A. Background

65. Since 1985, the Commission, pursuant to its general authority under sections 1, 4(i), 201, and 205 of the Act and in cooperation with state regulators and local telephone companies, has administered two programs designed to increase subscribership by reducing charges to low-income consumers.[157] The Commission's Lifeline program reduces qualifying consumers' monthly charges, and Link Up provides federal support to reduce eligible consumers' initial connection charges by up to one half.[158]

66. Under the Commission's current rules, states and territories have the authority to establish their own Lifeline/Link Up programs that provide additional support to low-income consumers that incorporate the unique characteristics of each state or territory.[159] For example, in establishing eligibility criteria, states have the flexibility to consider federal and state-specific public assistance programs with high rates of participation among low-income consumers in the state. State certification procedures and outreach efforts can also take into account existing state laws and budgetary limits. Some states and territories, however, have elected to use the federal criteria as their default standard. These "federal default states" include not only states and territories with their own Lifeline/Link Up programs that have adopted the federal default criteria, but also states and territories that have not adopted their own Lifeline/Link Up program. In April 2004, the Commission released an order expanding the federal default eligibility criteria to include an income-based criterion and additional means-tested programs.[160]

67. *Eligibility for Lifeline and Link Up.* In states that provide state Lifeline and Link Up support, Lifeline and Link Up are available to all subscribers who meet state eligibility requirements. Although states have some latitude in selecting means tests, state commissions must establish narrowly targeted qualification criteria that are based solely on income or factors directly related to income for low-income residents to be eligible for Lifeline and Link Up. In addition, states with eligible residents of tribal lands must ensure that their qualification criteria are reasonably designed to apply to residents of tribal lands, if applicable.[161] To receive Lifeline and Link Up in a state that does not mandate state Lifeline support, consumers must certify that their household income is at or below 135 percent of the Federal Poverty Guidelines, or that they participate in one of the following seven federal programs: Medicaid, Food Stamps, Supplemental Security Income (SSI), Federal Public Housing Assistance (Section 8), the Low-

[157] 47 U.S.C. §§ 151, 154(i), 201, 205.

[158] Lifeline currently provides low-income consumers with discounts of up to $10.00 off of the monthly cost of telephone service for a single telephone line in their principal residence, though this amount adjusts, in part, to reflect the carrier's tariffed federal subscriber line charge. *See* 47 C.F.R. § 54.403. Link Up provides low-income consumers with discounts of up to $30.00 off of the initial costs of installing telephone service. *See* 47 C.F.R. § 54.411(a). Under the Commission's rules, there are four tiers of federal Lifeline support. All eligible subscribers receive Tier 1 support which provides a discount equal to the ETC's subscriber line charge. Tier 2 support provides an additional $1.75 per month in federal support, available if all relevant state regulatory authorities approve such a reduction. (All fifty states have approved this reduction.). Tier 3 of federal support provides one half of the subscriber's state Lifeline support, up to a maximum of $1.75. Only subscribers residing in a state that has established its own Lifeline/Link Up program may receive Tier 3 support, assuming that the ETC has all necessary approvals to pass on the full amount of this total support in discounts to subscribers. Tier 4 support provides eligible subscribers living on tribal lands up to an additional $25 per month towards reducing basic local service rates, but this discount cannot bring the subscriber's cost for basic local service to less than $1. *See* 47 C.F.R. § 54.403.

[159] *See* 47 C.F.R. §§ 54.409(a), 54.415(a).

[160] *See Lifeline and Link Up*, WC Docket No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302 (2004).

[161] 47 C.F.R. § 54.409(a).

Income Home Energy Assistance Program (LIHEAP), the National School Lunch Program's free lunch program, or Temporary Assistance for Needy Families (TANF).[162] Subscribers living on tribal lands qualify to receive federal Lifeline support if: (1) they qualify under state criteria in a state that provides Lifeline support; (2) they certify that their household income is at or below 135 percent of the Federal Poverty Guidelines; (3) they certify that they receive benefits from one of the seven federal programs listed above; or (4) they certify that they participate in one of the following additional federal assistance programs: Bureau of Indian Affairs General Assistance (GA), Tribally administered Temporary Assistance for Needy Families (Tribal TANF), or Head Start (meeting the income-qualifying standard).[163]

