

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51

**REPLY COMMENTS  
OF  
THE NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION,  
THE ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT  
OF SMALL TELECOMMUNICATIONS COMPANIES, AND  
THE WESTERN TELECOMMUNICATIONS ALLIANCE**

August 6, 2012

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## EXECUTIVE SUMMARY

There is agreement across a widespread segment of the telecommunications industry that the Commission should immediately broaden the USF contribution base in order to sustain the Fund for the long term. Commenters agree that the Commission has clear and well-established permissive authority under Section 254(d) of the Communications Act of 1934, as amended, to expand the contribution base to include a broad range of “providers of interstate telecommunications,” even if they do not “offer” telecommunications on a stand-alone basis.

The record also confirms that the Commission should adopt a bright line rule for contributions that will guide and govern service-specific designations that must be made, both now and in the future. This approach is the most efficient and effective way to maximize certainty and minimize contribution evasion and litigation. On the other hand, a general rule standing alone would be insufficient to provide adequate notice and guidance to individual firms and USAC with respect to potential contribution obligations. As commenters recognize, however, it is essential that this “bright line” rule and the service-specific designations do not become blurred as a result of exemptions and exclusions that overtake them.

The record strongly supports assessment of the following services for USF contributions: (1) text messaging; (2) one-way VoIP; (3) retail broadband Internet access; and (4) all enterprise communications services that include a telecommunications component.

As a diverse group of commenters make clear, text messaging fits squarely within the statutory definition of a “telecommunications service” and is therefore subject to a mandatory contribution obligation. However, even if the assertion that text messaging is an “integrated information service” were correct, it is still in the public interest to require contributions from providers of this service. Text messaging benefits from the use of the PSTN, and exempting

these revenues from USF assessment would make it more challenging to establish a contribution base that is sustainable for the long term.

There is nearly unanimous support for inclusion of one-way VoIP services in the contribution base. Despite a few commenters' assertions to the contrary, contribution requirements do not and should not attach only to substitutes for PSTN calling services. Rather, they may apply to any service that includes a transmission component if the public interest so requires. Providers of one-way VoIP services rely upon and benefit from the very networks that the USF helps to promote and enable, and their assessment for USF contributions is therefore in the public interest.

The record in this proceeding strongly supports Commission action to assess all retail broadband Internet access services for USF contributions, with no exemption for any customer market or technology platform. The rapid growth in subscribership to broadband Internet access services is undeniable. As a result, if all of these services were assessed for USF contributions, the Commission could immediately lower the contribution factor, relieving the pass-through amount on every assessed service. This would help to sustain the USF for the long term and ensure that the Commission is able to meet its broadband policy goals.

Notable among supporters of assessing broadband Internet access services for USF contributions are the only two nationwide consumer advocacy groups to comment on the issue – NASUCA and AARP. These commenters state that concerns that assessing broadband Internet access services will discourage broadband adoption are unwarranted. Broadband is widely considered to be essential by most Americans, and thus a nominal USF assessment will not lead existing broadband subscribers to drop their service or deter potential new customers from subscribing. Also, broadband adoption is likely to rise substantially as a result of increased

availability brought about by a sustainable USF. This expansion of broadband networks and subscribership clearly benefits broadband Internet access providers, thereby making it in the public interest to assess these services.

The record also supports assessing all enterprise communications services that include a telecommunications component for many of the same reasons applicable to broadband Internet access. Clarification of this issue will promote fairness and competitive neutrality, as certain providers of these services presently contribute, while others do not.

The record supports the continued use of revenues as the basis for USF contributions. As one commenter states, while the revenues-based mechanism is in need of reform, its shortcomings are known and can be quickly adjusted without replacing the entire system. In addition, commenters point out a whole host of possible negative impacts that could result from a connections-based or numbers-based mechanism. On the other hand, commenters agree that a revenues-based system is competitively and technologically neutral, is not regressive, and can be implemented efficiently.

Finally, the record supports a staged approach to contributions reform. The Commission should first expeditiously resolve basic approaches and certain major issues that are ripe for action, and do so in the manner as discussed herein. Following that, it should deal with more complex and less ripe issues at a later date in an ongoing further rulemaking and/or separate clarification orders as the consequences and unresolved issues of the initial reform become more apparent.

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**I. INTRODUCTION**

The National Telecommunications Cooperative Association (NTCA), the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), and the Western Telecommunications Alliance (WTA)<sup>1</sup> (collectively, the Rural Associations) hereby file reply comments in response to comments filed on the Further Notice of Proposed Rulemaking (FNPRM) issued by the Federal Communications Commission (the Commission) in the above-captioned proceedings.<sup>2</sup>

Like the Rural Associations, commenters agree that the Commission has clear authority under Section 254 of the Communications Act of 1934, as amended (the Act), to expand the

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<sup>1</sup> The National Telecommunications Cooperative Association (NTCA) is a national trade association representing more than 580 rural rate-of-return (RoR) regulated telecommunications providers. The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) is a national trade association representing approximately 420 small incumbent local exchange carriers (ILECs) serving rural areas of the United States. The Western Telecommunications Alliance (WTA) is a trade association that represents over 250 small rural telecommunications companies operating in the 24 states west of the Mississippi River.

<sup>2</sup> *Universal Service Contribution Methodology*, WC Docket No. 06-122, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, Further Notice of Proposed Rulemaking, FCC 12-46 (rel. April 30, 2012) (FNPRM).

contribution base to include a broad range of “providers of interstate telecommunications,” even if they do not “offer” telecommunications on a stand-alone basis. The record supports doing so by adopting a bright line rule for contributions that will guide and govern service-specific designations, now and in the future. This “bright line” rule and the service-specific designations must not become blurred as a result of exemptions and exclusions that overtake them.

Commenters strongly support assessment of the following services for Universal Service Fund (USF) contributions: (1) text messaging; (2) one-way Voice over Internet Protocol (VoIP); (3) retail broadband Internet access; and (4) all enterprise communications services that include a telecommunications component. Among other things, commenters recognize that providers of each of these services benefit from the public network and should therefore contribute to the Fund. They also recognize that assessment of all of these services would enable the Commission to relieve the pass-through amount on every assessed service and sustain the Fund for the long term. Finally, commenters note that concerns that assessing broadband Internet access services will discourage broadband adoption are entirely unwarranted.

The record supports the continued use of revenues as the basis for USF contributions. While the revenues-based mechanism is in need of reform, its shortcomings are known and can be quickly adjusted without replacing the entire system. Commenters also state that a revenues-based system is competitively and technologically neutral, is not regressive, and can be implemented efficiently.

Finally, the record supports a staged approach to contributions reform. The Commission should first expeditiously resolve basic approaches and certain major issues that are ripe for action and deal with more complex and less ripe issues at a later date.

