Commodity	Parts per million
* * * * * * *	
Pistachios ...	0.02
* * * * * * *	
Tree nuts	0.02
* * * * * * *	

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[FR Doc. 00–11145 Filed 5–3–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket Nos. 96–45, 97–21, and 98–171; FCC 00–118]

Federal-State Joint Board on Universal Service; Division Announces Release of Revised Universal Worksheet, FCC for 457

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document concerning the Federal-State Joint Board on Universal Service addresses challenges filed by several parties of the Commission's decision to include in the universal service contribution base those charges identified by carriers on end-user bills as recovering state or federal universal service contributions. The Commission denies the parties' challenges.

DATES: Effective May 4, 2000.

FOR FURTHER INFORMATION CONTACT: Jack Zinman, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's 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; FCC 00–118, released on April 11, 2000. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW, Washington, DC 20554.

Introduction

1. Several parties have challenged the Commission's decision to include in the universal service contribution base those charges identified by carriers on end-user bills as recovering state or federal universal service contributions. As described, these challenges are pending before the Commission at various procedural stages. Because all of the challenges concern the same issue, we address them together in this order. For the reasons that follow, we deny the parties' challenges.

II. Discussion

A. Alleged Procedural Violations

2. The Commission's rules provide that contributions to the universal service support mechanisms shall be based on ''revenues derived from domestic end users for telecommunications or telecommunications services.'' The parties claim that charges assessed on end users to recover a carrier's contributions to state or federal universal service support mechanisms do not qualify as revenues derived from telecommunications or telecommunications services. Thus, the parties assert that Line 48 on the 1998 Universal Service Worksheet (FCC Form 457), which treats universal service charges as telecommunications revenues, constitutes a new substantive rule. Based on the assertion that Line 48 is a new substantive rule, the parties further allege that APD committed two procedural violations in adding Line 48 to the 1998 Worksheet. First, the parties claim that APD exceeded the authority delegated to the Bureau by adopting a new substantive rule, which is a task reserved to the Commission in Part 1, Subpart C, of the Commission's rules. Second, the parties allege that APD violated section 553 of the Administrative Procedure Act (APA) by adopting a new substantive rule without an opportunity for notice and comment. We disagree.

3. The parties have erred in their underlying assertion that Line 48 constitutes a new substantive rule. In the *First Report and Order,* 62 FR 32862 (June 17, 1997), released on May 8, 1997, the Commission decided to assess contributions to the universal service support mechanisms on telecommunications revenues that carriers derive from end users. The Commission permitted carriers to recover their universal service contributions from their customers and ''to specify that fact on customers' bills,'' e.g., through a line-item charge. The Commission codified the contribution requirement at § 54.709(a)(1) of its rules, which states that contributions to the universal service support mechanisms shall be based on ''revenues derived from domestic end users for telecommunications or telecommunications services.'' The 1996 Act defines telecommunications as ''the 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 sent and received.'' The 1996 Act also defines telecommunications services as ''the offering of telecommunications *for a fee* directly to the public * * *.'' The charge assessed on an end-user to recover a carrier's contributions to state or federal universal service support mechanisms is simply one part of the carrier's fee for the provision of telecommunications to that end-user. Although a carrier may choose to assess a particular cost of providing telecommunications or telecommunications services separately from other such costs, the carrier's choice does not change the nature of the revenues received from the end-user. Thus, carrier-imposed universal service charges are, and always have been, revenues derived from the provision of telecommunications. As such, carrier-imposed universal service charges are part of the universal service contributions base.

4. Moreover, we believe that the parties misapprehend the nature of carrier-imposed universal service charges. Instead of forcing carriers to recover their universal service contributions through a mandatory surcharge on their customers, the Commission gave carriers the flexibility to decide whether, how, and how much to recover from their customers. For example, carriers may recover their universal service contributions by raising their rates or by adding a separate line-item universal service charge to their customers' bills. In either event, the carrier is recovering its contribution from its end-users. Merely because the Commission allowed carriers to identify a portion of their fees as recovering the carriers' universal service contributions, the monies so collected are not somehow rendered non-telecommunications revenues. Indeed, but for the provision of telecommunications to its customers, a carrier would not have a telecommunications revenues, would not be required to contribute to the universal service support mechanisms, and would not have any lawful basis to assess a universal service charge on its customers.

5. Because carrier-imposed universal service charges are end-user telecommunications revenues, the addition of Line 48 on the 1998 Worksheet does not constitute a new substantive rule. Rather, Line 48 is

merely the Bureau's implementation and clarification of the existing Commission rule requiring that contributions be based on end-user telecommunications revenues. Because Line 48 is not a new substantive rule, the Bureau neither exceeded its delegated authority nor violated the notice and comment requirements of the APA. Accordingly, we reject the parties' procedural claims.

