Information Technology Industry Council
Leading Policy for the Innovation Economy

July 21, 2011

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: *Ex parte comments in response to CG Docket No. 11-47*

Dear Ms. Dortch:

As we indicated in our previous comments, the Information Technology Industry Council ("ITI") represents the global leaders in the information and communications technology industry, including in hardware, software, web applications and the Internet. Our members are among the key innovators in accessible technology, developing and delivering tools and services that enable people with disabilities and age-related limitations to fully participate in the emerging digital economy. Many of our members also develop products and services that include non-interconnected Voice over Internet Protocol ("VoIP"). Accordingly, we have a distinct interest in the Federal Communication Commission's ("Commission") efforts to implement the VoIP-related provisions of the Twenty-First Century Communications and Video Accessibility Act of 2010 ("Accessibility Act").[1]

ITI and its members share the goal of broad accessibility to VoIP technology. We remain concerned, however, that a broad interpretation of Congressional intent relative to Section 715 of the Accessibility Act will have a detrimental effect on the provision of VoIP services, particularly those offered free of charge or as ancillary functionality bundled with other services for which fees may be assessed.

[1] Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010).

As we indicated in our previous comments,[2] the Accessibility Act's expansion of the Telecommunications Relay Service ("TRS") and the TRS fund to encompass non-interconnected VoIP raises a number of significant questions and technical challenges. In a June 8, 2011 *ex parte* meeting with Commission staff, ITI was asked if we intended to offer specific recommendations relative to the various concerns that we had raised. We do so in this document. Again, we urge the Commission to adopt a narrow definition for non-interconnected VoIP within the context of Section 715. The following recommendations are intended to ensure continued progress toward the important goal of accessibility without adding undue costs and complexity that may impact consumer choice.

ITI believes that there are a number of key questions and technical issues that must be addressed with respect to TRS and the TRS fund:

1. **What constitutes a VoIP "*service*"?** While this may seem like a simple question, the answer is actually quite complicated, given the array of scenarios that are evolving in the marketplace. For example, if an entity deploys non-interconnected VoIP within its organization and the service cannot be used to communicate outside of the organization, has that entity deployed a "non-interconnected VoIP ***service***" as per Section 715 such that it must contribute to the TRS fund?[3] Many ITI members develop VoIP applications that are commonly purchased and deployed in such a fashion.[4] What about emerging point-to-point VoIP applications that work directly by IP address? In such instances, there is no central service involved. Would these services be subjected to TRS obligations under Section 715? What about products that include incidental, non-interconnected VoIP functionality to supplement primary services, such as the audio chat facility of

[2] *See* Comments of the Information Technology Industry Council in response to the Federal Communications Commission Notice of Proposed Rulemaking, CG Docket No. 11-47 (filed May 4, 2011), located at http://fjallfoss.fcc.gov/ecfs/comment/view.action?id=6016483343

[3] It is even the case that some individuals deploy non-interconnected VoIP servers for shared use among their friends or community.

[4] See http://en.wikipedia.org/wiki/List_of_SIP_software#SIP_servers for a list of proprietary and open source SIP servers, which is one of the types of VoIP servers available on the market.

multiplayer online games and online conferencing services? By definition, such products are not *intended* to be used as a VoIP communication service. Would these be subjected to TRS obligations under Section 715?

RECOMMENDATION: ITI urges the Commission to exclude from this rulemaking non-interconnected VoIP services: (1) that are internal to an organization and cannot connect to outside telecommunication services; (2) that utilize point-to-point VoIP applications that do not include a central service; and (3) that are incidental and supplementary to primary services and functionality.

2. **What constitutes the *revenue base* from a VoIP service?** In paragraph 19 of the Notice of Proposed Rulemaking, the Commission proposes "to require non-interconnected VoIP services to report their interstate end-user revenues as 'telecommunications revenues' on the FCC Form 499-A." If there are no end-user revenues, however, does it even make sense to require that the provider of the service incur the administrative costs associated with the TRS Fund? Indeed, in the example mentioned earlier where an entity deploys non-interconnected VoIP solely for use within its organization, VoIP is a cost, not a revenue source.

   Section 103 of the Accessibility Act requires the Commission to establish a system such that the contribution from non-interconnected VoIP providers is "comparable to the obligations of other contributors to such Fund." Other contributors are assessed fees based on interstate revenues directly related to the services provided. Accordingly, it would stand to reason that if a VoIP provider has zero interstate revenues, then its TRS obligation should also be zero. Imposing a TRS obligation and corresponding administrative requirements on free services may risk causing providers to reconsider such offerings.

