with sufficient information to assess the benefits of expanding the low-income support mechanisms upon the conclusion of the Pilot Program. When extrapolated to all states and territories, the low-income pilot program proposed by TracFone could potentially double the size of the $7 billion universal service fund.[185] We find it more appropriate to fund a pilot program that better correlates with providing broadband Internet access service to all eligible low-income support recipients as this provides better information regarding the permanent adoption of such support.

75. Instead, we set the size of the Lifeline and Link Up Pilot Program at up to $300 million per year over the next three years. We find that this amount provides benefits to low-income consumers while not overly increasing the amount of low-income support disbursed from the universal service fund. Specifically, this level of funding should enable the program to increase the broadband subscribership for these customers to over fifty percent.[186]

2. Eligible Services and Equipment

76. For the broadband Lifeline/Link Up Pilot Program we adopt today, we limit support to one subsidy per household. For purposes of this order, we define "household" as one adult and his/her dependants, living together in the same residence.[187] Participating households who remain eligible for the program will be entitled to remain in the program beyond the first year, subject to the requirement that participating ETCs verify their customers' continued eligibility under the applicable income-based or program-based criteria, as they are required to do for their current voice Lifeline customers. We do not require state or carrier matching requirements. The Pilot Program is exempt from fees and taxes to the same degree as the current Lifeline programs.

77. Under the Link Up portion of the Pilot Program we adopt today, we seek to overcome barriers that low-income households might face in subscribing to broadband services, such as lacking the equipment necessary to connect to broadband services. Therefore, if an ETC currently provides or seeks to provide Lifeline voice service to an eligible customer, the Pilot Program will support 50 percent of the cost of broadband Internet access service installation, including a broadband Internet access device, up to a total amount of $100. The device can be a laptop computer, a desktop computer, or a handheld device, so long as the equipment has the capability to access the Internet at the speeds established per this order, and the equipment carries at least a warranty.[188] The device subsidy is a one-time subsidy and is limited to one unit per qualified household.[189] The subsidy amount will be paid by USAC to the participating ETC that provides the device and the service to the customer, utilizing the same process that USAC uses for the current Link Up program.[190]

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[185] Assuming $250 is provided to each consumer, the total cost of the TracFone proposal could reach almost $7 billion.

[186] *See supra* para. 71.

[187] *Federal-State Joint Board on Universal Service, Schools and Libraries Universal Service Support Mechanism, Rural Health Care Support Mechanism, Lifeline and Link-up*, CC Docket Nos. 96-45, 02-6 and WC Docket Nos. 02-60, 03-109, Order, 20 FCC Rcd 16883, 16890, para. 12 (2005) (*Hurricane Katrina Order*). Also, service agreements of longer than the lesser of one year or the remaining Pilot Program funding period are prohibited.

[188] Where such device costs $100 or less, the Pilot Program will support 90% of the cost of the broadband Internet access device.

[189] 47 C.F.R. § 54.411(b).

[190] *See* USAC, Low Income: Overview of the Process, http://www.universalservice.org/li/about/overview-process.aspx (last visited Oct. 11, 2008).

78. Once low-income households have the ability to connect to the Internet, we seek to ensure that they can afford to subscribe to broadband Internet access service. Under the Lifeline portion of the program, if an ETC currently provides or seeks to provide Lifeline voice service to an eligible household, and that ETC provides broadband Internet access service, the Pilot Program will double the current monthly subsidy for the Lifeline subscriber up to $10 per month to offset the cost of broadband Internet access service.[191] As defined in this order, broadband Internet access service is an "always on" service that combines computer processing, information provision, and computer interactivity with data transport, enabling end users to access the Internet and use a variety of applications, at speeds discussed below.[192] This monthly support provided to participating customers under the Pilot Program is separate from and in addition to their monthly Lifeline support for voice telephone service.[193]

79. All ETCs participating in the existing low-income programs are eligible to participate, provided that they notify the Commission and USAC of their election to participate at least a month in advance and certify that they will comply with all program requirements, including those set forth herein. Such certification must identify the service area in which the ETC plans to offer such Lifeline/Link Up broadband services, the costs of such service and broadband device, and all costs, both recurring and nonrecurring, to the customer participating in the program. The ETC must offer the services supported in the Pilot Program throughout the entire service area. The Wireline Competition Bureau will release a public notice establishing a deadline by which ETCs must notify the Commission of their intention to participate.

80. The program we adopt today is technologically and competitively neutral; however, we establish minimum speeds at which participating ETCs must be able to provide broadband service. ETCs participating in the Pilot Program must offer broadband Internet access service with download speeds equal to or greater than 768 kbps and upload speeds greater than 200 kbps.[194]

3. Selection Criteria

81. TracFone suggests that all ETCs notifying the Commission of their intent to participate in the Pilot Program should be allowed to provide the broadband Internet access service and devices under the Pilot Program.[195] TracFone also argues that the Commission should limit the Pilot Program to 500,000 to 100,000 low-income households in Florida, Virginia, Tennessee and the District of Columbia.[196] We agree with TracFone that all ETCs should be allowed to provide services under the Pilot Program, but we disagree that the consumers who are eligible to participate should be limited to three states and the

[191] Because $10 is the maximum federal support under Tier 1 to Tier 3 of the existing Lifeline program, we find this to be the appropriate support amount for purposes of the Pilot Program. *See* 2007 UNIVERSAL SERVICE MONITORING REPORT, tbl. 2.3. Ten dollars is also above the average Lifeline support amount of $8.46, which includes both tribal and non-tribal recipients. *See id.*, tbl. 2.12.

[192] *See infra* para. 84.

[193] Pilot Program participants may not receive support for the same services from both the Pilot Program and the existing universal service programs—which consist of the rural health care, E-rate, high-cost, and low-income programs.

[194] *See supra* para. 28.

[195] *TracFone Petition* at 4.

[196] *TracFone Petition* at 3.

District of Columbia.[197] Instead, it is consistent with the public interest to allow all ETCs and consumers that meet the criteria discussed in this order to participate in the Pilot Program, limited only by the availability of funds. Support will be disbursed on a "first come, first served basis" where priority is established according to ETCs' submission of reimbursement requests to USAC and compliance with program eligibility.

82. *Consumer Qualifications.* To receive reimbursement under the Pilot Program, an ETC must provide support to a consumer eligible for support under the current Lifeline and Link Up programs. Specifically, the consumer must meet the eligibility criteria specified in section 54.409 of the Commission's rules.[198] We agree with TracFone that only one connection and device per household should be funded. Accordingly, we limit Pilot Program support to one new connection and device per household. Lifeline consumers who currently have a broadband connection and related Internet device are excluded from participation in this Pilot Program. In addition to their obligations under section 54.409 of our rules, consumers must demonstrate that they do not currently have a broadband Internet access service subscription or broadband Internet access device.[199]

83. *ETC Obligation to Offer Pilot Program Services.* Prior to participation, ETCs must notify the Commission and USAC of their intention to participate. A participating ETC must offer the services and supported devices to all qualifying low-income consumers throughout its service areas. It must also follow the carrier obligations identified in section 54.405, as applicable, of the Commission's rules.[200] Consumers and ETCs must follow the framework and requirements of the existing Lifeline and Link Up program.[201]

4. Implementation and Reporting Requirements

84. To be eligible for support, ETCs must submit a reimbursement request to USAC 30 days from the date a customer subscribes to service or purchases a device. We require participating each ETC to file with USAC on a monthly basis the number of Pilot Program consumers it is serving, the types and prices of devices offered, the type of technology used (including make and model of equipment used) and the speeds at which it is providing service to each of those consumers. ETCs in their monthly submission must also report the number of subscribers served for the past month and projections for the number of subscribers for the next 2 months. Such monthly reporting is required to allow USAC to monitor availability of funds under the Pilot Program and notify participating ETCs when funds may no longer be available for additional customers. In determining and/or projecting funds availability, USAC should consider the recurring costs of existing customers; we decline to specifically allocate the available funding between Lifeline and Link Up, relying instead on the certification and reporting requirements herein to enable USAC to properly administer the Pilot Program.

85. Similar to current recordkeeping requirements, we also require ETCs to maintain records to document compliance with all Commission requirements governing this Pilot Program for the three full

[197] *See, e.g.*, YourTel Oct. 21, 2008 *Ex Parte* Letter at 2 (urging the Commission to allow low-income consumers living in Missouri to be eligible for Pilot Program support).

[198] *See* 47 C.F.R. § 54.409.

[199] As discussed above, for purposes of this Pilot Program we define "household" as one adult and his/her dependants living together in the same residence. *See supra* para 76; *Hurricane Katrina Order*, 20 FCC Rcd at 16890, para. 12.

[200] *See* 47 C.F.R. § 54.405.

[201] 47 C.F.R. § 54.400–.417.

preceding calendar years and provide that documentation to the Commission or USAC upon request.[202] Additionally, ETCs must maintain documentation for as long as the consumer is receiving broadband Lifeline service from that ETC pursuant to the Pilot Program, and for three additional years after the consumer stops receiving service pursuant to the Pilot Program.

86. ETCs may receive reimbursement for the revenue they forego in reducing the price of any qualified consumers' broadband Internet access service and related device. As a condition of participation, it is the ETC's responsibility to make available a wide array of cost efficient broadband Internet access devices capable of providing the speeds described above to qualified consumers under this program. ETCs must also comply with the self-certification procedures, and submit certifications with their monthly submissions, consistent with sections 54.410 and 54.416 of the Commission's rules.[203] Any services or equipment supported under this order are non-transferable and the devices must be returned to the ETC if they are not used in compliance with the terms of this order or other applicable laws or regulations. We delegate to the Wireline Competition Bureau the authority to disqualify an ETC or consumer from the Pilot Program and seek recovery of support not used in a manner consistent with this order.

5. Program Oversight

87. We are committed to guarding against waste, fraud, and abuse, and ensuring that funds disbursed through the Pilot Program are used for appropriate purposes. In particular, each Pilot Program participant shall be subject to audit by the Office of Inspector General and, if necessary, investigated by the Office of Inspector General, to determine compliance with the Pilot Program, Commission rules and orders, as well as section 254 of the Act.[204] The Pilot Program participant will be required to comply fully with the Office of Inspector General's audit requirements including, but not limited to, providing full access to all accounting systems, records, reports, and source documents of itself and its employees, contractors, and other agents in addition to all other internal and external audit reports that are involved, in whole or in part, in the administration of this Pilot Program.[205] Such audits or investigations may provide information showing that a Pilot Program participant or vendor failed to comply with the Act or the Commission rules, and thus may reveal instances in which Pilot Program awards were improperly distributed or used. To the extent the Commission finds that funds were distributed and/or used improperly, the Commission will require USAC to recover such funds though its normal processes, including adjustment of support amounts in other universal service programs from which Pilot Program participants receive support.[206] If any participant fails to comply with Commission rules or orders, or fails to timely submit filings required by such rules or orders, the Commission also has the authority to assess forfeitures for violations of such Commission rules and orders. In addition, any participant or service provider that willfully makes a false statement can be punished by fine or forfeiture under sections

[202] *See* 47 C.F.R. § 54.417(a).

