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

VERIZON WIRELESS REPLY COMMENTS ON USF STAFF STUDY

Verizon Wireless hereby: (1) replies to comments regarding the federal Universal Service Fund ("USF") Staff Study; (2) responds to arguments provided by proponents of connections-based alternatives in comments and reply comments to the *Second Further*

Notice;[1] and (3) provides initial thoughts on the submission from the North American Numbering Council ("NANC") regarding the technical impediments to using telephone numbers ("TNs") as a USF assessment allocator.[2]

The Staff Study compares alternative methodologies for calculating contributions to the USF support mechanisms. While some parties point out legitimate concerns regarding the assumptions underlying the Staff Study,[3] especially those assumptions regarding wireless growth projections, many parties acknowledge that the Staff Study is a useful tool for comparing the various proposals.[4] Moreover, most parties concur that the Staff Study demonstrates that the three connections-based proposals are unsupportable on legal and/or policy grounds.[5] They agree that the present revenue-based system is sustainable and should be given an opportunity to work, and strongly support retaining the revenue-based system.[6]

I. THE STAFF STUDY MAY UNDERSTATE THE DISCRMINATORY FUNDING BURDEN ON WIRELESS CARRIERS AND CONSUMERS FROM ALL OF THE CONNECTIONS-BASED PROPOSALS

Verizon Wireless and many other parties expressed concern in their initial comments that the connections-based proposals from the *Second Further Notice* impose

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1 Federal-State Joint Board on Universal Service, *Report and Order and Second Further Notice of Proposed Rulemaking,* 17 FCC Rcd. 24952 (2002) ("*Second Further Notice*").

2 *See Ex parte* letter from Bob Atkinson, NANC Chair, to William Maher, Chief, Wireline Competition Bureau, FCC, dated May 14, 2003, attaching the NANC USF IMG Final Report ("IMG Report").

3 Unless otherwise stated, all comments referenced herein were filed April 18, 2003 as reply comments to the *Second Further Notice* and/or initial comments to the Staff Study. *See* Comments by AT&T at Exhibit 1; Virgin Mobile USA ("VMU") at 3-11; MCI at 35-40; Verizon Wireless at 3.

4 *See* Comments by AT&T at Exhibit 1, page 1; VMU at 2; Sprint at 4; NASUCA at 2; Verizon Wireless at 3.

5 Comments by Consumers Union et al. ("CU") at 2; NASUCA at 2; Montana Independent Telecommunications Systems ("MITS") at 3; Beacon Telecommunications Advisors ("Beacon") at 6; Weblink Wireless ("Weblink") at 3; Metrocall at 2-3; Tracfone Wireless at 2; Verizon Wireless at ii, 2, 7-8; VMU at 13-14; XO Communications at 3-4; Verizon at 1, CTIA at 2; Nextel at 3-4.

discriminatory burdens on wireless carriers while freeing IXCs (and other categories of carriers) from paying an equitable share – a concern confirmed by the Staff Study.[7] Virgin Mobile USA's ("VMU") comments on the Staff Study reinforce this concern by explaining why the projections used by the Staff Study may *overstate* wireless industry revenue growth and therefore *understate* the discriminatory impact on wireless carriers and consumers from connections-based proposals.[8] VMU's comments confirm that the Commission should retain the revenue-based system as the most valid approach to supporting USF in a manner that is consistent with Section 254 of the Act.

Specifically, VMU posits that several of the assumptions underlying the Staff Study regarding the growth of the wireless industry are incorrect because: (1) total projected wireless growth is too high; (2) prepaid wireless growth is too low; and (3) growth projection of multiple handset households is too low.[9] While predictions of future growth are often educated guesses based on historical trends and market forecasts, VMU correctly notes that the Staff Study accepts the fact of declining wireless growth rates but, nevertheless, treats the decline as if it is a one-time phenomenon that stabilizes and flattens out the growth curve (instead of as an on-going trend). According to VMU, the Staff's unexplained decision not to extend the decline in wireless growth rates is at odds with current trends and leads to calculations that understate the adverse impact on wireless carriers and consumers from any of the connections-based systems.[10]

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6 Comments by CU at 6; NASUCA at 5; MITS at 3; National Telecommunications Cooperative Association at 13; Beacon at 5-6; Weblink at 3-4; Metrocall at 2; TracFone Wireless at 2; Verizon Wireless at ii,6-8; VMU at 13; T-Mobile at 17; XO Communications at 3; Verizon at 1; CTIA at 2; Nextel at 3.

7 Comments by CU at 2; NASUCA at 1; Beacon at 6; Weblink at 3; Metrocall at 3-4; Tracfone Wireless at 5-7; Verizon Wireless at ii, 2; VMU at 13-14; XO Communications at 3; Verizon at 9-10, CTIA at 5-6; Nextel at 3-4.

