

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)
)
Inquiry Concerning the Deployment) GN Docket No. 07-45
of Advanced Telecommunications)
Capability to All Americans)
)

REPLY COMMENTS



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I. Introduction.

The American Cable Association (“ACA”) files these Reply Comments in response to the Commission’s Notice of Inquiry in this docket (“NOI”).

ACA’s members lead the field in deploying advanced telecommunications services – including HD video, VoIP and high-speed broadband – to rural and hard-to-serve areas. ACA members serving as few as 560 subscribers are providing VoIP services.¹ ACA members with as few as 70 subscribers are providing high-speed data services to their rural customers, and are doing so affordably and in accordance with the Commission’s Policy Statement.²

That said, regulatory barriers artificially impede competition and slow infrastructure development and the deployment of advanced services in ACA members’ service areas. These include:

- The lack of USF funding for VoIP services;
- The artificially high VoIP “safe harbor” of 64.9%; and
- The set-top box “integration ban” in 47 C.F.R. § 76.1204(a)(1).

¹ In May 2007, ACA conducted an email survey of its members asking whether they provided broadband or VoIP services, and asking the members to list their subscriber counts. Approximately 20% of ACA member companies responded. Of the respondents, approximately 80% reported that they provide broadband Internet access services, and approximately 26% reported that they provide VoIP services. The smallest reporting broadband provider serves 70 subscribers, and the smallest reporting VoIP provider serves 560 subscribers.

² In May 2007, ACA conducted an email survey relating to its members’ broadband services offerings and practices. All respondents reported that their price per Mbps for broadband Internet access was holding steady or dropping. One respondent reported that its price per Mbps had fallen from a high of \$78.02/month in 1999 to \$5.74/month in 2007. Nearly all respondents reported that their practices align with the Commission’s Policy Statement to encourage broadband deployment. See *FCC Adopts Policy Statement*, 2005 WL 1866079 (2005).

These impediments add to the already-disproportionate cost to upgrade broadband networks in smaller and rural markets.³

To increase deployment of advanced services in smaller and rural markets, ACA recommends that the Commission take the following actions:

- Provide USF funding for VoIP services in a competitively-neutral manner;
- Implement the Small Business Administration's recommendations in WC Docket No. 06-122 regarding USF contribution methodology; and
- Defer enforcement of the integration ban against all small and medium-sized cable operators until the earlier of December 31, 2009 or the general availability of downloadable security.

About ACA. ACA represents nearly 1,100 small and medium-sized cable companies that serve more than 8 million cable subscribers, primarily in smaller markets and rural areas. ACA member systems are located in all 50 states, and in virtually every congressional district. The companies range from family-run cable businesses serving a single town to multiple system operators that focus on serving smaller markets. More than half of ACA's members serve fewer than 1,000 subscribers. All ACA members face the challenges of upgrading and operating broadband networks in lower-density markets.

II. The lack of USF funding for VoIP services is a barrier to deployment of VoIP in smaller and rural markets. USF funding should be available for VoIP services in a competitively-neutral manner.

ACA's members are using interconnected VoIP to provide many smaller markets and rural areas with their first competitive voice services. The Commission has consistently recognized that these fixed VoIP services are a substitute for traditional

³ ACA's members focus on smaller and rural markets, and therefore serve many fewer homes per mile of facilities than major MSOs. This means that the cost per subscriber to upgrade is much greater in smaller-market and rural areas.

landline services.⁴ For this reason, the Commission is applying to VoIP services an increasing number of the regulatory requirements that are applicable to POTS, including paying into the Universal Service Fund.⁵

In short, VoIP providers are now shouldering many of the same costly regulatory requirements as landline providers. Yet a consumer who receives USF support for his landline services will lose that support if he switches his landline telephone number to an interconnected VoIP provider's services.⁶ There is no policy reason for this regulatory disparity between functionally equivalent services. To the contrary, this regulatory disparity only decreases competition in rural and high-cost service areas.

Accordingly, to encourage broadband providers to enter the VoIP market in rural and high-cost areas, and to allow existing VoIP providers to continue to offer robust and affordable competition to POTS in these markets, the Commission must provide users of interconnected VoIP services with the same access to USF funding as is available for traditional landline services.

⁴ See, e.g., *In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, WC 04-36, FCC 07-22 (rel. April 2, 2007) at note 170; *2006 Biennial Regulatory Review, Consumer & Governmental Affairs Bureau Staff Report*, 2007 WL 489498 (2007) at *12; *In the Matter of Universal Services Contribution Methodology, Comments of the American Cable Association, Report and Order and Notice of Proposed Rulemaking*, 21 FCC Rcd. 7518 (2006) at ¶ 36.

⁵ See, e.g., *FCC Updates Approach for Assessing Contributions to the Federal Universal Service Fund*, 2006 WL 1699355 (2006) at *2 ("...we require interconnected VoIP providers to contribute to the fund. Like wireless services, consumers are increasingly using interconnected VoIP services as a substitute for traditional wireline service."); *In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, WC 04-36, FCC 07-22 (rel. April 2, 2007) at ¶ 56; *2006 Biennial Regulatory Review, Consumer & Governmental Affairs Bureau Staff Report*, 2007 WL 489498 (2007) at *12.

⁶ Many ACA members' VoIP services allow subscribers to use their former landline numbers with their new VoIP services.

III. The artificially high VoIP “safe harbor” of 64.9% is impeding the deployment of advanced telecommunications services. Accordingly, the FCC should implement the SBA’s recommendations in WC Docket No. 06-122 regarding USF contribution methodology.

