

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

In the Matter of

Universal Service Contribution  
Methodology

WC Docket No. 06-122

**COMMENTS OF THE INFORMATION TECHNOLOGY INDUSTRY COUNCIL**

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Brian Peters  
Director, Government Relations  
**INFORMATION TECHNOLOGY  
INDUSTRY COUNCIL**  
1250 Eye Street, NW  
Suite 200  
Washington, DC 20005  
(202) 737-8888

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**INTRODUCTION AND SUMMARY**

The Information Technology Industry Council (ITI) represents the nation's leading information technology companies, including computer hardware and software, Internet services, and wireline and wireless networking companies.<sup>1</sup> ITI is the voice of the high tech community, advocating policies that advance U.S. leadership in technology and innovation, open access to new and emerging markets, support e-commerce expansion, protect consumer choice, and enhance global competition.

ITI welcomes the opportunity to provide comments in this matter of great importance to the information technology sector and supports the Commission's continuing efforts to ensure the sufficiency and stability of the Universal Service Fund.<sup>2</sup>

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<sup>1</sup> ITI's members include Accenture, Agilent Technologies, Inc., AMD, Apple, Applied Materials, Canon USA Inc., Cisco Systems, Inc., Corning, Dell, Eastman Kodak Company, eBay/Skype, EMC, Hewlett-Packard, Honeywell, IBM, Intel, Lexmark International, Inc., Micron, Microsoft, National Semiconductor, NCR Corporation, Oracle, Panasonic, QUALCOMM, Inc., SAP, Sony Electronics Inc., Sun Microsystems, Symbol Technologies Inc., Tektronix, Inc., Time Warner, Unisys Corporation, and VeriSign.

<sup>2</sup> *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;*

ITI's members are at the forefront of producing the technologies and devices that are bringing cutting edge communications technologies, including interconnected Voice over Internet Protocol (VoIP) services, to the American public.

As the Commission works to achieve its essential USF goals, it should consider the need for regulatory certainty and stability, as well as the importance of allowing new technologies an opportunity to develop and thrive. In support of these goals, the Commission should:

- Move immediately to comprehensive, competitively neutral reform of the universal service system;
- Replace the broken revenue-based contribution system with a flexible numbers-based contribution (and distribution) system;
- Confirm the importance of a single national regulatory policy for VoIP; and
- Not apply USF obligations to non-interconnected VoIP services – or other VoIP services that do not use numbers – under a reformed numbers-based system.

Adherence to these principles will enable the Commission to preserve and sustain universal service while continuing to foster investment and innovation.

**I. The Commission Should Immediately Adopt Comprehensive, Competitively Neutral Universal Service Reform.**

In its *NPRM*, the Commission solicits suggestions for a “permanent approach to USF contributions” from interconnected VoIP services.<sup>3</sup> ITI believes that the Commission should not waste its time on further interim USF solutions that merely serve to shore up a contribution mechanism that operates under an outdated and unsustainable

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*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*”).

<sup>3</sup> *Id.* at ¶ 68.

methodology. Instead, it should promptly adopt comprehensive universal service contribution reform that assesses a flat fee on end users based on working telephone numbers.<sup>4</sup>

There is little doubt that the existing revenue-based contribution model for USF requires reform. Stakeholders,<sup>5</sup> legislators,<sup>6</sup> and regulators<sup>7</sup> have all called for a new approach to Universal Service, recognizing that changes in the telecommunications landscape have placed the fund under enormous strain.<sup>8</sup> Consistent with these myriad requests for reform, the Commission itself has recognized that “the assumptions that form the basis for the current revenue-based system” are eroding<sup>9</sup> — and have been for quite some time. In 2002, the Commission observed that “interstate telecommunications revenues are becoming increasingly difficult to identify as customers migrate to bundled packages of interstate and intrastate telecommunications and non-telecommunications

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<sup>4</sup> ITI also believes that, for a reformed USF system to be truly competitively neutral, it should be competitively neutral on both the contribution and distribution ends. Thus, if a USF charge is being assessed on the end users of interconnected VoIP services, then VoIP providers using numbers should be eligible to receive universal service funds. Without this parity, the USF charge becomes more like a tax than a fee – imposing a heavier and inequitable burden on some providers.

<sup>5</sup> *See Order* at ¶ 21 n. 84 (setting forth list of comments supporting proposals to replace pure revenues-based model).

<sup>6</sup> *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).

<sup>7</sup> *See, e.g., Order* at 145 (Statement of Chairman Kevin J. Martin); *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*”).

