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

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

July 9, 2012

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EXECUTIVE SUMMARY

The Commission possesses well-settled legal authority via Section 254(d) and Section 4(i) of the Communications Act to broaden the contribution base by requiring all providers of interstate telecommunications to contribute to the USF. The Commission's broad authority under the permissive clause of Section 254(d) plainly includes cases where such providers do not offer a telecommunications service on a stand-alone basis. The Commission's decision to require providers of interconnected VoIP services to contribute to the USF is clear evidence of this broad authority.

The Commission should specify the services that are subject to a USF contribution assessment, while also adopting a general rule that would provide potential contributors notice of the contours of the regime. While the Commission's search for "future proof" contribution rules is admirable, a list of assessed services that is updated regularly is necessary to minimize confusion and to reflect marketplace development.

Both text messaging and one-way VoIP services should be assessed for USF contributions. Among other things, both services contain a telecommunications component as defined in the Act, and both services benefit from the use of the PSTN.

Most importantly, all retail broadband Internet access services should be assessed equitably for USF contributions. Such contributions are essential to advancing the Commission's goals of USF sustainability and a contribution system that is fair and efficient. The ever-growing use of broadband Internet access services plays a significant role in the present instability and unsustainability of the existing contribution base. If all broadband Internet access services were assessed for USF contributions, then long-term sustainability could be established. It would also lower and stabilize the contribution factor, thereby relieving the pass-through

amount on every assessable service and more equitably distributing the cost of the USF among consumers. Furthermore, it is in the public interest to assess all broadband Internet access services, since providers will benefit from the "network effect" that results from the expansion of broadband networks and subscribership nationwide, which the High-Cost program now explicitly seeks to achieve.

Requiring mass market broadband Internet access services to contribute to the USF would not threaten broadband adoption. Broadband is widely considered an essential service, and a nominal USF assessment is not going to dissuade customers from subscribing. The large increase in residential interconnected VoIP subscribership following the imposition of USF assessments on those services demonstrates that a contribution obligation will not harm adoption. In fact, it would undermine the goals of universal service to not assess mass market broadband Internet access services because it would prevent the needed broadening of the contribution base to sustain the USF for the long term, along with the fulfillment of the broadband policy objectives of Congress and the FCC.

The Commission should also require all enterprise communications services that include a telecommunications component to contribute to the Fund. Expanding the number of enterprise communications services that must contribute to the USF will promote the Fund's long-term sustainability by broadening the contribution base and lowering the assessment on other services.

The Commission should avoid gutting its general USF contribution rule through overly broad exemptions and exclusions. Broad exemptions and categorical exclusions perpetuate confusion, create new loopholes, and ultimately undermine the effort to simplify and stabilize the USF contribution mechanism. While no system of contributions can preclude every opportunity

for "hair-splitting" and loopholes, the Commission must not enable definitional gamesmanship through broad exemptions and exclusions.

Regarding the basis upon which contributions are assessed, the FCC should look first to revenues while also retaining flexibility to consider other options and "hybrid" approaches as necessary to fill gaps. A revenues-based model provides clarity in definition, transparency in enforcement, and predictability by removing the ambiguity that may attend other proposed contribution methodologies. A revenues-based methodology is also competitively neutral because it best captures the value that consumers place on competing services that use underlying telecommunications networks without regard to the technology used to deliver the service. Additionally, a revenues-based mechanism can be implemented quickly and with little burden to providers since existing billing systems are already designed for revenues-based assessments.

The Commission should adopt the FNPRM proposal that would require carriers to treat all revenues from a bundled offering as assessable telecommunications revenues or to allocate revenues associated with the bundle consistent with the price it charges for stand-alone offerings of equivalent services. Also, for assessable information services with a telecommunications component, all revenues from the information service should be assessable unless the transmission underlying the information service is offered separately on a stand-alone basis. Finally, since federal USF support alone cannot deliver ubiquitous broadband, the Commission should be certain not to adopt any rules that would explicitly prohibit or prevent states from establishing a sufficiently broad contribution base to sustain state universal service funds.

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

The Rural Associations submit that the Commission has clear authority to include providers of broadband services within the community of contributors to the Universal Service Fund (USF). In these comments, the Rural Associations define that authority and describe

[1] 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.

[2] *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*).

specific services that should contribute to universal service mechanisms. The Rural Associations support a revenues-based approach, though not to the exclusion of other bases that may be appropriate if they can be implemented in an administratively efficient manner. Above all, the Rural Associations submit that the underlying theory of universal service contributions policy should be that those who benefit from the network contribute toward it.

I. THE COMMISSION HAS CLEAR AUTHORITY TO ASSESS ALL "PROVIDERS OF INTERSTATE TELECOMMUNICATIONS," EVEN IF THEY DO NOT "OFFER" TELECOMMUNICATIONS ON A STAND-ALONE BASIS

Section 254(d) of the Communications Act of 1934, as amended (the Act), requires that "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service."[3] In addition, Section 254(d) includes a permissive contribution clause declaring that "[a]ny other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires."[4]

In enacting this provision, Congress stated:

> New section 254(d) requires that all telecommunications carriers providing interstate telecommunications services shall contribute to the preservation and advancement of universal service. … This section preserves the Commission's authority to require all providers of interstate telecommunications to contribute, if the public interest requires it, to preserve and advance universal service.[5]

[3] 47 U.S.C. §254(d).

[4] *Id*.

[5] *House Report 104-458*, 142 Cong. Rec. H1112 (January 31, 1996).

There is no question or dispute that "telecommunications carriers providing interstate telecommunications services" are required pursuant to Section 254 to contribute to universal service. It is further notable that this contribution mandate is accompanied by a clear and significant statutory condition that telecommunications carrier contributions must be assessed "on an equitable and nondiscriminatory basis." This confirms the clear Congressional intent that telecommunications carrier contributors must neither bear a disproportionate burden, nor be placed at a competitive disadvantage, vis-à-vis other telecommunications carriers and/or providers of telecommunications, against whom they compete for customers or traffic.

By way of example, in determining whether to extend universal service contribution obligations to interconnected Voice over Internet Protocol (VoIP) services, the Commission did not forestall action by first determining whether these services should be classified as "telecommunications services" or "information services" under the Act.[6] Rather, the Commission properly invoked its permissive authority to determine whether these particular "providers" of interstate "telecommunications" – regardless of the classification of the "finished" service – should be required to contribute to universal service mechanisms. The plain language of the permissive clause of Section 254(d), as well as prior Commission actions and judicial decisions, confirm the Commission's authority to require universal service contributions from an extensive range of providers of telecommunications when the public interest so demands.

Both the Commission and the courts have interpreted "provide" and "provider" as much more broad and inclusive terms than the "offerings" which constitute "telecommunications

[6] *Universal Service Contribution Methodology*, WC Docket No. 06-122, *et al.*, 21 FCC Rcd 7518, 7537, ¶35 (2006) (*2006 Contribution Methodology Order*).

service."[7] The Commission has determined reasonably and properly that "provide" should be considered from the supply side (*i.e.*, the service provider's perception of what it supplies) rather than the demand side (*i.e.*, the customer's perception of what he or she receives), and that "providers" encompass those who furnish or supply a good or service as a component of a larger, integrated product.[8]

Section 3(43) of the 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 as sent and received."[9] Combining the two terms, the Commission has determined that a "provider of telecommunications" need only supply telecommunications (that is, transmission between customers and the public network) as a component of its finished product. This determination has been upheld on appeal.[10] Hence, under settled regulatory and judicial precedent, all that is required to meet the threshold definition of a "provider of telecommunications" is the incorporation of telecommunications within the "service offering," and not that the provider separately "offer" telecommunications to consumers on a stand-alone basis. In fact, the Commission has noted that the ownership of the particular telecommunications or transmission facilities is irrelevant, and that a "provider of

[7] *Id.*, 21 FCC Rcd 7538-7539, ¶40; *Vonage Holdings Corp. v. FCC*, 489 F.3d 1232, 1238-40 (DC Cir. 2007).

[8] *2006 Contribution Methodology Order*, 21 FCC Rcd 7538-7539, ¶40; *Vonage Holdings Corp*., 489 F.3d at 1240.

[9] 47 U.S.C. §153(43).

[10] *2006 Contribution Methodology Order*, 21 FCC Rcd 7538-7540, ¶¶40-41; *Vonage Holdings Corp*., 489 F.3d at 1240-41.

telecommunications" may own or operate its own transmission facilities or may obtain transmission from third parties.[11]

Once a particular service provider or class of service providers meets the "provider of telecommunications" criterion, the other prong of the permissive contribution clause is satisfied by the Commission's determination as to whether the "public interest" requires that such provider or providers contribute to universal service mechanisms. The Commission and the courts have long determined that it is in the public interest to extend universal service contribution obligations to classes of providers that benefit from universal service programs due to their ability to connect via the public network with households and businesses that would not have access to their services in the absence of universal service support mechanisms.[12] Given that universal service contributions are "part of a particular program supporting the expansion of, and increased access to, the public institutional telecommunications network,"[13] "providers of telecommunications" that benefit from access to a larger public network should contribute to the universal service program.

In addition, the principle of competitive neutrality, which the Commission (upon recommendation of the Federal-State Joint Board on Universal Service added to the list of universal service principles in Section 254(b)) provides a further "public interest" basis to require a broad array of "providers of telecommunications" to contribute to universal service mechanisms. The Commission has defined "competitive neutrality" to mean that "universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider

[11] *2006 Contribution Methodology Order*, 21 FCC Rcd 7539-7540, ¶41.

