

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

In the Matter of)	
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link Up)	WC Docket No. 03-109
)	
Universal Service Contribution Methodology)	WC Docket No. 06-122
)	
Numbering Resource Optimization)	CC Docket No. 99-200
)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996)	CC Docket No. 96-98
)	
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Intercarrier Compensation for ISP-Bound Traffic)	CC Docket No. 99-68
)	
IP-Enabled Services)	WC Docket No. 04-36

COMMENTS OF TOYOTA MOTOR SALES, INC.

James A. Barker
Matthew A. Brill
Catherine M. Henderson
LATHAM & WATKINS, LLP
555 11th Street, N.W., Suite 1000
Washington, D.C. 20004

Counsel for Toyota Motor Sales, Inc.

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COMMENTS OF TOYOTA MOTOR SALES, INC.

Toyota Motor Sales, Inc. (“Toyota”) hereby submits these comments in response to the Further Notice of Proposed Rulemaking in the above-captioned proceeding.¹ Toyota strongly opposes the imposition of numbers-based universal service fund (“USF”) assessments on providers of telematics services. While a numbers-based contribution methodology might be lawful (and perhaps sensible) for telephone companies, it would violate Section 254(d) and undermine the public interest if applied to telematics providers like Toyota. Indeed, the drastic cost increases that would flow from the proposals in the *Further Notice* would threaten the very

¹ See *Universal Service Contribution Methodology*, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 06-122, CC Docket No. 96-45 (rel. Nov. 5, 2008) (“*Further Notice*”).

existence of life-saving telematics services. Therefore, if the Commission proceeds with any of the pending proposals described in the *Further Notice*, it should establish an alternative assessment mechanism that maintains the minimal usage-based charges to which telematics providers are subject today.

INTRODUCTION

Toyota is a leading manufacturer of automobiles in the United States and worldwide. In keeping with its widely recognized commitment to safety, Toyota offers telematics services in several of its vehicles. Vehicle telematics offer a suite of emergency and convenience features, including airbag deployment notification, emergency services dispatch, stolen vehicle location assistance, and roadside assistance, among others.

Toyota currently resells another provider's telematics services under the brand "Lexus Link," including an optional "personal calling" component, but its next-generation telematics service, which will be launched in 2009, before the proposed changes to the contribution methodology would be implemented, will not include any telecommunications service offering. Subscribers thus will not be able to place calls to, or receive calls from, any landline or wireless phone. Rather, Toyota will offer only a "standard" telematics service (consisting of the features described above), which is not subject to "telecommunications" regulation under established precedent.² Toyota's standard telematics service is an information service that makes use of—but does not entail the offering of—telecommunications. In other words, Toyota is a *purchaser*, not a *provider*, of telecommunications. Specifically, Toyota purchases wireless connectivity between its vehicles and a call center from a Commercial Mobile Radio Service ("CMRS")

² See *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 25340, ¶¶ 64-90 (2003) ("2003 E911 Order").

carrier in a business-to-business transaction, as an input into its retail information service. The CMRS carrier assigns telephone numbers to Toyota to enable this connectivity. These numbers are embedded in the telematics device inside the vehicle, and are not accessible to (or even known by) the retail subscribers to the telematics service.

Under the Commission's existing rules, the CMRS carrier contributes to universal service based on the interstate revenues derived from the telecommunications service it provides to Toyota, and it passes through that contribution cost to Toyota. Because Toyota's standard telematics subscribers use less than two minutes of airtime each month, however, the resultant universal service costs on a per-user basis amount to less than \$.01 per month. As a result, increasing the monthly USF fee associated with each telematics user to \$0.85 or \$1.00, as the *Further Notice* contemplates, would represent increases of more than 8,500 percent and 10,000 percent, respectively.

