

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

In the Matter of)	
)	
Universal Service Contribution Methodology)	WC Docket No. 06-122
)	FCC 06-94

**NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
INITIAL COMMENTS**

NATIONAL TELECOMMUNICATIONS
COOPERATIVE ASSOCIATION

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The National Telecommunications Cooperative Association (NTCA)¹ hereby responds to the Federal Communications Commission's (FCC or Commission) June 27, 2006 Report and Order and Notice of Proposed Rulemaking (NPRM or Interim Contribution Order)² seeking comment on changes it made to the federal universal service fund (USF) contribution methodology by raising the interim wireless safe harbor from 28.5% to 37.1%, and by establishing universal service obligations for interconnected voice over Internet protocol (VoIP) providers, including a 64.9% VoIP safe harbor.³

I. INTRODUCTION AND SUMMARY

In its June 27, 2006 NPRM, the Commission sought comment on whether to eliminate, continue or raise the 37.1% interim wireless safe harbor and whether to permit wireless carriers to use traffic studies as a means of estimating the amount of interstate

¹ NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents over 570 rural rate-of-return regulated incumbent local exchange carriers (ILECs). All of its members are full service local exchange carriers, and many members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a "rural telephone company" as defined in the Communications Act of 1934, as amended (Act). NTCA members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

² *Universal Service Contribution Methodology*, WC Docket No. 06-122 (rel. June 27, 2006) NPRM (NPRM Interim USF Contribution Order).

³ NPRM, ¶¶ 2, 16, 23, 34, 53, 54.

and international end-user revenues.⁴ The Commission also sought input on methods of determining the jurisdiction of wireless calls, whether by analyzing the originating or terminating number plan area (NPA or area code) of the call, the originating or terminating cell site, the outgoing calls, or other method.⁵ The Commission sought comment on how frequently to adjust the wireless safe harbor, given that market conditions change.⁶ The Commission also asked for comment on extending USF obligations to interconnected VoIP providers, specifically whether to change the 64.9% VoIP safe harbor, and asked whether VoIP providers can identify the actual amounts of their interstate and international revenues.⁷

NTCA supports the new 37.1% wireless safe harbor and recommends that the Commission should not change the wireless safe harbor absent documented proof that it no longer reflects market realities. Further, the Commission should not protect a traffic study's methodology or end result because knowing that this information is accessible by the public will provide carriers with the proper incentive to use reasonable assumptions, sampling, data collection methods and statistical analyses that create reliable and representative results. The Commission should also dedicate more resources to reviewing the traffic studies and rejecting inadequate studies. Traffic studies are based on certain assumptions, so the Commission will have to examine those underlying assumptions to ascertain whether they are supported and will reveal accurate depictions of interstate and international call traffic.

NTCA agrees that, absent better data in the form of actual revenues or audited traffic studies, the Commission's 64.9% VoIP safe harbor is a reasonable estimation of

⁴ *Id.*, ¶¶ 66, 67.

⁵ *Id.*, ¶ 66.

⁶ *Id.*, ¶ 67.

⁷ *Id.*, ¶¶ 68, 69.

VoIP interstate and international traffic revenues. NTCA also encourages the Commission to permit state commissions to assess local VoIP revenues on an equal level with wireline local services, including contribution to state USF programs.

Finally, the Commission should modify the existing revenue-based USF contribution mechanism by expanding the pool of USF contributors to include cable, wireline, wireless, electric, and satellite broadband Internet access providers. The future public communications network will require universal service funding to provide affordable and comparable voice and broadband services to all Americans, urban and rural, high-cost and low-income. It will also require a USF contribution methodology that is able to evolve with the future public communications network that will rely on IP-based transmission services. If USF contributions are limited to traditional wireline and wireless voice services only, the inevitable migration away from these services could potentially eliminate all future universal service funding. NTCA urges the Commission to keep pace with how competitors use different facilities and technologies as substitutes for traditional circuit switched telecommunications services and wireline broadband Internet access services. The Commission should, therefore, require all cable, wireline, wireless, electric and satellite broadband Internet access providers to contribute to the federal universal service fund.