[12] *Id.*, 21 FCC Rcd 7540-7541, ¶43; *Texas Office of Public Utility Counsel v. FCC*, 183 F.2d 393, 427-28 (Fifth Cir. 1999).

[13] *Texas Office of Public Utility Counsel,* 183 F.2d at 427-28.

over another, and neither unfairly favor nor disfavor one technology over another."[14] In a converging broadband world where a growing variety of voice, data, and video service providers are increasingly competing against each other, it is essential that universal service contribution requirements do not skew end-users' evaluation of competitive choices. Rather, all competing telecommunications carriers and "providers of telecommunications" should be required to contribute in a substantially equivalent manner to existing and future universal service mechanisms.

In this manner, the Commission's principle of competitive neutrality is fully consistent with the statutory Section 254(d) condition that telecommunications carrier contributions must be assessed "on an equitable and nondiscriminatory basis." Telecommunications carrier contributors should neither bear a disproportionate burden, nor be placed at a competitive disadvantage, with respect to the other telecommunications carriers and/or providers of telecommunications against which they compete for customers and/or traffic. The "public interest" criterion should be analyzed based upon what service providers are presently required to contribute and on the basis of how failure to require equivalent contributions from particular classes of service providers might skew the competitive playing field and/or make it difficult, if not impossible, to sustain a "sufficient" USF for the long term.

The Commission has asked whether marketplace changes during the past decade have diminished the nature or importance of the Commission's permissive authority to require "providers of interstate telecommunications" to contribute to the preservation and advancement of universal service.[15] To the contrary, changes in the evolving broadband market have

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[14] *Universal Service First Report and Order*, 12 FCC Rcd 8776, 8801 (1997); *2006 Contribution Methodology Order*, 21 FCC Rcd 7541, ¶44.

[15] FNRPM, ¶35.

increased significantly the number and variety of services and the array of "providers of telecommunications" that use and benefit from access to the public network and that compete with the services of existing universal service contributors. The United States is in the midst of a rapid evolution of Internet protocol (IP)-based and other sophisticated voice, data, and video services that use or incorporate telecommunications and that are often bundled with other services. The Commission need not reconsider its definitions of "provide," "telecommunications" or the "public interest." Rather, it should extend and expand its permissive authority to require contributions from all "providers of telecommunications" that benefit from the public network and universal service programs, and that compete with existing universal service contributors.

Finally, in addition to the Commission's clear permissive authority to "broaden the base" of contributors pursuant to Section 254(d) of the Act, the ancillary jurisdiction conferred upon the Commission by Section 4(i) of the Act provides a separate and independent jurisdictional basis for extending universal service contribution obligations to a broad base of service providers.[16] The courts have held that the Commission may exercise ancillary jurisdiction when the following two conditions are satisfied: (1) the Commission's general jurisdiction under Title I of the Act covers the regulated subject; and (2) the regulation is reasonably ancillary to the Commission's performance of its statutorily mandated responsibilities.[17] Title I of the Act gives the Commission general subject matter jurisdiction over the interstate services furnished by "providers of interstate telecommunications." Likewise, Section 254 gives the Commission statutorily mandated responsibilities to establish specific, predictable, and sufficient mechanisms

[16] 47 U.S.C. §154(i).

[17] *American Library Association v. FCC*, 406 F.3d 689, 691-92 (DC Cir. 2005); *Comcast Corp. v. FCC*, 600 F.3d 642, 646 (DC Cir. 2010).

to preserve and advance universal service. These include the mandatory and permissive authority of Section 254(d) to require universal service contributions from various telecommunications carriers and providers of telecommunications. In fact, eight years prior to the adoption of the express statutory provisions of Section 254, the courts permitted the Commission to employ its ancillary jurisdiction to establish a funding mechanism to support universal service.[18] Accordingly, the Commission has several statutory bases to require that various entities that rely upon robust and ubiquitous networks to enable their own service offerings contribute to the universal service mechanisms that support those networks.

II. THE COMMISSION SHOULD SPECIFY SERVICES THAT ARE SUBJECT TO ASSESSMENT, IN ADDITION TO ADOPTING A GENERAL RULE APPLYING TO PROVIDERS OF INTERSTATE TELECOMMUNICATIONS

In its FNPRM, the Commission questions whether it should specify services that are subject to assessment, or whether it could adopt a simpler approach that is flexible enough to be applied to services that exist today and ones that will emerge in the future, without the need to continually update the codified rules.[19] Although an attempt to adopt a "simpler approach" and "future proof" rules is attractive, specific guidelines that are updated regularly remain necessary to minimize confusion. Toward this end, a general rule, coupled with a list of specific services subject to that rule, will provide all relevant parties, including USAC, with the notice necessary to comply. It will also avoid time consuming and costly disagreements and requests for clarification or guidance. This approach, however, should not preclude, and in fact depends in significant part upon, a commitment to frequent and regular updating as uncertainties and disputes arise as a result of new market developments and business strategies.

[18] *Rural Telephone Coalition v. FCC*, 838 F.2d 1307, 1315 (DC Cir. 1988).

[19] FNPRM, ¶73.

The Commission proposes to exercise its permissive authority to apply a general rule that would provide potential contributors notice of the contours of the regime.[20] The Commission states that its intention is "to include entities that provide transmission capability to their users... but not include entities that require their users to "bring their own" transmission capability in order to use a service."[21] The Commission anticipates that the rule will have broad applicability, but with possible exceptions. Indeed, seven paragraphs of the FNPRM are devoted to such potential exceptions.

The Commission should seek to afford all potential contributors as much certainty as practicable, and to enhance the stability of the contribution base, by adopting a general rule that is then complemented by a periodically updated list of specific services that are either assessed pursuant to that general rule or excluded from such assessments. A general rule, coupled with an evolving list of specific examples of assessed and non-assessed services, constitutes the most effective, efficient and equitable way to administer a contribution mechanism in a changing marketplace with a minimum of uncertainty and litigation. In the following subsections, the Rural Associations recommend specific services that should be assessable pursuant to this general rule.

A. Text Messaging Services Should be Subject to USF Contributions

An example of the inadequacies of a general rule without further clarification is text messaging. USAC sought guidance in the spring of 2011 because it was unclear how text messaging fits into the current general contribution regime. A petition was filed in December

[20] Specifically, the Commission's rule would state, "Any interstate information service or interstate telecommunications is assessable if the provider also provides the transmission (wired or wireless) directly or indirectly through an affiliate, to end users." *Id.*, ¶75.

[21] *Id*., ¶76.

2007 seeking a declaratory ruling that text messaging is a "telecommunications service."[22] Five years later, the ambiguities regarding text messaging persist.

Text messaging services should be required to contribute to universal service mechanisms as "telecommunications services." Text messaging permits a consumer to send (or receive) a text of his or her choosing in lieu of sending or receiving a comparable communication through audible means. Text messaging does not provide "access to the Internet," does not typically involve a change in the protocol of the message on an end-to-end basis,[23] and is addressed by reference to telephone numbers that are part and parcel of the public switched telephone network (PSTN). Moreover, the mere fact that a carrier's system may make several attempts to transmit a text message before "giving up" does not equate to some kind of enhanced "store and forward" feature. This is not an enhanced feature, but rather a network management tool to accommodate phones that may be unable to receive text messages at a given time (*e.g.*, where a mobile phone is turned off). Finally, text messaging service is offered for a fee to the public, and is available on nearly every cell phone marketed today with or without a specific "data plan."[24] Thus, text messaging fits squarely within the statutory definition of a

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[22] *Petition of Public Knowledge, et.al. for Declaratory Ruling Stating Text Messaging and Short Codes are Title II Services or are Title I Services Subject to Section 202 Nondiscrimination Rules,* WT Docket No. 08-7 (filed Dec. 11, 2007).

[23] Even if for the sake of argument there were a "net protocol conversion" in the case of texts that may originate or terminate on a computer or to email services, and even if such a protocol conversion were deemed relevant for purposes of determining the nature of the communication, this does not render *every* text message or the fundamental service provided to the customer "enhanced" in nature. Nor does the fact that text messaging may be used to receive data from electronic databases necessitate classification as an "information" service. For example, a telephone customer can dial an information service and retrieve sports scores or weather updates from an electronic database, but that does not mean the telephone service purchased by the customer is itself an "information service."

[24] *See, e.g.*, "Messaging FAQs" (available at http://www.att.com/esupport/search.jsp?srch=text+messaging&serviceName=undefined&df=fals

"telecommunications service," and revenues derived from such services should therefore be subject to USF contribution pursuant to Section 254 of the Act.[25]

However, regardless of when or how text messaging is classified for other regulatory purposes, it is at least subject at this time to the permissive clause of Section 254(d) because it contains a "telecommunications" component and because the public interest dictates that it should be subject to USF contribution requirements.[26] As indicated above, the Commission has recognized that "the heart of 'telecommunications' is transmission."[27] Text messaging simply involves the transmittal of short messages to and from handheld wireless devices.[28] There is no change in the format in which such messages are sent or received or the content of the consumer's communication, as plain text is sent and plain text is received. This is a straightforward, unambiguous example of "telecommunications" – specifically, "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."[29]

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e&cv=) ("**Q. Is my phone ready for Text Messaging? A**. Most wireless phones support Text Messaging . . . . **Q. What is the pricing for Text Messaging? A**. You are charged for both sent and received text messages. The cost of text messages is based on your Text Messaging package.").

