

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:

Universal Service Contribution
Methodology

WC Docket No. 06-122

COMMENTS OF VONAGE AMERICA, INC.

Vonage America, Inc. (“Vonage”) welcomes the opportunity to submit the following comments in response to the Commission’s *Notice of Proposed Rulemaking* in the above-captioned docket.¹ Interconnected VoIP technology furthers the goals of universal service by lowering the cost of service for all consumers, and Vonage is proud to have contributed to its development and adoption. Vonage also agrees that interconnected VoIP providers should pay into the Universal Service Fund (“USF”), and that some contribution from these providers is appropriate to help address the latest USF funding crisis.

Unfortunately, the *NPRM* (and the *Report and Order* that accompanied it) represent yet another squandered opportunity for real reform. The nature of the current stresses on the Universal Service Fund, and the urgency of the threats to its stability, are

¹ *Universal Service Contribution Methodology, 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; IP-Enabled Services, Report and Order and Notice of Proposed Rulemaking, WC Docket No. 06-122, ¶¶ 65-70 (rel. June 27, 2006) (“Order” or “NPRM”).*

widely understood throughout the industry; indeed, they are well described in the *Report and Order*. However, instead of acting decisively to solve this well-understood problem, the Commission has adopted yet another package of “interim” half-measures. The *NPRM* seeks to “refine” the embarrassingly vacant record on which these half-measures were adopted, while the Commission pledges, in classic bureaucratic vocabulary, to “continue to examine more fundamental contribution methodology reform.”² And indeed, the questions on which the *NPRM* solicits industry input have absolutely nothing to do with “more fundamental contribution methodology reform”; the *NPRM* is primarily if not exclusively a rear-guard action designed to fill in the gaps in the record on which the Commission has *already* taken “interim” action.

Vonage believes that fundamental reform is too important an issue to be back-burnered by yet more talk about half-measures. The courts can decide whether the Commission’s “interim” steps are legally sustainable,³ but the *only* sensible goal of further rulemaking activity should be a long-term solution to the universal service funding problem. Vonage urges the Commission to begin the transition to an equitable and sustainable USF contribution mechanism immediately, and to reject any future interim measures – particularly those that disproportionately affect users of interconnected VoIP.

I. Universal Service Must be Fixed, not Patched.

Although it is principally focused elsewhere, the *NPRM* states that the Commission “welcome[s] suggestions for a permanent approach to USF contributions”

² *Id.* at ¶ 65.

³ *See generally* Motion for Expedition of Vonage Holdings Corporation, *Vonage Holdings Corp. v. FCC*, No. 06-1276 (D.C. Cir. 2006) (filed Aug. 8, 2006); Vonage Holdings Corp. Petition for Review, *Vonage Holdings Corp. v. FCC* (filed Jul. 18, 2006).

from providers of interconnected VoIP services.⁴ However, there have been plenty of suggestions already; the time has come for decisions. The core universal service contribution mechanism operates under an outdated and unsustainable methodology bolstered by an increasing number of “interim” stopgaps. Although the Commission has repeated vague assurances that it will continue to examine more fundamental reform,⁵ it has committed only to more hand-wringing over the issue, noting that “a consensus approach to reform has not developed.”⁶ The Commission’s reluctance to regulate is particularly indefensible here, as fundamental reform would both capture interconnected VoIP service revenues and address the chronic flaws of the current system.

There is little doubt that the existing revenue-based contribution model for USF is in dire need of overhaul. Calls for comprehensive reform have come from Chairman Martin,⁷ legislators,⁸ and numerous private entities.⁹ While there has been a range of opinions as to which proposals offer the most efficient and equitable means of ensuring sufficient funding for universal service, there is broad consensus that the current model is broken. To be sure, a minority of contributors favors retaining some form of revenue-

⁴ *Order* ¶ 68.

⁵ *Id.* at ¶ 1.

⁶ *Id.* at ¶ 21.

