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**Sent:** Friday, September 08, 2006 12:44 PM  
**To:** Rita Bolden  
**Subject:** NTCA Reply Comments re USFContribution Methodology, WC 06-122



FCC 06-94  
CA.USF.Contrib Met

Good afternoon,

Attached are NTCA's reply comments on FCC Order & NPRM re Universal Service Contribution Methodology, released June 27, 2006.

Have a great weekend!

Thank you.

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

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

**NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION  
REPLY COMMENTS**

The National Telecommunications Cooperative Association (“NTCA”)<sup>1</sup> submits these reply comments in response to the initial comments filed on August 9, 2006, as part of the Federal Communications Commission’s (Commission or FCC) June 27, 2006 Report and Order and Notice of Proposed Rulemaking soliciting comments on its new interim 37.1% wireless safe harbor and 64.9% safe harbor for interconnected Voice over Internet Protocol (VoIP) service providers.<sup>2</sup> NTCA renews its assertions from its Initial Comments<sup>3</sup> and its July 25, 2006 *ex parte* filing<sup>4</sup> in this docket and urges the Commission to retain the new 37.1% wireless safe harbor and 64.9% Voice over Internet Protocol (VoIP) safe harbor for interstate revenues, absent better evidence. NTCA agrees with others that traffic studies should be approved by the Commission prior to implementation for USF contribution purposes. The Commission should

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<sup>1</sup> NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents 571 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, CATV, IPTV, 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.

<sup>2</sup> *In the Matter of Universal Service Contribution Methodology*, WC Docket No. 06-122, Report and Order and Notice of Proposed Rulemaking (rel. June 27, 2006) (NPRM).

<sup>3</sup> NTCA Comments (filed Aug. 9, 2006). NTCA silence on any positions raised by parties in this proceeding connotes neither agreement nor disagreement with their positions or proposals.

<sup>4</sup> NTCA Notice of Written *Ex Parte* Presentation, WC Docket No. 06-122 (filed July 25, 2006) (NTCA *ex parte*).

use both the originating and terminating cell sites, or the closest equivalent, for both incoming and outgoing calls to determine whether the call is local or toll. Furthermore, the USF contribution base should remain as large as possible, which lies within the Commission's authority under Section 254(d).

**I. THE NEW WIRELESS AND VoIP SAFE HARBORS ARE APPROPRIATE FOR NOW.**

NTCA agrees with the Rural Cellular Association that "small and rural wireless carriers in particular need flexibility in the manner of reporting revenues due to their reliance on billing systems."<sup>5</sup> Others agree with NTCA that the use of safe harbors is an effective alternative to tracking and calculating actual revenues, or designing and conducting traffic studies.<sup>6</sup> Several commenters suggest the safe harbors should be higher<sup>7</sup> or lower,<sup>8</sup> but the Commission should adopt the view that the safe harbors are appropriate unless carriers present credible evidence to the contrary.<sup>9</sup> Using just the large, national carriers' data may not accurately reflect the entire industry.<sup>10</sup> Consequently, the Commission should retain its new 37.1% wireless and 64.9%

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<sup>5</sup> Rural Cellular Association (RCA) Comment, p. 2.

<sup>6</sup> American Cable Association (ACA) Comment, p. 4; Cincinnati Bell Wireless Comment, p. 2; Cingular Wireless LLC (Cingular) Comment, p. 1; CTIA—The Wireless Association (CTIA) Comment, pp. 8-9; IDT Telecom, Inc. (IDT) Comment, p. 3; Multi-Link Telecom, LLC (Multi-Link) Comment, p. 1; New Jersey Board of Public Utilities (NJBPU) Comment, p. 4; Office of Advocacy of the U.S. Small Business Administration (SBA Advocate) Comment, p. 8.

<sup>7</sup> Alexicon Telecommunications Consulting (Alexicon) Comment, pp. 7, 9 (The wireless safe harbor should be raised to 50%, and a VoIP safe harbor less than 100% may not adequately treat revenues for USF purposes).

<sup>8</sup> ACA Comment, pp. 2, 6-8 (VoIP safe harbor should be 12.8% or 37.1%); Information Technology Industry Council (ITIC) Comment, p. 5; National Cable & Telecommunications Association (NCTA) Comment, p. 1; SBA Advocate Comment, p. 4 (roundtable of unnamed participants assert that 23% of wireless traffic is long distance); TracFone Wireless, Inc. (TracFone) Comment, p. 2 (eliminate wireless safe harbor); VON Coalition Comment, p. 16 (VoIP safe harbor should be 12.76% or 23%).

<sup>9</sup> BellSouth Comment, p. 2 (the interim safe harbors are reasonable and appropriately tailored); Cingular Comment, p. 3 (The Commission should not raise safe harbor absent compelling evidence); Embarq Corporation (Embarq) Comment, p. 5 (64.9% may be an appropriate first step for VoIP); Nebraska Rural Independent Companies Comment, pp. ii, 5.