68. *TracFone and Computer and Communications Industry Association Petitions.* On October 9, 2008, TracFone Wireless, Inc. (TracFone) submitted a petition requesting that the Commission establish a trial basis program to support broadband Internet access service and the devices that support this service.[164] Citing data demonstrating that a significant amount of low-income families are unable to afford broadband Internet access, TracFone proposes that the Commission, on a temporary basis, provide affordable access to low-income consumers by supporting broadband Internet access service and the devices used to access these services.[165] TracFone proposes limiting the program to 500,000 to 100,000 low-income households in Florida, Virginia, Tennessee, and the District of Columbia.[166] Doing so, according to TracFone, will enable to the Commission to examine how to better make available broadband Internet access service to low-income consumers throughout the Nation.[167]

69. On October 7, 2008, the Computer and Communications Industry Association (CCIA) filed a petition requesting the Commission revise the definition of universal service supported services to allow low-income consumers receive support for broadband Internet access services.[168] CCIA states that, despite a critical need for broadband Internet access service, low-income consumers still have a considerably low broadband Internet access deployment rate. Accordingly, CCIA argues the definition of supported services for purposes of universal service should be revised to provide support for broadband Internet access service to low-income consumers.[169]

70. In recent proceedings, other parties have also urged the Commission to provide low-income consumers with support for broadband services. For example, Windstream argues that the Commission should direct broadband support to low-income consumers where such support is most needed.[170] AARP

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[162] 47 C.F.R. § 54.409(b).

[163] 47 C.F.R. § 54.409(a)–(d).

[164] *See Lifeline and Link Up, Federal-State Joint Board on Universal Service*, WC Docket No. 03-109, CC Docket No. 96-45, Petition to Establish A Trial Broadband Lifeline/Link Up Program (filed Oct. 9, 2008) (*TracFone Petition*).

[165] *See TracFone Petition* at 3–4.

[166] *See TracFone Petition* at 3.

[167] *See TracFone Petition* at 5.

[168] *See* Petition for Rulemaking to Enable Low-Income Consumers to Access Broadband Through the Universal Service Lifeline and Link Up Programs, WC Docket No. 03-109 (filed Oct. 7, 2008) (*CCIA Petition*).

[169] *See CCIA Petition* at 7.

[170] *See* Letter from Eric Einhorn, Vice President Governmental Affairs, Windstream Communications Inc., to Marlene Dortch, Secretary, FCC, CC Docket Nos. 01-92, 96-45, WC Docket Nos. 99-68, 08-122, 05-337, 08-152 (Sept. 24, 2008) (Windstream Sept. 24, 2008 *Ex Parte* Letter).

also concludes that the Commission should provide Lifeline/Link Up support for broadband services and urges the Commission to conduct a proceeding to examine the matter.[171] AARP proposes that in addition to examining supporting broadband services, the Commission should also examine how to increase low-income consumers' access to devices that support broadband services and education on how to use such devices.[172] Many consumer groups and service providers have also commented in support of TracFone and CCIA's proposals to support the provision to low-income consumers of broadband Internet access service and the devices used to access these services.[173]

B. Discussion

71. Consistent with the Commission's authority under sections 1, 4(i), 201, 205, and 254 of the Act, we establish a Lifeline and Link Up pilot program to support the provision of broadband Internet access service and the devices used to access this service to low-income consumers.[174] In doing so, we explain the justification for establishing this program and provide criteria and obligations applicants must satisfy for selection to participate in this program. Further, we establish requirements for oversight and administration of the Pilot Program.

72. *Broadband Internet Access Service and Devices Eligible for Low Income Support.* In the *Universal Service First Report and Order*, consistent with its statutory obligations, the Commission maintained the authority to adopt changes to the Lifeline program to make it more consistent with

[171] AARP *Joint Board Comprehensive Reform NPRM* Comments at 55.

[172] AARP *Joint Board Comprehensive Reform NPRM* Comments at 55.

