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Federal Communications Commission
Washington, D.C. 20554

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

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INTRODUCTION

This proceeding is Exhibit 1 for the argument that the Commission needs to move away from a revenue/usage-based Universal Service Fund ("USF") contribution methodology and toward a numbers/connections-based contribution methodology. IDT Telecom, Inc.'s ("IDT") support for a numbers/connections-based methodology starts with a basic premise: because it is really consumers – and not carriers, which simply pass through a USF surcharge to end users - that support the USF, determining how to apply the USF surcharge is fundamentally a question of consumer rights. Accordingly, the Commission needs to consider whether the use of safe harbors is fair to consumers. IDT concludes that it is not. However, IDT also concludes that the way to resolve this injustice is not simply to modify or eliminate the safe harbors within the current revenue/usage-based methodology. Indeed, as explained herein, safe harbors are a necessary evil within this broken, anti-consumer contribution methodology. Instead, the Commission must move away from the revenue/usage-based methodology and toward a numbers/connections-based contribution methodology. Only once it has made this transition will it be able to eliminate safe harbors. Because such a transition will take time, as carriers will need to modify billing systems, IDT addresses some of the questions the Commission has raised regarding the calculation and application of the wireless and interconnected VoIP safe harbors. As demonstrated below, however, we do not believe that USF can truly be reformed or fixed until the Commission has made a commitment to a numbers/connections-based methodology.

I. THE ISSUES RAISED BY THE COMMISSION IN ITS NOTICE OF PROPOSED RULEMAKING DO NOT ADEQUATELY ADDRESS THE NEED FOR FUNDAMENTAL, PRO-CONSUMER USF REFORM

A. Whether to eliminate or raise the interim wireless safe harbor

IDT supports the maintenance of a wireless safe harbor until the Commission implements a numbers/connections-based contribution methodology. Upon implementation, all safe harbors can be eliminated. While IDT believes safe harbors are fundamentally anti-consumer, as long as the Commission bases carrier contributions on revenue, safe harbors remain necessary due to the confusion that exists in the industry for determining the jurisdiction of calls and for the application of revenue among wireless buckets of minutes plans. The wireless safe harbor permits carriers to report revenue in a manner that provides them a reasonable amount of certainty that their methodology is acceptable to the Commission and for this reason, the safe harbor must remain until the current methodology is replaced with a more rational methodology that eliminates carrier confusion and uncertainty and, by extension, the need for safe harbors.

IDT does not support raising the interim wireless safe harbor. IDT believes that a safe harbor percentage should be determined based on studies done *by the Commission* and with the participation of many and diverse industry members – not just a few of the larger providers. For this reason, IDT has serious concerns with the manner in which the most recent "interim" safe harbor was determined. IDT is also concerned that the Commission's need to maintain the USF at certain financial levels could lead to certain

presumptions (*e.g.*, the Commission's repeated questioning about raising safe harbor percentages and not asking whether such percentages should be reduced) that could make a higher safe harbor preordained. Such an outcome would be harmful for carriers that report under the safe harbor and even worse for their customers. Ultimately, we believe it is more important that the Commission make greater use of its time and resources to implement a new, long-term numbers/connections-based methodology than to revise the current interim methodology.

B. Whether mobile wireless providers can, or should be able to, determine their actual interstate and international end-user revenues

Whether mobile wireless providers can determine the jurisdiction of their calls depends on what methodology or methodologies the Commission considers acceptable for determining the jurisdiction of calls. For example, if the Commission permits jurisdiction to be determined by NPAs, then wireless providers can determine the jurisdiction for most – but likely not all - of their calls. Yet we know that because wireless service is mobile and a wireless user may have a NPA associated with one state but may use her mobile phone in another state, use of NPAs is not a wholly accurate approach. Similarly, the Commission would need to provide guidance on wireless providers use of buckets of minutes (*e.g.*, 500 Minutes for $40, etc.). Despite the fact that the buckets of minutes are probably the primary, if not dominant manner in which postpaid wireless service is offered, the Commission has offered little guidance as to how such plans (and revenue) should be treated for USF contribution purposes. Therefore, placing revenue

in the applicable jurisdictional bucket is not simply a question of carriers' technical capabilities, it is a question of the Commission providing clear guidelines on how the jurisdiction of wireless calls should be determined and how revenue for buckets of minutes plans should be apportioned.