As described more fully below, these massive fee increases would violate the Communications Act, Commission precedent, and the Administrative Procedure Act ("APA"). They would be equally unsound as a policy matter, as they would curtail or even eliminate the availability of emergency telematics services and the enormous public safety benefits they deliver. Such a result is directly at odds with recent Commission public safety initiatives, including its promotion of telematics services themselves as well as its efforts to promote improved communications among first responders through the D Block auction and the response to communications failures during Hurricane Katrina.

DISCUSSION

I. IMPOSING NUMBERS-BASED USF CHARGES ON TELEMATICS PROVIDERS WOULD VIOLATE SECTION 254(D) AND THE APA

Section 254(d) provides that “[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis,” to the federal universal service support mechanisms, and that other providers of “interstate telecommunications may be required to contribute . . . if the public interest so requires.”³ The proposal to impose direct contribution obligations on providers of standard telematics services would violate Section 254(d) in three independent respects. First, such entities do not offer or provide “telecommunications” to their subscribers, and thus cannot be assessed contributions under Section 254(d) (or any other statutory provision). Second, in any event, extending contribution obligations to entities other than “telecommunications carriers” is permissible only to the extent necessary to promote the public interest, and that standard is not remotely satisfied by massive fee increases that threaten the viability of life-saving telematics services. Third, by the same token, subjecting telematics providers to such dramatic fee increases cannot be squared with the statutory mandate to ensure that contribution burdens are “equitable” and “nondiscriminatory.”

A. Standard Telematics Services Do Not Entail the Provision of “Telecommunications,” and Thus Are Not Subject to Assessment Under Section 254(d)

As an information service provider, Toyota makes use of, but does not *provide*, telecommunications. The Act defines an information service as “the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available

³ 47 U.S.C. § 254(d).

information via telecommunications.”⁴ Standard telematics services satisfy this definition in many different respects. For example, in the event of a crash, the service generates, acquires, processes, retrieves and makes available data pertaining to the vehicle location and air bag deployment status, and also permits the call center to gather additional information regarding the occupants and vehicle damage before contact is made with the Public Safety Answering Point.⁵ Other functions relating to lost or stolen vehicles similarly generate and process information in a manner that is archetypical of information services.

Commission precedent establishes that information service providers are *users*, rather than *providers*, of telecommunications. When the Commission classified wireless broadband Internet access as an information service, for example, it explained that, like other broadband services, it “inextricably combines the transmission of data with computer processing, information provision, and computer interactivity, for the purpose of enabling end users to run a variety of applications.”⁶ In particular, the service entails the “*use* of telecommunications” to connect customers to the Internet,⁷ and that functionality is “part and parcel of the Internet access service’s information service capabilities.”⁸

Consistent with these longstanding principles, the *2003 E911 Order* concluded that standard telematics services are not subject to regulation as CMRS services. Most significantly, the Commission held that a standard telematics service should *not* be considered

⁴ 47 U.S.C. § 153(20).

⁵ *2003 E911 Order* ¶ 65.

⁶ *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, Declaratory Ruling, 22 FCC Rcd 5901 ¶ 26 (2007).

⁷ *Id.* ¶ 30 (quoting *Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as amended*, Order on Remand, 16 FCC Rcd 9751, ¶ 36 (2001) (emphasis added)).

⁸ *Id.* ¶ 31.

“interconnect[ed] with the PSTN . . . because it relies solely on a dedicated link to the call center, which is the only wireless end user.”⁹ Rather, “customers of standard telematics service providers”—including Toyota, which will not offer any other service by the time any new contribution methodology would take effect—“have no capability to communicate with other end users on the PSTN.”¹⁰

This holding contrasts starkly with the unsupported assertion in the *Further Notice* that telematics companies provide PSTN transmission to end users.¹¹ The *Further Notice* ignores the *2003 E911 Order*,¹² relying instead on its intervening determination that it has authority to require interconnected VoIP providers to contribute directly to universal service as “providers” of telecommunications.¹³ But that ruling is easily distinguishable. Whereas interconnected VoIP providers plainly offer a substitute for traditional telephone services, the Commission has unequivocally found that standard telematics services are *not* a substitute for CMRS services, because they offer far more limited capabilities.¹⁴ Indeed, the *2006 Contribution Methodology Order* itself distinguishes services like telematics, stating: “In contrast to services that merely

⁹ *2003 E911 Order* ¶ 71.

