

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

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

REPLY COMMENTS OF VERIZON

The record in this proceeding evidences an overwhelming consensus that fundamental reform of the universal service contribution mechanism in favor of a number-based assessment is overdue. Moreover, there is widespread agreement that merely tweaking safe harbors and traffic studies that rely upon arbitrary jurisdictional and regulatory distinctions cannot compensate for the inherent deficiencies of a revenue-based mechanism. The Commission should, therefore, transition to a contribution mechanism based primarily on in-use, working telephone numbers, as urged by most commenters. In doing so, the Commission should maintain its deregulatory approach to broadband services. The Commission also should ensure that low-income consumers, businesses, wireless family share plan subscribers, and prepaid wireless customers are treated fairly under the new structure. Lastly, to the extent parties here have raised the effect of the *Interim Contribution Order* on the Commission's holding in the *Vonage Order*, the simple answer is that the *Interim Contribution Order* could not and did not change that holding, as the Commission itself previously has explained.

I. THE COMMISSION SHOULD ADOPT A CONTRIBUTION MECHANISM BASED ON IN-USE WORKING TELEPHONE NUMBERS.

A. There is an Overwhelming Consensus in Support of Adopting a Number-Based Contribution Mechanism.

As suggested in the *Notice*¹ and confirmed in the opening comments, there is a clear consensus that the current, revenue-based contribution mechanism is not sustainable and that a number-based mechanism would be more equitable and rational. Indeed, representatives of virtually every industry segment – including wireline telephone companies,² cable telephony providers,³ wireless carriers,⁴ equipment manufacturers,⁵ VoIP providers,⁶ and state regulators⁷ – agree that a number-based mechanism would be more competitively neutral, rational, and sustainable than the existing approach. An assessment on in-use, working telephone numbers would treat all providers of competing services the same, without the need for arbitrary revenue allocations among categories of services and jurisdictions. Such a mechanism also would promote "both stability and competitive neutrality"⁸ and would be "clean, simple, and efficient."⁹ Accordingly, as the

¹ *Federal-State Joint Board on Universal Service, Report and Order and Notice of Proposed Rulemaking, FCC 06-94 (June 27, 2006) ("Interim Contribution Order" or "Notice").*

² *USTelecom* at 1; *BellSouth* at 1; *AT&T* at 1-2.

³ *National Cable and Telecommunications Association* at 5; *Time Warner* at 16.

⁴ *Leap Wireless* at 2; *Cincinnati Bell Wireless LLC* at 7; *Cingular Wireless LLC* at 6; *CTIA* at 2.

⁵ *Information Technology Industry Council* at 3.

⁶ *VON Coalition* at 1; *Vonage* at 6.

⁷ *Iowa Utilities Board* at 2.

⁸ *USTelecom* at 3.

Information Technology Industry Council stated, 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 methodology." *Information Technology Industry Council* at 2. Instead, it should promptly adopt a number-based contribution mechanism, subject to a reasonable (one-year) transition period to permit the industry, the Commission, and USAC to adjust to the new approach.

In particular, as explained in more detail in Verizon's initial comments (at 4-5), the Commission should base universal service contributions on a flat assessment per in-use, working telephone number, supplemented by revenue-based contributions for major categories of non-number based services such as special access and pre-paid calling cards. The new mechanism should exempt from assessment numbers serving Lifeline customers and should impose reduced assessments on secondary numbers used in wireless family share plans and on prepaid wireless customers. *See e.g., Information Technology Industry Council* at 6; *CTIA* at 5.

The Commission also should permit service providers flexibility to recover their contributions from individual business and institutional customers in a manner that minimizes economic impact and promotes technological neutrality, as long as the providers contribute the total required amount to the fund for all in-use, working business and institutional customer numbers. Such flexibility is needed because customers receiving similar services may nonetheless face inequitable contribution burdens based largely on the type of technologies and network configurations used by their service providers. For example, particular users (such as colleges, universities, and state and local

⁹ *Cincinnati Bell Wireless LLC* at 8.

government agencies) that make large use of numbers but have relatively little interstate usage could experience rate shock under a number-based mechanism unless providers have flexibility to recover universal service contributions in a manner that minimizes such concerns.¹⁰

Finally, the Commission should apply the same per-number charge to business and residential numbers. Any assessment on non-number based services (such as private lines and prepaid calling cards) should result in those service categories continuing to contribute in the same relative proportion as they do today. The Commission should decline to simply fix a relatively low assessment for residential customers and then determine assessments on business customers and users of non-number based services on a residual basis. Doing so would be inequitable and contrary to the public interest. It could dissuade business customers from investing in higher-capacity and more robust communications facilities because of the escalation in their universal service contribution burden. Such an approach also could significantly increase the cost of prepaid calling cards, which are particularly attractive to low-income customers.