C. Whether originating and terminating NPAs reflect whether a call is interstate or international

As the Commission has previously acknowledged within the context of other non-fixed communications products,[1] originating and terminating NPAs do not necessarily reflect the jurisdiction of a call. The "mobility" issue is exacerbated by the fact that some carriers distribute phone numbers that do not necessarily reflect the geographic location of the callers. And while the non-geographic distribution of phone numbers is not limited to wireless, it exists within the wireless industry and, as such, must be accounted for when determining whether or how to implement a wireless safe harbor. For these reasons, originating and terminating NPAs can serve, at best, as imperfect proxies for determining the jurisdiction of wireless call. Rather than focus on how the industry can better determine the jurisdiction of a call, as the Commission is doing in this proceeding, it should focus on creating a regulatory regime – be it USF or access charge reform – that reflects the jurisdiction-agnostic approach that exists throughout the telecommunications industry. Within the context of this proceeding, then, the Commission should move toward a numbers/connections-based contribution methodology and away from an intra-/interstate usage/revenue-based methodology, which bears increasingly little relationship to end user telecommunications pricing.

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[1] *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, 19 FCC Rcd 22404 (2004), petition for review pending, *Nat'l Ass'n of State Util. Consumer Advocates v. FCC*, No. 05-1122 (8th Cir.).

D. Whether originating and terminating cell sites could be used to determine the jurisdictional nature of a call

While not necessarily a perfect methodology, it appears that using the originating and terminating cell sites for a wireless call is more likely to accurately determine the jurisdictional nature of a call. What is less clear is whether such cell site information is readily available to all wireless providers, especially those that rely on the wireless networks of underlying providers. However, as noted above, IDT believes that the Commission's efforts would be better focused on creating a regulatory regime that more accurately reflects the nature of the industry – where distance is increasingly irrelevant – than in creating regulations and guidelines to which the industry must conform.

E. Whether there are unique difficulties associated with analyzing either outgoing or incoming calls, and whether it is necessary to analyze both types of calls

If the Commission is to revise its wireless safe harbor on the basis of a traffic study, then the study must reflect all calls that comprise the base of wireless revenue. Since wireless users are generally charged for incoming calls, such calls serve as part of the USF base and, by extension, would need to be included within a traffic study. Such studies may reveal that inbound calls are jurisdictionally similar to outbound calls, but such a conclusion cannot be reached absent verifiable data. And even if such a conclusion were reached it is unclear why such a significant portion of revenue-producing calls should be excluded from a traffic study. More important than this question is that the Commission acknowledges that wireless subscribers are

charged for incoming calls (thus making revenue from such calls part of the USF base) whereas incoming calls to wireline subscribers are free and are, as such, not part of the USF base. This further demonstrates the failure of the current USF methodology and the need for reform. If it is the Commission's position that contributions to the USF is relative to use of the PSTN, then wireless subscribers, who use the network as wireline users do for incoming calls, are unfairly punished, because most wireless subscribers incur a cost for incoming calls whereas wireline subscribers do not. The wireless subscriber essentially incurs a USF liability every time she receives a call but the wireline subscriber never does. It is difficult, if not impossible, to demonstrate how great the financial burden this distinction places on wireless consumers, yet the impact is beyond question: wireless users use the PSTN to receive calls as do wireline users, but wireless users incur a USF liability for this use while wireline users do not. This is nothing less than discrimination and further evidence that a numbers-based contribution methodology, which does not discriminate based on technology, is the only solution for USF reform.