[173] *See, e.g.*, Letter from Dale R. Schmick, CEO, YourTel America, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 96-45, 01-92, WC Docket Nos. 03-109, 05-337, at 2 (filed Oct. 21, 2008) (YourTel Oct. 21, 2008 *Ex Parte* Letter); Letter from Thomas J. Sugrue, Vice President Government Affairs, T-Mobile, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket Nos. 04-356, 07-195 at 3 (filed Oct. 17, 2008) (urging the Commission to adopt quickly TracFone's and CCIA's proposals); Letter from Karyne Jones, President & CEO, National Caucus and Center on Black Aged, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, WC Docket No. 03-109 at 1 (filed Oct. 29, 2008) (NCBA Oct. 29, 2008 *Ex Parte* Letter); Letter from Donnie Ruby, Staff Associate, Telecommunications Research and Action Center, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, WC Docket No. 03-109 (filed Oct. 28, 2008); Letter from Bill Newton, Executive Director, Florida Consumer Action Network, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, WC Docket No. 03-109 (filed Oct. 27, 2008); Letter from Robert D. Atkinson, Chair Public Policy Committee, Alliance for Public Technology, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, WC Docket No. 03-109 (filed Oct. 24, 2008) (APT Oct. 24, 2008 *Ex Parte* Letter); Letter from John Breyault, Vice President of Public Policy Telecommunications and Fraud, National Consumers League, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, WC Docket No. 03-109 (filed Oct. 23, 2008) (NCL Oct. 23, 2008 *Ex Parte* Letter); Letter from Mark Richert, Director, Public Policy, American Foundation for the Blind, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, WC Docket No. 03-109 (filed Oct. 28, 2008) (AFB Oct. 28, 2008 *Ex Parte* Letter).

[174] To the extent that our adoption of the Pilot Program adds broadband to the list of universal service supported services, we clarify that this inclusion is limited only to the Pilot Program—broadband is not a supported service for other low-income or high-cost support purposes. Pursuant to section 254(c)(1) of the Act, the Joint Board has recommended adding broadband as a supported service, and we do so for the limited purpose of the Pilot Program. *See Comprehensive Reform Recommended Decision*, 22 FCC Rcd at 20478, para. 4 ("The Joint Board now recommends that the nation's communications goals include achieving . . . universal availability of broadband Internet services"). Furthermore, the Commission's authority to provide universal service support to low-income consumers pre-dates the adoption in 1996 of section 254 of the Act, and arises out of sections 1, 4(i), 201, and 205 of the Act. 47 U.S.C. §§ 151, 154, 201, 205; *Universal Service First Report and Order*, 12 FCC Rcd at 8956–57, paras. 338–40. Pursuant to our authority to regulate low-income support under these sections, as well as under section 254, we provide universal service support for broadband Internet access services through the Pilot Program.

Congress's mandates in the 1996 Act if such changes would serve the public interest.[175] We believe that a Lifeline and Link Up pilot program comports with the goals of universal service, and advances the public interest by providing new technologies and services to low-income consumers. Section 254(b)(2) of the Act instructs the Commission to base policies for the advancement of universal service on the principle that "[a]ccess to *advanced* telecommunications *and information services* should be provided in all regions of the Nation."[176] Similarly, section 254(b)(3) states that "low-income consumers . . . should have access to . . . *advanced* telecommunications and *information services*, that are reasonably comparable to those services provided in urban areas and that are available at rates charged for similar services in urban areas."[177]

73. Since the Commission first adopted its universal service rules in response to the 1996 Act, broadband Internet access service has evolved into a critical service for American consumers.[178] The majority of consumers who use broadband Internet access service today rely on it for telework, access to banking services, interaction with government, entertainment, shopping, access to news and other information, and many other uses. Access to broadband Internet access service is especially important to low-income consumers for purposes of education, public health and public safety.[179] High-speed connections to the Internet allow children in low-income families access to distance learning and research.[180] Telemedicine networks made possible by broadband Internet access service also save lives and improve the standard of healthcare to low-income families living in areas that may lack access to the breadth of medical expertise and advanced medical technologies available in other areas.[181] Broadband Internet access service also enables the sharing of critical, time-sensitive information with first responders, government officials, and health care providers, thereby improving the government's ability to provide a comprehensive and cohesive response to a public health crisis.

74. Despite the advances in broadband technology, broadband availability still lags for low-income consumers.[182] The Commission's most recent data reveal that where the median income is under $21,000, approximately 99.5 percent of households have high-speed service available with speeds in

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[175] *Universal Service First Report and Order*, 12 FCC Rcd at 8956, para. 339.