[25] 47 U.S.C. §254(d).

[26] *See Id*. ("Any other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires.")

[27] *Petition for Declaratory Ruling that pulver.com's Free World Dialup is Neither Telecommunications Nor a Telecommunications Service*, WC Docket No. 03-45, Declaratory Ruling, 19 FCC Rcd 3307, 3312, ¶9 (2004).

[28] *See,* Newton's Telecom Dictionary 1116 (25th ed. 2009); *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Notice of Proposed Rulemaking, 23 FCC Rcd 11703, 11712, ¶19 (2008).

[29] 47 U.S.C. §153(43).

Indeed, when one considers what other services have been categorized as "telecommunications," it is illogical to exclude text messaging from this category. For example, "wireless telephony, including cellular and personal communications services" is subject to USF contribution as "interstate telecommunications."[30] Similarly, the Commission has on multiple occasions compared text messaging to paging and messaging service,[31] which in turn is clearly within the scope of "interstate telecommunications" subject to USF contribution: the service that enables text messaging and the service that is most comparable to text messaging are both "interstate telecommunications." In light of the fundamental nature of text messaging as a means of sending plain text from point A to point B, and the way in which comparable services have been categorized, clearly sets text messaging within "telecommunications."

Moreover, it is in the public interest to require providers of text messaging to contribute to universal service based upon the revenues received from end users of such services. Providers of text messaging benefit from use of the PSTN. In fact, text messaging would not exist but for the PSTN, relying upon telephone numbers for the addressing of text messages and upon CMRS networks and wireline backhaul networks as the physical means for transmission.[32] It would also be contrary to the statutory requirements of equity and nondiscrimination for text messaging services *not* to contribute to USF, because consumers use texting as a substitute for placing

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[30] 2012 Telecommunications Reporting Worksheet Instructions, FCC Form 499-A, March 2012, p. 3.

[31] *See Id.,* at 2 (citing FCC Second Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services 51, 12 FCC Rcd 11266, 11322; *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Report and Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd 6562, 6571,¶17 (2009)).

[32] *See, e.g., 2006 Contribution Methodology Order,* 21 FCC Rcd 7540-7541, ¶43 ("The Commission has previously found it in the public interest to extend universal service contribution obligations to classes of providers that benefit from universal service through their interconnection with the PSTN.")

voice calls. Therefore, regardless of whether the Commission decides to classify text messaging as a telecommunications service, it should nonetheless proceed to confirm at an early date that text messaging contains a "telecommunications" component as defined in the Act, and that it is an assessed service pursuant to the Commission's permissive authority under Section 254(d).

B. "Non-Interconnected" VoIP Should be Subject to USF Contributions

The Commission seeks comment on whether it should exercise permissive authority to include in the contribution base providers of "one-way" VoIP,[33] regardless of the statutory classification of the service.[34] Current regulatory distinctions result in voice and interconnected VoIP services being assessed because customers can place *and* receive calls, while one-way VoIP – the functional equivalent of voice and interconnected VoIP services for the purpose of placing calls – does not contribute. It is time for the Commission to correct this arbitrary and inequitable definitional distinction and assess contributions on one-way VoIP services.

First, just as two-way VoIP, one-way VoIP service includes "transmission" – that is, a "telecommunications" – component. It entails the transmittal of messages from a user's device, with no change in the format in which the messages are sent or received or the content of the communication. Therefore, one-way VoIP meets the definition of "telecommunications," that is, "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."[35]

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[33] The Commission proposes to define one-way VoIP as "A service that (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location; (3) requires Internet protocol-compatible customer premises equipment; and (4) permits users generally to receive calls that originate on the public switched telephone network or terminate calls to the public switched telephone network." FNPRM, ¶58.

[34] *Id*.

[35] 47 U.S.C. §153(43).

The "public interest" requires that providers of one-way VoIP service contribute to universal service mechanisms. The USF program seeks to support the networks upon which traffic rides. One-way VoIP unquestionably relies upon and benefits from access to the PSTN. On a "per session" basis, the fact that a session may only be initiated from, or received by, a given station is irrelevant to the burden placed on the network by the session, or on the benefit derived by end users once communication is initiated.

The current system encourages regulatory gamesmanship with respect to one-way VoIP service. Providers can structure functionally equivalent offerings (*e.g.*, two one-way services vs. a single two-way service) for the purpose of evading contribution obligations. One-way VoIP providers compete with traditional voice and interconnected VoIP providers for customers. The regulatory disparity unfairly skews the market in favor of one-way VoIP. The lack of competitive neutrality is especially glaring in interstate and international communications. For example, the services of Skype, a one-way VoIP provider, are not typically utilized as a service for placing local calls. However, Skype is seemingly quite popular in the context of interstate and international communications.

In 2006, the Commission found that interconnected VoIP providers should contribute to the USF because, like other contributors, VoIP providers "are dependent on the wide spread telecommunications network for the maintenance and expansion of their business" and they "directly benefit[] from a larger and larger network."[36] One-way VoIP providers benefit from the USF for the same reason, and the mere fact that they happen to only allow "calls out" rather than "calls in" does not change the benefit they and their customers derive from a series of robust

[36] *2006 Contribution Methodology Order*, 21 FCC Rcd 7540-7541, ¶43.

interconnected networks. Therefore, one-way VoIP should be listed specifically as an assessed service.

C. All Retail Broadband Internet Access Services Should be Assessed Equitably for USF Contributions

The Commission should exercise its permissive authority under Section 254(d) of the Act to equitably assess all retail broadband Internet access services for USF contributions. As discussed further in Section III, *infra*, there should be no exemptions for any technology platform or for any customer market. This means that broadband Internet access 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. It also means that both mass market and enterprise broadband Internet access services should be assessed. Taking this important step is critical to the long-term sustainability of the USF, and to establishing a contribution system that is fair and efficient, all of which are Commission goals in this proceeding.[37]

As an initial matter, the Commission has ample legal authority to assess all retail broadband Internet access services. As discussed in Section I of these comments and explained in the FNPRM,[38] where a service provider is offering an integrated information service that includes telecommunications and non-telecommunications components, the service provider is "providing" telecommunications as part of its offering. Here again, the precedent set in requiring providers of interconnected VoIP services to contribute to the USF is instructive.[39] The Commission's decision to compel contributions did not turn on whether such services were

[37] FNPRM, ¶¶23-25.

[38] *Id.*, ¶33.

[39] *2006 Contribution Methodology Order*, 21 FCC Rcd 7536-7549, ¶¶34-62.

"telecommunications services" or "information services." Rather, all that mattered for this determination was that interconnected VoIP providers "provide" transmission (*i.e.,* interstate telecommunications) regardless of whether they own or operate their own transmission facilities or obtain transmission from third parties.[40] This decision provides a clear precedent for requiring USF contributions from providers of all retail broadband Internet access services. It makes no difference how the service is legally classified or even whether the retail provider supplies its own broadband transmission. All that must be established is that telecommunications is being "provided" as part of the integrated retail service being assessed – and, telecommunications is provided as part of all broadband Internet access services.

Turning to the second prong of the permissive clause of section 254(d), it could not be clearer that the public interest requires universal service contributions from providers of all broadband Internet access services. Such contributions are ultimately essential to advance the Commission's goals of USF sustainability and a contribution system that is fair and efficient.

Data provided in the FNPRM demonstrate that the current contribution base, consisting primarily of interstate and international end-user revenues from telecommunications services and interconnected VoIP services, is no longer sustainable. From 2008 to 2011, the contribution base fell nearly 12 percent, from $74.9 billion to $67 billion.[41] A declining contribution base means that even if the USF remains static in size, the contribution factor must continue to rise to compensate for the erosion of assessable revenues. Yet, despite the decline in the contribution base, total revenues reported to the Commission by communications firms has grown, from $335

[40] *Id.*, 21 FCC Rcd 7538-7540, ¶¶39-42.

[41] FNPRM, ¶20.

billion in 2000 to more than $444 billion in 2010.[42] This seeming contradiction is due to dramatic changes in the communications industry, not the least of which is the rapid growth of broadband.

The ever-growing use of broadband Internet access services plays a significant role in the present instability and long-term instability (or, un-sustainability) of the existing contribution base. For example, more and more consumers access the World Wide Web to make airline, car rental, hotel, and other travel reservations, when previously they would have made telephone calls to accomplish each of these tasks. Similarly, people increasingly transact mail-order purchases of merchandise using the Web, rather than contacting those same vendors via traditional voice service. Moreover, families and friends frequently use e-mail and instant messaging to keep in touch with each other.

According to statistics from the Wireline Competition Bureau, between December 2008 and June 2011, Internet access connections over 200 Kbps in at least one direction more than doubled, from 102.2 million to 206.1 million.[43] Even in just the last 12 months for which statistics were available, from June 2010 to June 2011, these same types of connections increased by approximately 31 percent.[44] Likewise, the FNPRM notes revenue estimates from the Telecommunications Industry Association for both the wired broadband Internet access marketplace and wireless data services.[45] In particular, revenues for wired broadband Internet access are expected to grow by over five percent from 2011 to 2012, from $38.3 billion to $40.3

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[42] *Id.*

[43] Indus. Analysis and Tech. Div., *Internet Access Services: Status as of June 30, 2011*, p. 16, Table 1 (Wireline Comp. Bur., June 2012).