F. Whether a safe harbor of 37.1 percent for interstate and international end-user revenue is appropriate or whether the safe harbor should be raised

No commenter is in a position to state whether the current safe harbor is appropriate or whether it should be raised – or lowered. Industry standards such as a safe harbor should only be based on industry-wide data and such data should be gathered in a manner that is widespread and uniform. Its reliance on the TNS Telecoms report in setting the revised

wireless safe harbor raises numerous questions regarding the Commission's adherence to an adequate methodology and should not serve as the sole basis for a policy as important as the safe harbor. Moreover, as noted above, any effort to revise the wireless safe harbor must begin with no preconceived notion about whether the safe harbor should be increased or reduced. The Commission's repeated insistence on examining ways to increase and not decrease the safe harbor raises concern that the Commission's goals are to increase wireless providers contribution to the USF rather than ensuring that wireless providers – and by extension, wireless consumers – contribute their fair share to the USF.

G. Should the Commission periodically (*e.g.*, annually, quarterly) adjust the interim safe harbor percentage to reflect wireless interstate end-user revenue trends? If so, how would it establish these trends?

As stated previously, IDT supports a numbers-based contribution methodology, which eliminates the need for a safe harbor. Until such a methodology can be implemented, however, IDT opposes changes to the wireless safe harbor more frequently than annually. For a carrier to determine whether or not to report under the safe harbor and whether or not to bill its end users based on the safe harbor takes considerable time, effort and cost. To revise the safe harbor percentage in the middle of the year could alter a company's decision on whether to file as a safe harbor filer or an "actual" filer. More importantly, if the Commission were to revise the safe harbor mid-year, it would require changes to billing, record-keeping and financial accruals that cannot be accomplished in a period of less than six

months. Accordingly, any changes to the safe harbor – which should not take place more frequently than annually – should be implemented with a six-month window so that carriers will have the time to determine whether or not to file under the (new) safe harbor and to prepare its billing, consumer education, etc. accordingly.

H. Describe possible ways in which the Commission's new requirements for interconnected VoIP providers could be improved, including suggestions for a permanent approach to USF contributions from interconnected VoIP providers

The Commission's requirements for interconnected VoIP providers can be improved by treating all forms of voice communications equally, without making distinctions or exceptions based on technology. The best way – in fact, the only way – to do this is to implement a numbers/connections-based methodology that applies a fixed USF surcharge per phone number or high-speed connection. IDT and countless other providers have provided considerable detail in the Commission's USF reform docket on how a numbers/connections-based methodology can be implemented.[2]

[2] IDT incorporates its prior comments by reference. IDT does not specifically endorse any particular previously filed comments or plan, but simply notes that numerous filings have already been submitted to the Commission for its review.

I. Whether to eliminate or change the interim safe harbor for providers of interconnected VoIP service

For the reasons stated above, IDT believes that until the Commission moves away from a usage/revenue based model to a numbers/connections-based methodology, a safe harbor is a necessary evil. A safe harbor for interconnected VoIP is even more necessary than for wireless service because, as the Commission has acknowledged, it is not clear whether all interconnected VoIP providers can determine the jurisdiction of their subscribers' calls (and even if a provider can make such determination, if it does so based on a traffic study, it may not implement a USF surcharge consistent with that determination until the FCC has approved the traffic study). Whether the current safe harbor should be changed may only be determined upon the review of traffic studies from a large number of interconnected VoIP providers that represent the industry as a whole. It is unclear that the Commission possesses such studies. In the absence of such studies, the Commission would have to rely on traffic studies of other service providers whose traffic patterns, the Commission has reason to believe, mimic those of interconnected VoIP providers. A decision to eliminate the safe harbor altogether would compel those providers unable to jurisdictionally apportion their traffic/revenue to charge USF on 100% of their end-user revenue. This would unjustly and unreasonably burden their customers.