<sup>8</sup> *See generally Order* at ¶ 21 n. 84.

<sup>9</sup> *Id.* at ¶ 17.

products and services.”<sup>10</sup> In the intervening years, this trend has continued apace. “All-distance” flat rate payment plans bundled with additional features have proved immensely popular, and figure prominently in the service offerings of a number of different companies. As a result, even the notion of “per call” charges—and consequently of discrete interstate revenue attributed thereto—has increasingly come to be viewed as obsolete.<sup>11</sup> Given these existing challenges, the current system is obsolete, as it is ill-suited to capturing revenue from “all-distance” or other bundled service.

The Commission should not allow these problems to continue – and interim fixes are not the answer. Each time the Commission adopts a temporary fix, it imposes substantial transaction costs, particularly since the mandated changes often require expensive shifts in billing and recordkeeping. The interim measures the Commission adopted in the *VoIP USF Order* were a mistake, as they impose significant burdens and fail to drive toward a meaningful long-term solution. In fact, many of these measures were unlawful, and none of them address the fundamental disconnect between the existing contribution method and the evolving telecommunications marketplace.<sup>12</sup>

While ITI recognizes that full-blown implementation of a comprehensively reformed USF system may take up to a year,<sup>13</sup> this timeframe only underscores the need for the Commission to start the reform process now. Simultaneous to doing so, the Commission should immediately revise its unnecessarily burdensome interim rules –

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<sup>10</sup> *Second Further NPRM*, 17 FCC Rcd. at 24955 ¶ 3.

<sup>11</sup> *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.

<sup>12</sup> *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).

<sup>13</sup> *See Order* at ¶ 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.”).

specifically, by lowering the safe harbor for interconnected VoIP providers and eliminating the pre-approval requirement for traffic studies. It is essential that the Commission avoid any more costly short-term solutions, and instead devote its scarce resources to much needed sustainable, long-term USF reform. The Commission has been promising to resolve this problem in a comprehensive, sustainable manner for a long time – it should do so now.

**II. The Commission Should Adopt a Flexible Numbers-Based Approach to Universal Service Reform.**

The Commission should reform Universal Service by moving quickly to a flexible numbers-based contribution methodology that assesses a flat fee on end users. Moving to a competitively neutral numbers-based contribution (and distribution) methodology will resolve several significant problems inherent in the current revenues-based system:

*Sustainability.* Because consumers increasingly purchase bundled services consisting of interstate and intrastate services (as well as telecommunication and non-telecommunication services), the revenues-based model is an anachronism. A flexible numbers-based model is not susceptible to disruption when the market adopts different pricing mechanisms, and as a result will not require the numerous emergency fixes that have plagued the existing system.

*Ease of Administration.* In contrast to the tortuous regulations that have evolved in an effort to track sources of interstate revenues from different contributors, levying a flat fee on end users based on a working telephone number is relatively simple to

administer. A flexible numbers-based approach also removes opportunities and incentives for contributors to game the system, thereby decreasing contributions.<sup>14</sup>

**Efficiency.** Because the existing system assesses contributions only on the revenues of long distance and other interstate services, in many cases demand for these services is artificially diminished, leading to a net consumer welfare loss.<sup>15</sup> In addition, because a numbers-based system generally would assess a flat fee on end users based on each active telephone number, it would slow the rate of consumption of telephone numbers, reducing the need for administratively difficult area code splits and overlays.

**Consumer Benefits.** A numbers-based USF assessment would be predictable and easy for consumers to understand. The assessment would also be more equitable with respect to rural customers, whose local calling areas contain far fewer individuals. Finally, federal Lifeline customers would be completely exempt from USF surcharges, unlike the existing system under which providers can pass on USF charges to these users based on interstate usage. Care should also be taken to protect low-volume users from inequitable impacts that could follow from a numbers-based contribution methodology.

The case for a flexible numbers-based contribution methodology is compelling, and ITI encourages the Commission to begin the transition immediately. In doing so, ITI urges the Commission to be flexible in how it implements the numbers-based methodology. For example, household or family discounts may be appropriate in some situations (*e.g.*, family share plans with multiple cell phone numbers). In time, if the

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<sup>14</sup> 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”).