II. THE WIRELESS SAFE HARBOR OF 37.1 PERCENT IS REASONABLE.

The Commission seeks comment on its new wireless safe harbor of 37.1%.⁸ This safe harbor effectively implies that callers use their cell phones for local and instate toll calls almost 2/3 of the time, with interstate and international toll calls reflecting a little more than 1/3 of the time. Absent a detailed analysis of updated traffic studies and a

⁸ NPRM, ¶ 66.

shortfall in USAC 4Q report, NTCA views the Commission's 37.1% safe harbor as appropriate. The Commission should, therefore, retain the 37.1% wireless safe harbor provision to permit carriers a cost-effective means to estimate their federal USF responsibilities if they choose not to use actual revenues or traffic studies.

The Commission also queried how frequently it should review the wireless safe harbor.⁹ The previous safe harbor was set in 1998¹⁰ and revised in 2002.¹¹ Rather than set a specific period (e.g., quarterly, annually, triannually), the Commission should review the wireless safe harbor when it has sufficient evidence that the marketplace reflects a different reality than the newly established 37.1%. The Commission should not change this new wireless safe harbor absent documented proof that the safe harbor no longer reflects market realities because carriers, especially rural wireless carriers, base their investment decisions on their anticipated costs, such as their USF obligations. These costs are also reflected in anticipated needs and applications for USF funds.

A. Wireless Traffic Studies Should Be Reviewed, Verified and Supported By Data Before Wireless Carriers Are Permitted To Use These Studies To Support Their USF Contribution Obligations.

The Commission used six wireless traffic studies supplied by CTIA to set the previous wireless safe harbor amount, 28.5%, as a method that wireless carriers could use to estimate their interstate and international revenues.¹² The Commission now requires pre-approval of traffic studies because the Commission found several wireless carriers used traffic studies to artificially skew their balance of local vs. interstate/international for USF purposes.¹³ Traffic studies and the 37.1% wireless safe harbor are convenient

⁹ *Id.*, ¶ 67.

¹⁰ *Id.*, ¶ 9 (The Commission relied on CTIA's 6 traffic studies from major carriers for the earlier safe harbor).

¹¹ NPRM, ¶ 10.

¹² *Ibid.*

¹³ NPRM, ¶¶ 29-32.

alternatives to measuring and reporting actual traffic. This convenience, however, must be weighed against potential falsification or inaccurate reporting of that traffic.

Consequently, the Commission has correctly perceived that traffic studies must be reviewed, verified and supported by data before wireless carriers can use them to support their USF obligations.

Wireless carriers (and VoIP providers) must file and seek approval from the Commission prior to using the studies and must retain the supporting information. For example, a VoIP provider, 8x8, Inc. (8x8), recently filed for expedited approval of its traffic study for use in reporting and calculating its August 1, 2006, USF obligations and FCC Form 499Q Report. This filing exemplifies some of the concerns that the Commission will face in reviewing traffic studies for USF contribution obligations.¹⁴

8x8 filed its request on July 18, 2006 for “emergency approval” of its proposed traffic study seeking approval before August 1.¹⁵ 8x8 claimed that its request deserves emergency review because 8x8 will be prejudiced if it cannot use its own traffic study to report its USF information in time for the August 1 FCC Form 499Q.¹⁶ 8x8 asserted that its traffic study and the end result of that study (i.e., the overall interstate traffic flow as it differs from the 64.9% safe harbor) should be treated as confidential. Finally, 8x8 asserted that its traffic study meets the Commission’s criteria set forth in the NPRM because the study employs sampling techniques that result in a 1% margin of error, has a confidence level of 95%, captures all traffic, does not overstate or emphasize one type

¹⁴ See *8x8 Request for Expedited Approval of Traffic Study*, WC Docket No. 06-122 (filed July 18, 2006).

¹⁵ *8x8 Request for Expedited Approval of Traffic Study*, WC Docket No. 06-122 (filed July 18, 2006) (8x8 Study).

