

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Universal Service Contribution Methodology)	WC Docket No. 06-122
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
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)	CC Docket No. 98-171
)	
Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990)	CC Docket No. 90-571
)	
Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size)	CC Docket No. 92-237 NSD File No. L-00-72
)	
Number Resource Optimization)	CC Docket No. 99-200
)	
Telephone Number Portability)	CC Docket No. 95-116
)	
Truth-in-Billing and Billing Format)	CC Docket No. 98-170
)	
IP-Enabled Services)	WC Docket No. 04-36

**COMMENTS OF
THE NEBRASKA RURAL INDEPENDENT COMPANIES**

Date: August 9, 2006

SUMMARY

The Nebraska Rural Independent Companies (the “Nebraska Companies”) commend Federal Communications Commission (“Commission”) efforts to ensure the sustainability and sufficiency of the Federal universal service fund (“USF”) by making interim modifications to the existing mechanism for assessing contributions. Although reforms of a more fundamental nature may be in order for the USF contribution assessment mechanism, the Commission observes correctly that such reforms may take significant time to implement. Therefore, adoption of the Commission’s proposed interim modifications is critical to maintaining sustainability and sufficiency of the USF while the Commission carefully evaluates, and possibly implements, more fundamental reforms.

The Nebraska Companies support raising the wireless safe harbor percentage from 28.5 percent to 37.1 percent. The Nebraska Companies also submit that the Commission should develop a mechanism to periodically adjust the wireless safe harbor percentage. Such a mechanism would help ensure that the Commission does not forgo USF contributions to which it is legitimately entitled, as it has in the past. The Commission should eventually eliminate the wireless safe harbor, and require the reporting of actual interstate and international revenues by wireless carriers.

The Nebraska Companies support the establishment of a safe harbor percentage of 64.9 percent for interconnected VoIP service providers. While the Nebraska Companies support the establishment of a safe harbor percentage at this time, the Nebraska Companies recommend that the Commission should eventually eliminate the safe harbor

for interconnected VoIP service providers, and require the reporting of actual interstate and international revenues by such providers.

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**COMMENTS OF
THE NEBRASKA RURAL INDEPENDENT COMPANIES**

I. INTRODUCTION

The Nebraska Rural Independent Companies¹ submit comments in the above-captioned proceeding. With this Order and Notice of Proposed Rulemaking (“NPRM”), the Federal Communications Commission requests comment on interim modifications to the existing approach for assessing contributions to the Federal universal service fund (“USF”).²

The Nebraska Companies support the Commission in its efforts to ensure the stability and sufficiency of the USF.³ The Nebraska Companies submit that the growing pressures on the stability and sustainability of the USF⁴ compel Commission adoption of modifications to the revenues-based contribution approach such that modifications can be implemented for the fourth quarter 2006 universal service contribution requirements.⁵ While more fundamental reform of the USF contribution mechanism may be in order, the Nebraska Companies agree that such fundamental change may take significant time to

¹ Companies submitting these collective comments include: Arlington Telephone Company, The Blair Telephone Company, Cambridge Telephone Company, Clarks Telecommunications Co., Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telecom, Inc., Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Company, Inc., K&M Telephone Company, Inc., Nebraska Central Telephone Company, Northeast Nebraska Telephone Co., Rock County Telephone Company, Stanton Telephone Co., Inc. and Three River Telco.

² See *Universal Service Contribution Methodology*, WC Docket No. 06-122, et al., Report and Order and Notice of Proposed Rulemaking, FCC 06-94 (“*Interim Contributions Assessment NPRM*”) (rel June 27, 2006).

³ Id. at ¶ 2.

⁴ Id. at ¶ 3.

⁵ Id. at ¶ 4.

implement.⁶ Therefore, the Nebraska Companies support the adoption of interim modifications to the USF contribution mechanism in order to help ensure continued stability and sustainability of the USF. Taking measures to further stabilize a strong Federal USF is critical for both wireless carriers and interconnected VoIP service providers in pursuit of their business goals, as well as for the entire nation.