The very existence of a safe harbor demonstrates the fundamental unfairness of the current usage/revenue-based contribution methodology. As

IDT argues below, this methodology is anti-consumer because applying a fee based on usage – a USF surcharge – to recover shared costs of the network is contrary to the Commission's historical approach of shared support for the network. Moreover, even if you accept the premise that a consumer's USF contribution should be relative to her use of the network or her end-user telecommunications charges, the fact is that a safe harbor bears no correlation between an actual consumer's usage and her contribution to the USF. In permitting carriers to abide by an industry-wide safe harbor – or a company-wide traffic study for that matter – the Commission has permitted providers to impose a USF charge upon *individual consumers* based on the *carrier's* overall traffic patterns and revenue. There is no reason to assume that overall industry or even carrier-specific revenue and traffic patterns are relative to a particular consumer's revenue. Thus, to the degree that a consumer contributes to the USF based on its provider's use of a safe harbor or traffic study, that consumer is being discriminated against because she is denied the opportunity afforded to other consumers that do not receive service from a "safe harbor" filer provider: to contribute to the fund based on actual usage and revenue. This Commission-sanctioned discrimination is all the more unjust because the safe harbor percentages are set, by the Commission's admission and intention, at the highest justifiable percent, essentially ensuring that subscribers of safe harbor providers are contributing to the USF at the highest possible rates.

II. MEANINGFUL USF REFORM COMPELS A TRANSITION TOWARD A NUMBERS/CONNECTIONS-BASED CONTRIBUTION METHODOLOGY

The Commission and the telecommunications industry have – for several years – been attempting to reform the contribution methodology for the USF so that a rational, sustainable contribution methodology can replace the existing irrational, faltering, revenue-based methodology. Over the past several months, most members of the industry have concluded that a methodology whereunder a predetermined contribution shall apply to all working phone numbers and, for certain high speed services, a predetermined contribution shall apply based on the type or speed of the connection (*i.e.*, "numbers/connections-based methodology"), is fair to consumers and the industry, and is sufficiently predictable to ensure that the USF is fully supported. IDT is one of the many members of industry that support this number/connections-based methodology and we believe it is time for the Commission to reject the arguments opposing a numbers/connections based methodology and cease trying to "fix" the current methodology and implement meaningful, long term USF contribution methodology reform.

There are a few opponents of the numbers/connections-based methodology that continue to urge the Commission to continue tinkering with the current system. These opponents have created a myth that states that applying a predetermined contribution per working phone number/connection is contrary to Commission policy and is fundamentally anti-consumer. As demonstrated below, their characterization of Commission policy is wrong and it is the current revenue-based methodology that is anti-consumer.

A. Recovering Costs to support the nation's telecommunications network have historically been revenue-blind

Universal Service is "[t]he financial mechanism which helps compensate telephone companies or other communications entities for providing access to telecommunications services at reasonable and affordable rates throughout the country, including rural, insular and high costs areas, and to public institutions."[3] Essentially, the USF spreads costs incurred for use of the nation's telecommunications network among all its users. Historically, for other expenses incurred for access to or upgrades of the network, the Commission has required or permitted carriers to recover costs through a per-line contribution methodology – not a revenue-based contribution methodology – as demonstrated in the below examples:

> The Subscriber Line Charge ("SLC"), which the Commission defines as a charge "that is used to compensate the local telephone company for part of the cost of installation and maintenance of the telephone wire, poles and other facilities that link your home to the telephone network"[4] is recovered on a per line basis. It is not revenue based: the SLC is not recovered based on the amount of revenue a provider gets from providing service to the subscriber. Moreover, it is not usage based: the SLC is not recovered based on the amount of calls a subscriber makes.
>
> The Local Number Portability ("LNP") charge, which the Commission has defined as recovering "certain costs for providing telephone number portability to its customers"[5] is a "fixed, monthly charge."[6] It is not revenue based: the LNP is not based on the amount of revenue a provider gets from

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[3] http://www.fcc.gov/glossary.html (Viewed on August 9, 2006).

[4] *Id.*

[5] http://www.fcc.gov/cgb/phonebills/samplePhonebill.html#Local%20Number%20Portability (Viewed August 9, 2006).

