Before the
Federal Communications Commission
Washington, DC 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 of 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 NETWORK ENHANCED TELECOM, LLP dba NETWORKIP

Network Enhanced Telecom, LLP, dba NetworkIP ("NetworkIP") hereby files comments in response to the Commission's Further Notice of Proposed Rulemaking ("FNPRM") concerning Universal Service Fund ("USF") reform.[1] Network IP applauds the Commission's consideration of USF reform and, in particular, its commitment to reform the current contribution methodology. To remedy the intractable issues associated with the current

[1] *See High-Cost Universal Service Support et al.*, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, FCC 08-262 (rel. Nov. 5, 2008) ("*USF FNPRM*").

contribution system, the Commission should replace the current revenue-based contribution methodology for residential and business services with a numbers-based contribution approach. In the event a revenues-based system is retained, the Commission must resolve outstanding questions about its application, particularly with regard to prepaid calling card services.

INTRODUCTION

As a service provider to the calling card industry, NetworkIP participates in this proceeding to ensure the Commission is mindful of the need for reform or clarification of the contribution rules in the calling-card context. NetworkIP provides calling card service providers and carriers with resold long distance capacity and use of a virtual switch to enable other providers to develop their own prepaid offerings.[2] In turn, NetworkIP's customers are able to exercise and retain real-time control over all aspects of their product offerings, including customer contact and the end-user experience (including end-user contact, pricing, and minutes of use).

NetworkIP's unique perspective as a service provider to the calling card industry helps to illuminate the contribution assessment challenges presented by calling cards. Indeed, in the calling card context, infirmities in the current contribution system bring the need for reform into particularly sharp focus. The revenues-based system fails to account for the structure of the calling card market and is ill-suited to keep pace with its dynamic nature.

As a general matter, the Commission has aptly concluded that the "system of contributions to the universal service fund is broken."[3] To remedy this and other problems, the

[2] NetworkIP is not itself a provider of prepaid calling cards. NetworkIP's application software enables its customers to price and bundle long distance service minutes (which NetworkIP resells from underlying carriers) into their own prepaid offerings and to use NetworkIP's platform to control and manage the applications software, billing, and back-office support.
[3] *USF FNPRM* at A-42, B-17, C-41.

Commission seeks comment on three alternative proposals for reform ("Orders A, B, and C").[4] Orders A and C propose to overhaul the current contribution methodology by assessing 'residential' connections based on a per-number charge of approximately $1.00.[5] Orders A and C also conclude that business services should be assessed based on connections to the network and propose that a new proceeding be established to implement a connections-based contribution methodology for such services. During the pendency of this new proceeding, however, the current revenues-based system would remain in place for business connections.[6]

Order B, by contrast, would eliminate the current revenue-based system entirely. Instead, residential services would be assessed on a per number basis of approximately $0.85 per month.[7] Contribution amounts for business services would be set at rates of $0.85 per Assessable Number. Business service connections that do not use numbers would be assessed $5.00 per "Assessable Connection" up to 64kbps and $35.00 per Assessable Connection over 64 kbps.[8] USAC would make adjustments as needed to any per-number or per-connection assessments, given that revenues would not otherwise automatically track fund needs.[9]

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[4] *See id*. at Appendices A, B, and C.

[5] *See id*. at A-43, C-39. Orders A and C substantially similar with the key difference being Order A's contribution exemption for stand-alone voice mail services *See id*. at C-45 – C-63.

[6] *See id*. at A-56 - A-58, C-55 – C57.

[7] *See id*. at B-21.

[8] *See id*. at B-32 – B-33. Under this proposal, an "Assessable Number" would be defined as a "NANP telephone number or functional equivalent identifier in a public or private network that is in use by an end user and that enables the end user to receive communications from or terminate communications to (1) an interstate public telecommunications network or (2) a network that traverses an interstate public telecommunications network." *Id*. at B-26 (internal citations omitted). An "Assessable Connection" would be defined as "an interstate telecommunications service or an interstate service with a telecommunications component that connects a business end-user's physical location (e.g., premises) on a dedicated basis to the contributor's network or the PSTN." *Id*. at B-32.

[9] *See id*. at B-33. Under this proposal, calling card providers would be considered end users for purposes of determining Accessible Connections and Assessable Numbers.

As discussed in more detail below, NetworkIP urges the Commission to adopt a pure numbers- and connections-based contribution methodology as proposed in Order B. Order B recognizes that fundamental change to the contribution system for both residential and business services cannot be delayed any longer. More importantly, the numbers- and connections-based system is predictable, fair and adaptable to the fast-changing communications market. If, however, the Commission elects to retain the revenue-based system, even for an interim time period, then it needs to resolve a number of problems affecting the system's operation, including serious outstanding issues relating to revenue reporting for calling card services.