[44] *Id.*

[45] FNPRM, ¶71.

billion.[46] Even more significantly, revenues from wireless data services are expected to grow a 22 percent in the same one year timeframe, from $73.6 billion to $89.8 billion, and to $140 billion by 2015, a 90 percent growth rate over a four year period.[47]

If all broadband Internet access services were assessed for USF contributions, then long-term sustainability could be established. It would also immediately lower and stabilize the contribution factor, thereby relieving the pass-through amount on every assessed service and more equitably distributing the cost of the USF among consumers of telecommunications and information services. Furthermore, while the *USF/ICC Order* set the annual "budget" for the High-Cost program for a six-year period,[48] including all broadband Internet access services in the contribution base would allow for a meaningful conversation regarding the longer-term funding needs to achieve policymakers' goals and expectations for universal broadband.

The Fifth Circuit Court of Appeals has explained that "Congress designed the universal service scheme to exact payments from those companies benefiting from the provision of universal service,"[49] which the Commission noted when it determined it was in the public interest for interconnected VoIP providers to contribute to the USF.[50] It further follows that contribution requirements should be aligned with the purpose of the funding. In the *USF/ICC Order*, the Commission modified the High-Cost program, with a primary goal of ensuring the

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[46] *Id.*

[47] *Id.*

[48] *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, 17710-17711, ¶123 (2011) (*USF/ICC Transformation Order*).

[49] *Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d at 428.

[50] *2006 Contribution Methodology Order*, 21 FCC Rcd 7540-7541, ¶43.

universal availability of broadband-capable networks.[51] Moreover, the Commission took the step of requiring all Eligible Telecommunications Carriers to offer broadband service that meets certain basic performance requirements as a condition of receiving support.[52] As a result, there is no question that it is consistent with the public interest to require providers of all broadband Internet access services to contribute to the USF, since providers will benefit directly from the "network effect" that results from the expansion of broadband networks and subscribership nationwide, which the High-Cost program now explicitly seeks to achieve.

Conversely, it would be self-defeating and ironically anomalous to fund a USF that has been modified to explicitly support broadband-capable networks and promote the universal availability of broadband service primarily through revenues from voice-grade and other "basic" services. As AT&T noted in an August 2009 *ex parte* letter, these services are wholly insufficient to sustain the USF: "…it is clear that the existing, traditional voice-based business model is disappearing and with it will go the universal service support provided by those traditional services today."[53] For this reason, in addition to exercising its permissive authority under section 254(d), the Commission would also be justified in exercising its ancillary authority under Title I of the Act.[54] It is increasingly evident that the Commission cannot meet its

[51] *USF/ICC Transformation Order*, 26 FCC Rcd 17681, 17684-17691, ¶¶51-52, 61-73.

[52] *Id.*, 26 FCC Rcd 17695-17705, ¶¶86-108.

[53] Letter from Robert W. Quinn, Jr., AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122 at 2 (fil. Aug. 14, 2009).

[54] Ancillary jurisdiction may be exercised when Title I gives the FCC subject matter jurisdiction over the service to be regulated and the assertion of jurisdiction is "reasonably ancillary to the effective performance of [its] various responsibilities." *United States v. Southwestern Cable Co*., 392 U.S. 157, 177-78 (1968).

statutory obligation to preserve and advance universal service[55] if the networks and services that most consumers are migrating toward, and which are now the focus of a revamped USF, do not contribute to the Fund.[56]

In addition, as the FNPRM acknowledges, there is a competitive disparity that exists today between rate of return-regulated ILECs and all other broadband providers.[57] Rate-of-return carriers are required to contribute to the USF on revenues from their broadband transmission service, because they provide that service as a stand-alone common carrier telecommunications service under Title II of the Act.[58] On the other hand, no other providers of broadband service have this contribution obligation.

Where competition exists within portions of service areas, the broadband competitors of RLECs are typically much larger, often nationwide providers that already enjoy significant competitive advantages because of their size (for example, AT&T, Verizon, Sprint, Comcast, Time Warner and Cox). The fact that RLECs are forced to either pass through or absorb a USF assessment on their broadband transmission service, while their competitors do not, only exacerbates the competitive challenges RLECs already face. It also results in many rural consumers paying more to support universal service than other consumers. This is

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[55] This includes ensuring the availability of advanced telecommunications and information services to all regions of the Nation, and that consumers in rural, insular and high-cost areas have access to advanced services that are reasonably comparable to those provided in urban areas and at reasonably comparable rates. 47 U.S.C. §254(b)(2), (3).

[56] *See* FNPRM, fn. 93 ("Many recognize that if the contribution base itself is not sustainable, that could jeopardize universal service goals.").

[57] *Id.*, ¶72.

[58] *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities et al.*, CC Docket No. 02-33 *et al.*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, 14916, fn. 357 (2005).

fundamentally at odds with the Commission's principle of fairness for carriers and consumers, with the statutory requirement that universal service contributions be assessed on an equitable and nondiscriminatory basis, and with the Commission's own universal service principle of competitive neutrality.[59] The Commission can easily rectify this problem by equitably assessing all retail broadband Internet access services.[60]

In addition to eliminating the distinction between rate-of-return carriers and all other broadband Internet access providers, the Commission should not distinguish between facilities-based broadband providers that supply their own transmission and those that purchase transmission from other carriers. If, in fact, it is the *retail* broadband Internet access service that is assessed, the manner or process by which a service provider obtains its underlying transmission should not matter. Both facilities-based and non-facilities based providers should be treated the same, so as not to give one group of providers an unfair competitive advantage over the other. This approach is similar to the contribution requirement imposed on interconnected VoIP providers, in which the Commission determined that "these obligations

[59] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8801, ¶47 (1997).

[60] However, as discussed further in section IV.B., *infra*, the Associations are supportive of the Commission's proposed rule, contained in ¶117 of the FNPRM, in which broadband Internet access providers that offer transmission on a stand-alone basis would be permitted to contribute to the USF just on 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. This exception to the general rule of assessing the retail information service is not incompatible with the Commission's goal of fairness and principle of competitive neutrality since all broadband Internet access providers would be free to provide broadband transmission on a stand-alone basis, should they so choose.

apply regardless of how the interconnected VoIP provider facilitates access to the PSTN, whether directly or by making arrangements with a third party."[61]

The FNPRM asks whether assessing broadband Internet access service in the near term would undermine the goals of universal service because it would discourage broadband adoption and, if so, whether mass market broadband Internet access services in particular should be exempted or contributions for these services should be phased in over time.[62] Requiring mass market broadband Internet access services to contribute would not threaten broadband adoption and they should not be exempted from USF assessments, or subject to a phased-in contribution requirement. Failure to assess mass market broadband Internet access services (or, even worse, any broadband Internet access services) would prevent the needed broadening of the contribution base to sustain the USF for the long term, and frustrate fulfillment of the broadband policy objectives of Congress and the FCC.

Broadband Internet access service is no longer in its infancy and is no longer considered a mere luxury by most Americans. It is widely considered an essential service,[63] which is precisely why the FCC "transformed" the High-Cost program and conditioned support on recipients making broadband service available in their supported areas. Services that consumers consider essential are price inelastic. Accordingly, a nominal USF assessment imposed on the service will not lead existing customers to drop the service or dissuade potential new customers from adopting it. Furthermore, if fear that a USF assessment may harm mass market adoption of

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[61] *2006 Contribution Methodology Order*, 21 FCC Rcd 7537, ¶36.

[62] FNPRM, ¶¶67-68, 70-71, 84.

[63] *See USF/ICC Transformation Order*, 26 FCC Rcd 17667-17668, ¶3. ("Fixed and mobile broadband have become crucial to our nation's economic growth, global competitiveness, and civic life.")

a communications service always led to a decision not to assess that service, then a USF could not have emerged to fulfill Congressional mandate and public policy in the first instance.

To help to gauge how assessing mass market broadband Internet access services will affect adoption, the Commission can look at subscribership for residential interconnected VoIP service following the decision to impose a USF contribution obligation on these providers. The Commission extended USF contribution obligations on providers of interconnected VoIP services in 2006. Yet, from December 2008 to June 2011, a period of just 2 1/2 years, residential subscriptions to interconnected VoIP services increased from 19.2 million to 28.6 million, a jump of 49 percent.[64] Moreover, this increase in subscribership occurred despite an increase in the USF contribution factor of 3.5 percentage points over the same time period.[65] This provides a strong indication that requiring all broadband Internet access services – including mass market services – to contribute equitably to the USF will not have an adverse impact on broadband adoption. Moreover, there is an inversely proportional obligation that arises when the responsibility to support USF is broadened: the more services that are subject to a USF contribution obligation, the smaller the assessment that will be imposed on each service. This, in turn, makes it highly unlikely that the assessment will bear negatively on a consumer's decision to adopt or retain a service, particularly one as essential as broadband Internet access.

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[64] Indus. Analysis and Tech. Div., *Local Telephone Competition: Status as of December 31, 2008*, p. 3, Figure 1 (Wireline Comp. Bur., June 2010); Indus. Analysis and Tech. Div., *Local Telephone Competition: Status as of December 31, 2011*, p. 5, Figure 4 (Wireline Comp. Bur., June 2012).

[65] In fourth quarter 2008, the contribution factor was 11.4 percent. *Proposed Fourth Quarter 2008 Universal Service Contribution Factor*, CC Docket No. 96-45, 23 FCC Rcd 13446 (2008). In second quarter 2011, the contribution factor was 14.9 percent. *Proposed Second Quarter 2011 Universal Service Contribution Factor*, CC Docket No. 96-45, 26 FCC Rcd 3755 (2011).