[6] http://www.fcc.gov/cgb/phonebills/samplePhonebill.html#Local%20Number%20Portability (Viewed August 9, 2006).

> providing service to the subscriber. Moreover, it is not usage based: the LNP charge is not recovered based on the frequency with which a subscriber ports her phone number.
>
> The E-911 surcharge, which the Commission has defined as "imposed by local governments to help pay for emergency services such as fire and rescue"[7] is implemented by state and local governments almost exclusively on a per-line basis, rather than on a revenue basis. It is not revenue based: the E-911 surcharge is not based on the amount of revenue a provider gets from providing service to the subscriber. Moreover, it is not usage based: consumers that make E-911 calls do not pay a higher surcharge than those that do not place E-911 calls.

In sum, the application of the SLC, the LNP charge and E-911 surcharge demonstrates that the Commission and other regulators have historically directed recovery of costs to support access to or upgrades of the nation's telecommunications network to be on a flat, per line basis and not on a revenue-based methodology.

B. <u>A revenue-based USF contribution methodology is anti-consumer</u>

When you look at the revenue-based USF contribution methodology from a consumer perspective, you see how the revenue-based approach is an irrational, exceptionally unfair, regressive methodology that harms consumers – particularly the poor, the elderly and those who do not choose the most economical service plan. Proponents of the revenue-based approach primarily argue that a revenue-based approach is fair because it ensures that those that use the network more pay the most into the fund. Aside from the above-made argument that usage is not the manner in which the Commission

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[7] http://www.fcc.gov/cgb/phonebills/samplePhonebill.html#Local%20Number%20Portability (Viewed August 9, 2006).

has traditionally used to recover costs of the network among consumers (nor should it be), as set forth below, the correlation between usage and revenue does not withstand scrutiny. The examples below demonstrate that telecommunications end user pricing is inconsistent and fraught with wholesale pricing anomalies, making the relationship between end user's usage and end user's rates distorted beyond recognition. Moreover, these examples, which are by no means exhaustive,[8] demonstrate that it is often the unwise or low-income consumer, who may not have the most economical plan or service that often contributes more to the USF than the higher income consumer or the consumer that is a wiser telecommunications shopper.[9]

> Wireline vs. Wireless A wireline consumer incurs a greater USF liability than wireless consumer for the same amount of interstate calls billed at the same rate. For example, a wireless consumer that makes 100 minutes of interstate calls and pays $10.00 for those calls will, assuming the consumer's carrier contributes to the USF using the Commission's current 37.1% interstate baseline, incur $0.39 in USF surcharges.[10] A wireline caller making the same calls for the same $10.00 charge will incur $1.05 in USF liability.
>
> Pay As You Go Prepaid Wireless Plans Many pay as you go wireless plans charge more per unit (*i.e.*, minute) when a consumer purchases a

[8] IDT has not included examples whereby the USF liability is difficult to quantify. However, some such examples may result in even greater inequities than the listed examples. For example, business subscribers pay lower per minute rates than residential users, thereby incurring a lower USF liability per minute.

[9] The purpose of providing these examples is not to be critical of companies and their pricing. In many of the examples – such as those addressing wireless roaming or international wireless calls, there is cost justification for different end user rates for services that appear to the end user to be similar, but are different from an industry cost perspective. For example, in the case of prepaid wireless or bundled plans, there is commercial justification to offer a lower rate when a consumer makes a larger financial commitment.

[10] All USF calculation examples listed use the current .105 USF Contribution Factor. Mild fluctuations in the Factor or, in the present example, a change in the default wireless interstate baseline, will not have a meaningful impact on the examples.

lower priced card instead of a higher priced card. For example, one prepaid wireless provider that has actively participated in this proceeding advertises a 400 unit card for $79.99 and a 60 unit card for $19.99. Thus, the per minute charge on the higher priced card is $0.20 and $0.33 on the lower priced card. As a result, presuming the provider remits on actual wireless usage rather than the default interstate percentage, a 10-minute call placed from the higher priced card will incur $0.21 in USF liability whereas the same call from the lower priced card will incur $0.35 in USF liability. Reasonably assuming that low income/low usage customers are more likely to purchase the lower priced card than the higher priced card, the effect of the current methodology on these consumers is regressive.