**II. THE RECORD IN THIS PROCEEDING CONFIRMS THAT THE COMMISSION CAN AND SHOULD EXERCISE ITS AUTHORITY TO ASSESS ALL “PROVIDERS OF INTERSTATE TELECOMMUNICATIONS” FOR USF CONTRIBUTIONS EVEN IF THEY DO NOT “OFFER” TELECOMMUNICATIONS ON A STAND-ALONE BASIS**

In their initial comments, the Rural Associations demonstrated that the Commission’s permissive authority under Section 254(d) of the Act is clear, well-established, judicially validated, and wholly sufficient to expand the universal service contribution base to include a broad range of “providers of interstate telecommunications.”<sup>3</sup> Services that incorporate a “telecommunications” component should be assessed for contributions, even if telecommunications is not offered on a stand-alone basis. In addition, assessment of a retail service with a telecommunications component should not be affected by whether the retail provider owns the telecommunications facilities or how the service is classified (*i.e.*, as an information service, telecommunications service, or yet to be determined). Accordingly, the Rural Associations urge the Commission to advance the public interest by exercising its Section 254(d) permissive authority to require equitable contributions from all “providers of telecommunications” that benefit from the public network and the USF and that compete with existing USF contributors.

There is agreement among a diverse range of commenting parties that the Commission’s Section 254(d) permissive authority can and should be used to “spread the contribution burden out as widely as possible to all who benefit directly or indirectly from the universal service programs without unfairly burdening or favoring specific technologies or classes of customers.”<sup>4</sup> For example, AT&T asserts that the Commission will need to “make greater use of its discretionary Section 254(d) authority to extend contribution obligations to ‘provider[s] of

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<sup>3</sup> Rural Associations, pp. 2-8.

<sup>4</sup> Universal Service for America Coalition (USA Coalition), p. 1.

interstate telecommunications,’ given how rapidly Internet-based services are eroding contribution revenues derived from traditional ‘telecommunications services.’”<sup>5</sup> AT&T proposes that such an expanded contribution mechanism satisfy the following four basic principles: (1) that it be sustainable (*i.e.*, predictable and sufficient) so as to produce a stable money flow over time; (2) that it be competitively neutral so as to treat like services alike and create no artificial advantages for any service provider over its competitors; (3) that it be predictable so that it is easy to comply with and administer; and (4) that there be some “rough correspondence” between USF obligations and benefits.<sup>6</sup>

Competitive service providers likewise urge the Commission to use its Section 254(d) permissive authority to expand the contribution base. COMPTTEL supports the Commission’s judicially-sustained interpretation of “provider of telecommunications” as including those that “supply telecommunications as a component of finished products offered to end users,” and asserts that this definition is “broad enough to include information services and information service providers.”<sup>7</sup> It submits that, “at the very least, the public interest requires any telecommunications provider that benefits from access to the public network in delivering or receiving services to be subject to contribution [obligations].”<sup>8</sup> It also points out that competitive neutrality prohibits contribution mechanisms from unfairly advantaging or disadvantaging one provider vis-à-vis another, or unfairly favoring or disfavoring one technology with respect to another.<sup>9</sup> COMPTTEL declares that the Commission should “exercise its discretionary authority

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<sup>5</sup> AT&T Services, Inc. (AT&T), p. 11.

<sup>6</sup> *Id.*, p. 12.

<sup>7</sup> COMPTTEL, p. 5.

<sup>8</sup> *Id.*, p. 6.

<sup>9</sup> *Id.*

to compel all providers that incorporate telecommunications into their finished products to contribute to the universal service fund, whether their finished products are provided via circuit-switched, packet-switched or some other transmission technology, and whether or not the Commission has classified their finished products as telecommunications services or information services.”<sup>10</sup> Use of Section 254(d) permissive authority in this manner will “ensure that integrated services that combine both telecommunications and non-telecommunications components and that compete with, or are used by consumers and businesses in lieu of, assessable telecommunications bear a fair share of the cost of preserving and advancing universal service.”<sup>11</sup> COMPTEL correctly concludes that, in order to spread the cost of the USF more equitably, “the Commission must expand the pool of services and providers that are subject to contribution to incorporate new technologies and service offerings that more accurately reflect the way that individuals and businesses communicate in today’s world.”<sup>12</sup>

Consumer advocacy groups also support the use of Section 254(d) permissive authority to broaden the USF contribution base. NASUCA heartily agrees with the finding of the Mankiw-Weinzierl-Yagan paper cited by the Commission that “market distortions in a revenue-based system could potentially be reduced by including the broadest set of services in the contribution base and by assessing competing services at the same rate.”<sup>13</sup> NASUCA concludes that the “public interest requires the broadest lawful class of contributors to the USF” and that “[t]hose who benefit from a ubiquitous national network should contribute to the Fund, with as few

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*, pp. 6-7.

<sup>12</sup> *Id.*, p. 7

<sup>13</sup> National Association of State Utility Consumer Advocates (NASUCA), pp. 4-5, citing FNPRM, fn. 184.

exceptions as possible.”<sup>14</sup> NASUCA agrees that it is “in the public interest to exercise permissive authority over a provider of telecommunications if the telecommunications is part of a service that competes with or is used by consumers or businesses in lieu of telecommunications services that are subject to assessment.”<sup>15</sup> It goes on to note that such a determination is necessary and proper both for pro-competitive reasons and because such services benefit from the existence of the public network.<sup>16</sup>

Similarly, AARP proposes to define the USF contribution base as “all services that enable end users, as well as service and content providers, to benefit from the network effects associated with the supported services, both [Public Switched Telephone Network (PSTN)] and broadband services.”<sup>17</sup> AARP interprets Section 254(d) permissive authority to require the Commission to utilize a “broad perspective” when establishing the contribution base.<sup>18</sup> It concludes that the contribution base should “include wired and wireless mass-market PSTN and broadband services; [and] services that enable businesses to connect to the Public Broadband Network, either to make their products and services available to the public, or to otherwise manage their operations.”<sup>19</sup>

In sum, there is widespread support among a diverse range of commenting parties for the Commission to exercise its Section 254(d) permissive authority to broaden the base of USF contributors to all “providers of telecommunications” that benefit from the public network and

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<sup>14</sup> *Id.*, p. 7.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*, pp. 8-9.

<sup>17</sup> AARP, pp. 8-9.

<sup>18</sup> *Id.*, pp. 14-16.

<sup>19</sup> *Id.*, p. 9.

universal service programs and that compete with existing universal service contributors. The Rural Associations are fully in accord with this near-unanimous industry consensus.

