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Via Electronic Delivery

Ms. Marlene H. Dortch
Federal Communications Commission
The Portals, TW-A325
445 12th Street SW
Washington, DC 20554

Re: *Ex Parte* Presentation – WC Dkt. 06-122, *Universal Service Contribution Methodology*; CC Dkt. 96-45, *Federal-State Joint Board on Universal Service*

Dear Ms. Dortch:

This letter, on behalf of Google Inc., addresses the proposed numbers-based federal Universal Service Fund (“FUSF”) contribution methodology as it would apply to enhanced “unified messaging” applications, such as Google’s GrandCentral software platform. Google continues to strongly support the Federal universal service program, and believes in the tangible benefits to consumers of comprehensive reform of FUSF. Such reform should include improving both the contribution and distribution components of the present system.¹ We also believe that an appropriately defined telephone numbers-based contribution methodology may be a reasonable and lawful proxy for underlying telecommunications connections. Under the right circumstances, then, Google could support a numbers-based approach to FUSF contributions. Nonetheless, Google remains concerned that, if applied to GrandCentral’s software platform, such a plan may impose inequitable burdens on valuable and innovative consumer services, and raise troubling legal concerns.

As we have explained previously in the record, requiring web-based information services and software applications such as Google’s GrandCentral “unified messaging” application to contribute directly to FUSF would be unfair to consumers, hamper innovative IP-enabled applications and information services, and create unintended regulatory consequences counter to our nation’s economic growth. Moreover, since unified messaging does not provide telecommunications, it cannot be assessed directly pursuant to Section 254(d) of the Communications Act.

¹ Among other things, Google believes that the federal government should institute a new subsidy mechanism to support ubiquitous broadband deployment, particularly in high-cost areas. *See, e.g.*, Comments of Google Inc., *In the Matter of Broadband Industry Practices*, WC Docket No. 07-52, filed June 15, 2007, at 36.

Requiring GrandCentral to Make Direct FUSF Contributions Would Be Unfair to Consumers and Undermine IP Innovation

Unlike telephone numbers associated with a PSTN access connection, GrandCentral's application helps consumers manage the connection-based telephone numbers they already have from their wireline and wireless carriers – services to which the telephone number-based FUSF contributions already would apply. This means, for example, that GrandCentral users with three or more connection-based numbers would already pay at least \$3 per-month for telephone number-based FUSF pass-through charges (based upon the \$1 per-month proposal we understand is under consideration). It would be inequitable to require these same consumers to pay yet another FUSF charge simply to enjoy an information service that provides them no ability to both make and receive calls and is not even associated with a PSTN telephone access connection.

Notably, as we understand the current proposal, the telephone numbers-based assessment would be in addition to the FUSF pass-through charges that GrandCentral incurs today and would continue to incur on the telecommunications services it uses (including its dedicated connections) – charges which may well increase under the proposed plan.² Since GrandCentral is a free service, it has no billing relationship with consumers and no ability to “pass-through” FUSF charges. As a practical matter, consumers and innovation will suffer if GrandCentral's business model of offering free unified messaging services – both to those with multiple connections and to those with none, such as the at-risk populations assisted through Project CARE – cannot remain viable due to the additional costs of a numbers-based FUSF assessment.

We are therefore concerned that a numbers-based plan applied to GrandCentral raises issues of whether the Commission is meeting the statutory obligations for the contribution scheme to be “equitable and nondiscriminatory,” “specific,” and “predictable.” Since GrandCentral does not provide telecommunications and generates no revenues from a telecommunications “fee,” the proposed contribution obligation may be “inequitable” under relevant precedent.³ Likewise, consumers should not have to bear an additional, higher FUSF burden simply because they want to manage those connections using a free service; the typical

² We also note that the telephone numbers used by GrandCentral should not be considered residential numbers, especially given the fact that the functionality enables users to manage all of their PSTN communications, including their business communications.

³ See, e.g., *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 434-435 (5th Cir. 1999), cert. denied 2000 WL 684656 (U.S. Sup. Ct. May 30, 2000) (holding that the Commission's interpretation of “equitable and nondiscriminatory” was not valid where it required contributions that would exceed revenues received from the provision of service); *Federal-State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd. 8776, ¶796 (1997), *aff'd in part, rev'd in part, TOPUC* (“the public interest requires private service providers that provide interstate telecommunications to others *for a fee* on a non-common carrier basis to contribute to universal service.”) (emphasis added). Indeed, the Commission has never imposed a direct contribution obligation on a service provider where there is no fee for the service.