8 Comments by VMU at 3-8.

9 *Id.*

10 *Id.* at 4-5.

VMU's second criticism of the Staff Study concerns the proportion of wireless growth attributed to prepaid wireless services. It notes that prepaid service is experiencing very strong growth.[11] If the growth of prepaid plans continues, the proportion of subscribers on prepaid plans will be substantially higher than it is today.[12] The enhanced attractiveness of prepaid arrangements will increase both the raw numbers of prepaid customers and the ratio of prepaid customers to post-paid customers as more carriers seek to add these customers. Plus, many credit challenged consumers who cannot qualify for post-paid plans, but still desire wireless service, will help propel the strong growth in this sector.

VMU's basic concern is valid: to the degree that the number of prepaid customers increases relative to the number of post-paid customers, the USF funding burden will fall increasingly on the shoulders of prepaid customers. Several consumer and advocacy groups asserted that prepaid customers are among the least able to afford increases to their bills as many such prepaid customers have low or fixed incomes and are low-volume users of interstate service.[13] Notably, while lower income landline customers who are served from Lifeline programs would be exempt from assessment under a number of contribution alternatives, prepaid wireless customers are not granted similar treatment. It is also much more difficult for carriers to recover USF assessments from prepaid customers who often purchase multi-month plans for one set price, but may actually use the entire value of the service plan within one month. Again, switching to

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[11] *Id.* at 5-6.

[12] In 1Q03, 22% of VZW's gross adds were prepaid. Prepaid sales accounted for 74% of Cingular's net subscriber growth 1Q03. *See* Merrill Lynch, "Cingular Wireless Largely Prepaid," (April 23, 2003). Sprint's venture with VMU added 150,000 new prepaid subscribers during 1Q03. *See* "Virgin Mobile USA Reaches 500,000 Customers," (April 21, 2003), at http://biz.yahoo.com/rc/030421/telecoms_virginmobile_1.html

[13] Comments by NAACP at 2; National Indian Education Association ("NIEA") at 2; CU at 2-3.

any of the connections-based methods given these trends would exacerbate the burden on wireless carriers and their customers.

Verizon Wireless agrees with VMU that the number of homes with multiple handsets has been increasing and will continue to increase in the future.[14] Currently, carriers offer discounted service plans to families or members of a household covering multiple handsets on a single account. These plans often include value-enhancing features to increase their attractiveness to consumers. The revenue potential, on a per handset or TN basis, of a handset sold as part of a group account, versus a handset sold for an individual account is not equal. As the average revenue per handset declines under these shared plans, customers on shared plans will bear a disproportionate USF burden under a connections-based or TN-based system. This means that the discriminatory impact on wireless carriers and customers of adopting any of the connections-based approaches will be even more severe than what the Staff Study already predicts.

In summary, to the extent the Staff Study underestimates the growth of value-oriented plans such as prepaid plans and family sharing plans (and Verizon Wireless agrees with VMU that it does), the Staff Study underestimates the impact of higher per connection USF fees as a proportion of wireless customers' telecommunications bills.

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[14] The fault here lies in the averaging employed by the Staff Study. The Staff Study assumes 1.6 handsets per household and appears to be based on arithmetic. The number of households in 2007 is estimated (by the Yankee Group) to be 116 million. Dividing the number of subscribers assumed by the FCC into the number of households results in the 1.6 figure. While the FCC figure is arithmetically sound, VMU's argument is correct because averages do not tell the whole story. Many more households will have multiple wireless handsets in 2007 (just as many will still have zero).

II. THE OPPOSITION IN THE RECORD TO THE TN-BASED PROPOSAL IS WELL-FOUNDED

Verizon Wireless and other commentors have demonstrated the illegality of the telephone number based ("TN-based") proposal.[15] Nothing in the comments to the *Second Further Notice* or the Staff Study saves the TN-based proposal from the following legal infirmities: (1) the Commission is not authorized by Section 251 to impose contributions to the USF based on each assigned telephone number (or otherwise held by carriers); (2) Section 254 requires that a USF contribution methodology is equitable and non-discriminatory – a test that the TN-based proposal does not pass; and (3) the TN-based proposal violates the prohibition against federal USF assessments against intrastate service. Moreover, the technical shortcomings of the TN-based proposal make such a system unworkable, even if it were legal.

A. None of the Variations of the TN-based Approach Satisfy Section 254

Despite its support for a TN-based approach, MCI acknowledges that the details of a number-based approach are undeveloped.[16] In addition to the proposal advanced by the FCC in the *Second Further Notice*, three parties have made proposals with important variations regarding methods for calculating the per-number contribution,[17] the number status category or categories that would trigger a per-number contribution, and how to assess ported numbers, resold services, and voice over Internet protocol ("VoIP") services.[18]

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15 Comments by Verizon Wireless at 20-24; NASUCA at 12.