[203] *See* 47 C.F.R. §§ 54.410, 54.416.

[204] *See* 47 C.F.R. § 54.619; *Comprehensive Review Report and Order*, 22 FCC Rcd at 16387, para. 26.

[205] This includes presenting personnel to testify, under oath, at a deposition if requested by the Office of Inspector General.

[206] We intend that funds disbursed in violation of a Commission rule that implements section 254 or a substantive program goal will be recovered. Sanctions, including enforcement action, are appropriate in cases of waste, fraud, and abuse, but not in cases of clerical or ministerial errors. *See Comprehensive Review Report and Order*, 22 FCC Rcd at 16388–89, para. 30.

502 and 503 of the Act,[207] or by fine or imprisonment under Title 18 of the United States Code (U.S.C.) including, but not limited to, criminal prosecution pursuant to section 1001 of Title 18 of the U.S.C.[208] We emphasize that we retain the discretion to evaluate the uses of monies disbursed through the Pilot Program and to determine on a case-by-case basis whether waste, fraud, or abuse of program funds occurred and whether recovery is warranted. We remain committed to ensuring the integrity of the universal service program and will aggressively pursue instances of waste, fraud, and abuse under the Commission's procedures and in cooperation with law enforcement agencies. In doing so, we intend to use any and all enforcement measures, including criminal and civil statutory remedies, available under law.[209] The Commission will also monitor the use of awarded monies and develop rules and processes as necessary to ensure that funds are used in a manner consistent with the goals of this Pilot Program. Finally, we remind participants that nothing in this order relieves them of their obligations to comply with other applicable federal laws and regulations.

IV. REFORM OF UNIVERSAL SERVICE CONTRIBUTIONS

88. In this Part, we adopt a telephone numbers-based methodology under which contributors will pay a constant, flat-rate assessment based on the number of telephone numbers they have assigned to residential end users. We set this per-number assessment at the fixed rate of $1.00 per residential number per month. We conclude that providers of business services should contribute to the universal service fund on a connection basis, and we seek comment on implementation of that methodology. In the interim, providers of business services will continue to contribute based on interstate and international revenues for these services. The separate contribution methodologies for residential and business services will be implemented beginning on January 1, 2010.

A. Background

89. In implementing the universal service requirements of the 1996 Act, the Commission established a method for collecting funds to be disbursed through the various universal service support mechanisms. Specifically, the Commission determined that contributions to the universal service fund would be assessed on telecommunications providers based on their interstate and international end-user telecommunications revenues.[210] The Commission concluded that basing providers' universal service contributions on their revenues would be competitively neutral, easy to administer, and explicit.[211]

90. When the Commission adopted the revenue-based contribution system, assessable interstate revenues were growing. The total assessable revenue base has declined in recent years, however, from

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[207] 47 U.S.C. §§ 502, 503(b).

[208] 18 U.S.C. § 1001. Further, the Commission has found that "debarment of applicants, service providers, consultants, or others who have defrauded the USF is necessary to protect the integrity of the universal service programs." *Comprehensive Review Report and Order*, 22 FCC at 16390, para. 32. Therefore, the Commission intends to suspend and debar parties from the Pilot Program who are convicted of or held civilly liable for the commission or attempted commission of fraud and similar offenses arising out of their participation in the Pilot Program or other universal service programs. *See id.* paras. 31–32.

[209] *See, e.g.*, 41 U.S.C. §§ 51–58 (Anti-Kickback Act of 1986); 31 U.S.C. § 3729 (False Claims Act).

[210] *See Universal Service First Report and Order*, 12 FCC Rcd at 9206–07, paras. 843–44; *Federal-State Joint Board on Universal Service; Access Charge Reform*, Sixteenth Order on Reconsideration and Eighth Report and Order in CC Docket No. 96-45 and Sixth Report and Order in CC Docket No. 96-262, 15 FCC Rcd 1679, 1685, para. 15 (1999) (*Fifth Circuit Remand Order*) (establishing a single contribution for all universal service support mechanisms based on interstate and international revenues).

[211] *Universal Service First Report and Order*, 12 FCC Rcd at 9206–08, 9211, paras. 843, 845–48, 854.

about $79.0 billion in 2000 to about $74.5 billion in 2006,[212] while universal service disbursements grew over that same time period from approximately $4.5 billion in 2000 to over $6.6 billion in 2006.[213] Declines in assessable contribution revenues combined with growth in universal service disbursements have increased the contribution factor applied to determine universal service contribution amounts.[214] This upward pressure jeopardizes the stability and sustainability of the support mechanisms, demonstrating the need for long-term fundamental reform of the contribution methodology.[215]

91. In addition, interstate end-user telecommunications service revenues are becoming increasingly difficult to identify as customers migrate to bundled packages of interstate and intrastate telecommunications and non-telecommunications products and services.[216] The integration of local and long-distance wireline services into packages that allow customers to purchase buckets of long distance minutes and local service for a single price blurs the distinction between revenue derived from intrastate telecommunications service and interstate telecommunications service. Similarly, the availability of mobile wireless calling plans that allow customers to purchase buckets of minutes on a nationwide network without incurring roaming or long-distance charges also makes it difficult for providers and the Commission to identify the amount of revenue derived from interstate telecommunications service.[217] Further, migration to interconnected VoIP services complicates the distinctions that serve as the basis for

[212] *Compare* JIM LANDE & KENNETH LYNCH, FCC, 2000 TELECOMMUNICATIONS INDUSTRY REVENUES, tbl. 4 (2002), *available at* http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/telrev00.pdf *with* JIM LANDE & KENNETH LYNCH, FCC, 2006 TELECOMMUNICATIONS INDUSTRY REVENUES, tbl. 4 (2008), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-284929A1.pdf. *But see* Letter from David C. Bergmann, Chair, NASUCA Telecommunications Committee, to Chairman Kevin Martin et al., FCC, WC Docket Nos. 08-152, 07-135, 06-122, 05-337, 05-195, 04-36, 03-109, 02-60, CC Docket Nos. 02-6, 01-92, 00-256, 99-68, 96-262, 96-45, 80-286, at 7 (filed Sept. 30, 2008) (NASUCA Sept. 30, 2008 *Ex Parte* Letter) (arguing that the growth in the contribution factor is "almost entirely" due to the growth in universal service disbursement requirements).

[213] *See* FCC, UNIVERSAL SERVICE MONITORING REPORT, tbl. 1.2a (2001) (2001 UNIVERSAL SERVICE MONITORING REPORT), *available at* http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/Monitor/mrs01-0.pdf; 2007 UNIVERSAL SERVICE MONITORING REPORT at tbl. 1.11; *see also* USAC 2007 ANNUAL REPORT at 3, 51 (detailing universal service disbursements for 2007 at approximately $6.9 billion).

[214] The contribution factor grew from 5.9% in the first quarter of 2000 to 11.3% for the fourth quarter of 2008. *See Proposed First Quarter 2000 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, 15 FCC Rcd 3660 (WCB 1999); *Proposed Fourth Quarter 2008 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 08-2091 (OMD Sept. 12, 2008) (*Fourth Quarter 2008 Contribution Factor Public Notice*).

[215] *See* 47 U.S.C. §§ 254(b), (d).

[216] Although the Commission has established safe harbors for the reporting of interstate telecommunications revenues derived from interstate telecommunications services bundled with customer premises equipment (CPE) or information services, it has not established guidelines for reporting interstate telecommunications service revenues for flat-rated bundles of wireline interstate and intrastate services. *See Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended; 1998 Biennial Regulatory Review—Review of Customer Premises Equipment and Enhanced Local Exchange Markets*, CC Docket Nos. 96-61, 98-183, Report and Order, 16 FCC Rcd 7418, 7446–48, paras. 47–54 (2001) (*CPE Bundling Order*).

[217] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 21252, 21258–59, paras. 13–15 (1998) (*First Wireless Safe Harbor Order*); *see also Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 24965–67, paras. 21–25 (2002) (*Second Wireless Safe Harbor Order*).

current contribution obligations.[218]

92. In 2001 and 2002, the Commission sought comment on modifications to the existing revenue-based contribution methodology, and on replacing that methodology with one that assesses contributions on the basis of a flat-fee charge, such as a per-line charge.[219] The Commission also sought comment on other universal service contribution methodologies, including moving to a numbers-based methodology.[220] Finally, in May 2008, the Commission encouraged commenters to refresh the record in several pending intercarrier compensation and universal service reform proceedings, including the contribution methodology proceeding.[221]

B. Discussion

93. The system of contributions to the universal service fund is broken. The Commission has repeatedly patched the current system to accommodate decreasing interstate revenues, a trend toward "all-you-can-eat" services that make distinguishing interstate from other revenues difficult if not impossible and changes in technology. While the service developments that precipitated these changes have enormous consumer benefits, they have also severely strained the contributions system.[222] We therefore adopt today a system of contributions that will assess a $1.00 contribution per residential telephone number per month, and we will move to a connections-based system for business services. In this part, we explain our legal authority to move to these new methodologies, why we have decided to move to

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[218] *See Universal Service Contribution Methodology*, WC Docket Nos. 06-122, 04-36, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006) (*2006 Interim 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).

[219] *See Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, Notice of Proposed Rulemaking, 16 FCC Rcd 9892 (2001) (*2001 Contribution NPRM*); *see also Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Further Notice of Proposed Rulemaking and Report and Order, 17 FCC Rcd 3752, 3765, para. 31, 3766–89, paras. 34–83 (2002) (*Contribution First FNPRM*).

[220] *Second Wireless Safe Harbor Order*, 17 FCC Rcd at 24983–97, paras. 66–100 (seeking comment on capacity-based proposals that had been developed in the record and on telephone-number proposals advocated by certain parties); *Commission Seeks Comment on Staff Study Regarding Alternative Contribution Methodologies*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Public Notice, 18 FCC Rcd 3006 (2003) (*Contribution Staff Study*) (seeking comment on a Commission staff study that estimated potential contribution assessment levels under the then-newly modified revenue-based method and the three connection-based proposals in the further notice portion of the *Second Wireless Safe Harbor Order*).

[221] *Interim Cap Clears Path for Comprehensive Reform: Commission Poised to Move Forward on Difficult Decisions Necessary to Promote and Advance Affordable Telecommunications for All Americans*, News Release (May 2, 2008), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-281939A1.pdf.