GrandCentral user generally already has several connection-based telephone numbers and thus already would pay several dollars per month for FUSF pass-throughs.

Applying a Numbers-Based Contribution Obligation to the GrandCentral Service Is Not Consistent with the FCC's Section 254 Statutory Authority

It is well-established that Section 254(d) limits the Commission's authority to impose a FUSF contribution obligation to two categories of service providers – mandatory and permissive contributors. 47 U.S.C. § 254(d). If a provider fits neither of these two categories, the FCC lacks statutory authority to impose a FUSF contribution obligation.

GrandCentral falls outside of either of the two statutory FUSF contributor categories. GrandCentral is not a “telecommunications carrier”⁴ and thus is not subject to mandatory contribution requirements. Nor is GrandCentral an “other provider of interstate telecommunications” subject to the Commission's permissive authority, because GrandCentral does not provide “telecommunications.” As the Commission explained in the *pulver.com Declaratory Ruling* with respect to an analogous service, “FWD members ‘bring their own broadband’ transmission to interact with the FWD server. . . . Pulver may ‘use’ some telecommunications to provide its FWD directory service but that does not make FWD itself telecommunications.”⁵ In the same way, GrandCentral provides a web application; while it uses telecommunications, it does not provide telecommunications.

We are aware of only one other instance – interconnected VoIP – in which the Commission has found that a non-facilities-based information service “provides telecommunications” for Section 254(d) purposes, and does not simply “use telecommunications.”⁶ In that case, the Commission found that, “[i]n contrast to [information] services that merely use the PSTN to supply a finished product to end users, interconnected VoIP supplies PSTN transmission *itself* to end users.”⁷ By contrast, GrandCentral's service is neither an interconnected VoIP service nor akin to one: it does not supply a PSTN dialtone or access

⁴ GrandCentral does not provide telecommunications service – *i.e.*, it does not offer telecommunications for a fee. 47 U.S.C. §§ 153(49), (51).

⁵ *Petition for Declaratory Ruling that pulver.com's Free World Dialup Is Neither Telecommunications Nor a Telecommunications Service, Memorandum Opinion and Order*, 19 FCC Rcd. 3307, ¶8 (2004) (“*pulver.com Declaratory Ruling*”) (“Pulver neither offers nor provides transmission to its members”).

⁶ *Universal Service Contribution Methodology, Report and Order and Notice of Proposed Rulemaking*, 21 FCC Rcd. 7518 (2006) (“*VoIP USF Order*”), *aff'd in part, Vonage Holdings Corp. v. FCC*, 489 F.3d 1232 (D.C. Cir. 2007).

⁷ *VoIP USF Order*, ¶41 (emphasis in original). The D.C. Circuit affirmed, noting that the Commission distinguished the *pulver.com Declaratory Ruling* from the holding in the *VoIP USF Order* on the basis that the interconnected VoIP service supplies “interconnection with the PSTN.” *Vonage Holdings Corp. v. FCC*, 489 F.3d 1232, 1239 (D.C. Cir. 2007).

Lampert, O'Connor & Johnston, P.C.

Google Inc. *Ex Parte*

October 28, 2008

Page 4

arrangement, and it does not allow users to make and receive PSTN telephone calls. Rather, GrandCentral offers information service functions for its users, who already have acquired PSTN access from third-party providers.⁸

Pursuant to the Commission's rules, this notice is being filed in the above-referenced dockets for inclusion in the public record. Please contact me directly should you have any questions.

Respectfully submitted,

A handwritten signature in blue ink, appearing to be 'D. N. Lampert', with a long horizontal stroke extending to the right.

Donna N. Lampert
Mark J. O'Connor
E. Ashton Johnston
Counsel for Google Inc.

cc: Chairman Martin
Commissioner Copps
Commissioner Adelstein
Commissioner Tate
Commissioner McDowell
Dana R. Shaffer

⁸ As the FCC has noted, "Internet service providers and other information service providers . . . leverage telecommunications connectivity to provide these services, but this makes them customers of telecommunications carriers rather than their competitors." *Federal and State Joint Board on Universal Service, Report to Congress*, 13 FCC Rcd. 11501 (1998), ¶15. See also *id.*, ¶¶ 41, 145.