¹⁶ 8x8 Study, p. 3.

traffic over another, uses random sampling rather than stratified sampling, contains no bias, and produces representative, reliable results.¹⁷

As explained in NTCA's July 25, 2006, *ex parte* filing, the Commission should not grant 8x8's emergency request because no true emergency exists. 8x8 has not justified its request for confidential treatment and 8x8 has not satisfied the Commission's standards for traffic studies.¹⁸ The Commission should deny 8x8's request, incorporate the 8x8 traffic study into the USF contribution methodology record, and require 8x8 to file a public, unredacted version of its Exhibit 1 and Attachment A to Exhibit 1 so that NTCA and others can offer the Commission their views on the validity of the traffic study and its overall accuracy.

Blindly approving 8x8's traffic study without adequate review will cause more harm than good to the USF. 8x8's traffic study may be replete with inaccuracies and fallacious assumptions that permit it to understate its true USF contribution obligations. The Commission needs time to review the traffic studies to ensure that their data collection methods, assumptions, and analyses will lead to reliable, representative results. 8x8 has not demonstrated that it will suffer irreparable harm or prejudice by using the 64.9% VoIP safe harbor. To the contrary, the USF program may suffer irreparable harm through underfunding if the Commission hastily approves traffic studies without giving those studies diligent review. Furthermore, the Commission retains the authority to permit 8x8 to reconcile its 499Q reports if the Commission later sets a different safe harbor amount or approves its traffic study. There is no emergency that cannot be redressed, so the Commission should deny 8x8's request for emergency review.

¹⁷ *Id.* at 2.

¹⁸ WC Docket No. 06-122, NTCA July 25, 2006 *ex parte*, p. 1.

8x8 also asked the Commission to protect its traffic study from public view. This request, however, amounts to no more than a casual request for confidentiality and fails to satisfy the Commission's standard of review for confidential treatment.¹⁹ The Commission should not protect a carrier's methodology or end result and should require 8x8 to hold up its methodology and end result to public view. Knowing that this information will be accessible will provide 8x8 and other carriers with the proper incentive to use reasonable assumptions, sampling, data collection methods, and statistical analyses so that the Commission can view the results as reliable and representative.

The Commission should allow carriers to use traffic studies but should not hesitate to reject unsubstantiated or unsupported traffic studies. The Commission's previous experience shows that carriers have an incentive to rush study reviews under the pretext of "emergencies" and to craft studies that underreport interstate and international call revenues. The Commission should also dedicate more resources to reviewing the traffic studies, rejecting studies that try to cheat the system. Traffic studies are based on certain assumptions, so the Commission will have to examine those underlying assumptions to ascertain whether they are supported and will reveal accurate depictions of interstate and international calls.

B. Determining Jurisdiction of Wireless Calls Should Be Based On The Originating Wireless Cell Site And Terminating Wireline Central Office Associated With A Wireless Call.

The Commission seeks comment on viable means to determine the jurisdiction of wireless calls, whether by analyzing the originating or terminating NPA or cell site, or by

¹⁹ NTCA July 25, 2006 *ex parte*, p. 3; 47 CFR §§ 0.457, 0.459.

examining just outgoing calls.²⁰ The Commission should determine the jurisdiction of wireless calls based on the originating wireless cell site/mobile switching office (MSO) and terminating wireline central office (CO) associated with a wireless-to-wireline call. Given the mobility of wireless calling, the most accurate way for determining whether a wireless call is local, instate toll, or interstate toll is by tracking the originating wireless site and the terminating wireline central office associated with the call. The use of virtual NPAs/NXXs by wireless carriers has allowed wireless carriers to disguise interstate and intrastate toll calls as local calls for purposes of avoiding interstate and intrastate toll intercarrier compensation to wireline carriers. Basing the jurisdiction of a wireless call on either the originating or the terminating NPAs/NXXs will promote the use of virtual NXXs to disguise the jurisdiction of wireless calls. Basing wireless calls on the originating wireless cell site/MSO and the terminating wireline CO will minimize or eliminate the virtual NPAs/NXXs arbitrage and promote the accurate jurisdiction of wireless-to-wireline calls for purposes of intercarrier compensation.

III. THE 64.9 PERCENT VoIP SAFE HARBOR IS REASONABLE.

The Commission seeks comment on its new safe harbor of 64.9% for interconnected VoIP providers. While stating that the Commission has the legal authority to assess 100% of VoIP revenues as interstate or international, the Commission set the interim safe harbor figure at the same level of wireline toll services, asserting that many customers have replaced their wireline toll service with VoIP voice services.²¹ By analogizing VoIP services to wireline toll service, the Commission has allowed VoIP providers to reduce their USF obligations somewhat, but implicitly has also decided that, until proven otherwise, about a third of all VoIP traffic is local traffic and reflects

²⁰ NPRM, ¶ 66.