¹⁰ *Id.*

¹¹ *Further Notice*, Appendix A, ¶ 144 n.360; Appendix B, ¶ 92 n.228; Appendix C, ¶ 139 n.351.

¹² Failure to justify abandonment of the Commission’s prior analysis would be arbitrary and capricious, even apart from the question whether the Commission can identify appropriate statutory authority. *See, e.g., Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir 1970) (“[A]n agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored, and if an agency glosses over or swerves from prior precedents without discussion it may cross the line from tolerably terse to intolerably mute.”).

¹³ *See Universal Service Contribution Methodology*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006) (“*2006 Contribution Methodology Order*”), *aff’d in part, vacated in part sub nom. Vonage Holdings Corp. v. FCC*, 489 F.3d 1232 (D.C. Cir. 2007).

¹⁴ *2003 E911 Order* ¶¶ 71, 77.

use the PSTN to supply a finished product to end users, interconnected VoIP supplies PSTN transmission *itself* to end users.”¹⁵

Nor can the Commission fall back on its Title I ancillary jurisdiction. Again, the contrast with the *2006 Contribution Methodology Order* is clear. There, the Commission held that establishing a direct contribution requirement for interconnected VoIP providers was reasonably ancillary to the mandate in Section 254 to preserve and advance universal service because “interconnected VoIP service is increasingly used to replace analog voice service.”¹⁶ In fact, the magnitude of this ongoing migration meant that a failure to act would “threaten[] the stability of the Fund.”¹⁷ Here, by contrast, the Commission has not found—nor could it—that any revenues from telematics services go unreported and thus threaten the stability of the fund. To the contrary, the total revenues at issue are extremely small, and telematics service providers contribute their fair share today based on their usage of interstate telecommunications services.

Finally, just as the *Further Notice* improperly lumps providers of standard telematics services together with regulated telecommunications carriers, the Chairman’s proposals commit a similar error in asserting that telematics services should be assessed under the mechanism that would be applicable to residential services. The Commission’s authority extends only to the *CMRS carrier* that sells telecommunications—and assigns telephone numbers—to telematics providers like Toyota. That underlying provision of telecommunications—which provides the only basis for assessing USF charges—is unquestionably a business service, since it is provided only to companies that offer retail telematics services. The Commission has made clear in analogous circumstances that the appropriate classification of that retail provider’s service is

¹⁵ *2006 Contribution Methodology Order* ¶ 41 (emphasis in original).

¹⁶ *Id.* ¶ 48 (internal quotation marks and citation omitted).

¹⁷ *Id.*

irrelevant.¹⁸ Accordingly, even apart from the absence of authority to impose direct contribution obligations on telematics providers, they should not be subject to assessment under the numbers-based proposals that are limited to *residential* services.

B. In Any Event, Extending Direct Contribution Obligations to Telematics Providers Would Undercut, Rather Than Promote, the Public Interest

Even if standard telematics involved the provision of telecommunications to end users, the public interest does not “require” extending direct contribution obligations to telematics providers.¹⁹ To the contrary, as discussed further below (*see infra* Section II), imposing massive fee increases on such entities—in amounts that exceed the total cost of telecommunications usage—would sharply curtail the availability of telematics services and threaten to drive them from the marketplace. As a result, the important and well-established public safety benefits associated with such services would be sacrificed.

