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

In the Matter of	)	
	)	
Request for Review by Madison River Communications, LLC of Decision of Universal Service Administrator	)))	WC Docket No. 06-122

COMMENTS OF
CTE TELECOM, LLC
D/B/A FRONTIER COMMUNICATIONS CTE TELECOM COMPANY

CTE Telecom, LLC d/b/a Frontier Communications CTE Telecom Company ("CTE") submits these Comments in response to the December 30, 2008 Public Notice released by the Federal Communications Commission (the "Commission"). These comments support the request by Madison River Communications, LLC ("Madison River") for review of a decision by the Universal Service Administrative Company ("USAC") requiring Madison River to make a universal service fund contribution payment based on Internet access service revenues. CTE agrees with Madison River that integrated Internet access services that include a transmission component are information services which are not subject to USF contribution and that the USAC decision is inconsistent with long-standing Commission precedent and should be overruled as a matter of law.[1]

---

[1] CTE has a similar Request for Review of Decision of the Universal Service Administrator pending before the Commission in WCB Docket No. 06-122. CTE has two business units, Commonwealth Long Distance (an interexchange carrier) and epix Internet (an Internet Service Provider). To provide high-speed Internet service, the Company's epix business unit purchased a portion of the bandwidth available on a local exchange carrier's copper loop to use as an input to epix's Internet access service. CTE appealed USAC's decision that the transmission component of its Internet access service should be classified as telecommunications revenue subject to federal USF contributions because, inter alia, it did not offer or provide transmission as a stand-alone product or service.

I. USAC Erred in Determining That the Internet Services Provided as an Integrated Service Was Assessable for Purposes of USF Contribution.

USAC has determined that revenues associated with "the transmission component of [Madison River's] Internet access services" should have been reported as assessable for purposes of the federal universal service fund ("USF").[2] USAC's determination ignores the integrated nature of Internet access services. In September 2005, the Commission confirmed that wireline broadband Internet access services are information services.[3] Prior to that, however, the Commission never required providers of Internet access to contribute to universal service on the transmission component of such a service offering. With respect to "non-facilities-based providers," the Commission held that offerings by such providers "combining communications and computing components should *always* be deemed enhanced."[4] Under this "contamination" approach employed since the *Computer Inquiry* decisions of the 1980s, the fact that an enhanced service might use regulated transmission paths did not convert it into a basic or adjunct-to-basic service.[5] Rather, the enhanced component of a non-facilities-based offering "contaminated" the

---

[2] Madison River Request for Review at 5.

[3] *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities Universal Service Obligations of Broadband Providers*, CC Docket No. 02-33, *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, CC Docket No. 01-337, *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, CC Docket Nos. 95-20, 98-10, *Conditional Petition of the Verizon Telephone Companies for Forbearance Under 47 USC §160(c) with Regard to Broadband Services Provided Via Fiber to the Premises; Petition of the Verizon Telephone Companies for Declaratory Ruling or, Alternatively, for Interim Waiver with Regard to Broadband Services Provided Via Fiber to the Premises*, WC Docket No. 04-242, *Consumer Protection in the Broadband Era*, WC Docket No. 05-271, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853 ("*Wireline Broadband Order*").

[4] *See, e.g.*, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report to Congress, 13 FCC Rcd 11501, 11530 (1998) ("*Report to Congress*"), at ¶ 60 (emphasis added).

[5] *See id*. at 11529, ¶ 58 ("An offering that constitutes a single service from the end user's standpoint is not subject to common carrier regulation simply by virtue of the fact that it involves telecommunications components.") (citing *Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry)*, Final Decision, 77 FCC 2d 384, 420-28 (1980), at ¶¶ 97-114).

basic component, resulting in the entire offering being "enhanced."[6] Information service providers, including ISPs, are thus classified for regulatory purposes as information service providers to the extent that they offer information services that utilize as an input otherwise basic transmission services.[7]

The FCC has applied this approach to Internet access service and found that the information-processing elements are inextricably intertwined with the data transport, so that Internet access qualifies as an information service.[8] The FCC also determined that non-facilities-based ISPs are not required to contribute directly to USF.[9] It affirmed this finding numerous times, including in the 2002 Wireline Broadband NPRM:

> ISPs that own no telecommunications facilities and lease transmission, such as T1 lines, from telecommunications carriers *to* transmit their information services, do not contribute directly to universal service…[10]

This passage confirms that the rules have never required *non-facilities-based* ISPs to segregate the telecommunications portion of wireline broadband Internet service for USF reporting purposes because such entities are not telecommunications carriers and do not provide

---

[6] *See Report to Congress*, 13 FCC Rcd at 11529-30, ¶¶ 57-60.

[7] *See, Third Computer Inquiry, Phase II*, Memorandum Opinion and Order on Reconsideration, 3 FCC Rcd 1150, 1170 n.23 (1988) ("*Computer III*").

[8] In its *Report to Congress*, the Commission concluded: *"Internet access providers look like other enhanced -- or information -- service providers. Internet access providers, typically, own no telecommunications facilities. Rather, in order to provide those components of Internet access services that involve information transport, they lease lines, and otherwise acquire telecommunications, from telecommunications providers -- interexchange carriers, incumbent local exchange carriers, competitive local exchange carriers, and others. In offering service to end users, however, they do more than resell those data transport services. They conjoin the data transport with data processing, information provision, and other computer-mediated offerings, thereby creating an information service. Since 1980, we have classed such entities as enhanced service providers. We conclude that, under the 1996 Act, they are appropriately classed as information service providers."* 13 FCC Rcd 11501 at ¶ 81.