[222] We agree with commenters who argue that the contribution methodology requires a comprehensive overhaul. *See, e.g.*, Letter from Mary L. Henze, AT&T Services, and Kathleen Grillo, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, CC Docket No. 96-45, Attach. 1 at 1 (filed Sept. 11, 2008) (AT&T and Verizon Sept. 11, 2008 *Ex Parte* Letter); Letter from Roger C. Sherman, Director, Government Affairs—Wireless Regulatory, Sprint Nextel, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, WC Docket No. 04-36 at 1 (filed June 14, 2006) (Sprint Nextel June 14, 2006 *Ex Parte* Letter); Letter from Susanne A. Guyer, Senior Vice President Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-92, 96-45, WC Docket Nos. 05-337, 06-122 at 2 (filed Oct. 28, 2008) (Verizon Oct. 29, 2008 *Ex Parte* Letter); Letter from Mary L. Henze, AT&T Services, and Kathleen Grillo, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, WC Docket No. 06-122 at 1 (filed Oct. 20, 2008) (AT&T and Verizon Oct. 20, 2008 *Ex Parte* Letter).

these methodologies, and how the residential numbers-based system will work.

1. Legal Authority

94. The Commission has ample authority to require contributions from the variety of providers discussed below. The Commission's authority derives from several sections of the Act: section 254(d), Title I, and section 251(e). These sections of the statute provide us authority to require contributions from the kinds of service providers we address below in our discussions of the new numbers-based approach for residential services and the connections-based approach for business services.

95. Section 254 is the cornerstone of the Commission's universal service program. Section 254(d) first provides that "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service."[223] Under this "mandatory contribution" provision, every provider of telecommunications services[224] must contribute, although the Commission has authority to exempt a carrier or class of carriers if their contributions would be *de minimis*.[225]

96. Section 254(d) also provides that the Commission may require "[a]ny other provider of interstate telecommunications . . . to contribute to the preservation and advancement of universal service if the public interest so requires."[226] The Commission has relied on this "permissive authority" to require various providers of telecommunications,[227] but not necessarily telecommunications *services*,[228] to contribute. For example, the Commission has required entities that provide interstate telecommunications to others on a private contractual basis to contribute to the universal service fund,[229] as well as payphone aggregators.[230] Most recently, we required interconnected VoIP providers to contribute even though the Commission has not determined that they are telecommunications carriers. Specifically, in the *2006 Interim Contribution Methodology Order*, we used our permissive authority under section 254(d) to

[223] 47 U.S.C. § 254(d).

[224] Section 254(d) refers to "telecommunications carriers," which are defined as "any provider of telecommunications services." 47 U.S.C. § 153(44).

[225] 47 U.S.C. § 254(d).

[226] 47 U.S.C. § 254(d).

[227] "Telecommunications" is defined as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." 47 U.S.C. § 153(43).

[228] "Telecommunications service" is defined as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." 47 U.S.C. § 153(46).

[229] *See* 47 C.F.R. § 54.706(a); *Universal Service First Report and Order*, 12 FCC Rcd at 9183–84, paras. 794–95. We note that private service providers that provide interstate connections solely to meet their internal needs (i.e., self-providers) will not be required to contribute under the new methodology. This is consistent with our current policy. In the *Universal Service First Report and Order*, the Commission reasoned that, for self-providers of interstate telecommunications, the telecommunications is incidental to their primary non-telecommunications business. *See Universal Service First Report and Order*, 12 FCC Rcd at 9185, para. 799.

[230] *See* 47 C.F.R. § 54.706(a); *Universal Service First Report and Order*, 12 FCC Rcd at 9184–85, paras. 796–98. *But see* Letter from Robert F. Aldrich, Counsel for the American Public Communications Council (APCC), to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, WC Docket No. 01-92, Attach. (filed Oct. 23, 2008).

require interconnected VoIP providers to contribute, and we noted that they "provide" telecommunications to their end users.[231] We also noted that in some cases, the interconnected VoIP provider may be "providing" telecommunications even if it arranges for the end user to have PSTN access through a third party.[232]

97. The Commission also has authority under Title I to require other service providers to contribute. In general, the Commission can rely on its ancillary jurisdiction under Title I when the Commission has subject matter jurisdiction over the service to be regulated, and the assertion of jurisdiction is "reasonably ancillary to the effective performance of [its] various responsibilities."[233] The Commission relied on this authority before section 254 was added by the 1996 Act to establish a high-cost support fund,[234] which the U.S. Court of Appeals for the D.C. Circuit found to be a permissive exercise of Title I authority.[235] And more recently in the *2006 Interim Contribution Methodology Order*, the Commission relied on its ancillary jurisdiction under Title I as an additional source of authority to require contributions from interconnected VoIP providers.[236] In that order, the Commission noted that the Act grants subject matter jurisdiction over interconnected VoIP because it involves "transmission" of voice by wire or radio,[237] and that imposing contribution obligations on interconnected VoIP providers was "reasonably ancillary" to the effective performance of the Commission's responsibilities to establish "specific, predictable, and sufficient mechanisms . . . to preserve and advance universal service."[238] In particular, the Commission noted that interconnected VoIP providers "benefit from their interconnection to the PSTN."[239]

98. In addition, Congress provided the Commission with "plenary authority" over numbering in section 251(e). Specifically, the Commission has "exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States."[240] The Commission relied on its authority under section 251(e) to support its action to require interconnected VoIP providers to provide E911 services.[241] The Commission noted that it exercised its authority under section 251(e) because, among

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231 *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7538–40, paras. 39–41; 47 C.F.R. § 54.706(a).

232 *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7539, para. 41 ("To provide this capability [telecommunications], interconnected VoIP providers may rely on their own facilities or provide access to the PSTN through others.").

233 *See United States v. Southwestern Cable Co.*, 392 U.S. 157, 177–78 (1968); *United States v. Midwest Video Corp.*, 406 U.S. 649, 667–68 (1972); *FCC v. Midwest Video Corp.*, 440 U.S. 689, 700 (1979); *see also American Library Ass'n v. FCC*, 406 F.3d 689 (D.C. Cir. 2005).

234 *See Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, CC Docket No. 80-286, Decision and Order, 96 F.C.C.2d 781, (1984), *aff'd sub nom. Rural Tel. Coalition v. FCC*, 838 F.2d 1307 (D.C. Cir. 1988).

235 *Rural Tel. Coalition*, 838 F.2d at 1315.

236 *See 2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7541–43, paras. 46–49.

237 *See 2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7542, para. 47 & n.160 (citing *IP-Enabled* Services, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245 (2005) (*VoIP 911 Order*), *aff'd sub nom. Nuvio Corp. v. FCC*, 473 F.3d 302 (D.C. Cir. 2006); 47 U.S.C. § 152(a)).

238 *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7542, para. 48 (quoting 47 U.S.C. § 254(d)).

239 *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7542, para. 48.

240 47 U.S.C. § 251(e)(1).

241 *See VoIP 911 Order*, 20 FCC Rcd at 10265, para. 33.

other reasons, "interconnected VoIP providers use NANP numbers to provide their services."[242]

99. These sections of the Act provide the Commission ample authority to require contributions from all providers subject to the new numbers-based and connections-based approaches described in more detail below. These methodologies may require some providers to contribute directly to universal service when in the past they may have been contributing only indirectly or not at all. For example, under the numbers-based approach, any provider who assigns an "Assessable Number" to a residential user must contribute $1.00 per number per month.[243] Providers such as VoIP providers who are not "interconnected VoIP" providers, electronic facsimile service providers, Internet-based TRS providers, one-way and two-way paging service providers, and telematics providers may assign Assessable Numbers to residential users and maintain the retail relationship with the end users.[244] Not all of these providers are "telecommunications carriers" subject to the mandatory contribution obligation of section 254(d). Nonetheless, we have authority to require them to contribute. First, all of these providers provide—directly or indirectly—some amount of interconnection to the public switched telephone network (PSTN), the network that universal service supports. Interconnection to the PSTN benefits the consumers of each of these types of services, facilitating communication (even if just one-way communication) between the end user and PSTN users. As we noted in the *2006 Interim Contribution Methodology Order*, interconnected VoIP providers often provide access to the PSTN via third parties[245] and this is sufficient to permit the Commission to rely on its authority to require contributions from "other provider[s] of interstate telecommunications."[246] And as we explain below, it is in the public interest (as required by section 254(d)) that these providers contribute. Furthermore, the prerequisites for the use of our Title I ancillary jurisdiction are unquestionably met here. All the services that rely on assignment of an Assessable Number to a residential end user come within the Commission's broad subject matter jurisdiction because they involve in some manner "interstate . . . communication by wire or radio."[247] And similar to our explanation in the *2006 Interim Contribution Methodology Order*, requiring contributions from providers who take advantage of PSTN connectivity whether directly or indirectly makes sense because their end users benefit from the ubiquity of that network and from being somehow interconnected with it.[248] Finally, our plenary authority over numbering supports our actions here with regard to a numbers-based methodology for residential services. The purpose of a uniform system of numbering is to facilitate communication on interconnected networks based on a standardized system of identifiers—telephone numbers.[249] Those customers who are assigned telephone numbers, whether for

[242] *See VoIP 911 Order*, 20 FCC Rcd at 10265, para. 33.

[243] The term Assessable Number is defined below. *See infra* paras. 115–129.

[244] This list is meant to be illustrative, not exhaustive. Other providers may also have to contribute to the universal service fund based on the criteria described in this order.

[245] *See 2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7539, para. 41.

[246] 47 U.S.C. § 254(d).

[247] 47 U.S.C. § 152(a); *see also VoIP 911 Order*, 20 FCC Rcd 10261–62, para. 28 (providing detailed explanation of why interconnected VoIP falls within the Commission's subject matter jurisdiction).

[248] *Compare 2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7540, para. 43.

[249] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392, 19404, 19407, paras. 19, 25 (1996) (noting that numbering administration ensures the creation of a nationwide, uniform system of numbering essential to the efficient delivery of interstate and international telecommunications services and the development of a competitive telecommunications services market) (subsequent history omitted); *see also Administration of the*

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plain old telephone service (POTS) or for any other service, are using the numbers to take advantage of some feature of the PSTN, whether it is the capability to be called, to have their locations automatically relayed to emergency call handlers, to be faxed from anywhere, or for some other reason. Because customers are receiving this benefit, it is appropriate that their service providers (and ultimately, likely, the customers themselves) contribute to the ubiquity and support of the network from which they are benefiting.