On top of the staggering increases in USF contribution costs, the proposal to subject telematics providers to direct payment obligations would impose significant administrative burdens. Unlike carriers, which are well-versed in the intricacies of Commission regulations and USAC procedures, providers of standard telematics services are generally unregulated and have no experience with the mechanics of USF contributions. Forcing such entities to file quarterly and annual worksheets and monthly payments with USAC, with significant risks of liability even

¹⁸ *See, e.g., Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, Memorandum Opinion and Order, 22 FCC Rcd 3513 ¶ 15 (WCB 2007) (“[T]he statutory classification of a third-party provider’s VoIP service as an information service or a telecommunications service is irrelevant to the issue of whether a wholesale provider of telecommunications may seek interconnection under section 251(a) and (b).”).

¹⁹ 47 U.S.C. § 254(d).

for inadvertent reporting or contribution errors, would add a new level of overhead expense and risk that would further deter the continued provision of telematics services.

On the other side of the ledger, there are no public interest arguments that remotely justify the imposition of such costs. As a general matter, the *Further Notice* purports to justify the imposition of numbers-based USF charges based on modest declines in the assessable revenue base since 2000, together with the growth in universal service disbursements.²⁰ But these problems have nothing whatsoever to do with telematics services, and thus cannot justify saddling providers of such services with massive fee increases.²¹

With respect to telematics in particular, the *Further Notice* asserts that granting an exception from a numbers-based assessment methodology for such services would confer unfair advantages.²² As noted above, however, the Commission has already found that standard telematics is not an “interconnected” service; it does not compete with such services, and consumers well understand the different capabilities that interconnected and non-interconnected services provide.²³ Thus, treating telematics services differently from regulated

²⁰ *Further Notice*, Appendix A, ¶ 94; Appendix B, ¶ 41; Appendix C, ¶ 90.

²¹ *See Tripoli Rocketry Ass’n v. Bureau of Alcohol, Tobacco, and Firearms*, 437 F.3d 75, 81 (D.C. Cir. 2006) (“In order to survive under the arbitrary and capricious standard, an agency must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.”); *Ctr. for Auto Safety v. Fed. Highway Admin.*, 956 F.2d 309, 313 (D.C. Cir. 1992) (holding that an agency must articulate a rational connection between its factual judgments and its ultimate policy choice, and that the underlying factual judgments must be supported by substantial evidence).

²² *Further Notice*, Appendix A, ¶ 144; Appendix B, ¶ 92; Appendix C, ¶ 139.

²³ *2003 E911 Order* ¶¶ 71, 77.

telecommunications services and interconnected VoIP services not only makes perfect sense, but is legally required.²⁴

The *Further Notice* also claims that telematics providers should have no difficulty recovering the massive fee increases from subscribers.²⁵ The record demonstrates otherwise,²⁶ and common sense confirms that telematics providers will not be able to pass through regulatory fees that are more than 85 or 100 times higher than those in place today. As an initial matter, Toyota's telecommunications supplier embeds phone numbers in vehicles before they are shipped to dealers for sale, and as a result Toyota would bear the cost of numbers-based charges for about four months before it could even initiate its provision of telematics service to the vehicle owner. Thereafter, Toyota still would face significant challenges in recovering the increased costs, because a charge of \$1.00 or \$0.85 would not only be dramatically higher than the imputed cost of USF contributions today (less than one cent), but also substantial in relation to the low monthly charge for the telematics service itself. The likely impact would be a material decline in telematics subscriptions. The Commission's conclusory rejection of these arguments as "unpersuasive" is arbitrary and capricious.²⁷

²⁴ See, e.g., *Petroleum Communications, Inc. v. FCC*, 22 F.3d 1164, 1172 (D.C. Cir. 1994) (holding that an agency must "justify its failure to take account of circumstances that appear to warrant different treatment for different parties").

²⁵ *Further Notice*, Appendix A ¶ 144 n.360; Appendix B, ¶ 92 n.228; Appendix C ¶ 139 n.351.