### **III. THE RECORD CONFIRMS THE NEED FOR A BRIGHT LINE RULE FOR CONTRIBUTIONS THAT CAN GUIDE FREQUENTLY UPDATED SERVICE-SPECIFIC DESIGNATIONS**

The FNPRM asks whether it would be best for the Commission to specify the services subject to USF assessment, or if it should rely upon a general rule to govern contribution requirements as they evolve over time. Many commenters support the position taken by the Rural Associations<sup>20</sup> – that there is no need for an “either . . . or” determination, but rather that a general rule refined and enhanced by periodic additions of examples of specific assessed services is the most efficient and effective way to maximize certainty and minimize evasion and litigation. A general rule standing alone would be insufficient to provide adequate notice and guidance to individual firms and the Universal Service Administrative Company (USAC) with respect to potential contribution obligations. Indeed, many commenters highlight how a list of specific services would provide clarity and minimize the likelihood of costly, time-consuming disputes over contribution liability,<sup>21</sup> while others indicate apparent support for such an approach by diving directly into arguments on the specific services that should be assessed.<sup>22</sup>

This being said, there remains a need for a general rule to guide and govern the service-specific designations that must be made now and will be made going forward. Although some

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<sup>20</sup> Rural Associations, pp. 8-9.

<sup>21</sup> *See, e.g.*, AT&T, pp. 9-10; Level 3 Communications, LLC. (Level 3), p. 10; XO Communications Services, LLC (XO), p. 22.

<sup>22</sup> *See, e.g.*, CenturyLink, pp. 6, 10 (advocating assessment of enterprise communications services and retail voice and broadband services); Earthlink, Inc., Integra Telecom, Inc., and tw telecom inc. (Earthlink), pp. 7-8 (advocating assessment of broadband services); Sprint Nextel Corporation (Sprint), pp. 31-35 (discussing assessment of broadband, one-way VoIP, and text messaging services).

appear to advocate *only* for a list of specific services and *against* a general rule,<sup>23</sup> this would leave a troubling (and potentially legally deficient) regulatory vacuum whereby the list of service-specific designations would be developed and updated without reference to any clearly governing rule.

The Commission should therefore adopt a general rule, along the lines of the proposal set forth in paragraph 75 of the FNPRM, that is tethered to the statutory definition of “telecommunications” and can be used as a clear regulatory guidepost for frequently updated service-specific designations.<sup>24</sup> This combined approach would establish a “bright line” to identify the contours of assessable services, which would also serve to facilitate the designation of specific services to minimize any potential ensuing confusion in the contribution framework.

It is essential, however, that this “bright line” rule and the service-specific designations do not become blurred (or blurry) as a result of exemptions and exclusions that overtake them. For example, and as the Rural Associations indicated in their comments, exempting non-facilities-based providers from contribution obligations would be contrary to Commission precedent, violate the principle of competitive neutrality in contribution obligations, and introduce substantial complexity and potential gamesmanship when the objective is to render contribution obligations more simple and straightforward.<sup>25</sup> As U.S. Cellular explains by quoting the Commission’s own words in the FNPRM, “the Act does not...distinguish between

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<sup>23</sup> AT&T, p. 5; Level 3, p. 10.

<sup>24</sup> *Cf.*, COMPTTEL, pp. 18-21; Cincinnati Bell Inc. (Cincinnati Bell), p. 7.

<sup>25</sup> Rural Associations, p. 29 (citing *Universal Service Contribution Methodology*, WC Docket No. 06-122, *et al.*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, 7539-7540, ¶41 (2006). *See also*, FNPRM, ¶23 (“Stakeholders also have urged the Commission to avoid any changes to the contribution system that would increase its complexity. Cleaner, simpler rules that can be applied in new situations could deter gaming of the system and save consumers, companies, and the government money.”).

facilities-based and non-facilities-based telecommunications providers for purposes of contribution obligations.”<sup>26</sup> AT&T expresses the same significant practical concern as the Rural Associations, noting that any attempt to define what is “facilities-based” for service providers would be nearly impossible given:

...an ever-evolving mix of (1) facilities that they own outright, (2) facilities that they do not own outright but hold under multi-decade ‘indefeasible rights of use’ (IRUs), (3) facilities that they rent from others under shorter but still widely divergent lease terms, and (4) third-party services that they purchase in cash or in kind.<sup>27</sup>

Perpetuating a “systems integrator” exemption would similarly facilitate the opportunity for gamesmanship and continue to offer unwarranted and undue competitive preferences to some providers of identical services. Several commenters join with the Rural Associations in highlighting the substantial competitive benefit realized by exempting large “systems integrators” in selling communications services.<sup>28</sup> By contrast, the few commenters that try to defend the “systems integrator” exemption fail to recognize or address the fact that the industry has evolved significantly since the exemption was adopted in 1997.<sup>29</sup> At that time, the Commission noted that systems integrators were in effect “resellers” and that their provision of telecommunications was incidental to the integrated nature of the complete package of services they supplied.<sup>30</sup> But today, as the Commission is well aware, the marketplace has shifted so that all types of carriers and service providers are supplying integrated packages and bundles in

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<sup>26</sup> United States Cellular Corporation (U.S. Cellular), p. 21 (quoting FNPRM, ¶83).

<sup>27</sup> AT&T, p. 11.

<sup>28</sup> BT Americas Inc. and its US Affiliates, pp. 5-6; GVNW Consulting, Inc. (GVNW), pp. 9-10; U.S. Cellular, pp. 30-31.

<sup>29</sup> International Business Machines Corporation, p. 2; Ad Hoc Telecommunications Users Committee (Ad Hoc), pp. 40-41.

<sup>30</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *et al.*, Fourth Order on Reconsideration, 13 FCC Rcd 5318, 5472, ¶278 (1997).

which telecommunications is but one component. Indeed, the very need for reform is driven in large part by significant shifts in the way that service providers deliver their services and consumers demand them. To exclude one type of “integrated” service provider from contribution obligations simply because it may not own some of the facilities it uses, or because it packages telecommunications with other services, would be competitively discriminatory. It would also ignore the likelihood that many of these systems integrators recognize revenues from communications services alone that far exceed the service revenues of many smaller ILECs that contribute to universal service.

Commenters also agree overwhelmingly with the need to include machine-to-machine (M2M) connections within the contribution framework. In fact, it appears that OnStar may have filed the only comments specifically advocating for an exemption for M2M connections.<sup>31</sup> OnStar asserts that because there is not a “user” to specify where transmitted information should be directed, a M2M connection is neither “telecommunications” nor a “telecommunications service.” But OnStar’s arguments appear to confuse the lack of an active “user” in the moment-to-moment transmission of M2M connections with the underlying existence of a “user” that indeed specifies the points of transmission for each M2M connection and the type of data that will traverse that connection.

Echoing the analysis provided by the Rural Associations in initial comments, AARP supplies a thorough explanation of why M2M connections *are* telecommunications and thus should be subject to contributions. AARP illustrates its point by reference to the example in the FNPRM of an online bookseller that uses a connection between a consumer e-reader device and the bookseller’s server to deliver content. In that case, as AARP notes, the bookseller is the

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<sup>31</sup> OnStar, LLC (OnStar), pp. 20-22.