100. We reject suggestions that we do not have authority to require contributions based on numbers or connections because we lack authority over intrastate services.[250] The same number or connection typically is used for both interstate and intrastate services. The Commission and courts have rejected the assertion that simply because a single facility has the capacity to provide both interstate and intrastate services, the Commission lacks authority to regulate any aspect of the facility.[251] In fact, the subscriber line charge (SLC) that the Commission established is intended to capture the *interstate* cost of the *local* loop.[252] The contribution methodologies we adopt are thus limited to assessments on services that can provide interstate service. We will only require providers to contribute to universal service based on the Assessable Numbers or connections that are capable of originating or terminating interstate or international communications.[253]

2. The New Numbers-Based Assessment Methodology for Residential Services

101. As discussed above, we adopt a new contribution methodology for residential services based on assessing telephone numbers, rather than interstate and international services revenue. We find that this change will benefit contributors and end users by simplifying the contribution process and providing predictability as to the amount of universal service contributions and pass-through charges for residential services. For residential services, we set the contribution amount at a flat $1.00 per month charge for each number associated with residential services.

a. Benefits of a Numbers-Based Contribution Methodology

102. We find that adoption of a telephone number-based methodology for residential services will help preserve and advance universal service by ensuring a specific, predictable, and sufficient funding source, consistent with the universal service principles of section 254(b) of the Act.[254] Changes in technology and services have made the revenue-based contribution mechanism difficult to administer.

(continued from previous page) *North American Numbering Plan*, CC Docket No. 95-283, Report and Order, 11 FCC Rcd 2588, 2591, para. 4 (1995) ("Adequate telephone numbers, available through a uniform numbering plan, are essential to provide consumers efficient access to new telecommunications services and technologies and to support continued growth of an economy increasingly dependent upon those services and technologies."); *Administration of the North American Numbering Plan*, CC Docket No. 92-237, Notice of Proposed Rulemaking, 11 FCC Rcd 2068, para. 2 (1994).

[250] *See, e.g.*, American Association of Paging Carriers (AAPC) *Contribution First FNPRM* Comments at 7; Alaska Communication Systems (ACS) *Contribution First FNPRM* Reply at 6–7; Allied Personal Communications Industry Association of California (Allied) *Contribution First FNPRM* Comments at 6–7; National ALEC Association/Prepaid Communications Association (NALA/PCA) *Contribution First FNPRM* Reply at 3.

[251] *See, e.g., NARUC v. FCC*, 737 F.2d 1095, 1113 (D.C. Cir. 1984) ("The same loop that connects a telephone subscriber to the local exchange necessarily connects that subscriber into the interstate network as well.").

[252] *NARUC v. FCC*, 737 F.2d at 1113–14.

[253] Services that provide only intrastate communications and do not traverse a public interstate network will not be required to contribute under the new assessment methodology.

[254] 47 U.S.C. § 254(b)(5).

As commenters have noted, the distinction between intrastate and interstate revenues is blurring as providers move from their traditional roles as pure LECs or interexchange carriers (IXCs) to businesses that offer consumers the choice of purchasing their telecommunications needs from a single source.[255] Additionally, these providers are offering consumers greater flexibility, such as bundling of local and long distance service at a flat rate.[256] Moreover, technologies such as wireless and interconnected VoIP have emerged that provide voice and data services that know no jurisdictional boundaries.[257] Consumers benefit from the opportunity to obtain bundled services, and the universal service contribution mechanism should reflect and complement those marketplace and technological developments as much as possible. Our decision to use numbers as the basis for assessing contributions for residential services will enhance the specificity and predictability of entities' contributions.

103. Our adoption of a numbers-based contribution methodology will benefit both residential consumers and contributors by simplifying the basis for assessments and stabilizing assessments at a set amount of $1.00 per month per residential telephone number.[258] Contributors are allowed, and in most cases do, recover their universal service contribution costs from fees assessed on their end-user customers.[259] Under the revenue-based contribution mechanism, a provider's contribution costs fluctuated from quarter to quarter, causing consumers' universal service fees to fluctuate as well. These fluctuations did not allow customers to anticipate changes to their fees. A set $1.00-per-number contribution assessment is simple and predictable for both contributors and for consumers. To the extent a contributor elects to recover its contribution costs through end-user fees, its residential customers will pay the same $1.00 fee per number each month, making the assessment simple and predictable.[260]

104. A numbers-based contribution methodology also benefits residential end users because it is technologically and competitively neutral. A consumer will pay the same universal service charge regardless of whether the consumer receives residential service from a cable provider, an interconnected VoIP provider, a wireless provider, or a wireline provider. This will enable residential consumers to choose the providers and provider types they want without regard to any artificial distortions that would

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[255] *See* AT&T and Verizon Sept. 11, 2008 *Ex Parte* Letter, Attach. 2 at 1.

[256] *See* AT&T and Verizon Sept. 11, 2008 *Ex Parte* Letter, Attach. 2 at 1; *see also* Letter from James S. Blaszak, Counsel for Ad Hoc Telecommunications Users Committee, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, at 5 (filed Nov. 19, 2007) (Ad Hoc Nov. 19, 2007 *Ex Parte* Letter) (discussing the convergence of different applications for business and residential customers onto a single integrated network with bundled pricing).

[257] *See Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, 19 FCC Rcd 22404, 22412–14, paras. 16–18 (2004) (*Vonage Order*), *aff'd sub nom. Minnesota Pub. Utils. Comm'n v. FCC*, 483 F.3d 570 (8th Cir. 2007).

[258] *See, e.g.*, AT&T and Verizon Sept. 11, 2008 *Ex Parte* Letter, Attach. 2 at 2.

[259] Contributors are prohibited from passing through to subscribers more than their contribution cost. 47 C.F.R. § 54.712.

[260] *See* AT&T and Verizon Sept. 11, 2008 *Ex Parte* Letter, Attach. 2 at 2; *see also* Information Technology Industry Council (ITI) *2006 Contribution FNPRM* Comments at 6; NCTA *2006 Contribution FNPRM* Comments at 5; Small Business Administration Office of Advocacy (SBA) *2006 Contribution FNPRM* Comments at 8; Vonage *2006 Contribution FNPRM* Comments at 7–8; Letter from Gregory V. Haledjian, Regulatory and Governmental Relations, Counsel to IDT Corporation and USF By the Numbers Coalition, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, Attach. at 3–4 (filed Jan. 30, 2007).

otherwise be caused by differing contribution charges.[261] In a marketplace characterized by increased competition within and between different technology platforms, residential consumers will receive the same universal service charge regardless of the type of service the customer chooses.

105. Similarly, by subjecting contributors to the same regulatory framework for assessments on residential services regardless of technology, the numbers-based methodology will eliminate incentives under the current revenue-based system for providers to migrate to services and technologies that are either exempt from contribution obligations or are subject to safe harbors.[262] The elimination of such incentives will result in a more competitively and technologically neutral marketplace and a more predictable source of funding for the universal service mechanisms.

106. The adoption of a fixed $1.00 per residential number per month contribution assessment is specific and predictable and will simplify the administration of universal service contributions.[263] Interstate end-user telecommunications revenues have become increasingly difficult to identify, particularly for residential services, due to increased bundling of local and long distance service and the growth of consumer interconnected VoIP offerings.[264] In contrast, telephone numbers provide an easily identifiable basis for contribution.[265] The amount of North American Numbering Plan (NANP) telephone numbers in use has shown steady, stable growth, providing a fairly constant basis for estimating universal service support amounts.[266] The new methodology, based on a flat $1.00 per residential number per month, will be easier to administer, facilitating greater regulatory compliance. A numbers-based contribution methodology will also be readily applicable to emerging service offerings. The new methodology minimizes the potential for providers to avoid contributions by bundling intrastate revenues with interstate revenues or engaging in other bypass activities.[267]

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[261] *See, e.g.*, NCTA *2006 Contribution FNPRM* Comments at 5; Vonage *2006 Contribution FNPRM* Comments at 6; Letter from Grace E. Koh, Policy Counsel, Cox Enterprises, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 06-122, 05-337, 01-92, CC Docket Nos. 96-45, 99-68, 96-262 at 2 (filed July 15, 2008).

[262] *See* AT&T *2006 Contribution FNPRM* Comments at 4.

[263] In addition to being easily administrable, the record supports adoption of $1.00 per month as the residential per-number assessment amount. *See, e.g.*, Letter from James S. Blaszak, Counsel for Ad Hoc Telecommunications Users Committee, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, NSD File No. L-00-72, Attach. at 3 (filed Oct. 25, 2005); *See* Letter from Mary L. Henze, AT&T Services, and Kathleen Grillo, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, CC Docket No. 96-45, at 3 (filed Sept. 23, 2008) (AT&T and Verizon Sept. 23, 2008 *Ex Parte* Letter) (estimating a $1.01 per-number per-month assessment under a numbers-based contribution methodology); *see also* Letter from Paul Garnett, Assistant Vice President, CTIA–The Wireless Association, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45 at 1 (filed Oct. 2, 2008) (CTIA Oct. 2, 2008 *Ex Parte* Letter), Attach. at 5 (supporting the AT&T and Verizon proposal); Letter from David B. Cohen, Vice President, Policy, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, CC Docket No. 96-45, Attach. at 1 (filed Sept. 25, 2008).

[264] *See* 2007 UNIVERSAL SERVICE MONITORING REPORT at tbl. 1.1.

[265] *See* AT&T and Verizon Sept. 11, 2008 *Ex Parte* Letter, Attach. 2 at 1; *see also* ALEXANDER BELINFANTE, FCC, TELEPHONE SUBSCRIBERSHIP IN THE UNITED STATES, tbl. 1 (2008), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-284923A1.pdf.

[266] *See* CRAIG STROUP AND JOHN VU, FCC, NUMBERING RESOURCE UTILIZATION IN THE UNITED STATES, tbl. 12 (2008) (showing number utilization from December 2000 to December 2007), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-284926A1.pdf.

[267] *See* Ad Hoc *Contribution First FNPRM* Comments at 6–7; Coalition for Sustainable Universal Service (CoSUS) *Contribution First FNPRM* Comments at 38; Sprint *Contribution First FNPRM* Comments at 8–9. Because

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107. Further, assessing universal service contributions based on residential telephone numbers will promote number conservation.[268] Telephone numbers are a finite, public resource. If contributors are assessed based on the residential telephone numbers assigned to them, they will have an incentive to efficiently manage their numbering resources in a manner that minimizes their costs. We expect that this will result in the need for fewer area code splits or overlays due to number exhaust.[269]

108. Our adoption of a numbers-based contribution methodology for residential services is consistent with the goal of ensuring just, reasonable, and affordable rates.[270] The per-number assessment of $1.00 per number per month will represent a reduction in pass-through charges for many residential customers.[271] Although the $1.00 per number per month assessment may represent an increase in universal service charges for residential customers that make few or no long distance calls, this increase should be slight. Under the current revenue-based contribution mechanism, providers may assess a federal universal service fee on the basis of the customer's SLC. The residential SLC may be as high as $6.50 per month.[272] Based on the most recent contribution factor of 11.4 percent, even a customer who made no long distance calls could thus be assessed $0.74 per month in universal service charges under the existing revenue-based methodology.[273] Thus, the potential increase for a customer who makes no long distance calls could be as little as $0.26 per month under the $1.00 per number methodology. In addition, we have separate protections to ensure that telephone service remains affordable for low-income subscribers.[274]

109. Some commenters assert that assessing a flat universal service charge is inherently unfair because it does not take into account the fact that some people make many interstate and international

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residential services will no longer be assessed based on revenues, contributors may not mark-up or otherwise adjust the $1.00 per Assessable Number per month residential contribution assessment in response to uncollectible revenues.