²⁶ See, e.g., Letter from Gary Wallace, Vice President of Corporate Relations for ATX, Group, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, CC Docket No. 96-45 (filed Oct. 28, 2008) ("ATX Oct. 28 Letter"); Letter from David L. Sieradzki, Counsel to OnStar Corporation, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, CC Docket No. 96-45 (filed Oct. 28, 2008) ("OnStar Oct. 28 Letter"); Letter of Matthew A. Brill, Counsel to Toyota Motor Sales USA, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, CC Docket No. 96-45 (filed Oct. 24, 2008) ("Toyota Oct. 24 Letter").

²⁷ See *Mistick PBT v. Chao*, 440 F.3d 503, 512 (D.C. Cir. 2006) ("An agency's failure to respond meaningfully to the evidence renders its decisions arbitrary and capricious. Unless an agency answers objections that on their face appear legitimate, its decisions can hardly be said to be

C. Dramatically Increasing Telematics Providers' USF Contributions Despite Their Minimal Use of the PSTN Would Be Inequitable and Discriminatory.

The *Further Notice* asserts that *exempting* telematics providers from a numbers-based USF assessment would not be “equitable,”²⁸ but that is exactly backwards: *Imposing* massively increased USF charges on telematics providers that bear no relationship to actual telecommunications usage, while most other purchasers of telecommunications pay less than they do today, would be inequitable and discriminatory. The numbers-based proposals rest on the assumption that a \$1.00 per number per month fee would reduce pass-through charges for most consumers, or at most would result in a “slight” increase.²⁹ But that is manifestly untrue in the context of telematics services. As noted above, and as documented in the record, customers of standard telematics services consume less than two minutes of air time each month, and as a result bear USF-related costs of *less than a penny*.³⁰ Raising monthly USF charges to \$0.85 or \$1.00 thus would represent increases of more than 8,500 percent and 10,000 percent, respectively. Not only are such draconian price hikes the furthest thing from “slight,” they epitomize an inequitable levy. It simply makes no sense for a customer who indirectly uses two minutes of CMRS air time to pay the exact same USF fee as one who uses thousands of minutes.

Indeed, applying such inflated charges to providers of telematics services—in complete disregard for their minimal use of the PSTN—is squarely foreclosed by the Fifth Circuit’s decision in *Texas Office of Public Utility Counsel v. FCC*. In that case, COMSAT argued that it

reasoned.”) (internal citations and quotations omitted); *PSC of Ky. v. Fed. Energy Regulatory Comm’n*, 397 F.3d 1004, 1008 (D.C. Cir., 2005) (“The Commission must . . . respond meaningfully to the arguments raised before it.”) (internal citations omitted).

²⁸ *Further Notice*, Appendix A, ¶ 144 n.360; Appendix B, ¶ 92 n.228; Appendix C, ¶ 139 n.351.

²⁹ *Further Notice*, Appendix A, ¶¶ 112, 143; Appendix B, ¶¶ 59, 91; Appendix C, ¶¶ 108, 138.

³⁰ *See supra* at 3; ATX Oct. 28 Letter at 1, 2; OnStar Oct. 28 Letter at 3; Toyota Oct. 24 Letter at 2-3.

was inequitable and discriminatory for the Commission to impose contribution obligations on COMSAT that exceeded its total interstate telecommunications revenues. The court found it “obvious[.]” that the statutory requirement that the contribution methodology be equitable “refers to the fairness in the allocation of contribution duties,” concluding that there must be a reasonable nexus between the amount of telecommunications that gives rise to the USF contribution obligation and the amount of the USF levy itself.³¹ The assessment of COMSAT’s international revenues failed that test, because the Commission was unable to justify a regime that forced a class of carriers to “contribute more in universal service payments than they will generate from interstate service.”³²

That is precisely the effect of the proposed imposition of flat numbers-based charges of \$0.85 or \$1.00 on telematics providers (whether the charge is imposed on the underlying CMRS carrier and passed through to the telematics provider, or imposed directly on the telematics provider). Such flat charges would far exceed the value of the telecommunications used in providing telematics services, and the draft orders do not even attempt to justify such an inequitable outcome. Indeed, they make no mention of the Fifth Circuit’s analysis at all. The Commission’s conclusory assertion that extending numbers-based assessments to telematics services would be equitable therefore cannot stand under Section 254(d) or the APA.³³

³¹ *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 434-35 (5th Cir. 1999).

