

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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

**REPLY COMMENTS OF SOUTHERNLINC WIRELESS**

Southern Communications Services, Inc. d/b/a SouthernLINC Wireless

(“SouthernLINC Wireless”) hereby submits these reply comments in response to the Notice of Proposed Rulemaking in the above-captioned docket.<sup>1</sup> SouthernLINC Wireless is a commercial mobile radio service provider licensed by the Commission to provide cellular communications services in Alabama, Florida, Georgia, and Mississippi.

**I. THE COMMISSION SHOULD OFFER GUIDANCE ON HOW TO DETERMINE THE JURISDICTIONAL NATURE OF INDIVIDUAL CALLS TO MINIMIZE UNCERTAINTY AND REPORTING AMBIGUITIES**

In the *2006 Contribution Order*, the Commission for the first time addressed the definition of “toll traffic” as it applies in the wireless context.<sup>2</sup> Nonetheless, SouthernLINC Wireless agrees with other commenting parties that the instructions for allocation wireless revenues are ambiguous and that the Commission has not offered sufficient guidance on this subject.<sup>3</sup> Likewise, SouthernLINC Wireless agrees that the Commission has not offered

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<sup>1</sup> Universal Service Contribution Methodology, WC Docket No. 06-122, *Report and Order and Notice of Proposed Rulemaking*, FCC 06-94 (released June 7, 2006) (“*2006 Contribution Order*” and “*Notice*”).

<sup>2</sup> *Id.* at ¶29.

<sup>3</sup> *See, e.g.*, IDT Comments at 4-5 (“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.”); Cincinnati Bell Wireless Comments at 2 (“The Commission has not developed a clear set of guidelines for how carriers are to

sufficient guidance with respect to wireless traffic studies,<sup>4</sup> particularly in light of the fact that mobile wireless service providers electing to rely on a traffic study must submit the study to the Commission and to USAC for review.<sup>5</sup> Although the *Order* sets forth certain criteria for developing company-specific traffic studies,<sup>6</sup> the Commission has not, among other things, clarified the frequency with which wireless carriers must conduct traffic studies to approximate interstate end-user revenues for universal service contribution purposes. SouthernLINC Wireless urges the Commission to provide further guidance on these issues in order to reduce inefficiencies and administrative burdens associated with the USF contribution rules and increase the predictability and uniformity of contributions among all service providers.

**A. Clarity is Important for Contributors, the Commission and USAC**

Further guidance regarding the allocation of wireless service revenues and wireless traffic studies is important for contributors, the Commission and USAC. First, clarifying the allocation and traffic study requirements would make it easier for contributors to comply with the contribution requirements, which reduces inefficiencies and waste. Second,

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determine the jurisdictional nature of individual wireless calls.”); *see also* Petition for Declaratory Ruling of CTIA-The Wireless Association on Universal Service Contribution Obligations, WC Docket No. 06-122 (filed Aug. 1, 2006) (requesting clarification of wireless carriers’ obligations with respect to toll revenue reporting and traffic studies).

<sup>4</sup> *See, e.g.*, NCTA Comments at 4-5 (“To the extent that the Commission chooses to retain the pre-approval requirement, NCTA requests that the Commission provide guidance regarding the procedures - and expedite the time frame - for approving these traffic studies.”); SBA Comments at 8 (“Small businesses at our roundtable discouraged the idea of the FCC setting specific requirements for the traffic study. Broad guidelines are best, and the FCC can use enforcement procedures if a particular traffic study is not sufficient.”); Cincinnati Bell Wireless Comments at 2 (“[T]here are no specific rules on how these studies should be conducted . . . Should the Commission disagree with the study methodology, the submitting carrier is in jeopardy of having the study rejected, such that the resources spent performing the study could be wasted and, in that case, there would have to be an alternative method of calculating the carrier’s contribution base.”).

<sup>5</sup> *2006 Contribution Order* at ¶ 32.

<sup>6</sup> *See Order* at n.115; Appendix C, Instructions for Revised FCC Form 499-A at p. 22, as modified in *Errata*, released July 10 and July 18, 2006 (setting forth requirements for traffic studies).

elimination of the current ambiguities would make it easier for the Commission and USAC accurately to predict the fund size and to set contribution factors. Third, further clarification would make enforcement of the contribution requirements by the Commission and USAC easier and facilitate compliance with those requirements by wireless service providers.