The FNPRM also asks if mass market broadband were to be excluded from contributions, how the Commission would differentiate between it and other forms of broadband Internet access, and whether such a distinction would create any distortions in the marketplace.[66] As the Commission seems to recognize, it would be very difficult for it to establish a definition of "mass market" broadband that clearly distinguishes it from "enterprise" broadband services in all instances. As a result, it can be expected that carriers will interpret the definition differently, creating marketplace distortions and inequity among broadband competitors. It would also be inconsistent with the Commission's goal of efficiency in the contribution system as it would create unneeded complexity, open up new loopholes, and create a further definitional quagmire. Finally, it is not fair to enterprise customers that they would be expected to shoulder a larger USF contribution assessment than they otherwise would if all broadband customers, both mass market and enterprise, were equitably assessed. Mass market broadband customers are now direct beneficiaries of the newly modernized High-Cost program, and therefore broadband service providers should be required to contribute equitably on the services provided to those customers.

D. All Enterprise Communications Services that Include a Telecommunications Component Should be Required to Contribute to the USF

The FCC should exercise its permissive authority under Section 254(d) of the Act to require all providers of enterprise communications services with a telecommunications component to contribute to the USF.[67] The Commission can take this step regardless of the

[66] FNPRM, ¶70.

[67] The Commission could also exercise its ancillary authority to require providers of enterprise communications services with a telecommunications component to contribute to the USF, for the same reasons discussed with regard to broadband Internet access services. *See*, p.19, *supra*.

regulatory classification of any particular enterprise communications service.[68] As previously discussed, the Commission need only look to its determination that providers of interconnected VoIP services should be subject to USF contribution obligations. The fact that the Commission has yet to classify interconnected VoIP services as either telecommunications services or information services did not pose a barrier to requiring those service providers to contribute to the USF.

In addition, clarification of the USF contribution obligations of enterprise communications services with a telecommunications component is in the public interest. Just as with broadband Internet access services, these types of enterprise services benefit from the provision of universal service. This is particularly true in light of the High-Cost program having been recently "transformed" to explicitly support the universal availability of multi-use advanced networks. Therefore, all such services should be subject to "equitable and nondiscriminatory" contribution obligations.

Clarification of the USF contribution obligations of enterprise communications services will also help to promote the Commission's goals of fairness, efficiency, and sustainability.[69] To begin with, as the FNPRM notes, the present lack of clarity as to the contribution obligations of enterprise communications services has resulted in a "gaming of the system" that unfairly disadvantages certain providers relative to their competitors.[70] In addition, certain enterprise

[68] While paragraph 41 of the FNPRM notes that certain enterprise communications services have been classified as telecommunications services, this is nevertheless irrelevant to the issue at hand. The Commission possesses well-settled authority under section 254(d) to require providers of interstate telecommunications to contribute to the USF without addressing the classification question.

[69] *Id*., ¶¶5, 22-27.

[70] *Id*., ¶42.

communications services already contribute to USF, while others that the FNPRM specifically identifies as performing substitutable functions utilizing newer technologies, do not.[71] Thus, a definitive clarification that all enterprise communications services with a telecommunications component are subject to USF assessment would promote fairness and competitive neutrality.

Furthermore, requiring equitable contributions from all enterprise communications services with a telecommunications component would recognize the evolving structure of the marketplace and close loopholes,[72] thereby promoting efficiency in the contribution methodology. Finally, expanding the number of enterprise communications services that must contribute to the USF will promote the Fund's long-term sustainability by broadening the contribution base and lowering the assessment on other services subject to a contribution requirement.

III. THE COMMISSION SHOULD DRAW BRIGHT LINES FOR CONTRIBUTION OBLIGATIONS AND AVOID EXEMPTIONS AND EXCLUSIONS THAT CREATE NEW LOOPHOLES TO BE EXPLOITED

A. Introducing New Exemptions and Exclusions Will Complicate a Mechanism that Must be Made More Simple, Thereby Perpetuating Confusion and Exacerbating the Opportunities for Definitional Gamesmanship

In addition to adopting a general rule that "broadens the contribution base" as discussed in the preceding section and then concluding that certain services – such as broadband Internet access and enterprise communications services – fall within that general rule, the Commission should also refuse to gut its general rule through overly broad exemptions and exclusions. Whereas clarity can be enhanced by excluding specific services that the Commission determines should not be subject to universal service contributions, broad exemptions and categorical

[71] *Id*., ¶41.

[72] *Id*., ¶23.

exclusions perpetuate confusion, create new loopholes, and ultimately undermine the effort to simplify and stabilize the USF contribution mechanism. The Rural Associations acknowledge that no system of contributions can preclude every opportunity for "hair-splitting" and loopholes, but the Commission must avoid fostering the exploitation of loopholes and enabling definitional gamesmanship through broad exemptions and exclusions.

As just one example, the Commission inquires whether the "systems integrators" exemption should be sustained.[73] This exemption excuses firms from any direct contribution obligations to the extent that their provision of interstate telecommunications constitutes a "small fraction" of total revenue from systems integration services.[74] As an initial matter, this overly broad exemption fails to take account of the size of the system integrator. For example, if a firm's systems integration revenues were $6 billion but its telecommunications revenues a penny under $300 million, that firm has no direct contribution obligation notwithstanding that it is a significant provider of interstate telecommunications as an absolute matter. Moreover, the "systems integrators" exemption is a definitional quagmire. It relies upon multiple levels of "hair-splitting" that are difficult, if not impossible, to unwind. In addition to the question of what might constitute the "provision of interstate telecommunications" (in the absence of clearly defined, service-specific findings as recommended in Section II hereof), the definition of "systems integration services" appears to be a blank slate. Firms are effectively invited, if not encouraged, to self-define activities so that the telecommunications component of service revenue is minimized (at least as a percentage of systems integration revenue). Although one supposes the threat of USAC audit might compel firms to reasonably classify revenues, it is

[73] *Id.*, ¶47.

[74] *Federal-State Joint Board on Universal Service, et al.*, CC Docket No. 96-45, *et al*., Fourth Order on Reconsideration and Report and Order, 13 FCC Rcd 5318, 5472, ¶278 (1997).

unclear that USAC has the expertise and/or resources needed to parse through whether any given sale is "systems integrations" or of some other nature.

The contribution obligation for systems integrators should be minimal if this exemption were revoked, particularly if paired with contribution reform that broadens the base by assessing sales of broadband Internet access services and enterprise communications services with a telecommunications component. Indeed, equity dictates revoking this exemption, as retaining it for "systems integrators" but otherwise applying contribution requirements to other providers of broadband Internet access and enterprise communications services would tip the competitive scales to the detriment of those providers of functionally equivalent services that contribute directly to the USF.

The same logic applies to other exclusions identified in the FNPRM. First, as discussed at length in Section II, *supra*, the Commission should take affirmative and determined steps to *include* revenues from broadband Internet access services within the contribution base, rather than categorically exclude such services.[75] If the Commission excludes from contribution the very suite of services that has been the catalyst for USF reform in the first instance and that is increasingly becoming the primary means of communicating for all Americans, contribution reform will be an exercise in futility. Excluding only "mass-market" broadband Internet access services would further complicate matters, creating new definitional "judgment calls" and opportunities for game-playing in distinguishing such services from "other" broadband Internet access services. As discussed in the preceding section, including *all* broadband Internet access services within the contribution base is essential to the long-term sustainability of the USF, and

[75] *See*, FNPRM, ¶84.

assessing a small contribution factor on the procurement of broadband Internet access should have no effect on broadband adoption by residential customers or small businesses.[76]

Nor should the Commission adopt a categorical exclusion for non-facilities-based providers.[77] The Commission has determined previously that the ownership of the particular telecommunications or transmission facilities is irrelevant, and that a "provider of telecommunications" may own or operate its own transmission facilities or may obtain transmission from third parties.[78] Here again, the Commission risks introducing complexity and potential gamesmanship into what must be a more simple and straightforward system. For example, if the Commission were to exclude non-facilities-based providers from the contribution obligation, where would the line fall with respect to ownership of facilities? If a service is provided over some combination of leased transport, owned routers, and/or unbundled network elements, is that facilities-based? How would interconnected VoIP be viewed? Today, many providers of such services are "over-the-top" and do not themselves own or control (or even lease) any part of the transmission network, yet the Commission previously found that they are "providers of interstate telecommunications" and thus subject to contribution obligations.[79] Would establishing a categorical exclusion in favor of non-facilities-based providers change this analysis? In the end, a non-facilities-based "reseller" (in whole or in part) constitutes the "final point of contact" with the "user" to whom an assessable service is provided. Thus, to ensure that

[76] *See*, Section II, *supra*, pp. 22-24.

[77] FNPRM, ¶83.

[78] *2006 Contribution Methodology Order*, 21 FCC Rcd 7539-7540, ¶41.