[268] *See, e.g.*, ITI *2006 Contribution FNPRM* Comments at 6; Vonage *2006 Contribution FNPRM* Comments at 7.

[269] *See Numbering Resource Optimization*, CC Docket No. 99-200, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 7574, 7625, para. 122 (2000) (*NRO I Order*) (determining that implementation of thousands-block number pooling is essential to extending the life of the NANP by making the assignment and use of NXX codes more efficient); *see also Numbering Resource Optimization*, CC Docket Nos. 99-200, 96-98, 95-116, Fourth Report and Order, 18 FCC Rcd 12472, 12474, para. 5 (2003) (*NRO IV Order*) (explaining further that thousands-block number pooling is a numbering resource optimization measure in which 10,000 numbers in an NXX are divided into ten sequential blocks of 1,000 numbers and allocated to different service providers (or different switches) within a rate center).

[270] 47 U.S.C. § 254(b)(1).

[271] *See* Letter from Jean L. Kiddoo and Tamar E. Finn, Counsel to IDT Telecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, at 5 (filed Aug. 2, 2007) (IDT Aug. 2, 2007 *Ex Parte* Letter) (showing that the average residential household paid about $1.37 in universal service fees in 2006). IDT claims the data show that the lowest-income consumers paid an average of $1.09 in universal service fees for wireline telephone bills. *Id.* at 6.

[272] 47 C.F.R. §§ 69.104(n)(1), 69.152(d)(1). The SLC is referred to as the End User Common Line Charge in the Commission's rules.

[273] The revenue from the $6.50 SLC would be multiplied by the 11.4% contribution factor, resulting in a contribution amount and corresponding assessment of $0.74. *See Fourth Quarter 2008 Contribution Factor Public Notice* at 1; AT&T and Verizon Sept. 11, 2008 *Ex Parte* Letter, Attach. 2 at 3.

[274] *See* 47 C.F.R. § 54.400 *et seq.*; *infra* para. 141 (describing contribution exemptions for services to low-income consumers).

calls, while others make few if any such calls in a given month.[275] We disagree. We find that imposition of a flat charge is warranted because all contributors and their subscribers receive a benefit from being connected to the public network, enabling them to make and receive interstate calls.[276] The *ability* to make or receive interstate calls over a public network is a significant benefit and it is reasonable to assess universal service contributions for residential customers based on access to the network. Customers who do not make any interstate calls still receive the benefit of accessing the network to *receive* interstate calls. The $1.00 per month per number assessment reflects our finding that it is equitable for providers to contribute a fixed amount based on the ability to access and utilize a ubiquitous public network.

110. Some commenters allege that changing from the current revenue-based methodology to a new mechanism based on telephone numbers would not be equitable because it could reduce contributions from certain industry segments and increase them for others.[277] Although the change to a numbers-based contribution methodology for residential services will result in changes in the relative contribution obligations of industry segments, the new contribution methodology is not inequitable or discriminatory. The evolving nature of the telecommunications marketplace and of its participants requires the Commission to periodically review and revise the contribution methodology to ensure that providers continue to be assessed on an equitable and non-discriminatory basis. We find that, given the difficulties in continuing to assess contributions entirely on a revenue-based methodology and the benefit to residential consumers of access to the public network, it is equitable to adopt a numbers-based contribution methodology that assesses a $1.00 per month per number fee for residential services.

b. Assessable Numbers

111. Below, we describe the telephone numbers for which service providers are obligated to contribute to the universal service fund. We call these "Assessable Numbers." The Commission has addressed certain reporting based on telephone numbers in other contexts. In the number utilization context, the Commission requires that each telecommunications carrier that receives numbering resources from the North American Numbering Plan Administrator (NANPA), the Pooling Administrator, or another telecommunications carrier report its numbering resources in each of six defined categories of numbers set forth in section 52.15(f) of our rules.[278] In the regulatory fee context, the Commission used

[275] *See, e.g.*, Letter from Maureen A. Thompson, Executive Director, Keep USF Fair Coalition, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, Attach. at 5–7 (filed Mar. 27, 2006) (Keep USF Fair Mar. 27, 2006 *Ex Parte* Letter); *see also* NASUCA Sept. 30, 2008 *Ex Parte* Letter at 9.

[276] *Universal Service First Report and Order*, 12 FCC Rcd at 8783, para. 8

[277] *See, e.g.*, FW&A *Contribution First FNPRM* Comments at 13–15; NRTA and OPASTCO *Contribution First FNPRM* Comments at 7–11; SBC *Contribution First FNPRM* Comments at 18; Verizon *Contribution First FNPRM* Reply at 6; Verizon Wireless *Contribution First FNPRM* Comments at 5–6.

[278] These six categories of numbers are defined as follows:

(i) Administrative numbers are numbers used by telecommunications carriers to perform internal administrative or operational functions necessary to maintain reasonable quality of service standards.

(ii) Aging numbers are disconnected numbers that are not available for assignment to another end user or customer for a specified period of time. Numbers previously assigned to residential customers may be aged for no more than 90 days. Numbers previously assigned to business customers may be aged for no more than 365 days.

(iii) Assigned numbers are numbers working in the Public Switched Telephone Network under an agreement such as a contract or tariff at the request of specific end users or customers for their use, or

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the category of "assigned numbers" as the starting point for determining how to assess fees on certain providers, but found it necessary to modify that definition to account for the different regulatory contexts. Specifically, in assessing regulatory fees for commercial mobile radio service (CMRS) providers that report number utilization to NANPA based on the reported assigned number count in their Numbering Resource Utilization and Forecast (NRUF) data, the Commission requires these providers to adjust their assigned number count to account for number porting. The Commission found that adjusting the NRUF data to account for porting was necessary for the data to be sufficiently accurate and reliable for purposes of regulatory fee assessment.[279]

112. We adopt a new term based on the category of assigned numbers to represent the numbers being assessed for universal service contribution purposes—"Assessable Numbers." The definition of Assessable Numbers that we adopt focuses on those numbers that are actually in use by end users for services that traverse a public interstate network. Specifically, we define an Assessable Number as a NANP telephone number or functional equivalent identifier[280] in a public or private network that is in use by a residential end user and that enables the residential end user to receive communications from or terminate communications to (1) an interstate public telecommunications network or (2) a network that traverses (in any manner) an interstate public telecommunications network.[281] Assessable Numbers include geographic as well as non-geographic telephone numbers (such as toll-free numbers and 500-NXX numbers) so long as they meet the other criteria described in this part for Assessable Numbers.

113. The provider with the retail relationship to the residential end user is the entity responsible for contributing.[282] We impose the contribution obligation on the provider with the retail

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numbers not yet working but having a customer service order pending. Numbers that are not yet working and have a service order pending for more than five days shall not be classified as assigned numbers.

(iv) Available numbers are numbers that are available for assignment to subscriber access lines, or their equivalents, within a switching entity or point of interconnection and are not classified as assigned, intermediate, administrative, aging, or reserved.

(v) Intermediate numbers are numbers that are made available for use by another telecommunications carrier or non-carrier entity for the purpose of providing telecommunications service to an end user or customer. Numbers ported for the purpose of transferring an established customer's service to another service provider shall not be classified as intermediate numbers.

(vi) Reserved numbers are numbers that are held by service providers at the request of specific end users or customers for their future use. Numbers held for specific end users or customers for more than 180 days shall not be classified as reserved numbers.

47 C.F.R. § 52.15(f)

[279] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2005, Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, MD Dockets No. 05-59, 04-73, Report and Order and Order on Reconsideration, 20 FCC Rcd 12259, 12271, paras. 39–40 (2005).

[280] "Functional equivalent identifier" means an identifier used in place of and with the same PSTN access capability as a NANP number; it is not intended to capture identifiers used in conjunction with NANP numbers, such as internal extensions that cannot be directly dialed from the PSTN. Nor is "functional equivalent identifier" intended to capture routing identifiers used for routing of Internet traffic, unless such identifiers are used in place of a NANP number to provide the ability to make or receive calls on the PSTN.

[281] For purposes of the definition of Assessable Numbers, we include only the NANP telephone numbers used in the United States and its Territories and possessions.

[282] *See Universal Service First Report and Order*, 12 FCC Rcd at 9206, para. 844; *see also, e.g.*, Letter from Melissa E. Newman, Vice President-Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-

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relationship to the end user for several reasons. First, this provider will have the most accurate and up-to-date information about how many Assessable Numbers it currently has assigned to end users. Second, this provider is also in the best position to distinguish residential users from business users, and thus to determine how many of its telephone numbers in use are Assessable Numbers. Finally, this provider, and its users, are benefiting from a supported PSTN, and thus it is sound policy to require them to contribute to its support.[283] We note that today, providers are permitted to pass through their contribution assessments to end users, and we understand that they typically do so.[284] Under the new methodologies, they may continue to do so, subject to the same requirement that they will not pass through more than their contribution amount.[285]

114. Next, we specify whether certain types of numbers are included in the definition of Assessable Numbers. First, numbers used for intermittent or cyclical purposes are included in the definition of Assessable Numbers. Numbers used for cyclical purposes are numbers designated for use that are typically "working" or in use by the end user for regular intervals of time. These numbers include, for example, an end user's summer home telephone number that is in service for six months out of the year.[286] In the *NRO III Order*, the Commission clarified that these types of numbers should generally be categorized as "assigned" numbers if they meet certain thresholds and that, if they do not meet these thresholds, they "must be made available for use by other customers" (i.e., they are "available" numbers).[287] Because these numbers are assigned to end users, we find they should be included in the definition of Assessable Numbers we adopt today.