[176] 47 U.S.C. § 254(b)(2) (emphasis added).

[177] *See* 47 U.S.C. § 254(b)(3) (emphasis added).

[178] *See* APT Oct. 24, 2008 *Ex Parte* Letter at 2; NCBA Oct. 29, 2008 *Ex Parte* Letter at 1; NCL Oct. 23, 2008 *Ex Parte* Letter at 1.

[179] According to the National Caucus and Center on Black Aged, older low-income Americans have difficulty affording broadband services and many do not have Internet access. NCBA Oct. 29, 2008 *Ex Parte* Letter at 1 (citing Older Americans, Broadband and the Future of the Net, SeniorNet, 2008). Commenters also assert that broadband connections are particularly necessary for consumers who are blind, visually impaired, deaf or hard of hearing. *See* APT Oct. 24, 2008 *Ex Parte* Letter at 1 (citing ALLIANCE FOR PUBLIC TECHNOLOGY, ACHIEVING UNIVERSAL BROADBAND: POLICIES FOR STIMULATING DEPLOYMENT AND DEMAND 27 (2007)); AFB Oct. 28, 2008 *Ex Parte* Letter.

[180] *See Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, GN Docket No. 07-45, Notice of Inquiry, 22 FCC Rcd 7816, 7817, para. 3 (2007) (*706 Fifth NOI*).

[181] *See 2006 Rural Health Care Pilot Program Order*, 21 FCC Rcd at 11112, para. 5; *706 Fifth NOI*, 22 FCC Rcd at 7817, para. 4.

[182] *See* Cellular South *High-Cost Reform NPRMs* Comments at 10.

excess of 200 kbps in at least one direction.[183] Yet, according to the Pew Internet & American Life Project, only 25 percent of households with annual incomes below $20,000 have broadband service.[184] In contrast, among those living in households with annual incomes in excess of $100,000, broadband adoption is approximately 85 percent.[185]

75. According to the Commission's data, there are approximately 6.9 million consumers participating in the Lifeline universal service program.[186] Providing an additional $300 million in annual support through the low-income universal service support mechanisms over a three-year period should increase the broadband subscribership for low-income customers to over fifty percent.[187]

76. We therefore find that this Pilot Program furthers the universal service objectives of section 254 of the Act and serves the public interest by making this critical service available to the low-income Americans who cannot otherwise afford it. In addition, the Pilot Program will provide the Commission with a more complete and practical understanding of how to ensure the best use of Lifeline and Link Up universal service support to deploy advanced services to low-income consumers.[188]

1. Available Funding

77. We establish a maximum annual funding level for this broadband Lifeline and Link Up Pilot Program at $300 million for each of the next three years. In its petition, TracFone proposes that a pilot program should fund up to either $180 million or $360 million per year for Lifeline broadband Internet access service support, and up to $125 million or $250 million for the Link Up portion of the program, for a total of either $305 million or $610 million, depending on whether the program would support 500,000 participants or one million participants.[189]

78. While we recognize the importance of making sufficient funds available for this Pilot

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[183] *See* FCC, HIGH-SPEED SERVICES FOR INTERNET ACCESS: STATUS AS OF DECEMBER 31, 2006, tbl. 19 (2007), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-277784A1.pdf.

[184] *See* 2008 PEW BROADBAND ADOPTION STUDY ii.

[185] *See* 2008 PEW BROADBAND ADOPTION STUDY at 2.

[186] *See* 2007 UNIVERSAL SERVICE MONITORING REPORT.