B. Substantiative Arguments Regarding the Inclusion of Carrier-Imposed Universal Service Charges in the Contribution Base

6. The parties argue that including carrier-imposed universal service charges in the contribution base creates a circular formula that drives up the contribution base, causing increased contributions, which result in higher carrier-imposed universal service charges that further drive up the contribution base. Thus, the parties claim that the inclusion of carrier-imposed universal service charges in the contribution base disserves the public interest because it results in an upwardly spiraling ''vicious cycle'' of perpetual increases in carrier contributions to the universal service support mechanisms. For example, PCIA supplies the following descriptions of this alleged effect:

> [I]f a carrier receives $100 in revenues for flat-rated services from an end-user over a given period, and assuming a 10 percent contribution rate, the carrier's contribution would be $10. If the carrier passes the $10 through to the customer, the revenues received from the customer (in the next comparable period) would increase to $110. If the $10 pass through is considered ''end user telecommunications revenues,'' the contribution would increase to $11, as an assessment would be included on the recovery of contributions from the customer.

Metrocall and Blooston provide similar examples. Upon closer examination, however, the inclusion of carrier-imposed universal service charges in the contribution base does not have the effect claimed by the parties.

7. In each of their examples, the parties assume that, all other things being equal, the contribution factor remains constant as the contribution base increases. This assumption, however, is mathematically impossible. The contribution factor is the ratio of total universal service program costs to the contribution base. Stated as a mathematical equation, the contribution factor can be described as follows:

$$\text{Contribution Factor} = \frac{\text{Total Program Costs}}{\text{Contribution Base}}$$

The total program costs and the contribution base are independent variables in this equation. The contribution factor, on the other hand, is the dependent variable, i.e., the contribution factor is dependent on the amount of the total program costs and the contribution base. Because the contribution base is the denominator in this equation, the contribution factor is inversely proportional to the contribution base. In other words, as the contribution base increases, all other things being equal,the contribution factor must decrease.

8. As demonstrated by the exhibit, all other things being equal, when carrier-imposed universal service charges are included in the contribution base, the contribution base increases, the contribution factor decreases in proportion to the increase in the contribution base, and the amount of each carrier's contribution remains constant. Therefore, the parties' ''vicious cycle'' argument is unfounded. Moreover, if carrier-imposed universal service charges were *not* included in the contribution base, there would be a competitive imbalance in the Commission's contribution methodology. All other things being equal, a carrier that chose to recover its contributions by increasing its rates would have an increased individual contribution base and an increased contribution. A carrier that chose to recover its contributions by imposing a line-item charge would not have an increased individual contribution base or an increased contribution. Such a result would put carriers choosing to raise their rates at a disadvantage compared to carriers choosing to impose a line-item charge, would render illusory the ''choice'' of recovery methods, and would violate the universal service principle of competitive neutrality. Accordingly, for all of the foregoing reasons, we reject the parties' claims that carrier-imposed universal service charges should be excluded from the contribution base.

III. Ordering Clauses

9. The authority contained in sections 1–4, 201–205, 218–220, 254, 303(r), 403, and 405 of the Communications Act of 1934, as amended, and section 1.429 of the Commission's rules, Twenty-First Order on Reconsideration in CC Docket No. 96–45 and the Memorandum Opinion and order in CC Docket Nos. 96–45, 97–21, and 98–171 are adopted.

10. The authority contained in sections 4(i) and 405 of the Communications Act of 1934, as amended, and section 1.429 of the Commission's rules, the Petition for Partial Reconsideration and Clarification filed by the Personal Communications Industry Association on July 17, 1997 is denied to the extent stated.

11. The authority contained in sections 4(i) and 405 of the Communications Act of 1934, as amended, and section 1.106 of the Commission's rules, the Petition for Reconsideration filed by the Personal Communications Industry Association on August 31, 1998 is denied.

12. The authority contained in sections 4(i) and 405 of the Communications Act of 1934, as amended, and section 1.106 of the Commission's rules, the Petition for Reconsideration filed by Metrocall, Inc. on August 31, 1998 is denied.

List of Subjects in 47 CFR Part 54

Universal service.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–11101 Filed 5–3–00; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[FCC 00–130; MM Docket No. 98–175; RM–9364]

Television Broadcasting Services; Digital Television Broadcasting Services; Buffalo, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In a *Memorandum Opinion and Order,* the Commission denies the Application for Review filed by Coalition for Noncommercial Media (''CNM''), and affirms the Mass Media Bureau's *Report and Order* 64 FR 45893 (August 23, 1999). The Bureau's action had granted the noncommercial educational channel reservation swap for Channels 17 and *23 in Buffalo, New York and related digital channels requested by licensee Western New York Public Broadcasting Association. That *Report and Order* also had denied oppositions filed by Grant Television, Inc., licensee of WNYO–TV, Buffalo, New York, WKBW–TV Licensee, Inc., licensee of Station WKBW–TV, Buffalo, New York, Kevin Smardz, President of Southtowns Christian Center, Lakeview, New York, and CNM.

DATES: Effective July 3, 2000.