²¹ *Id.*, ¶¶ 53-54.

intrastate revenues. This poses an interesting quandary: If some VoIP traffic is considered local, shouldn't that VoIP traffic be subject to state regulation? NTCA agrees that, absent better data in the form of actual revenues or audited traffic studies, the Commission's 64.9% safe harbor is a reasonable estimation of VoIP interstate and international traffic revenues. NTCA also encourages the Commission to permit state commissions to assess local VoIP revenues on an equal level with wireline local services, including contribution to state USF programs. This same approach can be used to analyze the Commission's other VoIP issue: whether VoIP providers can identify whether their traffic is local or interstate. This VoIP issue, though, necessarily requires the Commission to view a VoIP provider's response that the provider does not need the protections described in the Commission's Vonage order for the local services revenue portion.²²

IV. THE BASE OF USF CONTRIBUTORS SHOULD BE EXPANDED TO INCLUDE ALL BROADBAND TRANSMISSION PROVIDERS.

NTCA urges the Commission to modify the existing revenue-based USF contribution mechanism by expanding the pool of USF contributors to include all cable, wireline, wireless, electric, and satellite broadband Internet access providers. Section 254(d) specifically provides the Commission with permissive authority to require any provider of interstate "telecommunications" to contribute to universal service. Using this authority the Commission has required some entities that provide interstate telecommunications to end-users for a fee to contribute to the universal service mechanisms. Requiring all broadband Internet access providers to contribute will provide sufficient universal service support and sustain long-term stability to the USF contribution methodology.

²² See NPRM ¶ 65.

Under the Commission's existing USF contribution rules, wireline telecommunications carriers providing broadband transmission services under Title II regulation 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.²³ 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."²⁴ In the *Wireline Broadband Classification Order*, the Commission concluded that wireline broadband Internet access service provided over a provider's own

²³ In the Commission's 2005 Wireline Broadband Internet Access Classification Order, the FCC required wireline facilities-based providers to contribute to existing universal service funding (USF) mechanisms based on their current levels of reported revenues for DSL transmission services for a 270-day period after the effective date of the order or until the FCC adopts a new contribution rules, whichever occurs earlier. If the FCC is unable to establish new contribution rules within the 270-day period, the Commission will take whatever action is necessary to preserve the existing funding levels, including extending the 270-day period or expanding the based USF contribution base. *In the Matter of the Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities*, CC Docket No. 02-33; *Universal Service Obligations of Broadband Providers*, Review of Regulatory Requirements for Incumbent LEC Broadband Transmission Services, CC Docket No. 01-337; *Computer III Further Remand Proceedings: Bell Operating Company Provision for Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguard Requirements*, CC Docket Nos. 95-20, 98-10; *Conditional Petition of the Verizon Telephone Companies for Forbearance Under U.S.C. §160(c) with Regard to Broadband Services Provided Via Fiber to the Premises; Petition of 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*, WC Docket No. 05-271. Report and Order and Notice of Proposed Rulemaking (rel. Sept. 23, 2005)(Wireline Broadband Classification Order) Also see, *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 Enhances 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).

²⁴ *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>.

facilities is an “information service.”²⁵ The Commission also determined that “wireline broadband Internet access service, like cable modem 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.”²⁶ The Commission further held that “consistent with *Brand X*, such a transmission component is mere telecommunications.”²⁷

The regulatory classification of cable²⁸ and wireline broadband Internet access service as an information service does not preclude the Commission 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

²⁵ *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*, WC Docket No. 05-271, FCC 05-150, ¶ 9 (rel. Sept. 23, 2005). (*Wireline Broadband Classification Order*).

²⁶ *Id.*, ¶ 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. ¶ 9, footnote 15.

²⁷ *Id.*, ¶104.

²⁸ *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 high-speed Internet access service, as it is currently offered, is classified as an interstate information service).

by the Act.²⁹ Section 254(d) specifically provides the Commission with permissive authority to require any other provider of interstate “telecommunications to contribute to universal service.”