Wireless Roaming Calls As is common in the wireless industry (pre- and post-paid), the above-referenced provider charges more for a roaming call. The particular provider deducts two "units" for each minute of a roaming call. Thus, in the above example, if the 10-minute call were a roaming call the USF surcharges would be $0.44 and $0.72, respectively. Ultimately, two 10 minute, interstate calls – one, a non-roaming call from the higher priced card and the other, a roaming call from the lower-priced card - can result in USF liability ranging between $0.21 and $0.69.

Bundled vs. Non-Bundled Consumers subscribing to unlimited calling plans (usually including local, intrastate toll and interstate toll) may make literally thousands of minutes in interstate calls each month and pay no more than a predetermined amount for USF. Assuming the bundled plan user pays $39.95 for her unlimited plan, then the user is incurring a USF liability of no more than $4.19 for usage – and quite probably less because the unlimited plan covers intrastate services and thus the USF contribution factor may not apply to the total price of the plan. On the other hand, a consumer with a standard pay-as-you-go calling plan with an interstate rate of $0.05 per minute would pay $7.86 to make the 1,500 minutes of interstate phone calls.

International Calling Plans vs. Standard International Rates Consumers that choose international calling plans from their presubscribed provider will likely receive per minute rates that are a fraction of the provider's standard international rates. For example, one major RBOC's basic international rate to Australia is $3.12 per minute, yet the rate to Australia for one of the same carrier's advertised international calling plans is only $0.10 per minute. Therefore, a consumer paying the basic rate will incur $3.28 in USF liability for a 10-minute call to Australia whereas the same call from a consumer that subscribes to the same provider's international calling plan will incur $0.11 in USF liability.

> Calls to International Wireless Phones Consumers that make phone calls to international wireless phone numbers in countries with calling party pays regimes frequently pay more per minute than for calls made to wireline phones in the same country because most carriers charge an additional fee for the calls to wireless phones to recover higher wireless termination costs. For example, one major carrier charges $0.059 for calls to a French wireline number and $0.33 for calls to a French wireless number. Therefore, a 10-minute call to a wireline number incurs $0.06 in USF liability whereas the same call to a wireless number incurs $0.35 in USF liability.

The purpose of providing these examples is not to demonstrate that there are exceptions to the rule that "Usage is Relative to Revenue." Rather, it is to prove that there simply is no such rule: carriers' end user rates (and consequently, carriers' revenue) are the product of pricing based on underlying network costs and the ability of carriers to charge consumers what the market will bear and are not the result of consumer-directed activity.

Ultimately, the current revenue-based model is exceptional. It is an exception to the historic approach of apportioning the costs of the network among those that use the network without exception for individual usage or, more abstractly, the revenue associated with usage. It is exceptionally inaccurate at tying a consumer's contribution to her actual use of the network. It is exceptionally anti-consumer because it punishes consumers that do not have the commercial know-how or the financial resources to get the most affordable service or the best plan. It is exceptionally irrational because it fails to account for pricing anomalies in the industry that distort the relationship between usage, cost and revenue. Ultimately, the revenue-based model is exceptionally unjust and unreasonable and needs to be

replaced with a model that is efficient and fair and which maintains, rather than subverts, the industry's historic approach of shared responsibility to support our nation's telecommunications infrastructure and affordable access for all. For these reasons, IDT supports a numbers/connections based contribution methodology and we urge the Commission to implement such a methodology immediately.

III. CONCLUSION

For the reasons stated herein, IDT Telecom, Inc. respectfully requests that the Commission make no further changes to its Universal Service Fund contribution methodology, but rather, it move forward and implement a long-term, sustainable numbers/connections-based methodology.

Respectfully submitted,

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