“user” because it procured the connection to sell books to the owner of the e-reader. Thus, the carrier providing that underlying connection to the bookseller would be providing “telecommunications” and should be subject to assessment on that sale.<sup>32</sup> OnStar misses the point that the party procuring the connection (such as perhaps OnStar in the case of the service it provides to vehicles) is a “user” that has specified the points of transmission (between the OnStar location and the vehicle) for the transmission of certain data. In other words, OnStar would not itself be liable for direct USF contribution arising out of its provision of service to the car driver. Rather, the provider of the connectivity *to* OnStar would be responsible to contribute to USF based upon *that* provision of connectivity. Just because a user such as OnStar may choose to put that connectivity on “auto-pilot” as part of a M2M service once installed and limit the kinds of data that might then be exchanged via that service should not result in removal of that service from the contribution base.

Finally, the Rural Associations expressed concern with respect to the practical implications and potential for gamesmanship in any exclusion that excuses free or advertising-supported services from contributing. Although the Rural Associations noted that a revenues-based assessment on such services might be difficult to resolve, a complete exclusion for such services could lead to creative pricing structures built solely around evading contribution responsibility. Thus, the Rural Associations highlighted the need for creative solutions, such as the exercise of ancillary jurisdiction to reach other revenues for assessment when “bundled” with a free or advertising-supported service, or the use of some other basis for assessing such service in order to “fill the gap” left by a strictly revenues-based approach.<sup>33</sup> Verizon offers just such an interesting proposal that could provide a model for addressing services where revenues

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<sup>32</sup> AARP, pp. 31-32.

<sup>33</sup> Rural Associations, p. 30.

may not fit squarely as a basis of assessment. Specifically, Verizon suggests that VoIP services where consumers pay some fee *other* than for telecommunications or no fee at all could be subject to a “proxy” that is assessed on a per-subscriber basis.<sup>34</sup> Verizon’s proposal is precisely the kind of “gap-filling” proposal recommended for review by the Rural Associations. As such, it should be given serious consideration as a means of capturing support from VoIP services that depend entirely upon access to robust underlying networks and that compete with traditional voice and other interconnected VoIP services for consumers.

**IV. THE RECORD IN THIS PROCEEDING STRONGLY SUPPORTS IMMEDIATE ASSESSMENT OF THE FOLLOWING SERVICES FOR USF CONTRIBUTIONS: TEXT MESSAGING, ONE-WAY VOIP, RETAIL BROADBAND INTERNET ACCESS, AND ALL ENTERPRISE COMMUNICATIONS SERVICES THAT INCLUDE A TELECOMMUNICATIONS COMPONENT**

**A. Text Messaging Services**

A handful of commenters argue that text messaging services should not be assessed for USF contributions because text messaging is an information service and because other services that offer purportedly comparable functionality may not yet contribute.<sup>35</sup> As an initial matter, CTIA and the several other commenters seeking to excuse text messaging revenues from any contribution obligation miss the mark in asserting that this is “an integrated information service.”<sup>36</sup> The Act defines a “telecommunications service” as “the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.”<sup>37</sup> In turn, “telecommunications”

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<sup>34</sup> Verizon, pp. 30-31.

<sup>35</sup>CTIA – The Wireless Association (CTIA), pp. 22-27; Sprint, pp. 34-35; AT&T, pp. 14-15; Verizon, pp. 33-41.

<sup>36</sup> See, CTIA, p. 23.

<sup>37</sup> 47 U.S.C. §153(46).

is defined 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 as sent and received.”<sup>38</sup> As a diverse group of other commenters makes clear, text messaging simply permits a consumer to send (or receive) text of his or her choosing in lieu of sending or receiving a comparable communication through audible means.<sup>39</sup> Any storage, processing, and transformation by short message service centers does not “enhance” the service, but rather is a function of network management used to enable transmission of messages between devices that have been assigned telephone numbers associated with the PSTN. Indeed, the Commission has already reached the conclusion in prior regulatory reviews that a text message is nothing more than one type of “call,” thus underscoring that there is no meaningful distinction from either a regulatory or a consumer-oriented perspective between a text and any other wireless “call.”<sup>40</sup> On numerous occasions the Commission has compared text messaging to paging and messaging services, which are both interstate telecommunications subject to USF contributions.<sup>41</sup> Text messaging thus fits squarely within the statutory definition of a “telecommunications service,”

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<sup>38</sup> *Id.* at §153(43).

<sup>39</sup> COMPTTEL, pp. 8-9; XO, pp. 24-27; California Public Utilities Commission (CAPUC), p. 6; AARP, pp. 21-22.

<sup>40</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014, 14115, ¶165 (2003) (noting that prohibitions on telemarketing to consumers using wireless devices “encompasses both voice calls and text calls to wireless numbers including, for example, short message service (SMS) calls, provided the call is made to a telephone number assigned to such service.”).

<sup>41</sup> *See, Instructions to the Telecommunications Reporting Worksheet*, FCC Form 499-A, February 2008, p. 2 (citing *Second Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, 12 FCC Rcd 11266, 11322 (1997); *Schools and Libraries Universal Service Support Mechanism*, CC Docket No 02-6, Report and Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd 65762, 6571, ¶17 (2009)).

and revenues derived from such services are subject to mandatory contribution pursuant to Section 254 of the Act.<sup>42</sup>

Although classification should be well-settled and provides the most obvious and direct justification for compelling contributions from text messaging service providers, there is substantial basis at a minimum for the Commission to exercise its permissive authority under Section 254(d) to require such contributions. Even if CTIA were correct in asserting that text messaging is “an integrated information service,” the Act specifically contemplates that “any provider of interstate telecommunications may be required to contribute. . ..”<sup>43</sup> It is in the public interest to enforce contribution obligations on text messaging services. Providers of such services benefit from the existence and maintenance of the PSTN. Text messaging relies upon telephone numbers for the addressing of text messages and upon USF-funded wireless networks as the transmission vehicle. Exempting text messaging revenues from USF assessment would make it more challenging to establish and maintain a contribution base that is sustainable for the long term. Moreover, there is no reason to believe (or evidence to indicate) that consumer use of text messaging would decline in the event that such services were subject to USF assessment.<sup>44</sup> This is particularly true if the contribution base were sufficiently broadened such that the contribution factor would be reduced to a lower figure.

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<sup>42</sup> 47 U.S.C. §254(d).

<sup>43</sup> *Id.*

<sup>44</sup> In fact, as wireless providers explore migration to bundled “unlimited text and talk” plans for a single price, it is unclear that contribution assessment on texting revenues would have any effect at all on consumer behavior. Under such plans, a customer would be free to text (or to talk) as much as she or he likes without effect on the USF contribution obligation associated with that customer. Thus, putting aside anything in the “fine print” of the provider’s terms and conditions, the total cost of the service to the customer (including any passed-through USF assessment) would presumably not change based upon the customer’s texting practices.