115. We exclude from our definition of Assessable Numbers those telephone numbers that satisfy the section 52.15 definition of "assigned numbers" solely because the "numbers [are] not yet working but hav[e] a customer service order pending" for five days or less.[288] Providers generally do not

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122, at 7 (filed Sept. 24, 2008) (Qwest Sept. 24, 2008 *Ex Parte* Letter); AT&T and Verizon Sept. 11, 2008, *Ex Parte* Letter, Attach. 1 at 1–2; Letter from Brad E. Mutschelknaus, Counsel for XO Communications, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 96-45, 01-92, WC Docket No. 04-36, Attach. at 9 (filed Oct. 3, 2008); Letter from Donna N. Lampert, Counsel for Google, to Marlene H. Dortch, Secretary, FCC (filed Oct. 3, 2008) (Google Oct. 3, 2008 *Ex Parte* Letter); *see also* 47 C.F.R. § 54.5 (defining "contributor" as "an entity required to contribute to the universal service support mechanism pursuant to § 54.706 [of the Commission's rules]").

[283] *See supra* para. 103 (discussing the public interest in requiring these entities to support the network).

[284] *See, e.g.*, AT&T and Verizon Sept. 23, 2008 *Ex Parte* Letter, Attach. 2 at 2; *see also Second Wireless Safe Harbor Order*, 17 FCC Rcd at 24978, para. 50.

[285] 47 C.F.R. § 54.712.

[286] *See Numbering Resource Optimization*, CC Docket Nos. 99-200, 96-98, 95-116, Third Report and Order and Second Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200, 17 FCC Rcd 252, 303, para. 119 (2001) (*NRO III Order*).

[287] *NRO III Order*, 17 FCC Rcd at 304, para. 122 ("With this requirement, we seek to limit the amount of numbers that are set aside for use by a particular customer, but are not being used to provide service on a regular basis. Thus, in order to categorize such blocks of numbers as assigned numbers, carriers may have to decrease the amount [of] numbers set aside for a particular customer. We also clarify that numbers 'working' periodically for regular intervals of time, such as numbers assigned to summer homes or student residences, may be categorized as assigned numbers, to the extent that they are 'working' for a minimum of 90 days during each calendar year in which they are assigned to a particular customer. Any numbers used for intermittent or cyclical purposes that do not meet these requirements may not be categorized as assigned numbers, and must be made available for use by other customers.").

[288] *See* 47 C.F.R. § 52.15(f)(iii).

bill for services that have yet to be provisioned and therefore are not compensated for services during the pendency of the service order. Moreover, such numbers are not yet operational to send or receive calls. Thus, under the existing contribution methodology, providers would not contribute for services they are about to provide (but have not yet provided) under a pending service order. We continue to find it appropriate for contributors not to be required to contribute to the universal service fund for pending service orders.

116. We exclude from the definition of Assessable Numbers those telephone numbers that telecommunications providers have transferred or ported to a carrier using resale or the unbundled network element platform. Under prior numbering orders, such telephone numbers would still be included in the NRUF assigned number count of the transferring-out carrier.[289] Consistent with our definition of Assessable Numbers, because the underlying provider no longer maintains the retail relationship with the end user, the provider should not include these numbers in its Assessable Number count. Conversely, the receiving provider of such transferred customers would include the associated telephone numbers in their count of Assessable Numbers.

117. We exclude from the definition of Assessable Numbers those numbers that meet the definition of an Available Number, an Administrative Number, an Aging Number, or an Intermediate Number as those terms are defined in section 52.15(f) of the Commission's rules.[290] For a particular carrier, the carrier will not have an end user associated with a number in any of these categories of numbers. For example, an intermediate number is a number that is "made available for use by another telecommunications carrier or non-carrier entity for the purpose of providing telecommunications service to an end user or customer."[291] The receiving provider will be responsible for including the number as an Assessable Number once it provides the number to an end user.[292]

118. We exclude non-working telephone numbers from the definition of Assessable Number. Carriers report as assigned numbers for NRUF purposes entire codes or blocks of numbers dedicated to specific end-user customers if at least fifty percent of the numbers in the code or block are working in the PSTN.[293] Consistent with our definition of Assessable Numbers, carriers should not include the non-working numbers in these blocks in their Assessable Number counts, because the non-working numbers portion of these blocks are not providing service to the end user.

119. We exclude from the definition of Assessable Number those numbers that are used merely for routing purposes in a network, so long as such numbers are always—without exception—provided without charge to the end user, are used for routing only to Assessable Numbers for which a

[289] *NRO I Order*, 15 FCC Rcd at 7586–87, para. 18. Ported-out numbers, a subcategory of assigned numbers, are not reported to NANPA although NRUF reporting carriers are required to maintain internal records associated with these numbers for five years. *Id.* at 7592, 7601, paras. 36, 62.

[290] *See* 47 C.F.R. § 52.15(f); *see also* Qwest Sept. 24, 2008 *Ex Parte* Letter at 7 (arguing, among other things, that numbers used for administrative purposes and numbers that are not "actively" working, such as aging, unassigned, reserved numbers, and numbers donated back to the industry pool should be excluded from the contributor's base).

[291] *See* 47 C.F.R. § 52.15(f)(v).

[292] *See NRO I Order*, 15 FCC Rcd at 7587, para. 21 (2000) ("We agree with commenters who opine that [intermediate] numbers should not be categorized as *assigned* numbers because they have not been assigned to an end user. . . . We therefore conclude that numbers that are made available for use by another carrier or non-carrier entity for the purpose of providing telecommunications service to an end user or customer should be categorized as *intermediate* [numbers].").

[293] *NRO III Order*, 17 FCC Rcd at 304, para. 122.

universal service contribution has been paid, and the ratio of such routing numbers to Assessable Numbers is no greater than 1:1. For example, a NANP number used solely to route or forward calls to a residential number, office number, and/or mobile number would be excluded from our definition of Assessable Number if such routing number were provided for free, and such number routes calls only to Assessable Numbers. If, however, such routing or forwarding is provided for a fee, such as with remote call forward service or foreign exchange service, both the routing number and the end user number to which calls are routed or forwarded would be considered Assessable Numbers.

120. In addition, incumbent LECs need not include numbers assigned to wireless providers that interconnect at the end office of an incumbent LEC and have obtained numbers directly from the incumbent LEC.[294] Because the incumbent LEC does not have the retail relationship with the end user, it should not include these numbers in its Assessable Number count. The wireless carriers that have the retail relationship with the end users must include these telephone numbers in their Assessable Number count.

121. Finally, we exclude from the definition of Assessable Numbers those numbers associated with Lifeline services for the reasons described below.[295]

122. We do not restrict our definition to numbers that exclusively use the PSTN.[296] As noted above, evolution in communications technology away from the PSTN to alternative networks that may only partially (if at all) traverse the PSTN is one of the causes in the erosion of the contribution base under the current revenue-based methodology. As more service providers migrate to alternative networks that partially access the PSTN, continuing to assess universal service contributions based only on traffic that exclusively traverses the PSTN will not account for this migration; nor will it allow us to meet our principle of competitive neutrality.[297] Moreover, if a service provider connects a private network to a public network, the service provider and its customers benefit from the connection to the PSTN. Because universal service supports the PSTN and these parties connect to the PSTN, they benefit from universal service.[298] Thus, it is increasingly important that we conform our regulatory definitions to recognize this reality. Indeed, the Commission has already begun to recognize the need to create a level regulatory playing field. For example, calls to end users that utilize interconnected VoIP service are not wholly within the PSTN. Indeed, calls between two interconnected VoIP users may not touch the PSTN at all. Yet we found in 2006 that interconnected VoIP providers must contribute to the universal service fund.[299]

[294] When a wireless carrier interconnects at an incumbent LEC end office it is known as a Type 1 interconnection. *See Federal Communications Commission Seeks Comment on Initial Regulatory Flexibility Analysis in Telephone Number Portability Proceeding*, CC Docket No. 95-116, Public Notice, 20 FCC Rcd 8616, 8632, App. B at para. 19 n.53 (2005) ("Type 1 numbers reside in an end office of a LEC and are assigned to a Type 1 interconnection group, which connects the wireless carrier's switch and the LEC's end office switch.").

[295] *See infra* paras. 140–46.

[296] The record is split over whether the definition of an assessable number should be restricted to the PSTN. AT&T and Verizon, for example, do not include such a requirement in their proposed definitions. *See* AT&T and Verizon Sept. 23, 2008 *Ex Parte* Letter, Attach. 1. Other commenters, however, argue for such a requirement. *See* Google Oct. 3, 2008 *Ex Parte* Letter at 1 (the definition of an assessable number should be "premised on a telephone number acting as a proxy for an underlying two-way PSTN connection"). As we explain herein, such a restriction is not warranted.

[297] *Universal Service First Report and Order*, 12 FCC Rcd at 9207, paras. 845–46.

[298] *Universal Service First Report and Order*, 12 FCC Rcd at 9184, para. 796.

[299] *See 2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7536–37, paras. 33-34.

For these reasons, we conclude that our definition must account for public or private interstate networks, regardless of the technology of the network (e.g., circuit-switched, packet-switched) or the transmission medium of the network (e.g., wireline, wireless).

123. Finally, we recognize that, by declining to adopt for contribution purposes verbatim the definition of "assigned numbers" in section 52.15(f) of our rules, which is used by carriers to file NRUF reports,[300] we may nominally increase some of the administrative burden associated with universal service contribution filings. We find, however, that any minor administrative cost increases arising from not using the pre-existing definition are outweighed by the benefits of modifying the definition to achieve sound universal service policy. For example, as stated above, the existing definition of assigned numbers would not enable us to meet our universal service contribution goal of ensuring that the provider with the retail relationship to the end user be the one responsible for contributing.[301]

124. Under our numbers-based approach, certain providers will be required to contribute to the universal service fund based on Assessable Numbers even though they are not today required to submit NRUF data. Section 52.15(f) of the Commission's rules requires only "reporting carriers" to submit NRUF data to the NANPA.[302] A "reporting carrier" is defined as a telecommunications carrier that receives numbering resources from the NANPA, the Pooling Administrator, or another telecommunications carrier.[303] In the case of numbers provided by a telecommunications carrier to a non-carrier entity, the carrier providing the numbers to such entities must report NRUF data to the NANPA for those numbers. Thus, non-carrier entities that use telephone numbers in a manner that meets our definition of Assessable Numbers do not report NRUF data yet must contribute.[304] For example, interconnected VoIP providers may use telephone numbers that meet our definition of Assessable Numbers even though these providers do not report NRUF data.[305] These non-carrier entities that use numbers in a manner that meets our definition of Assessable Number will be required to determine their Assessable Number count based on their internal records (e.g., billing system records) and will be required to report such numbers to USAC.[306]

125. We are mindful that our move to a numbers-based contribution methodology may encourage entities to try to avoid their contribution obligations by developing ways to bypass the use of NANPA-issued numbers.[307] To the extent, however, these alternative methods are the functional

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[300] *See* 47 C.F.R. § 52.15(f)(iii).

[301] *See Universal Service First Report and Order*, 12 FCC Rcd at 9206, para. 844.

[302] 47 C.F.R. § 52.15(f).

[303] 47 C.F.R. § 52.15(f)(2).