I. THE COMMISSION SHOULD ADOPT A PURE NUMBERS- AND CONNECTIONS-BASED CONTRIBUTION METHODOLOGY AS PROPOSED IN ORDER B

A. The Revenue-based System has become Unworkable

In Order B, the Commission recognizes that the current assessment system "is no longer sustainable in today's marketplace" due to industry and technology trends that have come to undermine the revenue-based methodology.[10] To date, the Commission's "patches" for the current system represent an unsustainable fix in response to fundamental industry change.[11] Specifically, the revenue-based system is no longer tenable as a result of declines in total assessable revenues and concurrent growth in universal service disbursements. The shrinking assessment contribution base is due to a variety of factors. "Evolution in communications technology away from the PSTN to alternative networks that may only partially traverse the PSTN is one of the causes of erosion of the contribution base." Additionally, consumer adoption of bundled and flat rate services has blurred the traditional distinction between intrastate and

[10] *See id*. at B-32.
[11] *See id*. at B-17.

assessable interstate end-user telecommunications revenues.[12] Taken together with the explosive growth in disbursements in recent years,[13] the stability of the Fund has become jeopardized.

The prepaid card situation further emphasizes the need for reform. Significant uncertainty exists for prepaid card providers and entities (like NetworkIP) that offer services to them (see *infra* Section II) which could be resolved by numbers-based contribution.

B. A Numbers- and Connections-Based System Will Ease Administration and Enhance the Sustainability of the Fund

The Commission's Order B accounts for the systemic problems with the revenue-based system, and its adoption would yield a number of significant benefits consistent with universal service goals.[14] At the outset, Order B will ensure a stable funding base because number usage is less variable than carrier revenues. From 2000 to 2006, the total assessable revenue base declined from $79.0 billion to $74.5 billion.[15] During the same time, the number of NANP telephone numbers in use has shown "steady, stable growth" that will provide a relatively "constant basis for estimating universal service support amounts."[16] In fact, between December 2000 and December 2007, numbering resource utilization has shown incremental and consistent growth from 40.1% to 47.1%.[17] As a result, an assessment system based on telephone numbers and dedicated business connections promises to provide necessary stability for the long-term health of the Fund.[18]

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[12] *See id*. at B-16 – B-17, B-22.
[13] *See id*. at B-16 (Indicating that disbursements have grown from $4.5 billion in 2000 to $6.6 billion in 2006).
[14] *See* 47 U.S.C. §§ 254(b)(5), (d).
[15] *See USF FNPRM* at B-16.
[16] *Id*. at B-23 *citing* Craig Stroup and John Vu, FCC, Numbering Resource Utilization in the United States, Table 12 (2008).
[17] *See* Stroup and Vu, Numbering Resource Utilization, at table 12.
[18] *See* 47 U.S.C. § 254(d) (The Commission is to establish "specific, predictable, and sufficient mechanisms… to preserve and advance universal service").

In addition, the Commission's proposed numbers-based approach will enhance the predictability of contributions, even if per-number assessments need to be modified periodically. Telephone numbers are readily identifiable. As a result, a numbers-based contribution system is situated to neatly account for evolution in communications technology and blurring intrastate/interstate distinctions by providing a bright-line and predictable metric for assessment. USF contributors and end users will also benefit from the simple and clear expectation that their monthly assessment will be tied to their amount of telephone numbers. Contributors and end-users will be able to predict their future assessments with a newfound degree of certainty and reliability. Such predictive confidence stands in stark contrast to the current USF contribution scheme where the USF contribution factor has changed in 7 of the last 8 quarters.[19]

Furthermore, Order B will benefit the entire USF ecosystem because it is technologically neutral and reduces opportunity for regulatory arbitrage. The proposed numbers-based system offers an elegant and adaptive simplicity, because it will subject contributors to the same assessment framework irrespective of technology platform. Thus, the incentive structure under the current system, which rewards providers who migrate to technologies exempt from contribution, will be eliminated. So too, for business services, the proposed connection-based fees will ensure that private line and special access services will not escape contribution. From the end-user consumer perspective, a technological and competitively neutral system will mean that residential customers will pay the same USF assessment no matter if they utilize a wireless, wireline, VoIP, or cable provider. As a result, artificial distortions between platforms will be eliminated and a level playing field will be set for competition.

[19] *See* Public Notice, DA 08-2091 (rel. Sept. 12, 2008); Public Notice, 23 FCC Rcd 9270 (2008); Public Notice, 23 FCC Rcd 4087 (2008); Public Notice, 22 FCC Rcd 21584 (2007); Public Notice, DA 07-3928 (rel. Sept. 13, 2007); Public Notice, 22 FCC Rcd 11049 (2007); Public Notice, 22 FCC Rcd 5047 (2007); Public Notice, 21 FCC Rcd 11775 (2006).