In a last-ditch effort to evade contribution, several commenters assert that the public interest weighs against the imposition of contribution obligations on text messaging because certain other services that may or may not be competitive are not subject to such obligations today. For example, CTIA cites to a number of facilities-based and over-the-top options that provide instant messenger-type capabilities and are purportedly “functionally equivalent” to text messaging.<sup>45</sup> Even if these services were true alternatives from a consumer’s perspective, however, this should not outweigh all of the other public interest factors that support assessment as noted above. Indeed, this argument, if taken to its logical extreme, creates a “race to the bottom” (or at least a “race to the escape hatch”). It would lead to every service being excused from contribution requirements to the extent that any would-be competitive service was not (yet) subject to a contribution requirement as well. Rather than undermining universal service in such fashion, CTIA’s argument should serve as a catalyst for careful examination of each of these other services in light of any general rule that the Commission adopts as part of comprehensive reform. At that point, a specific determination can be made as to whether each such service either constitutes a telecommunications service or, in the alternative, is provided via telecommunications and thus should likewise contribute to the USF pursuant to the public interest.

### **B. One-Way VoIP Services**

The record evinces nearly unanimous support for inclusion of one-way VoIP services in the contribution base, regardless of the statutory classification of the service. A diverse set of commenters echo the Rural Associations, noting the nonsensical nature of a regime that requires a contribution from two-way, interconnected VoIP services but exempts one-way VoIP services

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<sup>45</sup> CTIA, p. 25.

simply based upon the fact that the user cannot receive return calls.<sup>46</sup> Indeed, the only party that appears to mount a detailed defense of excluding one-way VoIP services from a contribution requirement is Microsoft, whose primary argument is that such services are “not intended or used as replacements for a user’s primary PSTN calling service.”<sup>47</sup> Even if this were true – and there is significant reason to doubt such a claim<sup>48</sup> – this is no justification for excusing one-way VoIP services from contribution. Contribution requirements do not and should not attach only to substitutes for PSTN calling services; rather, contribution requirements may apply to any service that includes a transmission component if the public interest so requires. Although the fact that a service may operate as a substitute for a PSTN-based calling service may help justify the assessment of contributions, this is not the only criterion for finding that the public interest dictates contribution. Providers of one-way VoIP services rely upon and benefit from the very networks that the USF helps to promote and enable. On a “per-session” basis, a one-way VoIP service places the same burden on those networks as any other transmission of comparable data. The public interest therefore compels assessing one-way VoIP services for USF contributions even if the claim that they are not substitutes for PSTN calling services had any merit.

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<sup>46</sup> See, e.g., AT&T, p.16; AARP, pp. 24-25; Ad Hoc, p. 16; Rural Telecommunications Group (RTG), pp. 5-7; COMPTTEL, pp. 14-15; MetroPCS Communications, Inc. (MetroPCS), pp. 17-20; Verizon, pp. 28-30; XO, pp. 27-28; Sprint, p. 5; U.S. Cellular, p. 31; CAPUC, p. 7.

<sup>47</sup> Microsoft Corporation (Microsoft), p. 8.

<sup>48</sup> See, e.g., *Skype’s changing traffic growth*, Financial Times (May 10, 2011) (available at: <http://www.ft.com/intl/cms/s/2/e858ad1c-7b1f-11e0-9b06-00144feabdc0.html#axzz21piaXm1O>) (“In 2008, at the height of the global economic recession, Skype became the largest carrier of international phone traffic for the first time. That year, while international phone traffic fell sharply, Skype carried 33 billion minutes of international calls – about 8 percent of total international voice traffic.”).

### C. Retail Broadband Internet Access Services

The record in this proceeding supports immediate Commission action to assess all retail broadband Internet access services for USF contributions, with no exemptions for any customer market or technology platform.<sup>49</sup> To begin with, as discussed more fully in Section II, *supra*, the Commission's ability to take such action by exercising its permissive authority under Section 254(d) of the Act is well established.<sup>50</sup> In addition, as demonstrated below, the majority of commenters that address this issue support equitably assessing all broadband Internet access services<sup>51</sup> in order to sustain the USF for the long term and to ensure that the Commission is able to meet its broadband policy goals. Notable among these supporters are the only two nationwide consumer advocacy groups to comment on the issue – NASUCA and AARP – who state that concerns that assessing broadband Internet access services will discourage broadband adoption are unwarranted.

Commenters recognize that immediate Commission action to broaden the USF contribution base is necessary and in the public interest.<sup>52</sup> This is because “the current base of contributors cannot support the Commission's broadband deployment goals and expansion is

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<sup>49</sup> However, the Rural Associations are supportive of the FNPRM's proposed rule in which broadband Internet access providers that offer transmission on a stand-alone basis would be permitted to contribute to the USF on just those revenues (as opposed to the revenues from the retail broadband Internet access service) since the revenues from the “telecommunications” component can be readily identified. FNPRM, ¶117.

<sup>50</sup> The Commission would also be justified in exercising its ancillary authority under Title I of the Communications Act to assess all broadband Internet access services for USF contributions.

<sup>51</sup> NASUCA, pp. 7-8; CenturyLink, p. 10; AT&T, p. 13; Frontier Communications Corporation (Frontier), p. 5; MetroPCS, pp. 13-15; U.S. Cellular, pp. 22-29; Alexicon Telecommunications Consulting (Alexicon), p. 4; GVNW, p. 3; Alaska Communications Systems Group, Inc., p. 10; RTG, pp. 4-5; COMPTEL, pp. 14-17; XO, pp. 28-31; Earthlink, pp. 5-7; Network Communications International Corp, p. 2; Peerless Networks, Inc., (Peerless) pp. 11-13; CAPUC, pp. 6-7; Ad Hoc, p. 38; ZipDx, LLC (ZipDX), p. 1; Critical Messaging Association (CMA), p. 4.

<sup>52</sup> *See*, GVNW, p. 1; Alexicon, p. 4; Earthlink, p. 6.

necessary for the continued viability of the USF program.”<sup>53</sup> As the FNRPM notes, the contribution base fell nearly 12 percent from 2008 to 2011.<sup>54</sup> Thus, even if the size of the Fund remains fixed at its present level, a declining base of assessable revenues requires a continual increase in the contribution factor.

On the other hand, commenters recognize that while the current contribution base is no longer sustainable, the rapid growth in subscribership to broadband Internet access services is undeniable.<sup>55</sup> Therefore, if all broadband Internet access services were assessed for USF contributions,<sup>56</sup> the Commission could immediately lower the contribution factor,<sup>57</sup> relieving the pass-through amount on every assessed service and establishing a base of contributions that would help to sustain the Fund for the long term.

Moreover, as several commenters note,<sup>58</sup> assessing all broadband Internet access services will align contribution requirements with the primary purpose of the funding, which is to ensure the universal availability of broadband-capable networks.<sup>59</sup> This is not only consistent with

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<sup>53</sup> Frontier, p. 3

<sup>54</sup> FNPRM, ¶20.