II. THE COMMISSION SHOULD RAISE THE INTERIM WIRELESS SAFE HARBOR AND EVENTUALLY ELIMINATE IT AND REQUIRE THE REPORTING OF ACTUAL INTERSTATE AND INTERNATIONAL REVENUES BY WIRELESS CARRIERS.

A. The Proposed Increase In The Wireless Safe Harbor From 28.5 Percent To 37.1 Percent Is Reasonable And Should Be Adopted.

The Commission raises the wireless safe harbor from 28.5 percent to 37.1 percent,⁷ and seeks comment on whether the new level is appropriate.⁸ The Nebraska Companies agree with the Commission that it is necessary to raise the wireless safe harbor to a level that better reflects the wireless industry's interstate revenues in light of the extraordinary growth of wireless services that has occurred since 2002, the last time the Commission examined the wireless safe harbor.⁹ In addition to the data on the growth in wireless customers and the increase in the percentage of interstate mobile wireless traffic minutes cited by the Commission,¹⁰ several Commission reports have documented substantial growth in wireless subscriptions and minutes of use, while at the same time indicating a decline in the number of wireline access lines and interstate toll

⁶ Ibid.

⁷ See *Interim Contributions Assessment NPRM* at ¶ 23.

⁸ Ibid.

⁹ Ibid.

¹⁰ See *Interim Contributions Assessment NPRM* at ¶ 24 and footnote 96.

revenues for local exchange carriers and interexchange carriers.¹¹ Therefore, the wireless safe harbor should be increased to better reflect the interstate revenue proportion currently experienced by wireless carriers.

The Commission indicates that several parties voiced concerns that the data upon which the Commission relied to establish the wireless safe harbor suffered from deficiencies in the sample size and methodology.¹² Yet, as the Commission notes, no wireless provider has submitted data to support a different, updated interim safe harbor level, or to prove a bias in the study used by the Commission to establish a new safe harbor.¹³ The Commission is inviting wireless carriers to provide evidence as to the appropriate wireless safe harbor in the *Interim Contributions Assessment NPRM*.¹⁴ Absent well-documented, methodologically-sound data supporting a different wireless safe harbor from several wireless carriers, the Commission should adopt the 37.1 percent wireless safe harbor.

¹¹ See *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, WT Docket No. 05-71, *Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Tenth Report (rel. Sept. 30, 2005) at ¶¶ 161-162 and 168, discussing growth in wireless subscribers and minutes, and *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, WT Docket No. 03-150, *Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Eighth Report (rel. July 14, 2003) at ¶¶ 103-104 discussing substitution of wireless service for wireline toll service. See also *Trends in Telephone Service*; Federal Communications Commission, April 2005, at Tables 7.1, 7.4, and 9.2, indicating decreases in wireline access lines and in interstate toll revenues for wireline carriers.

¹² See *Interim Contributions Assessment NPRM* at ¶ 26.

¹³ *Ibid.*

¹⁴ *Ibid.*

B. The Commission Should Periodically Adjust The Wireless Safe Harbor Percentage In Order To Ensure The Stability And Sufficiency Of The USF.

The Commission indicates that its increases to the wireless safe harbor percentage have lagged behind market conditions, resulting in the collection of fewer USF contributions than market conditions would have supported.¹⁵ The Commission seeks comment on how to determine the safe harbor percentage to better reflect market conditions on an ongoing basis, and asks if it should periodically adjust the interim safe harbor percentage to reflect wireless end-user revenue trends.¹⁶ The Nebraska Companies submit that the Commission should periodically adjust the wireless safe harbor percentage, so that it does not forgo USF contributions to which it is legitimately entitled, as has occurred in the past.