Certainty is particularly important to the extent that the Commission and USAC seek aggressively to audit carriers and strictly interpret the contribution requirements. It would not be reasonable for the Commission to refuse to eliminate the ambiguities raised by various parties in this proceeding and then hold them to be in violation of those ambiguous requirements despite good faith efforts to comply. Carriers seeking in good faith to comply cannot rely upon informal advice given by individual employees of the Commission or USAC. Accordingly, SouthernLINC Wireless urges the Commission to clarify as much as possible in a subsequent order addressing these issues and the ambiguities identified.

**B. In Providing Further Guidance, the Commission Should Clarify That Wireless Carriers Have Reasonable Flexibility to Conduct Traffic Studies**

The Commission needs to provide further guidance regarding the classification of wireless revenues and the content and timing of traffic studies. However, in doing so, the Commission should clarify that wireless carriers have reasonable flexibility in light of the variety of network technologies and billing systems in the industry today.

In implementing Section 254(b), the Commission adopted the principle that federal USF contributions should be assessed in a competitively neutral manner, neither unfairly advantaging nor disadvantaging particular service providers or technologies.<sup>7</sup> The ability to perform traffic studies or otherwise determine the actual percentage of interstate and

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<sup>7</sup> See Federal-State Joint Board on Universal Service, *First Report and Order*, 12 FCC Rcd. 8776, 8801-03 (¶¶ 46-51) (1997).

international revenues is highly dependent on individual network and billing systems, which may require considerable time and expense to modify. The Commission should not force any mobile wireless carrier to undertake a massive billing system overhaul that is otherwise unnecessary simply in order to determine the level of its federal USF contributions. Doing so would unfairly disadvantage mobile wireless carriers. Rather, mobile wireless carriers should be permitted to use what is already generated by their systems.

For the same reasons, SouthernLINC Wireless agrees with CTIA that mobile wireless carriers also should be allowed to make reasonable simplifying assumptions with regard to roaming traffic, calls to toll-free numbers, calls to directory assistance, and calls to other short codes.<sup>8</sup> Accordingly, SouthernLINC Wireless joins other commenting parties in urging the Commission not to be overly prescriptive in its guidance and to reject any suggestions to impose unnecessarily rigid standards for traffic studies.<sup>9</sup>

**C. The Commission Should Provide Further Guidance on How Revenues for Buckets of Minutes Plans Should be Apportioned**

Calling plans based upon “buckets of minutes” are the primary means by which mobile wireless service is offered, and they frequently do not categorize each subscriber’s actual use of minutes on a jurisdictional basis. Accordingly, SouthernLINC Wireless agrees with IDT that the Commission should provide guidance on how the jurisdiction of such plans should be determined and how revenues should be apportioned.<sup>10</sup> SouthernLINC Wireless also agrees with CTIA that the Commission should provide further guidance with respect to how revenue should be allocated when there are separate charges that may fit the Commission’s definition of “toll

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<sup>8</sup> CTIA Comments at 9.

<sup>9</sup> *See, e.g.*, Cingular Wireless comments at 4; CTIA Comments at 8-9.

<sup>10</sup> IDT Comments at 5.

revenue.”<sup>11</sup> As the Commission seeks to give guidance, it should be mindful that the mobile wireless industry has succeeded in the consumer market because providers have to be responsive to consumer demands or else lose customers. USF assessment methodologies and standards adopted by the Commission should therefore never require carriers fundamentally to transform the way they do business.

**D. NPAs/NXXs Are a Reasonable Proxy for Determining the Originating and Terminating Point of a Call**

SouthernLINC Wireless agrees with other commenting parties that mobile wireless carriers should have the flexibility to rely on either originating/terminating cell sites, NPA/NXX, or a combination of those methods, when it is not possible to do a complete and accurate traffic study using one or the other.<sup>12</sup> There is no reason to believe that either NPA/NXX or cell site information, taken alone, is more accurate for determining the jurisdictional nature of traffic. SouthernLINC Wireless also agrees that the use of NPAs/NXXs is a reliable and statistically valid method to determine the location of a called party from either wireline or wireless originated calls.<sup>13</sup>

For the reasons set forth by Cingular and other commenting parties, the Commission should not mandate the use of the originating cell site and the terminating area code or NPA/NXX of a call to approximate the jurisdictional nature of a call.<sup>14</sup> Any mechanism employed by the Commission that would require carriers to use the originating cell site rather than the NPA would require a massive billing system overhaul that would take time and be

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<sup>11</sup> See, e.g., Petition for Declaratory Ruling of CTIA-The Wireless Association on Universal Service Contribution Obligations, WC Docket No. 06-122 (filed Aug. 1, 2006)

<sup>12</sup> See, e.g., Cingular Comments at 4-5; CTIA Comments at 9; Rural Cellular Association Comments at 4-5.