<sup>10</sup> IDT Comment, pp. 7-8, 11; Cincinnati Bell Wireless Comment, p. 6. The Commission should use caution if it chooses to consider Cincinnati's reasoning behind using only large carriers' data to approximate the entire wireless industry. A better method is to rely on data supporting a proposition, and not rely on the absence of data.

VoIP safe harbors absent significant evidence that these percentages do not reflect market realities.<sup>11</sup>

## **II. THE COMMISSION SHOULD PRE-APPROVE TRAFFIC STUDIES TO KEEP ASSUMPTIONS REASONABLE.**

Traffic studies are a convenient, efficient means for many wireless and VoIP carriers to estimate their actual interstate and international revenues. According to the SBA Advocate, 65% of wireless carriers use traffic studies.<sup>12</sup> The Commission should disregard requests by those commenters who ask to be permitted to use untested, unreviewed, and unapproved traffic studies to calculate their USF contribution obligations.<sup>13</sup> Traffic studies must be reviewed and approved before application, rather than after application or through enforcement actions, because carriers have obvious incentives to minimize their USF contributions and may be inclined to contort their study parameters to fit that objective.<sup>14</sup> The VON Coalition inaccurately characterized the case-by-case approval process as “especially harmful” and the Commission should disregard this viewpoint.<sup>15</sup> The USF must be adequately funded, and traffic studies that are replete with inaccuracies and fallacious assumptions would permit contributing carriers to understate their true USF contribution obligations.<sup>16</sup> The Commission needs to review the traffic studies prior to implementation to ensure that their data collection methods, assumptions, and analyses will lead to reliable, representative results. The USF program may suffer irreparable harm through underfunding if the Commission hastily approves traffic studies without giving those studies

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<sup>11</sup> Nebraska Rural Independent Companies Comment, p. 3.

<sup>12</sup> SBA Advocate, p. 4.

<sup>13</sup> ITIC Comment, p. 5; SBA Advocate Comment, p. 8; Time Warner Inc. (Time Warner) Comment, pp. 2, 7.

<sup>14</sup> Alexicon Comment, p. 10 (independent verification of any VoIP provider traffic study is necessary for the use in lieu of a safe harbor percentage); Embarq Comment, pp. 3, 6.

<sup>15</sup> VON Coalition Comment, p. 16.

<sup>16</sup> Cingular advocates the use of reasonable assumptions in determining the originating and terminating points of call. Cingular Comment, pp. 4, 5. The Commission should examine these assumptions before allowing carriers to rely on them.

diligent review, or if the Commission allows carriers to file the supporting data after implementation. As stated in our *ex parte*, the Commission retains the authority to permit a carrier to reconcile its 499Q reports if the Commission later sets a different safe harbor amount or approves its traffic study.<sup>17</sup>

These traffic studies also should be made available, either in whole or in part, to public inspection, especially if the end result differs substantially from the safe harbor.<sup>18</sup> Embarq suggests that any wireless study deviating below a 28.5% contribution rate should automatically be subject to Commission or USAC audit and public review.<sup>19</sup> This approach has merit, though all traffic studies should be reviewed and approved by the Commission prior to implementation. Embarq agreed with NTCA that public disclosure will provide a powerful incentive to carriers to ensure the accuracy of their traffic data and fairness of their study assumptions.<sup>20</sup>

The Commission should also carefully review any request for confidentiality that a carrier may request for its traffic study assumptions, methodology, or end result, and should deny all casual request for confidentiality. 47 CFR § 0.459(c). Per the Commission's rules, carriers must substantiate their claims of confidentiality and must state their reasons for withholding the materials from inspection and the facts upon which those records are based. 47 CFR § 0.459(b). Carriers seeking to conceal their traffic study information must explain the degree to which the information is commercial or financial, or contains a trade secret or is privileged. 47 CFR § 0.459(b)(3). They must also explain how disclosure of the information could result in substantial competitive harm. 47 CFR § 0.459(b)(5). Carriers are required to specify or justify

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<sup>17</sup> NTCA *Ex Parte*, p. 2. Time Warner appears to assert this general approach as a fall-back position. Time Warner Comment, pp. 2, 7.

<sup>18</sup> TracFone contends that traffic studies should reveal when a carrier will start using actual data and disclosing the type of actual data to be used. TracFone Comment, p. 8. NTCA agrees with that view.

<sup>19</sup> Embarq Comment, p. 10.

<sup>20</sup> *Ibid*; NTCA Comment, pp. 4-6.

the period for which its material should not be viewed by the public. 47 CFR §0.459(b)(8). If the specific data is not the type the Commission's rules typically exclude from public view (see 47 CFR §0.457), carriers must explain the circumstances that would permit concealment. Carriers who do not comply with the Commission's rules should not receive confidential treatment for their filings.