As explained in ACA’s Comments in the Commission’s Universal Service Contribution Methodology docket,⁷ the 64.9% “safe harbor” for VoIP services is discriminatory and far too high. This is especially evident given the Commission’s determination that VoIP is a functional equivalent for landline services,⁸ and that only 12.8% of landline minutes are interstate and international.⁹

Moreover, for ACA members, the current Byzantine contribution scheme is a considerable administrative and financial burden. Devoting limited administrative resources to the complex Forms 499-A and 499-Q is expensive and time-consuming, and the inflated 64.9% “safe harbor” further raises costs and impairs members’ ability to provide competitively-priced services. As a result, the 64.9% “safe harbor” impedes or prevents ACA members’ deployment of VoIP services to their small and rural service areas, and impairs their ability to compete effectively with landline and wireless voice services.

⁷ *In the Matter of Universal Services Contribution Methodology, Comments of the American Cable Association*, WC Docket No. 06-122 (filed August 9, 2006) (“*ACA USF Comments*”). ACA requests that the Commission incorporate the *ACA USF Comments* into the record in this docket.

⁸ See note 4, *supra*.

⁹ See FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service* (August 2003) (“*Trends in Telephone Report*”) at Table 10.1 (most recent reported percentage of interstate Dial Equipment Minutes (“DEM”) is 12.8% in 2001). See also *In the Matter of Federal-State Joint Board on Universal Service, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 13 FCC Rcd. 21,252 (1998) at ¶ 13 (setting the wireless safe harbor at 15% based on 1995 DEM).

Accordingly, ACA supports the SBA's recommendation in WC Docket No. 06-122 that the Commission implement a numbers-based contribution methodology for USF.¹⁰ A numbers-based system would significantly simplify the now-onerous reporting burdens related to USF, and would be an accurate and non-discriminatory method of assessing contributions. Until the Commission adopts such a methodology, ACA supports the following alternative recommendations made by SBA in its Comments:¹¹

- Lowering the safe harbor for VoIP.
- Eliminating the pre-approval requirement for traffic studies.
- Removing the fine for small providers that incorrectly estimate their revenue projections.
- Simplifying Forms 499-A and 499-Q.
- Increasing the *de minimis* threshold.

IV. The set-top box "integration ban" in 47 C.F.R. § 76.1204(a)(1) is a barrier to deployment of advanced telecommunications services. The Commission should defer enforcement of the integration ban against small and medium-sized cable operators until the earlier of December 31, 2009 or the general availability of downloadable security.

ACA members have invested hundreds of millions of dollars to move toward all-digital networks in smaller and rural markets. By going all-digital ACA members can free up bandwidth for higher-speed data services, HD, VOD, and other advanced services. As ACA has reported to the Commission, low-cost set-top boxes like the Motorola DCT-700 increase digital penetration among price-sensitive customers and are the key to facilitating the digital transition.¹² The integration ban will require ACA's members to

¹⁰ See *In the Matter of Universal Services Contribution Methodology, Comments of the Office of Advocacy, U.S. Small Business Administration*, WC Docket No. 06-122 (filed August 8, 2006) at 9-10.

¹¹ *Id.* at 7-9.

¹² See, e.g., *In the Matter of Comcast Corporation's Request for Waiver of 47 C.F.R. § 76.1204(a)(1), Comments of the American Cable Association*, CSR-7012-Z, CS Docket No. 97-

deploy much more expensive, separable security boxes. The capital expenditure required to comply with the integration ban will divert funds that many smaller operators could have invested in advanced services like higher-speed data services, VoIP and HD. Further, the ban will raise the price of digital services beyond the reach of many subscribers and significantly slow the digital transition.¹³ In short, the integration ban is a significant barrier to the deployment of advanced telecommunications services.

As explained above, ACA's small and medium-sized cable operator members must spend much more to upgrade their facilities to provide advanced telecommunications services than larger MSOs. Their smaller-market and rural subscribers will be unable to span the digital divide unless these operators are permitted to continue to deploy low-cost, integrated set-top boxes.

Accordingly, to facilitate the deployment of advanced services in smaller and rural markets, the Commission should defer enforcement of the integration ban against small and medium-sized cable operators until the earlier of December 31, 2009 or the general availability of downloadable security.

V. Conclusion.

The Commission is required to "take immediate action to accelerate deployment of [advanced telecommunications] capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market" if the

80 (filed June 15, 2006); *In the Matter of Charter Communications, Inc.'s Request for Waiver of 47 C.F.R. § 76.1204(a)(1), Comments of the American Cable Association*, CSR-7049-Z, CS Docket No. 97-80 (filed September 18, 2006) at 3-4. ACA requests that the Commission incorporate these comments into the record in this docket.

¹³ *Id.*

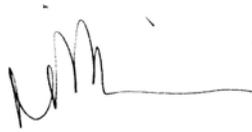
Commission determines that advanced telecommunications are not being deployed to all Americans “in a reasonable and timely fashion.”¹⁴

ACA’s members are leading the field in deploying advanced telecommunications services in the small towns and rural communities of the United States. That said, this deployment is being hampered by the regulatory barriers described above. In order to promote competition and investment in smaller and rural markets, ACA recommends that the Commission take the following actions:

- Provide USF funding for VoIP services in a competitively-neutral manner;
- Implement the Small Business Administration’s recommendations in WC Docket No. 06-122 regarding USF contribution methodology; and
- Defer enforcement of the integration ban against all small and medium-sized cable operators until the earlier of December 31, 2009 or the general availability of downloadable security.

Respectfully submitted,

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¹⁴ Pub.L. 104-104, Title VII, § 706, Feb. 8, 1996, 110 Stat. 153, as amended Pub.L. 107-110, § 1076(gg), Jan. 8, 2002, 115 Stat. 2093, codified at 47 U.S.C. § 157.