[187] Desktop computers can be purchased for as low as $200. *See* Walmart Consumer Products, http://www.walmart.com/catalog/catalog.gsp?cat=3951&fromPageCatId=14503 (last visited Oct. 24, 2008). For $267, a consumer can purchase a new ASUS Eee PC 2G Surf laptop. *See* Amazon ASUS Eee PC 2G Surf Product Page, http://www.amazon.com/gp/product/B00114T9WY/ref=noref?ie=UTF8&s=pc (last visited Oct. 24, 2008). Personal computers and wireless devices will continue to become available at even lower rates. Throughout the world, there are $100 laptops and wireless devices. *See* Michael Trucano, InfoDev.org, Quick guide: Low-cost computing devices and initiatives for developing world (Apr. 2008), http://www.infodev.org/en/Publication.107.html (last visited Oct. 25, 2008). For example, Candlebox, being developed for use in India by Qualcom, is a low-cost, low-power device that uses mobile technology to provide wireless Internet access and supports e-mail, social networking, e-commerce and distance learning applications. RICHARD P. ADLER & MAHESH UPPAL, ASPEN INSTITUTE INDIA, M-POWERING INDIA: MOBILE COMMUNICATIONS FOR INCLUSIVE GROWTH at 21 (2008), *available at* http://www.aspeninstitute.org/atf/cf/%7Bdeb6f227-659b-4ec8-8f84-8df23ca704f5%7D/2008INDIA.pdf.

[188] *See* NCBA Oct. 29, 2008 *Ex Parte* Letter at 2 (suggesting that the Pilot Program should be modeled after the existing Lifeline program and can be studied and evaluated to develop future broadband Lifeline/Link Up support programs).

[189] *See TracFone Petition* at 5.

Program to enable us to determine whether and, if so, how to make broadband Internet access service funding a permanent part of the Lifeline and Link Up programs, we find that the levels of funding proposed by TracFone are not sufficiently tied to a specific improvement in the adoption of broadband by Lifeline subscribers, as discussed above. In 2007, the overall size of the universal service fund's disbursement mechanisms was approximately $7.0 billion.[190] Of that amount, approximately $823 million went to fund the universal service low-income program.[191] TracFone's proposal represents a potential 74 percent increase over existing low-income program disbursements, and would be limited to targeting low-income consumers in only three states and the District of Columbia.[192] We are concerned that such a large funding commitment for a limited geographic area would not provide the Commission 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.[193] 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.

79. 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.[194]

2. Eligible Services and Equipment

80. 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.[195] 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.

81. 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

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[190] *See* USAC 2007 ANNUAL REPORT at 51. USAC's administrative expenses for 2007 were $104,073,000. *Id.* at 3.

[191] USAC 2007 ANNUAL REPORT at 3.

[192] *See TracFone Petition* at 3.

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

[194] *See supra* para. 75.

[195] *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.

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.[196] The device subsidy is a one-time subsidy and is limited to one unit per qualified household.[197] 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.[198]

82. 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.[199] 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.[200] 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.[201]

83. 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.

84. 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

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

[197] 47 C.F.R. § 54.411(b).

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

[199] 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.

[200] *See infra* para. 84.

[201] 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.

equal to or greater than 768 kbps and upload speeds greater than 200 kbps.[202]

3. Selection Criteria

85. 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.[203] 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.[204] 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 District of Columbia.[205] 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.

86. *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.[206] 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.[207]

87. *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.[208] Consumers and ETCs must follow the framework and requirements of the existing Lifeline and Link Up program.[209]

4. Implementation and Reporting Requirements

88. To be eligible for support, ETCs must submit a reimbursement request to USAC 30 days

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[202] *See supra* para. 52.

[203] *TracFone Petition* at 4.

[204] *TracFone Petition* at 3.

[205] *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).

[206] *See* 47 C.F.R. § 54.409.

[207] 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* paras 80–84; *Hurricane Katrina Order*, 20 FCC Rcd at 16890, para. 12.

[208] *See* 47 C.F.R. § 54.405.

[209] 47 C.F.R. § 54.400–.417.

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.

89. 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 preceding calendar years and provide that documentation to the Commission or USAC upon request.[210] 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.

90. 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.[211] 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

91. 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.[212] 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.[213] Such audits or investigations may provide information showing that a Pilot Program participant or vendor failed to comply with the Act or

[210] *See* 47 C.F.R. § 54.417(a).

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

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

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

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.[214] 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 502 and 503 of the Act,[215] 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.[216] 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.[217] 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

92. 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

93. 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

[214] 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.

[215] 47 U.S.C. §§ 502, 503(b).

[216] 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.