<sup>55</sup> Frontier, p. 5. *See also*, U.S. Cellular, p. 24 (noting that “networks capable of delivering broadband services are expected to grow dramatically in the next several years.”); Alexicon, p. 3.

<sup>56</sup> A number of commenters agree with the Rural Associations that all broadband Internet access services provided over wired networks (including, but not limited to, cable, telephone, and power-line), satellite networks, and fixed and mobile wireless networks all should be required to contribute. NASUCA, p. 8; Centurylink, p. 10; U.S. Cellular, p. 22; GVNW, p. 6; RTG, p. 4; COMPTTEL, pp. 16-17; Ad Hoc, p. 39.

<sup>57</sup> Alexicon, p. 3; Earthlink, p. 5; Peerless, p. 12; CMA, pp. 5-6.

<sup>58</sup> NASUCA, p. 7; Cincinnati Bell, p. 6; CenturyLink, p. 10; MetroPCS, p. 8; Alexicon, p. 2; GVNW, pp. 5-6; COMPTTEL, p. 6; CAPUC, p. 7; XO, p. 30; CMA, p. 4; AARP, p. 11; RTG, p. 4; ZipDX, p. 1.

<sup>59</sup> *Connect America Fund, et al.*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17681, 17684-17691, ¶¶51-52, 61-73 (2011) (USF/ICC Transformation Order).

Congressional intent,<sup>60</sup> it is also clearly in the public interest. This is because of the so-called “network effect,” through which broadband Internet access providers will benefit directly from the expansion of broadband networks and subscribership.<sup>61</sup>

Most importantly, comments filed in this proceeding reject the notion that assessing broadband Internet access services for USF contributions may discourage broadband adoption.<sup>62</sup> At the outset, as the Rural Associations noted in their initial comments,<sup>63</sup> services that consumers consider essential are price inelastic, and there is little room to argue that broadband Internet access service is widely considered to be essential by most Americans. Also, the inclusion of broadband Internet access and other services in the contribution base will reduce the assessment imposed on each service subject to a contribution requirement. As a result, a nominal USF assessment will not lead existing broadband subscribers to drop their service or deter potential new customers from subscribing.

NASUCA concurs with this conclusion:

...given the vagaries of broadband pricing and the market move to broadband, the notion that assessing broadband service to pay for supporting broadband (including voice over broadband) will suppress broadband subscription seems almost silly.<sup>64</sup>

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<sup>60</sup> GVNW, pp. 5-6, citing *Texas Office of Public Utility Counsel v. FCC*, 183 F.2d 393, 427-28 (Fifth Cir. 1999). *See also*, XO, pp. 14-15 (“The clear intention of Congress was to spread the burden of contributing to universal service subsidy support broadly, both to ensure that the contribution base is sufficiently large to provide funding adequate to achieve the purposes of the universal service fund program and to avoid unfairly burdening any particular set of services or service providers.”).

<sup>61</sup> Frontier, p. 6; AARP, p. 6.

<sup>62</sup> NASUCA, pp. 7-8; AARP, pp. 25-29.

<sup>63</sup> Rural Associations, p. 22.

<sup>64</sup> NASUCA, p. 7.

NASUCA goes on to point out that the alternative before the Commission is continued reliance on a rapidly eroding contribution base.<sup>65</sup>

Furthermore, as U.S. Cellular recognizes, the opportunity to subscribe to broadband will be greatly enhanced by requiring providers of broadband Internet access to contribute to the Fund.<sup>66</sup> This is because a contribution mechanism consisting of a growing revenue base, rather than the currently eroding one, will ensure that sufficient funding can be made available for the foreseeable future to enable the Commission to meet its broadband deployment goals.<sup>67</sup> In fact, AARP, which supports a contribution requirement for broadband Internet access services, states that “the impact on broadband subscription from new broadband availability is likely to be positive and substantial.”<sup>68</sup>

Some commenters urge the Commission to avoid multiple assessments on consumers already contributing to the Fund,<sup>69</sup> or assessments on voice subscribers who do not presently subscribe to broadband services based on the possible presence of a USF assessment sometime in the future.<sup>70</sup> However, each of these commenters miss an essential fact:

[M]any current and potential broadband subscribers also subscribe to other services—wired and wireless—that are already subject to very high USF contribution rates that are passed through to consumers. If the contributions base was expanded to include broadband Internet access service, these same customers may see their current USF charges reduced on the other bills...<sup>71</sup>

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<sup>65</sup> *Id.*

<sup>66</sup> U.S. Cellular, p. 25.

<sup>67</sup> *See, Id.*

<sup>68</sup> AARP, p. V (emphasis added).

<sup>69</sup> National Cable & Telecommunications Association (NCTA), p. 5.

<sup>70</sup> Verizon, p. 41.

<sup>71</sup> Frontier, pp. 5-6.

Another erroneous assertion made by a couple of commenters is that a revenues-based contribution mechanism will discourage adoption of more expensive, higher-speed services,<sup>72</sup> and that a flat, per-connection assessment would be more appropriate.<sup>73</sup> However, as the Fiber-to-the-Home-Council itself recognizes, growth in broadband subscribership will likely come in part from lower-income Americans.<sup>74</sup> It follows, then, that these consumers are most likely to initially subscribe to lower-priced, lower-speed services. Consequently, a flat, per-connection fee, without regard to the price or speed of the connection, would be regressive and impose a disproportionate assessment on these lower-priced services and the very group of consumers about which the Fiber-to-the-Home-Council expresses concern. On the other hand, consumers who are considering upgrading to a higher-speed broadband service reasonably expect to pay a higher price for it. Thus, a proportionate increase in the USF assessment under a revenues-based contribution mechanism is unlikely to alter their decision.

Finally, a couple of commenters urge the Commission to defer consideration of assessing broadband Internet access services for USF contributions pending the outcome of litigation regarding its USF/ICC Transformation Order.<sup>75</sup> Yet, in a seeming contradiction, these parties also acknowledge that broadening the base is important to the long-term sustainability of the USF.<sup>76</sup> Thus, it makes no sense for the Commission to defer action on this critical issue when the Fund's stability and long-term sustainability are in serious jeopardy.

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<sup>72</sup> Comcast Corporation (Comcast), p. 16.

<sup>73</sup> Fiber-to-the-Home Council (FTTH Council), p. 4.

<sup>74</sup> *Id.*, p. 5.

<sup>75</sup> RCA – The Competitive Carriers Association (RCA), pp. 7-9; Clearwire Corporation (Clearwire), p. 5.

<sup>76</sup> RCA, p. 4; Clearwire, p. 5.

The Commission should therefore promptly impose USF assessments on all retail broadband Internet access services (both mass market and enterprise) provided over all technological platforms. Requiring these services to contribute is well within the Commission's legal authority, is consistent with the Commission's goals in this proceeding,<sup>77</sup> and is clearly in the public interest.