[9] 13 FCC Rcd 11501 at ¶ 3.

[10] *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Universal Service Obligations of Broadband Providers*, CC Docket No. 02-33, Notice of Proposed Rulemaking, 17 FCC Rcd 3019 at ¶ 74 (2002) (*Wireline Broadband NPRM*) (emphasis added).

transmission services on a stand-alone basis. Thus, to the extent that Madison River is not a "facilities-based provider," the transmission components of its Internet access services were not subject to USF assessment in 2005.

II. Even if Madison River is Classified as a Facilities-based Provider, the Company Still Would Not be Required to Contribute to USF Based on Its Information Service Revenues.

Even if Madison River *were* deemed a "facilities-based" provider, Madison River would not necessarily be required to contribute to USF based on its information services revenues. In the *Report to Congress*, the Commission recognized that its rules do not require USF contribution in cases where an Internet Service Provider "owns transmission facilities, and engages in data transport over those facilities in order to provide an information service."[11] As the Commission observed in 2002, facilities-based carriers are subject to USF requirements only "to the extent they provide broadband transmission services or other telecommunications services *on a stand-alone basis* to affiliated or unaffiliated Internet service providers (ISPs) or to end-users."[12]

Commission rules have never required facilities-based providers to segregate the telecommunications portion of wireline broadband Internet access for USF reporting, because such transmission services are not provided on a stand-alone basis. The Commission found that when bundled with an information service, the underlying telecommunications service is

[11] *Report to Congress*, 13 FCC Rcd at 11528, ¶ 55.

[12] *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities, Universal Service Obligations of Broadband Providers*, CC Docket No. 02-33, *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review - Review of Computer III and ONA Safeguards and Requirements*, CC Docket Nos. 95-20, 98-10, Notice of Proposed Rulemaking, 17 FCC Rcd 3019, 3051 (2002), at ¶ 72 (emphasis added).

"contaminated" and the entire service becomes an information service.[13] The Commission never applied its USF safe harbor for "bundled" services to a transmission service that had been "contaminated" by bundling it with Internet access. Rather, the bundled safe harbor rules applied only to *combinations of stand-alone services* that were marketed and sold together as a package at a total price less than the sum of the stand-alone prices.[14] In other words, the combination referred to in the "bundled" safe harbor is a single package at a single price for multiple services, not components linked to form a single service. Although some confusion may exist because the term "bundle" has been used by some to refer to either situation, the circumstances are different -- in the one case, there is a telecommunications service sold *alongside* an information service in a one-price package, while with respect to wireline broadband Internet access the customer receives a single and inseparable "contaminated" service that relies upon telecommunications and information service components.

Commission precedent makes clear that USF contribution and the "bundled" safe harbor were never applicable to wireline broadband Internet access, even as offered by a facilities-based provider. Indeed, the Commission acknowledged this in its *Wireline Broadband Order*:

> Under current law, the Commission has permissive authority to require "[a]ny other provider of interstate telecommunications to contribute to universal service if required by the public interest." The question of "whether and under what circumstances the public interest would require us to exercise our permissive authority over wireline broadband Internet access providers" is pending before the Commission in this docket. In addition, the question of "whether other facilities-based providers of broadband Internet access services may, as a legal

[13] *Report to Congress*, 11 FCC Rcd at 11529, ¶ 57.

[14] *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96-61, *Implementation of Section 254(g) of the Communications Act of 1934, as amended*, CC Docket No. 98-183, *1998 Biennial Regulatory Review -- Review of Customer Premises Equipment and Enhanced Services Bundling Rules in the Interexchange, Exchange Access, and Local Exchange Markets*, Report and Order, 16 FCC Rcd 7418, 7424-25 and 7446-49 (2001) at ¶¶ 10-12 and 48-55.

> matter, or should as a policy matter, be required to contribute" is also pending before us. We expect to address these issues in a comprehensive fashion either in this docket or in the Universal Service Contribution Methodology proceeding now pending in Docket No. 96-45.[15]

By referring to its permissive authority and policy questions regarding whether to expand the scope of USF obligations to other types of providers, the Commission recognized that certain Internet service providers were not required to report, or to contribute to USF based on, the contaminated broadband transmission service. The Commission acknowledged that the issue of whether facilities-based providers should contribute would be addressed in a subsequent proceeding. Accordingly, wireline broadband Internet services that are single, integrated service offerings - as compared to bundled packages of stand-alone telecommunications and information services - have never been subject to USF assessment.

III. CONCLUSION

In summary, FCC rules do not require Internet service providers that lease telecommunications facilities to contribute to USF; FCC rules do not require facilities-based Internet service providers to contribute to USF on the basis of their information service revenue; and FCC rules do not require facilities-based common carriers to contribute to USF based on a transmission service "contaminated" by Internet access and sold to a consumer as a single, integrated information service. For the foregoing reasons, CTE urges the Commission overturn USAC's finding that revenues related to Internet access services which include an integrated transmission component are not subject to USF contribution, on which Madison River seeks review.

[15] *Wireline Broadband Order*, 20 FCC Rcd at 14915, ¶ 112 (citations omitted).

Dated: January 29, 2009

Respectfully submitted,

Kevin Saville
Associate General Counsel
2378 Wilshire Blvd.
Mound, MN 55364
Tel: 952-491-5564
Fax: 952-491-5577
Kevin.Saville@frontiercorp.com

Counsel for CTE Telecom, LLC