[79] *2006 Contribution Methodology Order*, 21 FCC Rcd 7518. Upheld in Vonage v. FCC, 489 F.3d 1232 (D.C. Cir. 2007).

the brightest lines are drawn, the Commission should require the assessment at that level of transaction regardless of the ownership of any underlying transmission facilities.[80]

The Commission also inquires whether free or advertising-supported services should be excluded from any contribution obligation.[81] This is an admittedly difficult question in the context of a mechanism that bases assessments solely on end-user revenues. Where advertiser revenues are a clear substitute for end-user revenues or a transparent device to gain a competitive advantage by evading universal service contributions, the Commission may be able to employ its ancillary jurisdiction to require universal service contributions on an equitable portion of a telecommunications provider's advertising revenues. In the alternative, as discussed in Section IV *infra*, the Commission could utilize a revenues-based methodology only *as a foundation for contribution, rather than as an exclusive regime*. In lieu of excluding all free or advertising-paid services from contribution by rule or otherwise permitting such services to go without contributing simply because revenues may not be the right basis for assessment in this instance, the Commission could "fill the gaps" by considering whether another basis for contribution (whether advertising revenues attached through ancillary jurisdiction or some other means of measuring telecommunications reliance, such as connections or numbers) is more appropriate in

[80] This is certainly not to say that the existing "resale" exemption process – whereby a reseller can certify to a wholesaler that it will contribute to the USF directly (or obtain evidence that a downstream provider will do so) – is flawless. But excluding non-facilities-based providers from contribution obligations altogether would introduce greater complexity into the contribution regime even as it potentially fixes this narrow concern. For purposes of keeping lines drawn brightly and minimizing confusion, the Commission should focus on making much-needed and achievable targeted technical fixes to the "resale" exemption process as suggested herein rather than creating an entirely new broad-brush exclusion for all non-facilities-based providers. *See* Section IV, C., *infra*.

[81] FNPRM, ¶86.

such limited cases. A provider that earns enough from advertising or realizes sufficient margin on other services to give away an assessable service should not be relieved from supporting the networks upon which its services depend and from which it derives significant benefits.[82] Rather, the Commission should review such circumstances more closely and determine whether to "fill the gaps" by utilizing a different basis for contributing ,such as connections or numbers, in such narrow instances.

B. The Statutory Definition of "Telecommunications" Provides the Capability to Draw Bright Lines and Define Assessable Services, Thereby Ensuring Administrative Simplicity and Promoting Clarity for Providers and Users

The Commission poses a series of questions with respect to how the definition of "telecommunications" affects the determination of whether contributions might be assessed on any given service.[83] Indeed, as the Commission's questions highlight, a general rule such as that proposed in paragraph 75 of the FNPRM can be useful, but such a rule cannot on its own establish the specific cases in which contribution obligations vest. Instead, as the discussion in Section II, *supra*, makes clear, the Commission would still need to provide clear guidance as to whether particular services involve the provision of interstate "telecommunications" and thus fall within the rule. As explained below, the statutory definition of "telecommunications" provides a reasonable foundation for application of the general rule proposed in the FNPRM to specific services, and this definition can facilitate the establishment of bright lines and the ultimate publication of a list of assessable services.

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[82] *See*, *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d at 428.

[83] FNPRM, ¶¶88-92.

To demonstrate the analysis required to establish which entities are "users" or providers of "telecommunications" in any given transaction, the Commission posits the case of Bookseller A, who provides an electronic reading device that comes with a 3G wireless connection supplied by Carrier B for use by Ms. Smith. The 3G device enables access to Bookseller A's server for the procurement of e-books. The Commission asks whether Ms. Smith or Bookseller A is the "user" in this instance, and depending upon that analysis, whether Bookseller A or Carrier B is the provider of "telecommunications."[84]

It is reasonably clear from this fact pattern that the "user" of "telecommunications" is Bookseller A, and Carrier B is the provider of "telecommunications" subject to a contribution obligation. Bookseller A is the customer of (and presumably in contractual privity with) the entity that supplies the telecommunications. Bookseller A "specifies" the "points" of transmission between the device and its server. The data transmitted between those points are e-books sent from the server to Ms. Smith; although it is true that Ms. Smith might choose specific e-books, her ability to "choose" is constrained within the limited universe of information chosen in the first instance by Bookseller A. Thus, Bookseller A is the "user" that specifies the points of transmission for information of its choosing. Carrier B is in turn the "provider of interstate telecommunications" to Bookseller A, and pursuant to the general rule and the service-specific applications of that rule recommended elsewhere in these comments, Carrier B would be obligated to contribute to the USF based upon the provision of broadband Internet access services (in the form of a 3G wireless connection) to Bookseller A.[85]

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[84] *Id*., ¶¶89-90.

[85] This same logic holds true for the additional example identified in paragraph 91 of the FNPRM involving a remote medical monitoring device. In that instance, the doctor's office procures broadband Internet access service (or some other connection incorporating telecommunications) to enable remote monitoring of a patient – say, Ms. Smith again for

It would strain the limits of statutory interpretation and complicate unnecessarily the contribution regime if Bookseller A (or the doctor's office) were considered providers of interstate telecommunications to Ms. Smith. Each provides a service in which the transmission of data is secondary to another purpose (*i.e.*, the delivery of e-books or the ability to review medical data). Neither enables Ms. Smith to specify freely the points of transmission or supplies access to any information of her choosing. The analysis would almost certainly differ if, for example, Bookseller A "opened" the 3G connection on its e-book reader to allow for unbounded web surfing rather than supplying a dedicated connection to its server. In that event, Bookseller A would appear to be a provider (or at least a reseller) of broadband Internet access service itself, with Ms. Smith as the user of that service. But in either case, the definition of "telecommunications" in the Act and a straightforward reading of terms such as "user," information "of the user's choosing," and specifying of the "points" of transmission, provide a sound foundation for the application of the general rule and the capability to publish from that rule a list of services that are subject to contribution obligations.

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purposes of consistency. The doctor's office is the customer of (and in contractual privity with) the provider of the underlying telecommunications capacity, the doctor has specified the points of transmission (*i.e.*, between the device and the doctor's office), and the information transmitted is of the doctor's choosing (*i.e.*, medical data). Thus, just as Bookseller A, the doctor's office is the "user" of "telecommunications" provided by the carrier, rather than a provider itself of "telecommunications" to Ms. Smith. The carrier would therefore be required to contribute to the USF based upon its provision of broadband Internet access service to the doctor's office under the rule supported herein.

Now compare both of these scenarios to one where Ms. Smith happens to purchase "over-the-top" interconnected VoIP at home as well. She would typically procure the broadband Internet access service that enables such VoIP service directly from Carrier B. Ms. Smith would choose the "points" of transmission for each of her calls using the VoIP service to convey information of her "choosing" (*i.e.*, the topic of conversation). Thus, for purposes of both the interconnected VoIP service and the underlying broadband Internet access service, Ms. Smith would be the "user," and the provider of each such service would be independently responsible to contribute to the USF based upon its respective provision of interstate telecommunications to Ms. Smith.

Similar interpretative questions arise in considering whether the Commission should establish a categorical exemption from contribution for "machine-to-machine" connections.[86] A categorical exclusion is unnecessary and inappropriate for the reasons discussed in the preceding subsection – specifically, because categorical exclusions encourage line-drawing and definitional gamesmanship to avoid contribution obligations. This being said, it is important to focus on who the "user" might be in the context of M2M connections, and this example reinforces the need to draw bright lines in identifying the providers of interstate telecommunications and specifying the services subject to contribution obligations. As the Commission notes in the FNPRM, the definition of "telecommunications" turns in part on the "user" that specifics the points of transmission and the information to be transmitted.[87] In the case of a M2M connection, much as in the case of the e-bookseller or the doctor providing a remote medical monitoring service, the party *procuring* the broadband Internet access service or enterprise communications service for purposes of facilitating the M2M communication should be considered the "user." Thus, the underlying supplier of the broadband Internet access service or enterprise communication service "within" the M2M connection should be considered the "provider of interstate telecommunications" and subject to the contribution obligation.

For example, in the case of "smart meter/smart grid" M2M technology, the homeowner or property manager would not be considered the user, because that individual neither specifies the ends of the transmission path nor the information transmitted; instead, all such decisions are made by the energy supplier that installs the smart meter to transmit data of *its* choosing to and

[86] FNPRM, ¶87.

[87] *Id*., (quoting 47 U.S.C. §153(50)).

from the designated premises. The same is true in the context of remote health monitoring, as discussed above, and home security systems. Although in each case the data transmittal may be on "auto-pilot" once established, the type(s) of data to be transmitted and the A and Z locations of the feed are specified by the installer/operator of the meter or other device. Here again, a straightforward reading of the statutory term "telecommunications" can help the Commission minimize definitional gamesmanship and establish bright lines with respect to where contribution obligations fall.[88]

IV. THE COMMISSION SHOULD LOOK FIRST TO REVENUES AS THE BASELINE UNIT FOR ASSESSMENT, BUT SHOULD ALSO RETAIN SUFFICIENT FLEXIBILITY TO CONSIDER OTHER OPTIONS AND "HYBRID" APPROACHES WHERE NECESSARY TO FILL GAPS

A. Revenues Provide the Most Efficient Route Towards Contributions Reform

The Commission seeks to "reform and modernize" how USF contributions are "assessed and recovered."[89] Part of this effort is the Commission's stated intent to "simplify" the contribution process.[90] The goal of simplification is laudable: simplification should not only reduce the administrative burden on providers and government officials charged with overseeing contributions, but should also enhance transparency and reduce opportunities for gaming or manipulation that could enable evasion of contribution obligations. The record is replete with

[88] To make matters even more clear, presumably the e-bookseller, the doctor, or the energy supplier, as the case may be, would not be entitled deliver a certificate or other indication to the provider of broadband Internet access or enterprise communications services of intent to "resell" the service – meaning that the provider of broadband Internet access or enterprise communications services should then be well aware of its obligation to contribute to the USF in connection with that sale.

[89] FNPRM, ¶1.