[304] *NRO I Order*, 15 FCC Rcd at 7587, para. 21.

[305] See *Administration of the North American Numbering Plan*, Order, 20 FCC Rcd 2957, 2961–62, para. 9 (2005) (*SBCIS Waiver Order*) (noting that most VoIP providers' numbering utilization data are embedded in the NRUF data of the LEC). In the *SBCIS Waiver Order*, the Commission granted SBCIS, an Internet service provider, permission to obtain numbering resources directly from the NANPA and/or Pooling Administrator, conditioned on, among other things, SBCIS reporting NRUF data. *Id.* at 2959, para. 4.

[306] *See infra* paras. 147–53.

[307] *See* Letter from Jeanine Poltronieri, Vice President, Federal Regulatory, BellSouth D.C., Inc, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, Attach. at 2 (filed July 6, 2005) ("If voice service is provided without using telephone numbers, but with IP address or other identifier, FCC will need to establish a 'functional equivalency' test.").

equivalent of numbers and otherwise meet our definition of Assessable Numbers, such entities must report these functional equivalents as Assessable Numbers to the universal service fund administrator.

3. Contribution Assessment Methodology for Business Services

126. Although we find that a numbers-based contribution mechanism is superior to the existing revenue-based mechanism for residential services, applying a numbers-based approach to business services would result in inequitable contribution obligations. Specifically, certain business services that do not utilize numbers, or that utilize them to a lesser extent, would not be contributing to the universal service fund on an equitable basis.[308] Section 254(d) of the Act requires "every carrier" that provides interstate telecommunications services to contribute to the universal service fund.[309] Thus, providers of business services, including non-numbers based services, must continue to contribute. We conclude that these services should be assessed based on their connection to the public network.

127. A number of commenters supported moving to a methodology that would assess telephone numbers for those services that are associated with a telephone number and assess based on capacity of the connection to the public switched network those services not associated with a telephone number.[310] Other commenters supported retaining a revenue-based methodology for these services.[311] As discussed above, a revenue-based contribution methodology is no longer sustainable in today's telecommunications marketplace.[312] Additionally, a connections-based contribution methodology will provide a basis for assessing services not associated with telephone numbers, and will recognize the greater utility derived by business end users from these high capacity business service offerings.[313] Further, in contrast to the revenues on which contributions are currently based, the number and capacity of connections continues to grow over time, providing a contribution base that is more stable than the current revenue-based methodology. Moreover, a connections-based mechanism can be easily applied to all business services. We, therefore, conclude that a connections-based contribution mechanism is the

[308] Business services such as private line and special access services do not typically utilize telephone numbers in the same manner as residential services, and would not contribute equitably to the universal service fund under a numbers-based approach. *See, e.g.*, Letter from James S. Blaszak, Counsel to Ad Hoc Telecommunications Users Committee, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, NSD File No. L-00-72, at 3 (filed Oct. 9, 2002); Letter from Robert Quinn, Vice President Federal Government Affairs, AT&T, to Marlene Dortch, Secretary, FCC, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, NSD File No. L-00-72, at 2 (filed Oct. 22, 2002). Moreover, unlike residential services, which usually have one telephone number assigned per access line, business services do not usually have a number of telephone numbers assigned that aligns with the number of access lines utilized.

[309] 47 U.S.C. § 254(d). Therefore, we disagree with those parties that continue to support a numbers-only based approach because we find such an approach would be inconsistent with the statutory requirement that every telecommunications carrier must contribute to the universal service fund. *See, e.g.*, Letter from James S. Blaszak, Counsel for Ad Hoc, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-92, 96-45, 99-68, WC Docket Nos. 05-337, 07-135, Attach. at 5 (filed Oct. 14, 2008).

[310] *See Staff Study*; *see also* Ad Hoc Telecommunications Users Committee 2003 Staff Study Reply; Letter from John Nakahata, Counsel for the Coalition for Sustainable Universal Service, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, at 1 (filed Oct. 31, 2002).

[311] *See* Letter from Melissa E. Newman, Vice President-Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, Attach. at 6 (filed Mar. 21, 2006) (Qwest Mar. 21, 2006 *Ex Parte* Letter); *see also* Qwest Sept. 24, 2008 *Ex Parte* Letter at 2.

[312] *See supra* para. 97.

[313] Time Warner *2006 Contribution FNPRM* Comments at 2.

better option for business services. We seek comment below on the implementation of the connections-based contribution mechanism for business services.[314]

128. We find that it is equitable and nondiscriminatory, consistent with the requirements of section 254(d) of the Act, to establish different contribution methodologies for residential and business services.[315] Although the statute states that "[a]ll providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service," it does not require that all contributors or all services be assessed in the same manner.[316] Under the current revenue-based mechanism, the Commission has established different contribution methodologies through the use of proxies for wireless and interconnected VoIP services.[317] As noted above, continuing to use a revenues-based contribution methodology has become increasingly complex, and a numbers-based system would avoid many of those complexities.[318] At the same time, however, if we relied exclusively on a numbers-based contribution methodology, there are some business services—such as private line and special access—that would escape contribution requirements entirely. That result would be inconsistent with the obligation that all providers of interstate telecommunications services contribute to universal service, and would impose an unfair burden on providers that contribute on the basis of numbers.[319] We therefore conclude that adopting different contribution assessment methodologies for residential and business services will result in equitable and nondiscriminatory contribution obligations.

129. On an interim basis, while we conduct a proceeding to implement the connections-based contribution methodology, we continue to require providers to contribute to the universal service fund using the current revenue-based methodology for their business services.[320] We find that providers of business services should continue to bear their portion of the universal service contribution obligation to ensure the sufficiency of the fund while the connections-based contribution mechanism is being implemented.[321]

[314] We decline at this time to adopt AT&T and Verizon's proposal for assessing contributions on connections based on flat rate charges that would differ based on the speed of the connection. AT&T and Verizon Oct. 20, 2008 *Ex Parte* Letter at 2. Instead, we seek further comment on implementing assessments based on connections.

[315] 47 U.S.C. § 254(d).

[316] 47 U.S.C. § 254(b)(4).

[317] The proxies offer an alternative to contributions assessed on actual interstate revenues; they are intended to approximate the portion of revenues derived from the provision of interstate telecommunications services. *First Wireless Safe Harbor Order*, 13 FCC Rcd at 21258–60, paras. 13–15 (establishing safe harbors for wireless service providers); *Second Wireless Safe Harbor Order*, 17 FCC Rcd at 14954, para. 1 (modifying the wireless safe harbors); *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7532, 7545, paras. 23, 53 (revising the wireless safe harbor and establishing a safe harbor for interconnected VoIP providers).

[318] *See supra* para. 95.

[319] 47 U.S.C. §§ 254(b)(4), (d).

[320] Contributors will base their contributions on business service revenues in the same manner as they do currently. We make no change to the *de minimis* exemption or to the Limited International Revenue Exception (LIRE) for business contributions based on revenues. 47 U.S.C. § 254(d); 47 C.F.R. § 54.708; *Fifth Circuit Remand Order*, 15 FCC Rcd at 1687–88, para. 19; *Contribution First FNPRM*, 17 FCC Rcd at 3806–07, paras. 125–28. These exceptions do not apply to residential contributions based on numbers.

[321] *See* 47 U.S.C. § 254(d). Prepaid calling card providers, as well as any other current contributors who provide services to residential consumers but do not assign Assessable Numbers, shall continue to contribute based on their

(continued....)

130. During the interim period in which the revenue-based contribution assessment for business services remains in place, the contribution factor for providers of business services will be determined based on the funding requirements not covered by the $1.00 assessment on Assessable Numbers. We will hold constant the contribution assessment on Assessable Numbers and determine the revenue contribution factor based on the quarterly projected demand of the universal service mechanisms divided by the quarterly projected-collected interstate and international end user telecommunications revenues from business services in the same manner in which the current contribution factor is calculated.[322] This approach will ensure a specific, predictable, and sufficient funding source for the Commission's universal service mechanisms.

4. Wireless Prepaid Plans

131. We adopt an alternative methodology for telephone numbers assigned to handsets under a wireless prepaid plan. Some commenters assess prepaid wireless services on a per-minute-of-use basis.[323] For example, prepaid wireless providers argue that their customers are typically low-income or low-volume consumers and, as such, should be subject to a lesser assessment.[324] Verizon and TracFone further assert that prepaid wireless providers may have difficulty administering a per-number assessment.[325] Verizon, therefore, recommends that any new contribution methodology accommodate prepaid wireless service providers by adopting a per-number assessment that "reflects the unique characteristics of [the] service," and TracFone similarly agrees.[326] Finally, CTIA essentially argues that the sheer number of prepaid wireless end users—over 44 million—combined with the likelihood that

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revenues during the interim period until these business services are assessed on the basis of connections and/or numbers. Despite IDT's recent request that its prepaid calling card services be treated as residential for purposes of universal service contribution assessments, we find that, consistent with arguments made over the years by such providers, these calling card services are provided to businesses. *See* Request for Review of Decision of the Universal Service Administrator by IDT Corporation and IDT Telecom, CC Docket No. 96-45 at 3 (filed June 30, 2008) ("The vast majority of [prepaid calling card sales] are completed through a network of distributors and resellers before being purchased by the ultimate end user consumer."). *But see* Letter from Tamar E. Finn, Counsel, IDT Corporation, to Marlene Dortch, Secretary, FCC, CC Docket No. 96-45, WC Docket No. 06-122 (filed Oct. 28, 2008) (asking the Commission to treat prepaid calling cards as residential services if the Commission adopts a numbers-based methodology limited to residential numbers).

[322] The Commission may revise the specific per-number residential assessment amount in the future, if market conditions warrant.

[323] AT&T and Verizon Oct. 20, 2008 *Ex Parte* Letter, Attach. at 4.

[324] Letter from Mitchell F. Brecher, Counsel for TracFone, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, Attach. at 2 (filed Sept. 17, 2008) (TracFone Sept. 17, 2008 *Ex Parte* Letter); CTIA *2006 Contribution FNPRM* Comments at 6; Leap Wireless *2006 Contribution FNPRM* Comments at 2–3; T-Mobile Apr. 4, 2006 *Ex Parte* Letter at 3–4; Letter from John M. Beahn and Malcolm Tuesley, Counsel to Virgin Mobile USA, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, Attach. at 4–7 (filed June 12, 2006) (Virgin Mobile June 12, 2006 *Ex Parte* Letter).

[325] *See, e.g.*, Verizon Mar. 28, 2006 *Ex Parte* Letter, Attach. at 3; TracFone Sept. 17, 2008 *Ex Parte* Letter, Attach. at 2; Virgin Mobile June 12, 2006 *Ex Parte* Letter, Attach. at 7.