Returning to the matter of incidental services, if the Commission were to decide to apply Section 715 broadly, one of the key questions and challenges will be determining how to fairly assess an appropriate and proportional contribution to the TRS Fund for incidental VoIP services. In the case of web conferencing products such as Adobe Connect and Microsoft Live Meeting, for example, many users take full advantage of features such as document and screen sharing or text chat, but may utilize the voice capabilities only sparingly or not at all. Other users choose to utilize these products in conjunction with a non-integrated telephone call, while still others use the web conferencing software with an integrated but optional telephone bridge that connects the meeting audio to the public switched telephone network ("PSTN"). Similar scenarios occur with gaming consoles and other devices that utilize network connectivity to deliver primary services and functionality.

The Commission would need to take into account that utilization of such incidental VoIP features is not independently tracked. It would require significant cost and effort to develop systems that track and record the proportional use of such features, while also raising serious privacy concerns. Without such systems, it would be near impossible to create an equitable formula for determining TRS obligations.

In addition to accurately isolating assessable interstate telecommunication revenues, the Commission would need to remove any "circularity" in its TRS funding mechanism.[5] To provide the PSTN-connected features discussed above, providers contract with licensed telecommunication service providers who pass through TRS contributions to their end users. In this way, companies make indirect contributions to the TRS fund through the purchase of wholesale telecommunications services. The Commission must resolve this complex issue before moving forward in this docket, to ensure TRS contributions are assessed in a competitively neutral manner across the industry.

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[5] Report and Order & Notice of Proposed Rulemaking Released on FCC Updates Approach for Assessing Contributions to the Federal Universal Service Fund., (rel. July 5, 2006) at ¶ 58.

Finally, we wish to note that the imposition of TRS obligations on non-interconnected VoIP services may place U.S. providers at a disadvantage relative to overseas VoIP providers, which presumably would not be subject to the same requirements. On the other hand, if the Commission does create a mechanism for collecting TRS Funds from foreign operators that have U.S. customers but no servers located in this country, such a precedent could be followed by other governments, and possibly used to erect barriers that limit market access for U.S. service providers.

<u>RECOMMENDATION</u>**: ITI urges the Commission to exclude from this rulemaking any requirement for service providers to file a Form 499-A report if they do not have interstate end-user revenues from non-interconnected VoIP services.**

3. **If users of a non-interconnected VoIP system cannot take advantage of TRS, is it appropriate for the organization that deployed that VoIP system to pay into the TRS fund?** As discussed earlier, many organizational non-interconnected VoIP services are deployed behind that organization's "firewall." Even if some of the users within that organization were able to make use of TRS, e.g., for communication with other users within the organization, they could not do so because of technical and policy barriers preventing connections from outside of the organization's firewall. Also, some non-interconnected VoIP systems are tied to specific operating systems or hardware platforms. Since most TRS operators are unlikely to have access to all of the various operating systems and hardware platforms currently in use in the marketplace – as well as the appropriate relay software for each – it is unlikely that they would even be able to provide relay service for users of those operating systems and platforms.

<u>RECOMMENDATION</u>**: ITI urges the Commission to exclude from this rulemaking any obligation for service providers to pay into the TRS fund for non-interconnected VoIP services that do not or cannot connect with a central TRS service provider via the PSTN.**

4. **Where does responsibility lie for VoIP interconnection?** As noted earlier, there may be technical or logistical challenges with TRS operators participating in various non-interconnected VoIP systems. However, it is not difficult to imagine a third party business arising that provides VoIP interconnection services, where their routers connect a non-interconnected VoIP service to the common carrier telecommunications network. Once such an inter-connection is made, TRS potentially can be provided to places where previously it was not available. In such cases, the Commission should make clear that any duties associated with interconnected VoIP lies with the entity that provides the interconnection.

RECOMMENDATION: ITI urges the Commission to exclude from this rulemaking any obligation for service providers to pay into the TRS fund for non-interconnected VoIP services that are connected to the PSTN by third parties outside of their managerial, financial or legal control.

ITI requests that the Commission proceed with implementing the Accessibility Act in the manner described herein. We welcome any questions regarding these comments.

Respectfully submitted,

/s/ Ken Salaets

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