#### **D. Enterprise Communications Services that Include a Telecommunications Component**

The record in this proceeding supports assessing all enterprise communications services that include a telecommunications component for USF contributions, for many of the same reasons applicable to broadband Internet access services discussed above.<sup>78</sup> For example, as one commenter notes, requiring providers of these services to contribute to the USF would broaden the contribution base and thus better enable the Commission to achieve its broadband deployment goals.<sup>79</sup> Furthermore, just as with broadband Internet access services, these types of enterprise services benefit from the provision of universal service, particularly in light of the recent "transformation" of the High-Cost program into one that explicitly supports the universal availability of multi-use advanced networks.<sup>80</sup> Moreover, as a couple of commenters note,<sup>81</sup> the present ambiguity of the current rules result in some providers of enterprise communications

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<sup>77</sup> In addition to promoting the sustainability of the Fund, assessing all broadband Internet access services advances the Commission's goal of fairness and competitive neutrality by eliminating the disparity under which rate-of-return carriers are required to contribute to the USF on revenues from their broadband transmission service, while no other broadband providers have such an obligation today. GVNW, p. 6.

<sup>78</sup> AARP, pp. 18-20; U.S. Cellular, pp. 29-31; RCA, pp. 5-6; GVNW, pp. 8-9.

<sup>79</sup> U.S. Cellular, p. 22.

<sup>80</sup> *See*, AARP, p. iii ("Because enterprise services benefit from the expanded network effects arising from expanded broadband, they should be assessed.").

<sup>81</sup> RCA, p. 5; GVNW, pp. 8-9.

services contributing, while others do not, which is at odds with the Commission’s goal of fairness and competitive neutrality.<sup>82</sup> Finally, as with broadband Internet access services, the Commission’s legal authority to impose a contribution requirement on these services is not in question. Therefore, clarification that all enterprise communications services with a telecommunications component are subject to a USF contribution requirement is in the public interest and should proceed without delay.

**V. THE RECORD IN THIS PROCEEDING SUPPORTS THE CONTINUED USE OF REVENUES AS THE BASIS FOR THE USF CONTRIBUTION MECHANISM**

Contributions reform is necessary to ensure the future stability and long-term sustainability of the USF, and to “spread[] the contribution burden out as widely as possible to all who benefit directly or indirectly from the universal service programs without unfairly burdening or favoring technologies or classes of customers.”<sup>83</sup> As affirmed by Alexicon, fairness should be priority, and all companies that benefit from the network should support it.<sup>84</sup> ADTRAN states that the “new contribution methodology must be technologically and competitively neutral”<sup>85</sup> and carrier and customer decisions should not be driven by USF costs.<sup>86</sup> Ultimately, and as noted by Cincinnati Bell, “the USF assessment rate can only realistically be reduced by broadening the USF contribution base.”<sup>87</sup> Moreover, expansion of the contribution base would allow for a meaningful conversation regarding the longer-term funding needed to achieve policymakers’ goals and expectations for universal broadband.

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<sup>82</sup> FNPRM, ¶¶5, 22-27.

<sup>83</sup> USA Coalition, p. 1.

<sup>84</sup> Alexicon, pp. 1-2.

<sup>85</sup> ADTRAN, Inc., (ADTRAN) p. 3.

<sup>86</sup> *Id.*, p. 3.

<sup>87</sup> Cincinnati Bell, p. 2.

Several parties echo the Rural Associations' position that revenues are the preferred primary basis for USF contributions. Cincinnati Bell acknowledges that the current revenues-based mechanism is in need of reform, but also correctly notes that it has been "thoroughly vetted over the years so that its shortcomings are known and the Commission may be able to correct them through small adjustments without replacing the entire system."<sup>88</sup> Likewise, Clearwire states that it "tentatively supports a revenues-based contributions methodology as superior to alternative methodologies . . . ."<sup>89</sup> Providing a helpful and cogent overview, NCTA states that, "[t]he fact that the current regime is challenging to apply in today's marketplace does not necessarily mean that alternatives will not have their own challenges."<sup>90</sup>

Among parties that oppose a revenues-based contributions mechanism, Comcast argues that assessing revenues would affect prices and could discourage residential adoption where demand is "likely quite elastic."<sup>91</sup> In their initial comments, the Rural Associations explained that broadband is, in fact, price *inelastic* because it is viewed as an essential service by most consumers. Therefore, reasonable and non-discriminatory USF assessments will not discourage adoption. This is bolstered by the fact that with a broadened contribution base, a revenues-based system would be non-regressive and result in a *lower* assessment rate for each and every assessable service. In addition, while Comcast also asserts that "the number of connections has historically been more stable than interstate revenues,"<sup>92</sup> the fact that "connections" remains undefined makes that prediction impossible to validate.

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<sup>88</sup> *Id.*, p. 8.

<sup>89</sup> Clearwire, p. 6.

<sup>90</sup> NCTA, p. 2.

<sup>91</sup> Comcast, pp. 16-17.

<sup>92</sup> *Id.*, p. 19.

Likewise, a connections-based system introduces a variety of potential unknown impacts. For example, a connections-based system raises questions as to how multiple devices would be treated.<sup>93</sup> Moreover, unlike a revenues basis that results in equitable pass-through amounts on end users with respect to the price of the services they purchase, a connections-based contributions mechanism would be regressive and apply proportionally greater obligations on lower-capacity users.<sup>94</sup> As noted by U.S. Cellular, a revenues-based system is competitively and technologically neutral and can be implemented efficiently.<sup>95</sup>

With regard to AT&T's proposal to rely upon a "simple numbers system" that could "rely entirely on already existing NANPA recordkeeping and reporting mechanisms,"<sup>96</sup> this is highly problematic because it is not sustainable for the long term. As commenters point out, even if telephone numbers continue to be in demand for certain devices and applications, a telephone numbers-based contributions mechanism is not technologically neutral – in that it tethers contributions to "voice" rather than network utilization – and would be frustrated by the growing number of telecommunications services and other services and applications that do not rely on telephone numbers, particularly as the industry continues its move toward an Internet Protocol (IP)-based addressing system.<sup>97</sup>

In addition, the Commission's goal to make the contributions system more efficient would be frustrated by the introduction of an entirely new process that relies on undefined factors. As emphasized by the USA Coalition, the contribution mechanism should be

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<sup>93</sup> USA Coalition, p. 12.

<sup>94</sup> *See*, Cincinnati Bell, p. 17; USA Coalition, p. 11.

<sup>95</sup> U.S. Cellular, pp. 32-34.

<sup>96</sup> AT&T, p. 20.

