



NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION

The Voice of Rural Telecommunications

www.ntca.org

Ex Parte Handout, October 21, 2005

USF CONTRIBUTION METHODOLOGY CC Docket 96-45

NTCA urges the Federal Communications Commission (Commission or FCC) to modify the existing revenue-based universal service fund (USF) contribution mechanism by expanding the pool of contributors to include wireline, cable, wireless, electric, and satellite broadband Internet access providers and facilities-based and non-facilities based voice over Internet protocol (VoIP) and IP-enabled services providers. NTCA also urges the Commission to eliminate or raise the wireless carrier safe harbor provision. Expanding the pool of contributors and eliminating or raising the wireless safe harbor will ensure a sufficient and continuous revenue-base for the interstate universal service mechanisms and create a technology neutral, non-discriminatory and equitable USF contribution mechanism in the rapidly evolving and increasingly competitive communications services market.

Under the Commission's existing contribution rules, wireline carriers providing broadband transmission services are required to make USF contributions to the extent they provide broadband transmission services or other telecommunications services on a stand alone basis to affiliated or non-affiliated Internet service providers (ISPs) or end-users.¹ These rules, however, do not apply to cable, wireless, electric and satellite providers of broadband transmission services or broadband Internet access services.

In *Brand X*, the Supreme Court stated "the Commission reasonably concluded a consumer cannot purchase Internet service without also purchasing a connection to the Internet and the transmission always occurs in connection with information processing."² In the *Wireline Broadband Classification Order*, the Commission concluded that wireline broadband Internet access service provided over a provider's own facilities is an "information service."³ The Commission also determined that "wireline broadband Internet access service, like cable modem

¹ *In the Matter of Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities*, CC Docket No. 02-33, *Universal Service Obligations of Broadband Providers*, and *Computer III Further Remand Proceeding: Bell Operating Company Provision of Enhanced Services: 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, CC Dockets Nos. 95-20, 98-10, FCC 02-42, Notice of Proposed Rulemaking (NPRM) ¶¶ 71, 72, and 79 (rel. Feb. 15, 2002).

² *NCTA v. Brand X*, slip op. at 20, (June 27, 2005). A copy of the Brand X Slip Opinion can be found at <http://www.fcc.gov/ogc/documents/opinions/2005/04-277-062705.pdf>.

³ *In the Matter of Appropriate Frameworks for Broadband Access to the Internet Over Wireline Facilities*, CC Docket 02-33, *Universal Service Obligations of Broadband Providers*, CC Docket No. 01-337, *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services, Computer III Further Remand Proceeding: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*; CC Docket Nos. 95-20, 98-10; *Conditional Petition of the Verizon Telephone Companies for Forbearance Under Section 47 U.S.C. § 160(c) with Regard to Broadband Services Provided Via Fiber to the Premises; Petition of the Verizon Telephone Companies for Declaratory Ruling or, Alternatively, for Interim Waiver with Regard to Broadband Services Provided Via Fiber to the Premises*, WC Docket No. 04-242, *Consumer Protection in the Broadband Era*, EC Docket No. 05-271, FCC 05-150, ¶ 9 (rel. Sept. 23, 2005). (*Wireline Broadband Classification Order*).

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service, is a functionally integrated, finished service that inextricably intertwines information-processing capabilities with data transmission such that the consumer always uses them as a unitary service.”⁴ The Commission further held that “consistent with *Brand X*, ... such a transmission component is mere telecommunications.”⁵

The regulatory classification of cable⁶ and wireline broadband Internet access service as an information service does not preclude the Commission from requiring all providers of broadband Internet access service to contribute to the USF mechanisms based on the revenues derived from these services. The underlying transmission component of all broadband Internet access services is “telecommunications” as defined by Act and as confirmed by the Supreme Court and the Commission.⁷ Section 254(d) specifically provides the Commission with permissive authority to require any other provider of interstate “telecommunications to contribute to universal service.” Using this authority the Commission can require all wireline, cable, wireless, electric, and satellite broadband Internet access service providers to contribute to the USF mechanisms.

The Commission is understandably concerned about competitive neutrality and the sustainability of an adequate revenue base for its interstate USF mechanisms. The Commission should, therefore, require all providers of broadband transmission or other telecommunications services on a stand alone basis to affiliated or non-affiliated ISPs or end-users to contribute on an equitable and non-discriminatory basis. The Commission’s rules should keep pace with competition as competitors use different facilities and technologies as substitutes for traditional circuit switched telecommunications services and broadband Internet access services. The Commission should therefore require all wireline, cable, wireless, electric and satellite broadband Internet access providers to contribute to the federal universal service fund.