¹⁰ See, e.g., Letter from David Ward, President, American Council on Education to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, dated March 16, 2006 (showing increased contribution obligations ranging from 328% to 3900% for several colleges); Letter from Stephen H. Hess, Associate Academic Vice President for Information Technology, University of Utah, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, dated March 10, 2006 (annual USF obligation would increase from \$52,700 to more than \$444,000); Letter from Nancy Kinchla, Directory – Telecommunications and Technology Services, Harvard University to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, dated Feb. 21, 2006 (annual USF obligation would increase from \$70,000 to over \$400,000); Letter from Dr. Stephen G. Landry, Chief Information Officer, Seton Hall University to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, dated Feb. 28, 2006 (annual USF obligation would increase from \$4,500 to over \$50,000) (“Seton Hall 2/28 ex parte”).

B. Broadband Customers Should Not be Separately Assessed Under a Number-Based Mechanism.

Under a number-based approach, broadband customers would be assessed based on any number-related services, such as VoIP, that are provided over their broadband connections. There is no need nor rational basis for a separate assessment on the underlying broadband connections. A separate universal service tax on broadband would only deter deployment of and subscription to innovative, higher-capacity offerings. Any additional assessment on broadband would render broadband services less affordable, depress demand, and therefore diminish investment incentives. Moreover, because most broadband customers already pay universal service assessments on other services, imposing a broadband charge in addition to the number-based assessment would result in double-taxing advanced offerings, directly undermining Congress's and the Commission's core goal of promoting broadband deployment.

Nonetheless, a few commenters support direct assessments on broadband services in order to broaden the revenue base as yet another interim fix to the existing, broken contribution mechanism.¹¹ Rather than imposing additional charges on broadband services, with the inevitable adverse effect on demand and deployment, the Commission should address these commenters' concerns head-on by transitioning to a number-based mechanism. Doing so would eliminate the perceived need to include broadband revenues in the current contribution base and preserve incentives to invest in and consume next-generation facilities and services.

¹¹ *NTCA* as 12-13 (arguing that is "impossible to sustain a robust USF based on contributions from only a narrow class of carriers"); *USTelecom* at 3.

II. THE COMMISSION MUST FUNDAMENTALLY REFORM THE UNIVERSAL SERVICE DISTRIBUTION MECHANISMS.

Reforming the contribution mechanism is vitally important, but reforming universal service distribution mechanisms is also critical. The high-cost portion of the fund alone has more than doubled in the past eight years, from \$1.718 billion in 1998 to an estimated \$4.147 billion in 2006. *Trends in Telephone Service* (June 2005), Table 19.3; see USAC, *Federal Universal Service Support Mechanisms Fund Size Projections for the Second Quarter 2006*, Appendix HC01 (Mar. 2006). The resulting double-digit contribution factors threaten the affordability of service to consumers. This risk would remain under a number-based approach if the Commission does not address fund growth, since the size of the fund will dictate the amount of any per-number assessment.

To ensure a reasonable per-number assessment – and, more important, to assure the USF remains sustainable going forward – the Commission should refocus the high-cost fund on its core objective of enabling affordable and reasonably comparable service in those very limited areas where such service could not be provided absent universal service support.¹² By taking such measures concurrent with reform of the contribution mechanism, the Commission can assure that the federal universal service program remains viable going forward.

III. THE HOLDING OF THE VONAGE ORDER REMAINS UNCHANGED.

A few parties have raised as an issue the effect of the *Interim Contribution Order* on the Commission's decision in *Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum

¹² See Reply Comments of Verizon, CC Docket No. 96-45 and WC Docket No. 05-337 (May 26, 2006); Comments of Verizon, CC Docket No. 96-45 and WC Docket No. 05-337 (Mar. 27, 2006).