16 Comments by MCI at 32-34.

17 For example, Sprint supports a per TN fee based on the number of "working TNs," including toll free, 900 and 500 numbers. Toll free numbers (*i.e.*, 800, 888, 877, 866) are not currently reported on NRUF and the universe of working TNs would need to be defined by the FCC.

18 *See* initial Comments to the *Second Further Notice* filed February 28, 2003, by AT&T at 4-10, 27-36, Exhibit 1; Ad Hoc at 2-17; Michigan PSC at 4-7 & Att. A.

Sprint opposes aspects of the FCC's TN-based proposal that would apply even minimally to interstate providers, such as IXCs, that would otherwise escape assessment under a pure TN-based method focused only on assigned geographic TNs.[19] Specifically, Sprint opposes a minimum payment obligation and capacity-based assessments on special access/private line services.[20] However, absent a meaningful way to require contributions by IXCs on a equitable and nondiscriminatory basis, the Sprint supported approach is not legal.

AT&T's version of a TN-based proposal would include assessments for IXCs that provide special access/private line service and toll-free numbers.[21] In response to concerns that IXCs would be effectively exempted from a number-based assessment, AT&T states, "[t]o the extent that there are any 'IXCs' that provide only interexchange service, and provide no local or special access/private line service, such companies would be assessed on all of their assigned telephone numbers, which includes the personal toll free numbers uniquely assigned to a specific end user that many carriers offer."[22] This minimal concession does not save AT&T's approach; it still fails to require equitable and nondiscriminatory contribution burdens, and thus violates Section 254. Today, the few toll free NPAs open for service (*i.e.*, 800, 888, 877, 866) account for approximately twenty-eight million numbers. IXCs are not the only providers of toll free numbers. Assuming 100 percent utilization of these toll free NPAs, and a dollar per TN contribution, a maximum of 28 million dollars per month in USF contributions would be spread across all service providers, including the IXCs. This is a proverbial drop in the

19 *See* Comments by Sprint at 9-12.
20 *Id.*
21 Comments by AT&T at 21.
22 *Id.* at 33.

bucket for the 542 million dollar per month USF.[23] Even accounting for special access/private line services, the overwhelming majority of the funding burden, as demonstrated by the Staff Study, would shift to carriers that manage geographic TNs (which, of course, also benefit IXCs in their provision of service to end-users). Such a result is neither equitable nor nondiscriminatory.

B. The TN-based Method Poses Significant Technical and Logistical Challenges

Pursuant to the FCC's request, the numbering experts on the North American Numbering Council ("NANC") reviewed the FCC's TN-based proposal and commented on its technical implications in a report filed in this proceeding.[24] The NANC Issues Management Group ("IMG") evaluated the TN-based proposal using the FCC's definition of assigned numbers and assumed that the current Numbering Resource Utilization and Forecast ("NRUF") report would be the tool for determining the contribution owed by carriers.[25]

The IMG Report considered two ways for the FCC to utilize the NRUF data for USF contribution purposes. First, the FCC could require the carrier(s) assigned numbers by NANPA (and presumably the Pooling Administrator) to be responsible for the USF payments for those numbers. The assigned carrier(s) would then bear the responsibility and expense of collecting USF contributions from carriers to which the number has been ported, resellers, and other non-facilities-based service providers that utilize TNs on their network. This option is not tenable because carriers, depending upon their number usage, would be charged with collecting or remitting funds to their competitors based on the

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23 On an annual basis this would yield only $336 million of the $6.5 billion USF.

24 *See* MG Report.

25 *See* IMG Report Overview.

number of assigned TNs they hold. Because a snapshot of assigned TNs does not necessarily indicate the number of a competitor's subscribers in a given market, and some of the critical data is confidential, the carrier (codeholder) would not be able to assess resellers and other service providers accurately based on actual assigned numbers.[26]

Second, the FCC could decide that the carrier that benefits from the end-user revenue generated by a given TN is responsible for the USF contribution for that TN. This latter approach is less flawed since it at least attempts to correlate responsibility for the USF contribution with revenue derived – notwithstanding the legal objection that much of the revenue generating benefit from TNs is for intrastate traffic. This approach also ignores the fact that although IXCs may not require large number inventories to serve customers, IXCs generate revenue from their customers' use of TNs held by other carriers.

The second method is fraught with logistical problems. The IMG identified numerous hurdles, a few of which are summarized as follows:[27]

- Ported TNs will count in the NRUF as assigned resources attributable to the old service provider ("OSP"). Only the NPAC will track porting information. There currently is no mechanized interface to reconcile NRUF data with NPAC data. An alternative, allowing the OSP to exclude numbers ported away from it from their NRUF data (or at least separately account for these numbers so that the USAC could back them out from the total number of assigned numbers), would require changes to the NRUF or an additional, separate reporting burden on carriers. Neither solution is without cost.[28]

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26 This idea is recognized by the FCC's policy of requiring states with access to carrier-specific NRUF data for their state to provide confidential treatment to such data. *See* Numbering Resource Optimization, *Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd. 7574 at ¶¶ 75-78.