<sup>97</sup> *See*, Cincinnati Bell, p. 20; USA Coalition, p. 10.

inexpensive to administer.<sup>98</sup> In contrast, “if the Commission were to adopt a numbers-based, connections-based, or other methodology for determining universal service fund contributions, then RLECs would be forced to incur additional costs to revise billing, accounting, and reporting systems.”<sup>99</sup> These results would be even more problematic at a time when newly-adopted Commission regulations make full recovery of operating expenses highly uncertain.<sup>100</sup>

Assuming that a revenues-based methodology is retained, the Rural Associations see merit in AT&T’s suggestion that the Commission or USAC establish reasonable price ranges to ensure that “sham services” are not used to escape USF contribution responsibilities. These ranges would be based upon filed or other publicly available pricing information.<sup>101</sup>

In addition, the Commission must address the apportionment of revenues from bundled services as well as the treatment of services with a telecommunications component. As stated in their initial comments, the Rural Associations support the FNPRM proposal in which carriers must treat all revenues from a bundled offering as assessable telecommunications revenues or allocate revenues associated with the bundle consistent with the price it charges for stand-alone offerings of equivalent services or products (with any discounts for bundling assumed to be discounts in non-assessable revenues).<sup>102</sup> The Rural Associations also support the FNPRM proposal in which all revenues from an information service with a telecommunications component would be assessable unless the transmission underlying the information service is

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<sup>98</sup> USA Coalition, p. 2.

<sup>99</sup> Alexicon, p. 5.

<sup>100</sup> USF/ICC Transformation Order, ¶¶210-226.

<sup>101</sup> AT&T, pp. 25-26.

<sup>102</sup> FNPRM, ¶106.

offered separately on a stand-alone basis.<sup>103</sup> Above all, the Rural Associations agree with AT&T, which “supports limiting the unbridled flexibility” which carriers currently enjoy in allocating assessable revenues,<sup>104</sup> and with Cincinnati Bell, which supports elimination of contributors’ ability to make “subjective judgments” concerning their contribution liabilities.<sup>105</sup>

Finally, the Rural Associations agree with Cincinnati Bell and NCTA that proposals to prohibit recovery of contributions through a line-item charge should be rejected.<sup>106</sup> As suggested in the FNPRM, such a rule would unnecessarily reduce carriers’ pricing flexibility resulting in fewer options for consumers.<sup>107</sup> It would also eliminate the ability of carriers to make transparent to customers the portion of their payment that is contributing to the preservation and advancement of universal service.<sup>108</sup>

## **VI. THE RECORD SUPPORTS A STAGED APPROACH TO USF CONTRIBUTION REFORM**

The Commission must reform the USF contribution methodology without further delay. However, in light of the numerous and complex issues that must be considered and resolved, as well as the consequences certain to arise, the Commission should take a staged approach to contribution reform. It should first expeditiously resolve basic approaches and certain major issues that are ripe for action in an initial Report and Order. Following that, it should deal with more complex and less ripe issues at a later date in an ongoing further rulemaking and/or

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<sup>103</sup> *Id.*, ¶117.

<sup>104</sup> AT&T, p. 25.

<sup>105</sup> Cincinnati Bell, pp. 3-4.

<sup>106</sup> *See, Id.*, p. 23; NCTA, p. 6.

<sup>107</sup> FNPRM, ¶395.

<sup>108</sup> *Id.*, ¶391.

separate clarification orders as the consequences and unresolved issues of the initial reform become more apparent.

For example, all parties addressing the contribution obligations of wholesalers and their customers recognize the complexity of the issue. Efforts to devise a practicable and equitable solution will take time, and should not be allowed to delay the more critical reforms necessary to broaden the contribution base and to determine and devise the basis of assessment.

Consequently, the Commission should not at this time attempt to fundamentally replace the existing reseller/wholesaler rules with a wholly new and untested “value-added” approach. Instead, it should revise its reseller/wholesaler procedures in the short term to reduce some of their more burdensome and ineffective elements (such as certifications) with more effective and efficient registrations. It should also more equitably allocate and collect contributions from wholesalers and resellers without imposing inequitable indemnification requirements and/or retroactive or unforeseen contribution liabilities.

The Rural Associations agree with Level 3 and Sprint that a “value added” approach is not feasible at this time. Level 3 points out that there is no existing system to assign and trace “credits” through very complex layers of wholesale relationships.<sup>109</sup> Sprint asserts that a “value added” system would be: (a) unduly expensive and burdensome because it would require carriers to track the amounts paid for services obtained from other providers (a requirement that would entail a considerable amount of data for carriers with extensive networks and large product portfolios); and (b) subject to misallocations and competitive distortions due to the need to identify and allocate assessable and non-assessable amounts for facilities and services purchased

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<sup>109</sup> Level 3, p. 19.

from other carriers for multiple purposes (*e.g.*, resale to end users, sale to other carriers, and internal use).<sup>110</sup>

Even T-Mobile, whose parent company Deutsche Telekom operates under the European value-added tax system, recognizes that additional study of such a system would be necessary before it could be adopted or implemented, along with a substantial transition period to allow carriers to update their wholesale-resale contracts.<sup>111</sup> Likewise, CTIA notes that a “value added” approach “shows some promise” for addressing wholesale-resale issues, but recognizes that “the Commission would need to consider further how such a system would work before moving forward to adopt it.”<sup>112</sup>

In sum, the Rural Associations reiterate that the Commission should take a staged approach to contribution reform – moving forward rapidly with basic and critical reforms such as broadening the contribution base and specifying the basis of assessment while deferring complex matters such as the wholesaler-reseller issue to a later stage. Whereas the Commission may find it appropriate to study “value added” approaches as a long term solution, it should restrict its changes at this time to matters such as: (a) replacing burdensome and ineffective certification requirements with registration procedures; and (b) eliminating inequitable indemnification and other requirements that force wholesalers to retroactively make contributions for non-contributing resellers.

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<sup>110</sup> Sprint, p. 20.

<sup>111</sup> T-Mobile USA, Inc., pp. 8-9.

<sup>112</sup> CTIA, p. 11.

## VII. CONCLUSION

The record in this proceeding supports the following:

- the exercise of the Commission’s authority under Section 254 of the 1996 Act to expand the contribution base to include a broad range of “providers of interstate telecommunications,” even if they do not “offer” telecommunications on a stand-alone basis;
- the adoption of a bright line rule for contributions that will guide and govern service-specific designations, now and in the future, without exemptions and exclusions that overtake them;
- the assessment of text messaging, one-way VoIP, retail broadband Internet access, and all enterprise communications services that include a telecommunications component for USF contributions;
- the continued use of revenues as the basis for USF contributions; and
- the use of a staged approach to contributions reform that expeditiously resolves basic approaches and certain major issues that are ripe for action while dealing with more complex and less ripe issues at a later date.

Respectfully submitted,

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August 6, 2012

## CERTIFICATE OF SERVICE

I, Brian Ford, hereby certify that a copy of the reply comments of the Rural Associations was sent on this, the 6<sup>th</sup> day of August, 2012 by via electronic mail, to those listed on the attached sheet.

By: /s/ Brian J. Ford  
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