<sup>15</sup> See Jerry Ellig, *Intercarrier Compensation and Consumer Welfare*, 2005 U. ILL. J.L. TECH. & POL’Y 97, 120 (2005).

communications marketplace continues to evolve and the significance of telephone numbers diminishes, the Commission should also consider whether it would be appropriate to move to a connections-based contribution methodology. It might also be worthwhile to consider adopting a contribution methodology such as a connections-based approach with respect to USF contributions for high-capacity lines.

### **III. The Commission Should Reaffirm its Commitment to Exclusive Federal Jurisdiction for VoIP.**

The Commission should use this opportunity to maintain its commitment to a single national regulatory policy for VoIP. In its *Vonage Order*, the Commission wisely recognized the importance of adopting a single national regulatory framework for VoIP, rather than a patchwork of numerous potentially conflicting state regulations, “clear[ing] the way for increased investment and innovation . . . to the benefit of the American consumers.”<sup>16</sup> The Commission should maintain its commitment to investment and innovation by declining to take any action that would undermine the *Vonage Order*.

As the Commission has explained to the Eighth Circuit, the *Order* in this proceeding does not call the reasoning or outcome of the *Vonage Order* into question, and arguments to the contrary are “mistaken.”<sup>17</sup> In the *Vonage Order*, the Commission “reasonably found that a percentage proxy would not be useful” for distinguishing between interstate and intrastate traffic for the purpose of subjecting VoIP to conflicting state and federal regulation.<sup>18</sup> The Commission likewise made clear that its *Order* does

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<sup>16</sup> *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, 19 FCC Rcd. 22404, 222405 ¶ 2 (2004) (“*Vonage Order*”).

<sup>17</sup> Letter from Nandan M. Joshi, counsel for the Federal Communications Commission, to Michael E. Gans, Clerk, U.S. Court of Appeals for the 8th Cir., *Minnesota Pub. Util. Comm’n et al. v. FCC*, No. 05-1069 et al. at 1 (Jul. 11, 2006).

<sup>18</sup> *Id.*

not call into question its authority to preempt state regulation of VoIP services that lack the technological capability accurately to distinguish in real-time between interstate and intrastate communications.<sup>19</sup> Consistent with its arguments to the Eighth Circuit, the Commission should continue to preempt state regulation of VoIP services.

The Commission is also free to affirm its commitment to federal jurisdiction for VoIP on grounds other than those contained in the *Vonage Order*. The Commission, for example, has applied a “10 percent rule” to private line services.<sup>20</sup> In reaching that result, the Commission explained that it is not required to rely on the inseverability doctrine to establish exclusive federal jurisdiction because jurisdictionally mixed traffic may be treated as interstate in nature irrespective of a service provider’s ability to identify the relative percentages of interstate and intrastate traffic.<sup>21</sup> By maintaining federal jurisdiction for VoIP, the Commission would be fulfilling its mandate under Sections 230 and 706 of the Telecommunications Act of 1996, which direct the FCC to preserve the competitive market for advanced services, free of federal or state regulation.<sup>22</sup> Finally, reaffirming federal preeminence in this area is consistent with the Commission’s views regarding the harms of subjecting competitive service providers to entry and other economic regulation.<sup>23</sup>

As a practical matter, the very nature of IP technology counsels against the use of any jurisdictional approach that relies on traditional geographic distinctions. In the

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<sup>19</sup> *Id.* at 2.

<sup>20</sup> *See* 47 C.F.R. § 36.154(a).

<sup>21</sup> *See GTE Telephone Operating Cos.; GTOC Tariff No. 1; GTE Transmittal No. 1148*, Memorandum Opinion and Order, 13 FCC Rcd. 22466, 22481 ¶ 28 (1998).

<sup>22</sup> *See, e.g.*, 47 U.S.C. § 230(b)(2); *see also Vonage Order*, 19 FCC Rcd. at 22426-27 ¶¶ 35-36.

<sup>23</sup> *Vonage Order*, 19 FCC Rcd. at 22417-18 ¶¶ 22, 39.

Commission's words, "new networks based on the Internet Protocol are, both technically and administratively, different from the PSTN."<sup>24</sup> These networks "challenge[] the key assumptions on which communications networks, and regulation of those networks, are predicated: Packets routed across a global network with multiple access points defy jurisdictional boundaries."<sup>25</sup> IP technology, by its very nature, is indifferent to traditional jurisdictional geography, routing packets in order to maximize efficiency, not satisfy regulatory distinctions. Even where the Commission disregards the global routing potential of IP technology and relies on its traditional "end-to-end" jurisdictional analysis, VoIP and other IP-enabled services defy geography-based jurisdictional classification, because "IP-based services . . . enable subscribers to utilize multiple service features that access different websites or IP addresses during the same communication session and to perform different types of communications separately."<sup>26</sup> VoIP services are likewise capable of directing a single call to multiple devices, an outcome fundamentally inconsistent with the notion that a communication has two, and only two, ends.