³² *Id.* at 435.

³³ *See id.* at 434-35 (finding FCC’s analogous approach to assessing international carriers inequitable, discriminatory, and arbitrary and capricious).

II. THE PROPOSALS TO SUBJECT TELEMATICS PROVIDERS TO NUMBERS-BASED USF ASSESSMENTS WOULD UNDERCUT IMPORTANT PUBLIC SAFETY BENEFITS

The harms to telematics providers caused by this inequitable and discriminatory contribution proposal would be greatly exacerbated by the adverse implications for public safety. Telematics services help save lives. From automatic crash notifications to other services that enhance the effectiveness of emergency response, these services can play an important role in safeguarding American motorists and passengers. Regulatory changes that deter consumers from purchasing such services therefore should be undertaken only when absolutely necessary.

The Commission itself has touted the significant benefits delivered by telematics services. For example, they rely on GPS technology to provide location capabilities for emergency calls that generally outperform the accuracy requirements under the E911 rules, and they can deliver such location information with every emergency call, regardless of whether the PSAP is Phase II compliant.³⁴ The Commission, joined by public safety organizations, further recognized that telematics providers' emergency call centers offer important enhancements to existing public safety tools, including the abilities to: Screen calls and avoid burdening PSAPs with non-emergency communications; gather additional information about the nature of an emergency beyond mere location and call-back data; and direct calls to the correct jurisdiction (in contrast to less reliable cell tower-based systems).³⁵ These attributes benefit not only telematics subscribers, but all consumers, since they "relieve[] pressure on PSAPs" and thus enable them to respond to traditional E911 calls more efficiently and effectively.³⁶

³⁴ *2003 E911 Order* ¶ 72.

³⁵ *Id.* ¶¶ 73-75.

³⁶ *Id.* ¶ 75.

The record makes clear that the substantial fee increases associated with the numbers-based USF proposals would deter consumers from purchasing telematics services, and, together with the burdens of taking on direct contribution and filing responsibilities, could even lead providers to withdraw offerings from the marketplace.³⁷ These outcomes would fly in the face of the Commission’s own public safety objectives. As noted above, the *Further Notice* dismisses such concerns, in a footnote, by characterizing them as “unpersuasive.”³⁸ But the Commission cannot negate basic economic principles—here, pretending that there is no such thing as demand elasticity—by *ipse dixit*.³⁹ In fact, the Commission’s assertion is all the more arbitrary in light of the long history of public safety regulation: The government has imposed safety regulations in other areas such as air travel, consumer products, and prescription drugs—and E911 services, in the telecommunications arena—precisely because market forces alone may be inadequate to ensure their widespread adoption. The axiomatic principle that consumers will not necessarily pay for safety benefits, no matter how valuable, belies any claim that the benefits of telematics services will immunize them from subscription losses in the event of significantly increased regulatory fees.

III. WHATEVER METHODOLOGY THE COMMISSION CHOOSES, IT SHOULD ENSURE THAT TELEMATICS SERVICES ARE NOT SUBJECT TO SIGNIFICANTLY INCREASED USF CONTRIBUTION BURDENS

While each of the options set forth in the *Further Notice* would inflict grave harm on telematics services, such harms can be easily averted. One option would be to continue

³⁷ See ATX Oct. 28 Letter at 2; OnStar Oct. 28 Letter at 3; Toyota Oct. 24 Letter at 2.

³⁸ *Further Notice*, Appendix A, ¶ 144 n.360; Appendix B, ¶ 92 n.228; Appendix C, ¶ 139 n.351.