⁷ *See, e.g., Order* at 145; *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*, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd. 24952, 25049 (2002) (“*Second Further NPRM*”).

⁸ *See generally* transcript, U.S. Senate Committee on Commerce, Science and Transportation, Hearing on Universal Service Fund Contributions (Feb. 28, 2006) (available on Nexis via Congressional Quarterly/FDCH Political Transcripts).

⁹ *See Order* ¶ 21 n. 84 (setting forth list of comments supporting proposals to replace pure revenues-based model).

based approach, but even these entities largely concede that changes in the telecommunications landscape have placed the fund under enormous strain.¹⁰

The Commission agrees. It has acknowledged that “the assumptions that form the basis for the current revenue-based system” are eroding.¹¹ The Commission recognized the need for reform years ago, explaining in 2002 that “interstate telecommunications revenues are becoming increasingly difficult to identify as customers migrate to bundled packages of interstate and intrastate telecommunications and non-telecommunications products and services.”¹² That trend has accelerated, not abated. Today “all-distance” flat rate payment plans bundled with additional features are available from a wide range of providers. To take but a few examples:

- T-Mobile offers 1000 minutes of any-distance calling for \$40¹³
- Vonage offers unlimited any-distance calling for \$25¹⁴
- Verizon offers unlimited any-distance calling for \$40¹⁵
- Comcast offers unlimited any-distance calling bundled with its Internet service for as low as \$40¹⁶

These developments are rendering the notion of geographically-measured “per call” charges increasingly obsolete.¹⁷

¹⁰ See *id.*

¹¹ *Id.* at ¶ 17.

¹² *Second Further NPRM*, 17 FCC Rcd. at 24955 ¶ 3.

¹³ See <http://www.t-mobile.com/shop/plans/> (last visited Aug. 9, 2006).

¹⁴ See http://vonage.com/services_premium.php (last visited Aug. 9, 2006).

¹⁵ See http://www2.verizon.com/Foryourhome/sas/sas_servicelocation.aspx (last visited Aug. 9, 2006).

¹⁶ See <http://www.comcast.com/getdigitalvoice> (last visited Aug. 9, 2006).

¹⁷ See, e.g., Christopher Stern, *So Long to Long-Distance?; Calling Packages, Internet Phoning Swiftly Ending a High-Cost Category*, Wash. Post, Aug. 5, 2004, at E1.

Although the Commission has expressed concern that implementation of a new contribution mechanism will not be instantaneous,¹⁸ this fact does not justify further delay in beginning the transition. To the contrary, it only underscores the need to act immediately before the continued collapse of the revenue-based model precipitates yet another makeshift modification. That the first of these “interim” fixes was needed in 1998—only one year after the Commission set forth the existing contribution methodology—speaks volumes.

The Commission’s refusal to address this crisis head-on has a price. Each temporary fix imposes substantial transaction costs on providers, particularly since the mandated changes often require expensive shifts in billing and record-keeping. Furthermore, recent attempts to shore up the fund are in severe tension with the Communications Act mandates that universal service contributions be “equitable and nondiscriminatory,”¹⁹ as well as the Commission’s own rules requiring that universal service support mechanisms be “competitively neutral.”²⁰ While interim solutions harm both big and small contributors, they particularly affect smaller entities, who face a Hobson’s choice of incurring disproportionate regulatory compliance costs or contributing under an excessively demanding safe harbor. The Commission’s recent adoption of a draconian 64.9% safe harbor reserved solely for interconnected VoIP is a

¹⁸ See *Order* ¶ 20 (“[M]ost of the fundamental reform proposals in the record ... generally claim that transitioning to a new methodology will require at least a year to accomplish.”).

¹⁹ 47 U.S.C. § 254(b)(4).

²⁰ *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd. 8776, 8801 (1997) (adopting the principle of competitive neutrality pursuant to 47 U.S.C. § 254(b)(7)).

particularly egregious example of the harms of such interim measures.²¹ Vonage urges the Commission to stop compounding these harms by dodging its regulatory responsibilities and relying on unsustainable and problematic short-term solutions.