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

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.[218] The Commission concluded that basing providers' universal service contributions on their revenues would be competitively neutral, easy to administer, and explicit.[219]

94. 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 about $79.0 billion in 2000 to about $74.5 billion in 2006,[220] while universal service disbursements grew over that same time period from approximately $4.5 billion in 2000 to over $6.6 billion in 2006.[221] Declines in assessable contribution revenues combined with growth in universal service disbursements have increased the contribution factor applied to determine universal service contribution amounts.[222] This upward pressure jeopardizes the stability and sustainability of the support mechanisms, demonstrating the need for long-term fundamental reform of the contribution methodology.[223]

95. 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.[224] The integration of local and

[218] *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).

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

[220] *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).

[221] *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).

[222] 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*).

[223] *See* 47 U.S.C. §§ 254(b), (d).

[224] 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*).

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.[225] Further, migration to interconnected VoIP services complicates the distinctions that serve as the basis for current contribution obligations.[226]

96. 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.[227] The Commission also sought comment on other universal service contribution methodologies, including moving to a numbers-based methodology.[228] 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.[229]

B. Discussion

97. 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

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[225] *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*).

[226] *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).

[227] *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*).

[228] *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*).

[229] *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.

enormous consumer benefits, they have also severely strained the contributions system.[230] 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 these methodologies, and how the residential numbers-based system will work.

1. Legal Authority

98. 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.

99. 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."[231] Under this "mandatory contribution" provision, every provider of telecommunications services[232] must contribute, although the Commission has authority to exempt a carrier or class of carriers if their contributions would be *de minimis*.[233]

100. 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."[234] The Commission has relied on this "permissive authority" to require various providers of telecommunications,[235] but not necessarily telecommunications *services*,[236] to contribute. For example, the Commission has required entities that provide interstate telecommunications

[230] 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).

[231] 47 U.S.C. § 254(d).

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

[233] 47 U.S.C. § 254(d).

[234] 47 U.S.C. § 254(d).

[235] "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).

[236] "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).

to others on a private contractual basis to contribute to the universal service fund,[237] as well as payphone aggregators.[238] 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 require interconnected VoIP providers to contribute, and we noted that they "provide" telecommunications to their end users.[239] 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.[240]

101. 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."[241] The Commission relied on this authority before section 254 was added by the 1996 Act to establish a high-cost support fund,[242] which the U.S. Court of Appeals for the D.C. Circuit found to be a permissive exercise of Title I authority.[243] 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.[244] 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,[245] and that imposing contribution obligations on interconnected VoIP providers was "reasonably ancillary" to the effective performance of the Commission's responsibilities to establish

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[237] *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.

[238] *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).

[239] *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7538–40, paras. 39–41; 47 C.F.R. § 54.706(a).

[240] *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.").

[241] *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).

[242] *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).

[243] *Rural Tel. Coalition*, 838 F.2d at 1315.

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

[245] *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)).

"specific, predictable, and sufficient mechanisms . . . to preserve and advance universal service."[246] In particular, the Commission noted that interconnected VoIP providers "benefit from their interconnection to the PSTN."[247]

102. 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."[248] The Commission relied on its authority under section 251(e) to support its action to require interconnected VoIP providers to provide E911 services.[249] The Commission noted that it exercised its authority under section 251(e) because, among other reasons, "interconnected VoIP providers use NANP numbers to provide their services."[250]

103. 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.[251] 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.[252] 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[253] and this is sufficient to permit the Commission to rely on its authority to require contributions from "other provider[s] of interstate telecommunications."[254] 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

[246] *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7542, para. 48 (quoting 47 U.S.C. § 254(d)).

[247] *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7542, para. 48.

[248] 47 U.S.C. § 251(e)(1).

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

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

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

[252] 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.

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

[254] 47 U.S.C. § 254(d).

jurisdiction because they involve in some manner "interstate . . . communication by wire or radio."[255] 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.[256] 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.[257] Those customers who are assigned telephone numbers, whether for 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.

104. We reject suggestions that we do not have authority to require contributions based on numbers or connections because we lack authority over intrastate services.[258] 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.[259] In fact, the subscriber line charge (SLC) that the Commission established is intended to capture the *interstate* cost of the *local* loop.[260] 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

[255] 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).

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

[257] *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 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).

[258] *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.

[259] *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.").