A numbers-based system will also be easy to administer and enforce, resulting in greater compliance. By requiring all contributors to pay a straightforward and fixed fee per number, the regulatory shell game, whereby providers seek to obfuscate interstate revenues to minimize USF exposure, will be undermined. Moreover, as noted, the ready identification of telephone numbers will ease the burden of administration for both contribution and pass-through purposes. Contributors will be able to accurately forecast their assessments in a stable and predictable fashion and consumers will enjoy the expectancy of a fixed and consistent monthly charge.

Finally, the proposed numbers-based contribution system will help to conserve and contain the growth in number usage. By adopting a scheme that includes an institutional incentive for providers to efficiently manage number usage, the Commission will promote number conservation. As the Commission has indicated, this could yield significant benefits including a reduction in the need for area code splits or overlays (and concomitant consumer confusion) that will be necessary due to future number exhaust.[20]

II. IF THE REVENUE-BASED CONTRIBUTION SYSTEM IS RETAINED, THE COMMISSION MUST CLARIFY THE REVENUE REPORTING OBLIGATIONS IN THE PREPAID CARD CONTEXT.

A. The FCC's Revenue-Based Reporting System Demands Clarification and Reform for Calling Card Providers

The Commission must address issues associated with the revenue-based contribution system if it is not replaced outright.[21] A number of significant problems exist with the revenue-based system; these problems prevent entities from reporting accurately, and prevent the Commission from assessing contributions on an equitable and non-discriminatory basis. These

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[20] *See USF FNPRM* at B-22.

[21] *See e.g.*, Request for Review of a Decision by the Universal Service Administrator by IDT Corporation and IDT Telecom, WC Docket No. 06-122 (filed June 30, 2008) ("IDT Petition"); see also Comments of Network Enhanced Telecom, LLP dba NetworkIP in Support of Request for Review, WC Docket No. 06-122 (filed Sept. 5, 2008) ("NetworkIP IDT Comments").

problems affect a range of different types of service providers, but are particularly acute in the prepaid calling card context.

For the Commission's convenience, NetworkIP will catalog the problems that would need to be resolved with revenue reporting in the prepaid context in the event a revenue-based system is retained. First, the FCC's Form 499 Instructions do not comport with the stated goal of the current system of requiring contributions based on end-user telecommunications revenues and avoiding double-recovery. In particular, the vague definitions and instructions contained in the FCC Form 499 could be interpreted to justify a contribution obligation upon every entity in the distribution chain of a prepaid calling card.[22] Thus, the FCC Form 499 Instructions are fundamentally out of sync with the statutory mandate for an equitable and nondiscriminatory contribution methodology (*i.e.*, one that eliminates the double payment problem).[23]

The requirement in the FCC Form 499 Instructions that prepaid calling card revenue be reported at face value also creates enormous problems. Reporting revenue at face value leads to the potential for inequitable and inconsistent payment. Assuming *arguendo* the legality of a scheme where multiple entities in a prepaid calling card supply chain are required to contribute to the Fund (discussed above), then face-value reporting would ignore commercial realities and discriminate against suppliers who charge their customers anything other than the amount for which retail outlets ultimately sell the cards. In other words, each entity in the supply chain would be assessed based on the same end user revenues. Such problems are compounded for third-party providers such as NetworkIP that have no way to know the face value of the cards

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[22] The Form 499 Instructions include imprecise and inconsistent definitions of end-user revenues, prepaid calling card providers and assessable toll revenues. *See* NetworkIP IDT Comments at 4-6. In addition, the Form 499 Instructions suffer from serious administrative process concerns. *See id*. at 2-3; IDT Petition at 7-11.

[23] *See Federal-State Joint Board on Universal Service,* Report and Order, 12 FCC Rcd 8776, 9206 (1997) (subsequent history omitted).

through which their services are used, because they only provide the underlying transmission and switching capabilities to the calling-card provider, which in turn, prices its service for retail as it sees fit.[24]

The requirement that cards be assessed at 'face-value' also does not account for the dynamic nature of the prepaid calling card market. Today, due to cost fluctuations and market trends, service providers using NetworkIP's platform create and market prepaid cards with no set 'face-value.' In fact, one of NetworkIP's clients merely prints the number of minutes on each card – this enables the cards to be priced on a real-time and competitive basis. This type of innovation improves the overall prepaid card marketplace and demonstrates how reporting prepaid card revenue at the 'face value' of the card on these type of products is both backward and impossible to administer as a practical matter.

[24] Although NetworkIP's switching platform gives NetworkIP's customers the ability to price and control their calling cards, NetworkIP retains no visibility into how its customers' cards are priced – nor could it.

CONCLUSION

For the foregoing reasons, the Commission should adopt the contribution methodology proposed in Order B or, in the alternative, take steps to clarify the rules and reporting obligations of calling card providers in the revenue-based system.

Respectfully submitted,

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November 26, 2008