On August 14, 2006, facilities-based wireline broadband Internet access service providers that choose to provide broadband transmission on a non-common carrier basis will no longer be required to contribute to the USF based on the revenues derived from that transmission service.³⁰ Apparently, the Commission believes that resulting reductions in USF contributions from these carriers will be offset by increased USF contributions from wireless carriers and interconnected VoIP providers.³¹ The Commission, however, provided no studies or data as part of its Interim USF Contribution Order to support such a result. If the additional contributions from wireless and VoIP providers do not offset the lost USF contributions from wireline broadband providers, then there will be a universal service support shortfall which will require an increase in the USF contribution factor. Requiring all broadband Internet access providers to contribute will provide long-term stability to the USF contribution methodology.

Moreover, the Missoula Plan for Intercarrier Compensation Reform, which is sponsored by a broad segment of the communications industry, supports expanding the base of universal service fund contributors to include all broadband Internet access

²⁹ 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).

³⁰ *Wireline Broadband Classification Order*, ¶113. *See also*, Universal Service Contribution Methodology Interim Order, WC Docket No. 06-122, fn. 206 (rel. June 27, 2006).

³¹ Commissioner Cops and Commissioner Adelstein, in their separate statements to the Contribution Order, expressed concern over the lack of certainty as to whether the new contributions from interconnected VoIP providers and wireless carriers will offset the funds lost by wireline broadband’s non-participation.

providers.³² The Missoula Plan states that it will be impossible to sustain a robust USF based on contributions from only a narrow class of carriers and services and that only a broad-based contribution methodology can achieve the Act's requirements that universal service support mechanisms be equitable and nondiscriminatory. The Missoula Plan further recommends that there should be a uniform contribution rule for all providers of facilities-based, broadband information services, regardless of the specific technology they use.

The future public communications network will require universal service funding to provide affordable and comparable voice and broadband services to all Americans, urban and rural, high-cost and low-income. It will also require a USF contribution methodology that is able to evolve with the future public communications network that will rely on IP-based transmission services.³³ If USF contributions are limited to traditional wireline and wireless voice services only, the inevitable migration away from these services could potentially eliminate all future universal service funding. NTCA, therefore, urges the Commission to keep pace with how competitors use different facilities and technologies as substitutes for traditional circuit switched telecommunications services and wireline broadband Internet access services and require all cable, wireline, wireless, electric and satellite broadband Internet access providers to contribute to the federal universal service fund.

³² Missoula Plan, CC Docket No. 01-92, Appendix B, pp. 88-89 (filed July 24, 2006).

³³ The Commission's most recent data on broadband subscribership demonstrates that high-speed connections continue to grow rapidly. During 2005, high-speed Internet access lines grew from 37.9 million to 50.2 million lines, an increase of 33 percent (or 12.3 million lines). *High-Speed Services for Internet Access: Status as of December 31, 2005*, Industry Analysis and Technology Division, Wireline Competition Bureau, p. 1 (July 26, 2006). Requiring this evolving segment of the communications industry to contribute to universal will significantly lower the USF contribution assessment.

V. CONCLUSION

Based on the above-stated reasons, the Commission should:

- (1) Determine that the new 37.1% wireless safe harbor is reasonable.
- (2) Review the wireless safe harbor only when FCC has sufficient evidence that the marketplace reflects a different reality.
- (3) Require wireless and VoIP carriers to hold up their methodologies and end results to public view and scrutiny.
- (4) Absent better data in the form of actual revenues or audited traffic studies, determine that the new 64.9% VoIP safe harbor is a reasonable estimation of VoIP interstate and international traffic revenues.
- (5) Modify the existing revenue-based USF contribution mechanism by expanding the pool of USF contributors to include cable, wireline, wireless, electric, and satellite broadband Internet access providers.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Gail Malloy, certify that a copy of the foregoing Initial Comments of the National Telecommunications Cooperative Association in WC Docket No. 06-122, FCC 06-94 was served on this 9th day of August 2006 by first-class, United States mail, postage prepaid, or via electronic mail to the following persons.

/s/ Gail Malloy

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