### **III. WIRELESS CALLS SHOULD BE MEASURED USING ORIGINATING AND TERMINATING CELL SITES FOR BOTH INCOMING AND OUTGOING CALLS.**

Commenters have expressed various views<sup>21</sup> on the proper measurement yardsticks for determining actual usage and whether originating and terminating NPAs or cell sites can be used to determine call jurisdiction.<sup>22</sup> Several assert that using originating and terminating cell sites or the closest equivalent will give a more accurate classification,<sup>23</sup> and this is a reasonable approach that the Commission should follow. The dilemma caused by virtual NXX calls in detecting geographic location, described by several commenters,<sup>24</sup> can be minimized by using both the originating and terminating cell sites instead of NPAs because NPAs are not completely reliable indicators of geographic location.<sup>25</sup> Alexicon correctly concluded that the Commission may need to analyze both outgoing and incoming wireless calls.<sup>26</sup> Wireless carriers collect revenues from both incoming and outgoing calls, so the carriers should be required to contribute to the USF on both types of calls. Furthermore, since wireless carriers receive revenue for both types

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<sup>21</sup> Cincinnati Bell Wireless Comment, p. 2 (the Commission has not developed a clear set of guidelines for how carriers are to determine the jurisdictional nature of individual wireless calls); CTIA Comment, p. 9 (use any reliable data to determine call jurisdiction).

<sup>22</sup> NPRM ¶ 66.

<sup>23</sup> Cingular Comment, p. 3; Embarq Comment, p. 7; IDT Comment, p. 7; NTCA Comment pp. 7-8; TracFone Comment, p. 3 ("Virtually all wireless providers are able or should be able to identify the originating and terminating locations either by ... address ... or by ... cell sites.").

<sup>24</sup> Alexicon Comment, p. 10 ("The use of these virtual NXX assignments negates the ability of any traffic study to correctly identify the accurate and true user location, thereby negating any logical analysis of call/revenue jurisdiction within such studies.");

<sup>25</sup> Cincinnati Bell Wireless Comment, p. 3; Embarq Comment, pp. 6, 7; IDT Comment, p. 4.

<sup>26</sup> Alexicon Comment, p. 5.

of calls, revenue generated on both types should be reported by the carriers on Form 499-A and 499-Q.<sup>27</sup> Based on the inadequacies of using NPAs, the Commission should require carriers to measure the originating and terminating cell sites or the closest possible approximates to determine call jurisdiction.

#### **IV. THE USF CONTRIBUTION BASE SHOULD BE AS BROAD AS POSSIBLE.**

Several commenters seek to reduce the USF base of contributors by carving out exceptions for themselves and their clients.<sup>28</sup> Some commenters want to raise the *de minimus* level above \$10,000, which will have the same effect.<sup>29</sup> The Commission should not accept these invitations to trouble but should, instead, broaden the contribution base as much as possible.<sup>30</sup> The Commission should include all broadband transmission providers, whether they are wireline, wireless, cable, electric, or satellite providers, and should not reduce its current *de minimus* standards.<sup>31</sup>

#### **V. CONCLUSION**

For all these reasons, the Commission should retain the new 37.1% wireless safe harbor and 64.9% interconnected VoIP safe harbor for interstate and international revenues, absent better evidence. Traffic studies should be approved by the Commission prior to implementation for USF contribution purposes. The Commission should use both the originating and terminating

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<sup>27</sup> CTIA and Cingular have filed petitions for declaratory relief and clarification of wireless toll revenue reporting on Form 499-A and Form 499-Q. *Petition For Declaratory Ruling of CTIA—The Wireless Association On Universal Service Obligations*, WC Docket No. 06-122 (filed Aug. 1, 2006); *Petition For Declaratory Ruling Of Cingular Wireless LLC*, WC Docket No. 06-122 (filed Aug. 8, 2006).

<sup>28</sup> ITIC Comment, p. 10 (carve out all non-interconnected VoIP services that do not use numbers); Multi-Link Comment, pp. 3-4 (carve out resellers and one-way communication services); RCA Comment, p. 6 (count only outgoing traffic, not incoming); VON Coalition Comment, p. 8 (carve out non-interconnected VoIP services bundled with interconnected VoIP services).

<sup>29</sup> Multi-Link Comment, p. 4; SBA Advocate Comment, p. 9.

<sup>30</sup> Alexicon Comment, p. 13 (“Any service provider who utilizes any portion of the PSTN in its offering(s) to customers must be responsible for contributions to the Fund”). NTCA agrees with this position.

<sup>31</sup> NTCA Comment, pp. 9-13. The New Jersey Board of Public Utilities (NJ BPU) agrees that the number of those contributing to the USF should be increased. NJ BPU Comment, pp. 3-4.

cell sites, or the closest equivalent, for both incoming and outgoing calls to determine whether the call is local or toll. Finally, the USF contribution base should remain as large as possible, given the Commission's authority under Section 254(d) to require providers of interstate telecommunications to contribute to universal service.

Respectfully submitted,

NATIONAL TELECOMMUNICATIONS  
COOPERATIVE ASSOCIATION

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September 8, 2006

## CERTIFICATE OF SERVICE

I, Rita H. Bolden, certify that a copy of the foregoing Reply Comments of the National Telecommunications Cooperative Association in WC Docket No. 06-122, FCC 06-94 was served on this 8th day of September 2006 by first-class, United States mail, postage prepaid, or via electronic mail to the following persons:

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