[326] *See* Verizon Mar. 28, 2006 *Ex Parte* Letter, Attach. at 3; TracFone Sept. 17, 2008 *Ex Parte* Letter, Attach.; *see also* Letter from Antoinette Bush, Counsel for Virgin Mobile, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, Attach. at 11 (filed Mar. 18, 2005) (Virgin Mobile Mar. 18, 2005 *Ex Parte* Letter); AT&T and Verizon Sept. 23, 2008 *Ex Parte* Letter at 6.

most of these end users would see a rise in their pass-through assessments warrants an exception.[327]

132. To accommodate the unique situation of prepaid wireless service providers, we find it appropriate to create a limited modification in contribution assessments for providers of prepaid wireless services and their end users.[328] We agree with commenters that it is considerably more difficult for wireless prepaid providers to pass-through their contribution assessments in light of their "pay-as-you-go" service offerings.[329] Because of this significant practical issue, we will modify the numbers-based assessment for prepaid wireless providers with regard to their offering of these services. Further, we note that, just as with Lifeline customers, many prepaid wireless end users are low income consumers. For example, TracFone states that about half of its customers have incomes of $25,000 or less.[330]

133. We find that TracFone's "USF by the Minute" proposal best addresses the concerns of prepaid wireless providers within the context of the new numbers-based contribution methodology we adopt today.[331] TracFone's proposed USF by the Minute Plan would calculate universal service contribution assessments on prepaid wireless services by dividing the residential per-number assessment (the $1.00 flat fee adopted above) by the number of minutes used by the average postpaid wireless customer in a month. This per-minute number would then be multiplied by the number of monthly prepaid minutes generated by the provider. This amount would be the provider's monthly universal service contribution obligation. The per-minute assessment, however, would be capped at an amount equal to the current per month contribution per Assessable Number, the per-number assessment amount adopted above.[332] We illustrate the proposal below.

134. According to CTIA data submitted by TracFone, the average wireless postpaid customer used 826 minutes per month for the period ending December 2007.[333] The residential per-number assessment of $1.00 would be divided by 826 minutes to calculate a per-minute assessment of $0.001210654. The wireless prepaid provider's contribution obligation would be calculated by multiplying the per-minute assessment by the number of prepaid minutes generated for the month. If the wireless prepaid provider generated a billion prepaid minutes in a month, its contribution for that month

[327] *See* CTIA Oct. 2, 2008 *Ex Parte* Letter at 1 (raising a concern that current proposals could harm the large number of prepaid wireless customers).

[328] *See supra* para. 141.

[329] *See* Letter from Mitchell F. Brecher, Counsel for TracFone, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, at 3 (filed June 15, 2007) (TracFone June 15 *Ex Parte* Letter).

[330] TracFone June 15, 2007 *Ex Parte* Letter at 3. TracFone also asserts that an exception is warranted because it provides service to low volume end users (i.e., end users that do make a small amount of calls, measured in minutes). *Id.* However, as explained below, we decline to provide a contribution exception for low-volume users. *See infra* para. 143.

[331] AT&T and Verizon support the TracFone discount approach for prepaid wireless providers. AT&T and Verizon Sept. 11, 2008 *Ex Parte* Letter, Attach. 1 at 3; *see also* Letter from David L. Sieradzki, Counsel to OnStar Corp., to Marlene Dortch, Secretary, FCC, WC Docket No. 06-122, CC Docket No. 96-45, at 2 (dated Oct. 28, 2008) (OnStar "strongly supports" the TracFone per-minute of use proposal for prepaid wireless services) (OnStar Oct. 28, 2008 *Ex Parte* Letter).

[332] TracFone Sept. 17, 2008 *Ex Parte* Letter, Attach. at 4–5.

[333] *See* TracFone Sept. 17, 2008 *Ex Parte* Letter at 5. We use these data because they are the most recent publicly available data.

would be $1,210,654.[334] *If the prepaid provider had 10 million prepaid customers that month, the average* contribution per customer would be $0.12 and its contribution obligation would remain at $1,210,654. If, on the other hand, it had only 1 million customers, the average contribution per-customer would be $1.20, which exceeds the residential per-number assessment of $1.00. In this case, because the per-customer contribution amount under the calculation would exceed the residential per-number assessment established by the Commission, the prepaid provider's contribution obligation would be capped at $1,000,000, which is the residential per-number assessment of $1.00 multiplied by the 1 million monthly prepaid customers. Under this scenario, the average per-customer contribution for the prepaid wireless provider would be equal to the per-number contribution of $1.00 for non-prepaid residential numbers.

135. We find the TracFone discount approach superior to other forms of a discount proposed by parties. For example, CTIA proposed a fifty percent discount for prepaid wireless providers.[335] The TracFone approach is based on actual wireless calling data, whereas the CTIA approach represents a more arbitrary half-off discount. Moreover, the CTIA proposal makes no allowance for the type of end user that is using the prepaid wireless service. This contrasts with the TracFone proposal, which would not provide any discount to those end users that use more than the average monthly post-paid number of minutes. As explained above, for those customers whose usage would result in more than the $1.00 pass-through, the assessment on the provider and the pass-through would be capped at $1.00 per month per Assessable Number. Thus, high volume users would neither benefit from, nor be penalized by, the discount mechanism. Finally, we make clear that if the prepaid provider is an ETC and is providing service to qualifying Lifeline customers, the provider is exempt from contribution assessments on the qualifying Lifeline customers and we prohibit the provider from assessing any universal service pass-through charges on their Lifeline customers.

5. Exceptions to Contribution Obligations

136. A number of parties have asked for exceptions from the contribution obligation. We find that, in general, providing an exception or exemption to a particular provider or to a particular category of end users would complicate the administration of the numbers-based methodology we adopt today. The result would unfairly favor certain groups by reducing or eliminating their contribution obligations, while increasing the contribution obligations on providers that are not exempted from contributing. Therefore, we conclude that grant of an exemption from the contribution obligations is only warranted for those who are truly unable to bear the burden of contributing to the universal service fund—low-income consumers. As discussed below, we exempt providers from contribution assessments on their qualifying Lifeline program customers and prohibit contributors from assessing any universal service pass-through charges on their Lifeline customers. As explained below, an exception for low-income consumers is consistent with the Commission's policies underlying the low-income universal service program and targets universal service benefits to those consumers most in need of those benefits.[336]

137. We conclude that telephone numbers assigned to Lifeline customers should be excluded from the universal service contribution base and providers of Lifeline service may not pass-through contribution assessments to Lifeline customers.[337] The Lifeline program provides an opportunity for the

[334] To the extent that the prepaid wireless subscriber is a Lifeline customer for the prepaid service, the prepaid provider should exclude prepaid minutes associated with the qualifying Lifeline customer. *See infra* para. 141.

[335] CTIA Oct. 2, 2008 *Ex Parte* Letter at 5.

[336] *Alenco v. FCC*, 201 F.3d at 621.

[337] *See, e.g.*, AT&T and Verizon Oct. 20, 2008 *Ex Parte* Letter at 4 (proposing that numbers assigned to Lifeline customers be excluded from the monthly number count for contribution purposes).

Commission to ensure that low-income families are not denied access to telephone service. We find that an exception for Lifeline customers satisfies the high threshold necessary to justify an exception to the new numbers-based contribution methodology we adopt today. Lifeline customers are, by definition, among the poorest individuals in the country. As such, they are in the greatest need of relief from regulatory assessments. Prohibiting recovery of universal service contributions from Lifeline customers helps to increase subscribership by reducing qualifying low-income consumers' monthly basic local service charges.[338] The record, moreover, overwhelmingly supports the creation of an exception for Lifeline customers. Consumer groups, large telecommunications customers, LECs, and wireless providers all support creating an exemption for Lifeline customers, and no commenter opposes an exemption for Lifeline customers.[339] We therefore adopt an exemption to our numbers-based contribution methodology for Lifeline customers.

138. Although commenters have sought contribution exceptions for other groups of consumers or service providers, we decline to adopt any further exceptions.[340] Some parties argue that consumers who make few or no calls, i.e., low-volume users, should be exempt from the numbers-based residential contribution assessment mechanism.[341] As discussed above, all users of the network, even those who make few or no calls, receive a benefit by being able to receive calls, and therefore it is appropriate for these consumers to contribute to universal service.[342] Also as discussed above, to the extent low-volume consumers may see an increase in the amount of their universal service contribution pass-through fee,[343] any such increase should be slight.[344]

139. We also decline to exempt telematics providers,[345] stand-alone voice mail providers,[346]

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[338] *See Second Wireless Safe Harbor Order*, 17 FCC Rcd at 24982, para. 62.

[339] *See, e.g.*, CTIA *2006 Contribution FNPRM* Comments at 5; CU et al. *High-Cost Reform NPRMs* Reply at 58; Ad Hoc Nov. 19, 2007 *Ex Parte* Letter at 4; AT&T and Verizon Sept. 11, 2008 *Ex Parte* Letter, Attach. 1 at 5.

[340] We do not prejudge whether additional exceptions should apply if the Commission were to assess contributions based on numbers for business services. We note that certain businesses, such as non-profit health care providers, libraries, and colleges and universities, support such exemptions. We do not address those exemptions at this time.

[341] *See, e.g.*, CU et al. *Contribution First FNPRM* Comments at 12; NASUCA *Contribution First FNPRM* Comments at 14; Keep USF Fair Mar. 27, 2006 *Ex Parte* Letter, Attach. at 1.

[342] *See supra* para. 113; *see also* Sprint *Contribution First FNPRM* Comments at 7.

[343] *But see* IDT Aug. 2, 2007 *Ex Parte* Letter at 6–7 (arguing that low-volume consumers who make no long distance calls pay about $1.40 in universal service contribution assessments).

[344] *See supra* para. 112.

[345] Telematics is a service that is provided through a transceiver, which is usually built into a vehicle but can also be a handheld device, that provides public safety information to public safety answering points (PSAPs) using global positioning satellite data to provide location information regarding accidents, airbag deployments, and other emergencies in real time. *See, e.g.*, Letter from David L Sieradzki, Counsel for OnStar, to Marlene H. Dortch, FCC, CC Docket No. 96-45, Attach. at 1 (filed Mar. 2, 2006); *Revision of the Commission's Rules To Ensure Compatability with Enhanced 911 Emergency Systems*, CC Docket No. 94-102, Order, 18 FCC Rcd 21531, 21531–33, paras. 2, 8 (2003).

[346] Letter from Jennifer D. Brandon, Executive Director, Community Voice Mail National, to Tom Navin, Wireline Competition Bureau, FCC, CC Docket No. 96-45 at 1 (filed May 30, 2006) (Community Voice Mail May 30, 2006 *Ex Parte* Letter) (arguing for an exemption for these services).