Future services will certainly test further the limits of any jurisdictional geography. For this reason, applying antiquated geographical distinctions to VoIP and similar services is likely to have significant unintended consequences, and may undermine the very investment and innovation that have enabled the Internet to flourish. It would be particularly unwise to impose traditional geographic distinctions for the sake of interim USF solutions, as there is already broad recognition that the existing

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<sup>24</sup> *IP-Enabled Services*, Notice of Proposed Rulemaking, 19 FCC Rcd. 4863, 4866 ¶ 4 (2004).

<sup>25</sup> *Id.* at ¶ 4.

<sup>26</sup> *Vonage Order*, 19 FCC Rcd. at 22420 ¶ 25.

geography-based revenue assessment scheme is broken.<sup>27</sup> Instead, the Commission should provide continued regulatory certainty by reaffirming the reasoning of its *Vonage Order* and making clear its commitment to a single national regulatory regime for VoIP.

**IV. It is Not Reasonable for Non-Interconnected VoIP Services To Contribute to Universal Service Under Either the FCC’s Interim Proposal or a Reformed Numbers-Based System.**

ITI commends the FCC for excluding non-interconnected VoIP services, including PC-to-PC services, from regulation and believes it should continue to promote innovation by keeping these services free from regulation. The Commission should not expand the definition of “interconnected VoIP” service or extend USF obligations to any non-interconnected VoIP services because these services do not use numbers and are not substitutes for traditional telephone service.

As part of a competitively neutral, comprehensively reformed, numbers-based system, it is reasonable to assess a flat fee on end users of interconnected VoIP services. Under a reformed numbers-based system, any end user with a working telephone number would be assessed a flat fee based on the quantity of working numbers held by that user. Thus, like any analog telephone user, a VoIP user with a working number would be assessed a flat fee for his or her telephone number(s). Therefore, it is not reasonable to extend USF obligations under a numbers-based system to non-interconnected VoIP services – *e.g.*, PC-to-PC services – or other VoIP services that do not use numbers.

Furthermore, the Commission in its *USF VoIP Order* states, “We emphasize that interconnected VoIP service offers the capability for users to receive calls and terminate calls to the PSTN; *the obligations we establish apply to all VoIP communications made*

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<sup>27</sup> See generally Section I. *supra*.

*using an interconnected VoIP service, even those that do not involve the PSTN.*<sup>28</sup> This text suggests that PC-to-PC services bundled with an interconnected VoIP service could be subject to USF. As noted above, because these services do not connect to the PSTN and do not substitute for circuit switched telephone service, it does not make sense for them to contribute to USF.

Finally, USF is currently focused on ensuring that all consumers have access to traditional telephone service at reasonable rates. As communications services evolve, so too will universal service.<sup>29</sup> For now, however, USF supports the circuit switched PSTN, and not broadband.<sup>30</sup> Thus, the Commission should make clear that PC-to-PC services are not subject to USF obligations under its interim proposal nor under a reformed numbers-based system. It also should move immediately to implement a comprehensive, flexible numbers-based system which will more clearly and sensibly draw a distinction between those services that should, and those that need not, contribute at this time.

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<sup>28</sup> *Order* at ¶ 36 (emphasis added).

<sup>29</sup> 47 U.S.C. § 254(c).

<sup>30</sup> If or when the FCC moves to a connections-based USF system (*i.e.*, charges broadband users a flat fee based on their quantity of connections), then broadband providers should be eligible to receive universal service funds. This parity is necessary in order for such a system to be truly competitively neutral.

## CONCLUSION

ITI urges the Commission to address the growing problems with USF by moving immediately to comprehensive numbers-based reform. By taking this long overdue and necessary step, the Commission will address the evolving communications marketplace and impose reasonable contribution requirements on VoIP services using the PSTN. In order to provide the regulatory certainty necessary to foster continued investment in innovative services, the Commission should confirm its commitment to a single national VoIP policy and continue to recognize the existing distinctions between interconnected VoIP and other services.

Respectfully Submitted,

*/s/ Brian Peters*

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Brian Peters  
Director, Government Relations  
**INFORMATION TECHNOLOGY**  
**INDUSTRY COUNCIL**  
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Suite 200  
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