³⁹ See *Ill. Pub. Telecommunications Ass'n v. FCC*, 117 F.3d 555, 564 (D.C. Cir. 1997), *clarified on reh'g*, 123 F.3d 693 (D.C. Cir. 1997) (finding the Commission’s assertion that the costs of different types of payphone calls are similar in the face of data proving the contrary, and dismissal of certain parties’ opposing arguments with the mere words: “We disagree,” to constitute an *ipse dixit* conclusion that epitomized arbitrary and capricious decision making).

imposing targeted revenue-based assessments on CMRS carriers' sale of interstate telecommunications services to telematics providers. Notably, however, the draft orders proposing to implement a residential-only numbers-based charge would improperly subject telematics providers to such "residential" charges by shifting the contribution obligation from the regulated carrier to the telematics provider, which cannot be squared with the statutory scheme.⁴⁰ As Verizon Wireless has explained, the CMRS services it provides to telematics providers are business services.⁴¹ As long as the contribution obligation is placed where it belongs—on the CMRS provider—numbers assigned to telematics providers would not be subject to flat charges.

Alternatively, if the Commission chooses to impose a flat charge on *all* telephone numbers, as contemplated by the proposal in Appendix B to the *Further Notice*,⁴² it could easily derive an alternative assessment for numbers assigned to telematics providers, along the same lines proposed for wireless prepaid plans.⁴³ Specifically, the Commission could divide the per-number charge (*e.g.*, \$1.00) by the number of minutes used by the average postpaid wireless voice customer in a month (826), and then multiply that per-minute rate (approximately \$0.0012) by the total number of minutes dedicated to telematics services. Under such a methodology, telematics providers' pass-through USF charges would remain very low, based on their minimal usage of telecommunications. Whatever burdens justify the proposed use of such an approach for prepaid wireless providers are far greater in the case of telematics providers. Therefore, if the

⁴⁰ See *supra* Section I.A.

⁴¹ Letter from Tamara Preiss, Legal and External Affairs, Verizon Wireless, to Marlene Dortch, Secretary, FCC, WC Docket No. 06-122, CC Docket No. 96-45 (Oct. 29, 2008).

⁴² This "narrow" proposal would impose a \$0.85 charge with respect to all telephone numbers, and apparently would impose connection-based charges of \$5.00 or \$35.00 only with respect to dedicated connections to which telephone numbers are not assigned. If the intent of the proposal were to assess *both* a numbers-based and connection-based charge on a telematics connection, its inequitable, discriminatory, and otherwise unlawful nature would be all the more profound.

⁴³ See *Further Notice*, Appendix A, ¶¶ 135-39; Appendix B, ¶¶ 83-88; Appendix C, ¶¶ 131-35.

Commission adopts such an alternative assessment mechanism for prepaid voice services, it would be arbitrary and capricious to refuse to address the even greater inequities facing telematics providers, which at a bare minimum are similarly situated to prepaid voice carriers.⁴⁴

CONCLUSION

Toyota respectfully submits that applying a numbers-based contribution methodology to telematics services would be unlawful and inconsistent with the Commission's consistent efforts to promote public safety. Therefore, if the Commission adopts any changes to its contribution rules, it should ensure that telematics services continue to pay no more than their fair share of the USF burden, commensurate with their minimal use of telecommunications, rather than facing dramatically increased fees of \$1.00 or \$0.85 per number.

Respectfully submitted,

/s/ James A. Barker

James A. Barker
Matthew A. Brill
Catherine M. Henderson
LATHAM & WATKINS, LLP
555 11th Street, N.W., Suite 1000
Washington, D.C. 20004

Counsel for Toyota Motor Sales, Inc.

November 26, 2008

⁴⁴ See, e.g., *Burlington N. & Santa Fe Ry. v. Surface Transp. Bd.*, 403 F.3d 771, 777 (D.C. Cir. 2005) (“Where an agency applies different standards to similarly situated entities and fails to support this disparate treatment with a reasoned explanation and substantial evidence in the record, its action is arbitrary and capricious and cannot be upheld.”).