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

international communications.[261]

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

105. 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

106. 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.[262] Changes in technology and services have made the revenue-based contribution mechanism difficult to administer. 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.[263] Additionally, these providers are offering consumers greater flexibility, such as bundling of local and long distance service at a flat rate.[264] Moreover, technologies such as wireless and interconnected VoIP have emerged that provide voice and data services that know no jurisdictional boundaries.[265] 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.

107. 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.[266] Contributors are allowed, and in most cases do, recover their universal service contribution costs from fees assessed on their end-user customers.[267] Under the revenue-based contribution mechanism, a provider's contribution costs fluctuated

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[261] 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.

[262] 47 U.S.C. § 254(b)(5).

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

[264] *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).

[265] *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).

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

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

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.[268]

108. 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 otherwise be caused by differing contribution charges.[269] 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.

109. 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.[270] 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.

110. 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.[271] 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.[272] In contrast, telephone numbers provide an easily

[268] *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).

[269] *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).

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

[271] 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).

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

identifiable basis for contribution.[273] 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.[274] 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.[275]

111. Further, assessing universal service contributions based on residential telephone numbers will promote number conservation.[276] 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.[277]

112. Our adoption of a numbers-based contribution methodology for residential services is consistent with the goal of ensuring just, reasonable, and affordable rates.[278] The per-number assessment of $1.00 per number per month will represent a reduction in pass-through charges for many residential customers.[279] 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

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[273] *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.

[274] *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.

[275] *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 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.

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

[277] *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).

[278] 47 U.S.C. § 254(b)(1).

[279] *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.

$6.50 per month.[280] 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.[281] 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.[282]

113. 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 calls, while others make few if any such calls in a given month.[283] 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.[284] 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.

114. 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.[285] 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

115. Below, we describe the telephone numbers for which service providers are obligated to

[280] 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.

[281] 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.

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

[283] *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.

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

[285] *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.

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.[286] In the regulatory fee context, the Commission used 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.[287]

116. 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

[286] 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 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)

[287] *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).

as a NANP telephone number or functional equivalent identifier[288] 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.[289] 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.

117. The provider with the retail relationship to the residential end user is the entity responsible for contributing.[290] We impose the contribution obligation on the provider with the retail 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.[291] We note that today, providers are permitted to pass through their contribution assessments to end users, and we understand that they typically do so.[292] 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.[293]

118. 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.[294] In the *NRO III Order*, the Commission clarified that these types of numbers should

[288] "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.

[289] 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.

[290] *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. 06-122, 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]").

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

[292] *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.

[293] 47 C.F.R. § 54.712.

[294] *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*).

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).[295] Because these numbers are assigned to end users, we find they should be included in the definition of Assessable Numbers we adopt today.

119. 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.[296] Providers generally do not 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.

120. 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.[297] 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.

121. 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.[298] 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."[299] The receiving provider will be responsible for including the number as an

[295] *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.").

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

[297] *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.

[298] *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).

[299] *See* 47 C.F.R. § 52.15(f)(v).

Assessable Number once it provides the number to an end user.[300]

122. 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.[301] 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.

123. 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 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.

124. 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.[302] 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.

125. Finally, we exclude from the definition of Assessable Numbers those numbers associated with Lifeline services for the reasons described below.[303]

126. We do not restrict our definition to numbers that exclusively use the PSTN.[304] As noted

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[300] *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].").

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

[302] 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.").

[303] *See infra* paras. 140–46.

[304] 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.

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.[305] 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.[306] 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.[307] 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).

127. 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,[308] 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.[309]

128. 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.[310] A "reporting carrier" is defined as a telecommunications carrier that receives numbering resources from the NANPA, the Pooling Administrator, or another telecommunications carrier.[311] 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.[312] For example, interconnected VoIP providers may use telephone numbers that meet our definition of Assessable

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

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

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

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

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

[310] 47 C.F.R. § 52.15(f).

[311] 47 C.F.R. § 52.15(f)(2).

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

Numbers even though these providers do not report NRUF data.[313] 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.[314]

129. 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.[315] To the extent, however, these alternative methods are the functional 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

130. 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.[316] Section 254(d) of the Act requires "every carrier" that provides interstate telecommunications services to contribute to the universal service fund.[317] 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.

131. 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

[313] *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.

[314] *See infra* paras. 147–53.

[315] *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.").

[316] 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.

[317] 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).