<sup>13</sup> See, e.g., Cingular Comments at 4; Alexicon Comments at 4.

<sup>14</sup> See, e.g., Cingular Comments at 4.

costly to implement. If a standard approach is required, SouthernLINC Wireless urges the Commission to allow the use of the originating and terminating NPAs, which is a practical and reasonable way to estimate the jurisdictional nature of a wireless call.

**E. Traffic Study Results For Tier III Wireless Carriers Should be Presumed Valid For Three Years**

The time and costs associated with revising traffic studies are significant and should not be overlooked by the Commission as a factor in determining when revisions to traffic studies should be required. Requiring traffic studies to be revised too often will unnecessarily increase service prices and inefficiencies, particularly for smaller carriers. Therefore, SouthernLINC Wireless urges the Commission to adopt a presumption that deems traffic study results to be valid for a three year period for Tier III wireless carriers.<sup>15</sup>

**II. THE COMMISSION SHOULD RETAIN A REASONABLE SAFE HARBOR OPTION FOR WIRELESS CARRIERS FOR SO LONG AS THE REVENUES-BASED CONTRIBUTION METHODOLOGY REMAINS IN PLACE**

SouthernLINC Wireless urges the Commission to retain a reasonable wireless safe harbor option for carriers that lack the resources to determine call jurisdiction in an efficient manner. SouthernLINC Wireless agrees with CTIA and others that the wireless safe harbor is needed to give those providers that either cannot determine their actual interstate and international telecommunications revenues or approximate the proportion of revenues based on a traffic study another means of computing the necessary revenue information.<sup>16</sup> A reasonable safe harbor helps ensure consistency, and therefore, fairness, across the industry in the calculation and reporting of interstate and international revenues.

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<sup>15</sup> Tier III wireless carriers provide service to 500,000 or fewer customers. *See Revision of the Commission's Rules to Ensure Compatibility with the Enhanced 911 Emergency Calling Systems*, 17 FCC Rcd. 14841, 14847 (2002).

<sup>16</sup> *See* CTIA Comments at 8.

**A. The New Interim Wireless Safe Harbor is Unreasonably High**

SouthernLINC Wireless agrees with other commenting parties who found that the data used to justify raising the safe harbor to 37.1% were not reliable, making it unreasonably high.<sup>17</sup> The report that served as the basis for raising the safe harbor was based on a limited study of billing records, which raises questions about the Commission's adherence to a consistent methodology.<sup>18</sup> The increase in the safe harbor apparently was intended to increase the contribution from wireless carriers in light of the extraordinary growth of wireless service traffic since 2002.<sup>19</sup> However, there is no evidence on the record in this proceeding that the increase in traffic was disproportionately tilted toward interstate traffic. It is important that the wireless safe harbor not be too high because it penalizes smaller carriers who are the most likely to use the safe harbor, since they are unable to determine actual interstate and international revenues and lack the resources to conduct traffic studies.<sup>20</sup>

The Commission's goal under the statute must be to ensure that all service providers, including mobile wireless providers, contribute their fair share to the universal service fund, rather than merely to increase the amount of contributions by wireless carriers.<sup>21</sup> Because changes to the safe harbor imposes costs, SouthernLINC Wireless urges the Commission not to further increase the wireless safe harbor absent compelling evidence that a majority of carriers reporting actual revenues have more than the safe harbor percentage of interstate and international telecommunications revenues. However, the Commission should reduce the

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<sup>17</sup> See, e.g., Cingular Comments at 3; IDT Comments at 9; Cincinnati Bell Wireless Comments at 6.

<sup>18</sup> See IDT Comments at 8.

<sup>19</sup> Order, ¶ 24.

<sup>20</sup> SBA Comments at 2.

<sup>21</sup> See IDT Comments at 9.

wireless safe harbor, particularly for Tier III wireless carriers, if the reports filed by carriers relying upon actual revenues demonstrate that the current safe harbor is unreasonably high.

### **III. CONCLUSION**

For the foregoing reasons, SouthernLINC Wireless urges the Commission to offer guidance on how to determine the jurisdictional nature of individual calls when conducting traffic studies and to retain the wireless safe harbor for carriers to allocate their telecommunications revenues to the interstate and international jurisdiction and should not increase it absent compelling evidence that an increase is warranted.

Respectfully submitted,

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September 8, 2006

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