Opinion and Order, 19 FCC Rcd 22404 (2004) ("*Vonage Order*"). See *VON Coalition* at 12-15; *Information Technology Industry Council* at 7-9. The *Interim Contribution Order* does not change the *Vonage Order*.

In the *Vonage Order*, the Commission preempted state regulation of VoIP services offered by Vonage and other services with like capabilities because, it concluded, those services “cannot be separated into interstate and intrastate components for compliance with [state regulatory] requirements without negating valid federal policies and rules.” *Vonage Order* ¶ 1. The Commission also made clear that, as to other VoIP services that are not like Vonage’s but share certain similar characteristics, it is “highly unlikely” that state regulation of those services would not be preempted to the same extent. *Id.* ¶¶ 1, 32, 46. These basic characteristics include a requirement for a broadband connection from the user’s location, a need for IP-compatible CPE, and/or a service offering that includes a suite of integrated capabilities and features. *Id.* ¶ 32. The Commission emphasized in particular that a package of “integrated communications capabilities” – for example, providing voice, data and other information or video services as part of a single package – “greatly complicates the isolation of intrastate communications and counsels against patchwork regulation.” *Id.* As to still other types of services that do not fit either of these categories, and were not before it in that proceeding, the Commission reached no conclusion, and instead left any issues with respect to such services to be addressed in its ongoing *IP-Enabled Services* proceeding. *Id.* ¶ 44.

The *Interim Contribution Order* does nothing to change the conclusions reached in the *Vonage Order*. On the contrary, the Commission there addressed a very different issue, namely the percentage of VoIP revenues that should be subject to federal universal

service contribution obligations. The Commission noted that, because VoIP services are preemptively within its interstate authority for jurisdictional purposes, it potentially could choose to assess 100 percent of VoIP revenues for that purpose. *Interim Contribution Order* ¶ 53. Because VoIP service is a substitute for wireline services, however, it instead adopted a lesser safe harbor percentage in an effort to treat VoIP equitably compared to other wireline services with which it competes. *Id.* And the Commission left open the option for any VoIP provider to pay based on its actual percentage of interstate calls, which necessarily would require that the provider have developed and deployed the capability both to separate voice calls from other components of a customer’s service package and also to track and record the jurisdictional confines of individual voice calls. *Id.* In that event, the Commission merely noted that the VoIP provider would not fall within the scope of the preemption it previously adopted in its *Vonage Order*. *Id.* But it said nothing about whether state regulation of a particular service might nonetheless be preempted based on another rationale. Nor could it have done so, because those issues are being considered separately in the *IP-Enabled Services* proceeding. In short, preempt was not at issue in the *Interim Contribution Order*, and the Commission did nothing there to change the holding of the *Vonage Order*.

Indeed, the Commission already has rejected claims that the *Interim Contribution Order* modifies the *Vonage* holding. In its “28(j)” letter filed recently with the Eighth Circuit, the Commission explained that parties alleging that the *Interim Contribution Order* supported their appeal of the *Vonage Order* were “mistaken.” See Letter from Nandan M. Joshi, Counsel, Federal Communications Commission, to Michael E. Gans, Clerk, United States Court of Appeals for the Eighth Circuit (July 11, 2006) (“*July 11*

Letter”). As the Commission noted in its *July 11 Letter*, there is a substantial difference between the reasoning and purpose of the *Vonage Order* and the reasoning and purpose of the *Interim Contribution Order*. The *Vonage Order* found that a percentage proxy is unsuitable for distinguishing interstate and intrastate calls for purposes of "conflicting federal and state policies governing entry and tariffing of VoIP communications." *July 11 Letter* at 1. In contrast, the *Interim Contribution Order* found only that a percentage proxy may be appropriate for the entirely different purpose of calculating *aggregate* carrier contributions to the federal universal service fund. *Id.*

IV. CONCLUSION

For the foregoing reasons, the Commission should expeditiously adopt a number-based contribution mechanism along the lines suggested in Verizon's opening comments.

Respectfully submitted,

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