT&T/WorldCom Ex Parte*. We note, however, that carriers would not be precluded from recovering contributions from all of their customers based on each customer's specific calling patterns.

<sup>28</sup> We find good cause to make this order effective upon publication in the Federal Register because CMRS providers must report to USAC their interstate end-user telecommunications revenues on FCC Forms 499-Q by February 1, 2003.