⁴ *Id.*, at ¶ 12. The Commission limited this order to wireline broadband Internet access service and its underlying broadband transmission component whether the component is provided over copper loops, hybrid copper-fiber loops, fiber to the curb or fiber to the premise (FTTP) network, or any other type of wireline facilities, and whether that component is provided using circuit switched, packet-based, or any other technology. ¶¶ 112-113. After a transition period established by the order, ILECs that choose to offer broadband Internet access on a common carrier basis will continue to be liable for USF contributions based on the revenues from those offerings. ILECs that choose to offer broadband Internet access on a private carriage basis after the transition, their revenues from the offering would not be subject to USF contribution assessments. *Id.*, ¶ 9, footnote 15.

⁵ *Id.*, at ¶104.

⁶ *In the Matter of Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities, Internet Over Cable Declaratory Ruling*, GN Docket No. 00-185; *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, CS Docket No. 02-52, FCC 02-77, ¶ 7 (rel. March 5, 2002). (cable modem service, as it is currently offered, is properly classified as an interstate information service).

⁷ Telecommunications is defined as the transmission, between or among points specified by the user, of information of the user’s choosing, without change in form or content of the information as sent and received. 47 U.S.C. §153(43). Information service is defined as the offering of a capability for generating acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications. 47 U.S.C. §153(20).

The Commission should also require all facilities-based and non-facilities based VoIP and IP-enabled services providers to contribute to the USF mechanisms. Under the Commission's existing contribution rules wireline and wireless carriers providing telecommunications services are required to make USF contributions to the extent they provide retail voice service to end-users. In the absence of a decision on whether VoIP providers are carriers offering "telecommunications services," the rules do not apply to VoIP carriers providing virtually the same retail voice communications services. From the customer's perspective, a VoIP provider that offers voice services to the public for a fee provides the same service as those offered by competing wireline, wireless, cable and satellite companies.

Most VoIP providers, including Vonage, Inflexion, and Level 3, charge customers a fee for sending and receiving voice calls. VoIP providers also use North American Numbering Plan (NANP) telephone numbers to facilitate voice calls throughout the public communications network. Furthermore, VoIP providers use the public communications network in the same way as other carriers who pay access charges and USF contributions in recognition of the fact that their use imposes costs on the underlying carrier networks that makeup the public communications network. The fact that VoIP providers use the public network, use NANP telephone numbers, and charge customers for voice service, clearly demonstrates that this service is a telecommunications service and should be required to pay USF contributions.

VoIP providers use their platforms to provide voice service in direct competition with wireline, cable, wireless and satellite providers. None of these VoIP providers, however, currently have the same universal service obligations as their competitors. Contribution policies and rules must change in order to eliminate the distinct competitive advantage these companies have over contributing companies, as well as the drain VoIP providers will impose on the interstate revenue USF assessment base. The Commission should define all VoIP services that allow their customers to interconnect with the public communications network as "telecommunication services," and assess these service revenues to further the Commission's universal service goals.⁸ Section 254(d) of the Act provides the Commission with this authority.

⁸ Telecommunications service is defined as the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available to the public, regardless of the facilities used. 47 U.S.C. §153(46).



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Lastly, the Commission should eliminate or raise the wireless safe harbor provision.⁹ Wireless customers have the option of receiving an itemized monthly bill listing each call by telephone number with the associated minutes for each call. Wireless carriers also have the ability to determine where a wireless call originates and terminates. This itemization and call tracking ability enables both wireless customers and wireless carriers to distinguish between local and long distance calls each month, thus making it possible to allocate interstate revenues based on total interstate minutes by each wireless carrier. By distinguishing a wireless carrier's total interstate minutes for the relevant contribution period, these minutes could then be multiplied by the appropriate interstate revenue allocator to determine the carrier's total interstate revenues for the relevant period. The Commission could then determine the wireless carrier's true interstate USF obligation by multiplying the newly calculated interstate revenues by the quarterly USF contribution factor to ascertain the wireless carrier's equitable and non-discriminatory interstate USF contribution obligation.

The goals of universal service and the President's goal that all Americans have affordable access to broadband technology by the year 2007 cannot be met without the broad support for the underlying networks that carry voice and data. Failing to position broadband Internet access service providers and VoIP and IP-enabled service providers on equal footing with existing contributors will continue to place existing contributors at a distinct competitive disadvantage and further drain revenues from the existing contribution revenue assessment base. Without competitive neutrality, the disparate regulatory treatment of cable, wireless, electric, and satellite broadband Internet services and VoIP and IP-enabled services will invite arbitrage and create false economic incentives that will undermine the very networks that make up the public communications network. NTCA therefore urges the Commission to modify the existing revenue-based USF contribution mechanism by expanding the pool of contributors to include wireline, cable, wireless, electric, and satellite broadband Internet access providers, facilities-based and non-facilities based VoIP and IP-enabled services providers and by eliminating or raising the wireless carrier safe harbor provision.

⁹ See *Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing and Billing Format*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952 (2002) (*Interim Contribution Methodology Order*).