The Nebraska Companies recommend that the Commission begin to adjust the wireless safe harbor percentage on at least an annual basis by developing a time-series trend analysis based upon the data used to establish the wireless safe harbor percentage in 2002 and in 2006. This approach will allow the Commission sufficient time to make an adjustment to the wireless safe harbor percentage for 2007. Concurrent with this approach, the Nebraska Companies recommend that the Commission should seek actual interstate and international revenue data from several wireless carriers on a quarterly basis.¹⁷ Each carrier should collect the data utilizing the same methodology. Such data

¹⁵ See *Interim Contributions Assessment NPRM* at ¶ 67.

¹⁶ *Ibid.*

¹⁷ The collection of data on a quarterly basis would allow wireless carriers to utilize the same methodology for reporting data to the Commission for time series trend analysis purposes that such carriers report for USF contribution assessment purposes.

would allow the Commission to develop a time series trend analysis that would have a greater degree of statistical accuracy than a time series trend analysis based on existing data used to develop the wireless safe harbor percentage. However, the Commission should not delay adjusting the wireless safe harbor percentage on an annual basis while it seeks actual interstate and international revenue data. To the extent that a wireless safe harbor percentage may be higher than a wireless carrier's percentage of interstate and international revenues, this situation will encourage wireless carriers to develop procedures to report actual interstate and international revenues.

C. The Commission Should Eventually Eliminate The Wireless Safe Harbor And Require The Reporting Of Actual Interstate And International Revenues By Wireless Carriers.

The Commission seeks comment on whether to eliminate or raise the interim wireless safe harbor.¹⁸ As discussed above, the Nebraska Companies recommend that the Commission raise the interim wireless safe harbor in order to ensure the stability and sufficiency of the Federal universal service fund. However, the Commission should eventually eliminate the wireless safe harbor and require the reporting of actual interstate and international revenues by wireless carriers.

The Commission indicates that staff analysis has raised the concern that some wireless carriers are not reporting their separately stated toll revenues correctly.¹⁹ The Commission cites examples in which comparisons of reported interstate and international toll revenues to data published by independent sources reveals what appears to be

¹⁸ See *Interim Contributions Assessment NPRM* at ¶ 66.

¹⁹ *Id.* at ¶ 29.

significant underreporting of revenues subject to USF assessment by wireless carriers.²⁰ In order to address these apparent data discrepancies, the Commission is taking additional action to ensure the accuracy of reported revenue data.²¹ The Commission now requires any mobile wireless provider that uses a traffic study to determine its interstate end-user revenues for universal service contribution purposes to submit the study to the Commission and to the Universal Service Administrative Company (“USAC”) for review.²² While the submission of traffic studies for review is a step in the right direction, the Commission and USAC would still be faced with the task of reviewing several traffic studies, many or all of which may be conducted using different methodologies, in order to determine whether the traffic studies were conducted in a manner that accurately reports interstate and international toll revenues. Such reviews could entail a considerable amount of time and resources. Therefore, the Nebraska Companies submit that the optimal manner in which to ensure that wireless carriers are reporting their interstate and international toll revenues correctly would be to require the reporting of actual interstate and international toll revenues by wireless carriers. In addition to the benefit of greater accuracy of reporting due to the reporting of actual revenue data, the USF assessment mechanism would also be administered in a more competitively neutral manner, as both wireline and wireless carriers would be required to report data on the same basis (actual interstate and international toll revenues).

²⁰ Id. at ¶¶ 30-31.

²¹ Id. at ¶ 32.

²² Ibid.

III. THE COMMISSION SHOULD ADOPT THE INTERIM SAFE HARBOR RECOMMENDED FOR INTERCONNECTED VOIP SERVICE AND EVENTUALLY ELIMINATE IT AND REQUIRE THE REPORTING OF ACTUAL INTERSTATE AND INTERNATIONAL REVENUES BY VOIP SERVICE PROVIDERS.

A. The Proposed VoIP Service Safe Harbor Is Reasonable If Not Even Conservative, Thus, Adopting A Lower Safe Harbor Would Be Inconsistent With The *Vonage Order*.