27 IMG Report.

28 Sprint asserts that one fault of other connections-based proposals and the revenue-based method is the lack of a validation tool, or at least one that is not time consuming and expensive. Comments by Sprint at 8. While the NRUF already exists, it is not a useful validation tool for purposes of USF because of the anomalies created by ported, resold, VOIP, and type 1 numbers. The solutions identified in the IMG report require expensive system modifications or would increase the reporting burden on carriers.

- Similarly, numbers used by resellers are reported as assigned by the underlying facilities based carrier when the reseller places them in service with a customer. Under the first option, which is unacceptable, the facilities-based carrier would have to collect money from resellers for their proportionate share of the USF assessment due to those numbers, which is not a position either carrier wants to be in. Otherwise, under the second option, all resellers would need to report their own assigned TNs for purposes of USF assessments. As above, the facilities-based carrier would need a way to exclude these TNs from its NRUF data.

- The frequency of NRUF reporting would increase dramatically from twice a year to at least quarterly, posing a significantly increased burden on carriers.

- NRUF is a snapshot of *historical* numbering usage, which is inconsistent with the FCC's current approach to assessing USF based on *projected* economic activity.

The IMG Report also considered permutations to the FCC's proposals and what burdens they would create for carriers, the NRUF reporting process and carrier audits. Contrary to the assertion by Sprint that a number-based method is easy to implement,[29] it is clear from the IMG Report that the logistical problems associated with such proposals outweigh the alleged benefits. As such, before the Commission considers this option any further, it should specifically seek more comment from carriers interested in numbering issues, especially smaller carriers, which may not closely follow or participate in universal service proceedings.

III. THERE IS INADEQUATE SUPPORT IN THE RECORD FOR THE CONNECTIONS-BASED PROPOSALS

Proponents of various connections-based proposals provide no consensus position that is lawful and grounded in sound public policy, sufficient to justify departing from the widely supported revenue-based system. Weblink aptly characterizes the record by stating, "Of the approximately fifty commenters in this phase of the proceeding, only eight parties advocate radical change to the contribution methodology. However, these

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29 Comments by Sprint at 5.

eight parties differ, depending on their business operations, on the form of per-connection contribution method they support."[30] NASUCA analyzed the record and concluded that the "presentation of three specific mechanisms in the Second Further Notice has exposed parties' views, and shows clearly first, that each of the proposals is opposed by far more parties than support it and second, that most of the parties supporting each proposal oppose the other two proposals."[31] The FCC lacks even a solidified minority base in the record that it could rely on for adopting any of the proposed connections-based proposals.

Given this record, any decision by this Commission to impose an ill-conceived and legally flawed connections-based proposal will engender legal challenge and regulatory uncertainty. The best course is for the Commission to continue adapting the revenue-based system to include all providers of interstate service, which will best ensure sustainability of the USF.[32] The Commission can continue to explore alternate options for the future, but none of the options on the table today justifies departure from the revenue-based system. Verizon Wireless urges the Commission to focus at this time instead on the critical need to place controls on the growth of the fund.[33]

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[30] Comments by Weblink at 2.

[31] Comments by NASUCA at 15.

[32] CU is incorrect that the Commission could assert jurisdiction over *all* revenues, including intrastate revenues, under the "impossibility exception" to section 2(b). Comments by CU at 13-16. The case cited refers to a situation where the "strict separation of state and federal regulatory spheres … would require construction of wholly independent intrastate and interstate networks and facilities." *Illinois Bell Tel. Co. v. FCC,* 883 F.2d 104, 116 (1989). That is far from the case here. Indeed, the current mechanism allows carriers to reasonably allocate revenues based on traffic. This is consistent both with section 2(b) and with states' ability to provide for intrastate USF.

IV. CONCLUSION

For the foregoing reasons, Verizon Wireless urges the Commission to retain the revenue-based system. The Staff Study demonstrates that none of the existing proposals of the *Second Further Notice* fulfills the statute's requirements.

Respectfully submitted,

VERIZON WIRELESS

By: John T. Scott, III

John T. Scott, III
Vice President and
Deputy General Counsel – Regulatory Law

Anne E. Hoskins
Regulatory Counsel

Lolita D. Smith
Associate Director – Regulatory Law

Verizon Wireless
1300 I Street, N.W.
Suite 400 West
Washington, D.C. 20005

May 16, 2003

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[33] Comments by Verizon Wireless at 5-6; NASUCA at 7-9; T-Mobile at 3-5.