[90] *Id.*, ¶95.

recommended alternatives to rely on revenues, numbers, connections, or hybrid-approaches.[91] At bottom, the resolution should be equitable and should avoid imposing unnecessary administrative burdens upon contributors. Therefore, although some flexibility to explore the role of numbers, connections, or hybrid solutions should be retained, the Commission should focus primarily on a revenues-based model for contributions as the foundation from which to build. A revenues-based model provides clarity in definition, transparency in enforcement, and predictability by removing the ambiguity that may attend other proposed bases of contribution.

The Commission asks whether the current revenue-based system can be retained while providing greater clarity and "promoting efficiency, fairness, and sustainability."[92] These are necessary elements of any solution: efficiency must ensure that resources are collected with a minimum of administrative expense, and directed primarily at network-oriented efforts; fairness is eminently consistent with the principle that beneficiaries should pay for the network they use; and, sustainability is critical in order to ensure that mechanisms to support the deployment, upgrading, and operation of advanced networks are available for the long term. A revenues-based mechanism meets these standards. First, revenues, unlike "connections," have a standard and unambiguous definition. Therefore, once the task of defining the universe of assessable services is completed, providers can carry their revenue figures from their ledgers to the contributions process. Moreover, revenues are easily verifiable through providers' accounting statements. In contrast, neither numbers nor connections, however defined, are subject to the sort of known and standardized processes by which revenues may be accounted as of specific periods and over time. Numbers present a further concern in that they likely have a regressive

[91] *Id.*, ¶96.

[92] *Id.*, ¶98.

impact, potentially placing a relatively greater burden on consumers (many of whom have multiple telephone numbers) than on large enterprise users that procure "big pipes" for data transmission. The Commission should not countenance any system that imposes a greater burden on a family with ten telephone numbers than on a business with five telephone numbers buying a 100 Mbps data service.

A revenues-based contributions mechanism also meets the Commission's oft-uttered commitment to technological neutrality; it best captures the value that consumers place on competing services that use underlying telecommunications networks without regard to the specific technology used to deliver the service. The Commission's interest in technological neutrality comports with the interest in allowing the market, rather than regulatory policies, to decide the position of any provider or technology in the marketplace. Reliance on revenues is especially attractive, as well, because it is effectively immune to changes in technologies or services that may arise from time-to-time. Revenues reflect the balance that consumers strike between different service offerings and the evolution of consumer preference. It is the most equitable means of apportioning responsibility among network users.

In addition to regulatory neutrality and verifiability, a revenues-based system also confers the benefit of rapid implementation, and with little burden to providers or the industry since existing billing systems are already designed for revenues-based assessments. By contrast, the FCC should avoid complex new contributions systems. In the first instance, a complex mechanism would demand overhaul of existing processes that providers, the Commission, and USAC use to calculate contributions. This, in turn, would necessitate that the Commission provide more lead time between adoption and actual implementation. Further, it is likely that the opportunity for disagreement and potential stalemate in any rulemaking process increases in

proportion to the complexity of the measure being considered. That is a result the Commission and industry must avoid as a new commitment to universal service is made. Finally, the introduction of a new and untested system could well create new and unforeseen pressures and loopholes that undermine the reform effort. This is not to say that the Commission and industry should never adopt a new approach; rather, the existing revenues-based system provides a strong foundation for contributions, and permits the Commission to solve for remaining concerns *after* initial reforms that fundamentally stabilize and sustain the system .

By contrast, the FNPRM is replete with questions regarding numbers or connections based regimes that evidence their untested nature. Either would likely demand some sort of "new data collection and reporting requirements, necessitating changes to billing and reporting systems."[93] Threshold questions arise regarding the definition of "numbers" or "connections." As the Commission relates, "'connections' is not a universally-recognized or tracked unit, and the Commission would need to create a definition of 'connection' for purposes of moving to a new connections-based mechanism."[94] The Commission would also need to determine whether capacity or other metrics would be inherent in the definition depending on the type of service in question. In similar vein, the use of numbers would implicate a determination of assigned but not operational; available but not assigned; assigned but non-working; and other situations, such as numbers associated with family plans. In the end, revenues are known, defined, verifiable, and equitable, and – apart from the questions discussed below surrounding bundled services and whether and how to allocate among interstate and intrastate revenues – a revenues-based solution is effectively a "turn-key" solution that can be plugged into exist billing platforms.

[93] *Id.*, ¶222.

[94] *Id.*, ¶226.

B. A Companionship of Safe Harbors and Rebuttable Presumptions Provides a Framework for Assessing Revenues of Bundled Services and Information Services, and for Allocating Assessments Among the Jurisdictions

1. Assessment of Bundled Services and Information Services

The FNPRM seeks comment on a proposed rule for determining contribution requirements from bundled offerings with one or more assessable services. Under the proposal, carriers must either treat all revenues for the 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).[95] The Associations support this approach. Compliance is best achieved when expectations and requirements are defined at the outset. Rules that give providers too much discretion (*e.g.*, allowing providers to apportion bundled revenues using "any reasonable method") could result in two unfavorable outcomes: (1) providers might intentionally and inappropriately mask certain assessable factors in order to reduce their contribution obligation, or (2) providers might run afoul of rules despite their best efforts to comply if the rule fails to provide proper guidance. Alternatively, providers erring on the side of caution may calculate their obligation as higher than it should be, thereby passing inequitable contribution obligations onto their customers.

The Commission appears to recognize that apportionment among various assessable and non-assessable services may be frustrated if the provider does not offer the assessable service on a stand-alone basis. Moreover, even if the provider does offer the service on a stand-alone basis, the integrity of the universal service process and the obligations imposed on providers must prevent the establishment of "sham" stand-alone services. The Commission suggestion that at

[95] *Id.*, ¶106.

least a certain threshold of revenues are required from a bona fide stand-alone offering to qualify is a reasonable proposal, and the Commission could also find that either: (a) the full price of the bundle is assessable in these cases; or (b) some other basis of assessment (a connection or number) may be needed to fill this gap.[96]

The Commission also asks whether the stand-alone service should be "generally available and actually subscribed to by a minimum number of end users."[97] That approach is presumably necessary to confirm that the stand-alone offering actually exists beyond the pages of a dusty tariff and is used for some other purpose beyond managing USF contribution obligations. If in actuality, however, the stand-alone service fails to gain the requisite number of subscribers, then the Commission may impose a default rate based upon surveyed average rates for the claimed stand-alone service. The burden of proof should rest with the provider to certify that its determined stand-alone price is based upon verifiable information that is derived from similar services offered in the marketplace.[98] Regarding the option to treat all revenues in the bundled offering as assessable, this would be administratively easy, reduce opportunities for arbitrage or gaming, and facilitate monitoring and enforcement, where necessary. Moreover, it would help to lower the contribution factor since the pool of assessable revenues would be larger.

The conundrum of separating mixtures arises not only in bundled service offerings, but in particular services that may include both an information and a telecommunications component. Toward that end, the Commission proposes that if an entity offers "an assessable information service with an interstate telecommunications component," then all revenues from that

[96] *See*, *Id.*, ¶108.

[97] *Id.*

[98] *Id.*, ¶109.

information service should be assessable unless the transmission underlying the information service is offered separately on a stand-alone basis.[99] The Rural Associations support this approach because, as the Commission notes, it is transparent, enforceable, and easily administrable.[100] It also offers a bulwark against gaming that could occur if a provider would seek to minimize its contribution obligation by fabricating incorrectly favorable allocations between the telecommunications and information components. Moreover, it is unlikely that a truly accurate system of "unblending" the telecommunications and information components could be created. Therefore, the only accurate way to derive the telecommunications assessment from a blended component service is to identify a stand-alone telecommunications service that is part of the mixture. Such a rule would not be unfair to service providers that choose not to offer transmission on a stand-alone basis because it is just that – a choice – and any provider could choose to offer transmission on a stand-alone basis if they believed that the benefits outweighed the costs of doing so. Finally, providers should not bewail the prospect of an artificially inflated contribution that might be perceived if the total revenue were considered assessable, since an assessment over a wider range of revenues leads to a proportionally smaller contribution factor as the base against which the assessment is levied increases.

2. Allocating Assessments Among the Jurisdictions

The Commission must ensure that allocations among jurisdictions respects historic federal and state components, but without unnecessarily restricting the ability of the federal regulator to assemble a competent and robust universal service contribution system. At the same time, the Commission must be sensitive to the existence of state universal service funds that may

[99] *Id.*, ¶117.

[100] *Id.,* ¶118.

face significantly greater challenges as new Commission regulations addressing intercarrier compensation rate reductions and high-cost support for rural carriers become effective. The Commission must balance carefully the needs of state stakeholders, and should consider thoughtfully creative approaches the states may propose. The Commission should make clear, as the statute contemplates, that a partnership is essential between state and federal universal service programs.[101] The Commission should recognize the importance of this partnership by declaring that promotion of state universal service contribution and support mechanisms is an additional goal of contributions reform.