The Commission seeks comment on the USF obligations it has established for interconnected VoIP service in the *Interim Contributions Assessment NPRM*.²³ In particular, it seeks comment on whether to eliminate or change the interim safe harbor it established for providers of interconnected VoIP service.²⁴ The Nebraska Companies support the adoption of the interim safe harbor established by the Commission as a reasonable alternative to require interconnected VoIP service providers to contribute to the USF.

The Commission adopted a safe harbor of 64.9 percent for interconnected VoIP service providers based upon the percentage of interstate revenues reported to the Commission by wireline toll providers.²⁵ As the Commission indicated, interconnected VoIP service traffic is generally regarded as primarily interstate.²⁶ An industry report cited by the Commission estimated the percent of VoIP traffic that was either long distance or international at 83.8 percent in 2004, and 66.2 percent in 2005.²⁷ These estimates are fairly consistent with the safe harbor percentage of 64.9 percent adopted by

²³ See *Interim Contributions Assessment NPRM* at ¶ 68.

²⁴ Id. at ¶ 69.

²⁵ Id. at ¶ 53.

²⁶ Ibid.

²⁷ Ibid.

the Commission. Furthermore, adopting a safe harbor lower than 64.9 percent would be inconsistent with the Commission's findings in the *Vonage Order* and the arguments of numerous VoIP service providers. For example, if the Commission were to adopt a safe harbor of less than 64.9 percent for interconnected VoIP service, it would be recognizing de facto that almost or more than half of VoIP traffic is intrastate in nature. This would be counter to the Commission's finding that VoIP service such as that offered by Vonage cannot be separated into interstate and intrastate communications.²⁸ In addition, as the Commission has observed, numerous VoIP providers have argued that "VoIP services are interstate in nature."²⁹ Setting a safe harbor of less than 64.9 percent would not be consistent with VoIP providers' characterization of their traffic. For the foregoing reasons, the Nebraska Companies urge the Commission to adopt a safe harbor percentage of 64.9 percent for interconnected VoIP service.

B. The Commission Should Eventually Eliminate The VoIP Service Safe Harbor And Require The Reporting Of Actual Interstate And International Revenues By VoIP Service Providers.

The Commission seeks comment on whether to eliminate or change the interim safe harbor it has established for interconnected VoIP service.³⁰ As discussed above, the Nebraska Companies recommend that the Commission adopt the recommended interim safe harbor for interconnected VoIP service, as it is a reasonable mechanism with which to institute USF contributions from interconnected VoIP service providers. Furthermore,

²⁸ See *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, Memorandum Opinion and Order, FCC 04-267 (*"Vonage Order"*) (rel. Nov. 12, 2004) at ¶ 14.

²⁹ See *Interim Contributions Assessment NPRM* at footnote 177, quoting a letter from John T. Nakahata, Counsel to Level 3, to Marlene H. Dortch, Secretary, FCC.

³⁰ *Id.* at ¶ 68.

requiring interconnected VoIP service providers to contribute to universal service will help ensure the stability and sufficiency of the Federal universal service fund. However, the Commission should eventually eliminate the safe harbor and require the reporting of actual interstate and international revenues by interconnected VoIP service providers.

The Commission indicates that it has identified concerns with the use of traffic studies as a replacement for reporting of actual revenues for wireless carriers, and it will now require wireless carriers to submit their studies to the Commission and USAC for review.³¹ Therefore, the Commission is requiring interconnected VoIP service providers to receive Commission approval of their traffic studies prior to remitting USF contributions on the basis of a traffic study.³² As discussed above with regard to the submission of wireless carrier's traffic studies, the review of such studies could entail a considerable amount of time and resources. Therefore, the Nebraska Companies submit that the optimal manner in which to ensure that interconnected VoIP service providers are reporting their interstate and international toll revenues correctly would be to require the reporting of actual interstate and international toll revenues by such providers.

Interconnected VoIP service providers have previously asserted that they cannot determine the jurisdiction of their traffic.³³ However, it appears that such assertions may have been made primarily to influence the choice of a particular regulatory regime, that is, exclusive Federal regulation. For example, the VON Coalition, et al. states "we are

³¹ Id. at ¶ 57.