II. It is Time for Numbers-Based Universal Service Reform.

Vonage already is on record as supporting Chairman Martin's long-standing advocacy of a contribution methodology based on telephone numbers,²² and again encourages the Commission to abandon the existing revenue model in favor of a numbers-based collections mechanism. As reflected by the recent formation of a new coalition in favor of a numbers-based system, this contribution methodology has widespread industry support,²³ and represents the closest approach to industry consensus the Commission could hope for given the voluminous record in these proceedings. A numbers-based methodology will improve the universal service contribution system in several key respects.

Most importantly, a numbers-based contribution mechanism would enable equal treatment of contributors. Using a competitively neutral mechanism like numbers will ensure that universal service contributions are made in the same manner regardless of the technology used to connect to the public switched telephone network. Wireline, wireless, and interconnected VoIP all require telephone numbers to communicate with the PSTN,

²¹ See generally Ex Parte Comments of Vonage, *Federal-State Joint Board on Universal Service; IP-Enabled Services*, CC Docket No. 96-45, WC Docket No. 04-36 at 3-4 (filed June 14, 2006) ("Ex Parte Comments").

²² See, e.g., Ex Parte Comments at 1-2.

²³ See Press Release: New Coalition Formed to Promote Numbers-Based Collection of Universal Service Funding (Jul. 11, 2006), available at <http://bellsouth.mediaroom.com/file.php/341/USF+by+the+Numbers+Press+Release+7-11-06.pdf> (last visited Aug. 9, 2006).

and the same flat fee would be assessed on those numbers regardless of the communications technology used.

Unlike the current system, a numbers based system would be sustainable. It would directly address the industry's move to bundled services consisting of interstate and intrastate services (as well as telecommunication and non-telecommunication services) and would not be subject to disruption when the market adopts different pricing mechanisms. Use of numbers would remove the pressures that have led the Commission to repeatedly adopt temporary fixes.

A numbers-based system would be much easier to administer. The Commission could do away with the complicated regulations adopted to capture various types of interstate revenues from different contributors, and replace them with a simple flat fee. A numbers-based approach likewise would remove opportunities and incentives for arbitrage, maximizing contributions to the fund.²⁴

Moving to a numbers-based system would increase efficiency. Assessing contributions only on the revenues of long distance and other interstate services can artificially reduce demand for these services, leading to a net welfare loss.²⁵ A numbers-based system would also address the problem of number exhaust, slowing the rate of consumption of the nation's finite ten-digit number supply.

Finally, a numbers-based USF assessment would benefit consumers. A numbers-based fee would be predictable and easy for consumers to understand. Further, using a

²⁴ See *Second Further NPRM*, 17 FCC Rcd. at 24955 ¶ 3 (noting that migration to bundled pricing has resulted in "increased opportunities to mischaracterize revenues that should be counted for contribution purposes").

²⁵ See Jerry Ellig, *Intercarrier Compensation and Consumer Welfare*, 2005 U. ILL. J.L. TECH. & POL'Y 97, 120 (2005).

simple flat-fee rather than a charge associated with each call would increase the likelihood that customers will use a utility-maximizing amount of interstate services. A numbers-based systems would also be fairer to rural customers, whose local calling areas typically contain fewer individuals than urban local calling areas.

To capture these benefits, and address the continuing strain on the fund, Vonage encourages the Commission to begin the transition to a numbers-based contribution mechanism immediately.

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In order to fulfill the goals of universal service, the Commission must ensure that contributions to the universal service fund are both stable and sufficient. As the Commission has recognized, the current contribution mechanism is inadequate to this task. Vonage urges the Commission to proceed with comprehensive reform of the USF by adopting a numbers-based contribution model, and to reject future interim measures that disproportionately affect users of interconnected VoIP.

Respectfully Submitted,

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