The Commission's decisions in this proceeding are likely to affect the great majority of states. At least 20 states have adopted universal service funds for high-cost purposes, and the Rural Associations understand that at least 10 others may be evaluating such funds. In many states, these high-cost funds fulfill an essential role in supporting universal service in high-cost and rural areas. State universal service funds are also used for other program purposes, such as intrastate access reform, broadband, Lifeline and Linkup, schools, hospitals and libraries, telecom access equipment, and Telecommunications Relay Service. Once these other types of state funds are added to the list, more than 40 states collect universal service surcharges to support state funds.[102]

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[101] *See*, 47 U.S.C. §254(d) and (f) (using parallel language with respect to federal and state universal service funds). The courts have also held that the Act "plainly contemplates" a state-federal partnership to support universal service. *Qwest Corp. v. FCC*, 258 F.3d 1191, 1203 (10th Cir. 2001), *accord, Qwest Communications Int'l Inc. v. FCC,* 398 F.3d 1222, 1232 (10th Cir. 2005).

[102] Somewhat dated information indicates that 21 states have high cost funds. FCC, *Connecting America: the National Broadband Plan,* at 140 (released March, 2010). More recent survey work by NRRI suggests that a much larger number of states, about 40, raise funds for one or more universal service purposes (forthcoming report).

Given that the Commission's own publications have identified an "investment gap" far in excess of current budget targets for the federal high-cost program,[103] the role of state universal service funds may only become more important – and more strained – in seeking to expand networks to provide broadband. State commissions' ability to continue state universal service programs is essential in achieving universal service goals and in developing a ubiquitous national communications network. Federal support is unlikely to prove sufficient by itself. Since federal USF support alone will be strained to deliver ubiquitous broadband, the Commission should be certain not to adopt any rules that would explicitly prohibit or prevent states from establishing a sufficiently broad contribution base to sustain state universal service funds.

In sum, state universal service programs will continue to play a key role in reaching the nation's universal service goals. As the Commission changes the basis for its own universal service programs, it should take great care to protect and strengthen the state-federal partnership. One important component of that partnership is a fair allocation of the contributions assessment base. Another useful step could be the adoption as an additional goal for its universal service contribution reform a principle stating that the federal contribution mechanism should be compatible with and promote state universal service contribution and support mechanisms.

With those considerations, the Commission must determine a proper way to allocate among state and federal jurisdictions if it is determined that such allocation is necessary. The Rural Associations suggest the establishment of safe harbors to delineate between interstate and intrastate services. These introduce administrative ease and meet that mandate of "predictability" by offering a course to define what otherwise may require intensive consumer

[103] FCC, *The Broadband Availability Gap,* OBI Technical Paper No. 1, April, 2010, p. 5.

usage and traffic-type studies. This approach creates an environment in which only overall revenues would serve as the variable on any given year.

Nevertheless, the safe harbors should be a default, and carriers should be permitted to "make a particularized showing that a higher percentage of their traffic is intrastate."[104] The particularized showing need not "allocate revenues on a customer-by-customer basis."[105] Although "each customer actually uses the purchased telecommunications differently,"[106] it can be inferred satisfactorily that a provider that offers a particularized showing will have incorporated relevant user data to arrive at its result, but the customer-by-customer data should not be a required element of the showing. Such a requirement could well be administratively burdensome for both the provider to present, and the Commission to review.

C. A Staged Approach to Reform that Starts from Revenues, Closes Loopholes, and Addresses Administrative Concerns with the Contribution Regime Provides the Best Approach

In summary, the FCC should take a staged approach to universal service contribution reform. First, it should expeditiously resolve basic approaches and certain major issues that are ripe for action in an initial Report and Order. Once that is completed, it can then deal with more complex and less ripe issues at a later date in an ongoing further rulemaking and/or separate clarification orders as the effects, unforeseen consequences, and unresolved issues of the initial reform become more apparent. The Rural Associations submit that the current revenues-based system constitutes the most efficient baseline for initiating reform at this time because: (i) service providers, customers, and regulators are familiar with it; (ii) service provider and USAC billing

[104] FNPRM, ¶136.

[105] *Id.*, ¶138.

[106] *Id*.

and collection systems based upon revenues are in place; and (iii) it will require fewer modifications to existing regulations and forms than would a change to a wholly new basis of contributions . However, in the longer term, it may prove effective and efficient to introduce connection-based and/or number-based elements to address issues and circumstances that cannot be resolved in an equitable and competitively neutral manner in a pure revenues-based system.

For example, 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.[107] Whereas value-added tax systems are employed in other nations, they are relatively novel in the United States and entail measurement, monitoring, enforcement, and other implementation issues. These issues are likely to be too unfamiliar and complicated to resolve at this time within the confines of a comprehensive and wide-ranging reform of the universal service contribution system.

Instead, the FCC should revise its reseller/wholesaler procedures in the short term to reduce some of their more burdensome and ineffective elements. These flaws include: (1) wholesalers have been turned into *de facto* enforcement agents of the Commission by requiring them to collect certifications from resellers; (2) wholesalers have been required to effectively indemnify the Commission against contributions evaded by their resellers; (3) resellers have been required to learn and comply with a variety of certification procedures imposed by different wholesalers; and (4) obtaining certifications that satisfy regulatory requirements has often proven to be a more significant factor than competitive equity in determining which resellers and wholesalers are subject to or exempt from contribution obligations.

[107] *Id.*, ¶149-161.

Some near-term rule modifications that the Commission could make to address these matters include: (a) replace certifications and exemption forms with a requirement that resellers register with the Commission and identify for each reporting period the wholesalers whose services they will resell or have resold; (b) require wholesalers wishing to take advantage of reseller/wholesaler procedures to verify that a reseller has registered with the Commission at the beginning of the first reporting period when the registration procedures are implemented or the first reporting period when the wholesaler begins providing service to a reseller (rather than obtaining certifications from the reseller); (d) require resellers and wholesalers to identify the wholesalers and resellers with which they do business, and report specifically the dollar amounts of their transactions with each other (so that such transactions can readily be cross-checked and verified); and (e) in instances where the Commission is unable to collect universal service contributions from a reseller, limit the wholesaler's contribution liability to the applicable contribution factor times the wholesaler's actual collected wholesale revenues from the delinquent reseller.

These and similar revisions would be intended to modify the existing reseller/wholesaler certification procedures to make them less burdensome and more readily verifiable. In the longer term, better reseller/wholesaler information and improved technology to process such information may make a value added approach more feasible, and easier to implement by itself as a more focused modification of the contribution mechanism. The Rural Associations also note that the expansion of the contribution base to include more "providers of telecommunications" that do not contribute today is likely to minimize or avoid many of the disputes and much of the confusion that exist today regarding whether certain services and revenues are "wholesale" or "retail."

In closing, the Rural Associations clarify that these comments should not be construed to say that revenues represent the perfect basis upon which to affix a contributions mechanism. Rather, as discussed herein, revenues simply offer the most readily feasible and administratively simple means of solving a complex problem – or at least narrowing the scope of complex problems for which to solve. The preference expressed here for revenues is not intended to, and must not, preclude a longer-term look at alternatives or the shorter-term need to use numbers or connections in conjunction with revenues to "fill gaps" where revenues do not capture a patent beneficiary of networks provided by carrier benefactors.

V. CONCLUSION

The Commission should immediately exercise its well-settled legal authority via Section 254(d) and Section 4(i) of the Communications Act to broaden the contribution base by requiring all providers of interstate telecommunications to contribute to the USF. This should be done by specifying the services that are subject to a USF contribution assessment, while also adopting a general rule that would provide potential contributors notice of the contours of the regime.

Both text messaging and one-way VoIP services should be assessed for USF contributions. Among other things, both services contain a telecommunications component as defined in the Act, and both services benefit from the use of the PSTN.

Most importantly, all retail broadband Internet access services should be assessed equitably for USF contributions. This is essential to establishing long-term sustainability of the Fund. It would also lower and stabilize the contribution factor, thereby relieving the pass-through amount on every assessable service and more equitably distributing the cost of the USF among consumers. Furthermore, it is in the public interest to assess all broadband Internet access services, since providers will benefit from the "network effect" that results from the

expansion of broadband networks and subscribership nationwide, which the High-Cost program now explicitly seeks to achieve.

There is no evidence that requiring mass market broadband Internet access services to contribute to the USF would threaten broadband adoption; in fact, logic and the available evidence argue otherwise. A nominal USF assessment is not going to dissuade customers from subscribing to an increasingly essential service. The Commission should also require all enterprise communications services that include a telecommunications component to contribute to the Fund.

The Commission should avoid gutting its general USF contribution rule through overly broad exemptions and exclusions. Broad exemptions and categorical exclusions perpetuate confusion, create new loopholes, and ultimately undermine the effort to simplify and stabilize the USF contribution mechanism.

Regarding the basis upon which contributions are assessed, the FCC should look first to revenues while also retaining flexibility to consider other options and "hybrid" approaches as necessary to fill gaps. A revenues-based methodology is competitively neutral because it best captures the value that consumers place on competing services that use underlying telecommunications networks without regard to the technology used to deliver the service. Additionally, a revenues-based mechanism can be implemented quickly and with little burden to providers since existing billing systems are already designed for revenues-based assessments.

The Commission should adopt the FNPRM proposal that would require carriers to treat all revenues from a bundled offering as assessable telecommunications revenues or to allocate revenues associated with the bundle consistent with the price it charges for stand-alone offerings of equivalent services. Also, for assessable information services with a telecommunications

component, all revenues from the information service should be assessable unless the transmission underlying the information service is offered separately on a stand-alone basis. Finally, since federal USF support alone cannot deliver ubiquitous broadband, the Commission should be certain not to adopt any rules that would explicitly prohibit or prevent states from establishing a sufficiently broad contribution base to sustain state universal service funds.

Respectfully submitted,

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July 9, 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 9th day of July, 2012 by via electronic mail, to those listed on the attached sheet.

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