³² Ibid.

³³ See *Vonage Order* at ¶ 12; see also letter from the VON Coalition, MCI, 8x8, Inc., AT&T, Avaya Inc., Dialpad, EDS, EDUCAUSE, iBasis, Ice Net, ITAA, Level 3, PointOne, pulver.com, Qovia, Skype, Telic Communications, USA Datanet, and Voiceglo, to Michael K. Powell, Chariman, FCC, dated Nov. 2, 2004 at p. 1.

asking the FCC to act quickly to establish a *federal jurisdictional framework* for VoIP services where subject to regulation.”³⁴ Nonetheless, since these assertions have been made by VoIP service providers, the Commission has ordered interconnected VoIP service providers to incorporate E911 service into interconnected VoIP service offerings.³⁵ A requirement of the E911 service to be offered by interconnected VoIP service providers is that such service providers must obtain from each customer, prior to the initiation of the service, the physical location at which the service will first be utilized.³⁶ In addition, providers of interconnected VoIP services that can be utilized from more than one physical location must provide their end users one or more methods of updating information regarding the user’s physical location, at will and in a timely manner.³⁷ Therefore, assertions that interconnected VoIP service providers do not know the physical location of their subscribers, such that they can determine the jurisdiction of individual calls, are without merit. Since interconnected VoIP service providers should be able to determine the jurisdiction of individual calls, the Commission should eventually eliminate the interconnected VoIP service safe harbor, and require the reporting of actual interstate and international revenues. As discussed above with regard to wireless service, in addition to the benefit of greater accuracy of reporting due to the reporting of actual revenue data, the USF assessment mechanism would also be

³⁴ See footnote 33, letter from the VON Coalition to Michael K. Powell at p. 2 (emphasis added).

³⁵ See *IP-Enabled Services*, WC Docket No. 04-36, *E911 Requirements for IP-Enabled Service Providers*, WC Docket No. 05-196, First Report and Order and Notice of Proposed Rulemaking, FCC 05-166 (rel. June 3, 2005) at ¶ 22.

³⁶ Id. at ¶ 46.

³⁷ Ibid.

administered in a more competitively neutral manner, as both wireline and wireless carriers would be required to report data on the same basis.

IV. CONCLUSION

The Nebraska Companies appreciate the opportunity to comment on the interim modifications to the existing mechanism for assessing contributions to the USF. The Nebraska Companies support interim modifications to the USF assessment mechanism in order to provide sustainability of the USF while the Commission considers more fundamental reforms of the contribution assessment mechanism.

The Nebraska Companies urge the Commission to increase the wireless safe harbor from 28.5 percent to 37.1 percent. The Commission should also establish a mechanism to periodically adjust the wireless safe harbor percentage so that the wireless safe harbor reflects the proportion of interstate and international revenues received by wireless carriers on a more timely basis. In addition, the Commission should eventually eliminate the wireless safe harbor and require the reporting of actual interstate and international revenues by wireless carriers.

The Nebraska Companies submit that the safe harbor percentage of 64.9 percent the Commission proposes for interconnected VoIP service providers is reasonable and should be adopted. The Commission should eventually eliminate the safe harbor percentage for interconnected VoIP service providers and require the reporting of actual interstate and international revenues by such providers.

Respectfully submitted,

The Nebraska Rural Independent Companies

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The Blair Telephone Company,
Cambridge Telephone Company,
Clarks Telecommunications Co.,
Consolidated Telephone Company,
Consolidated Telco Inc.,
Consolidated Telecom, Inc.
Eastern Nebraska Telephone Company,
Great Plains Communications, Inc.,
Hartington Telecommunications Co., Inc,
Hershey Cooperative Telephone Company, Inc.,
K&M Telephone Company, Inc.,
Nebraska Central Telephone Company,
Northeast Nebraska Telephone Company,
Rock County Telephone Company,
Stanton Telephone Co., Inc., and
Three River Telco

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