Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of	)	
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
	)	
A National Broadband Plan For Our Future	)	GN Docket No. 09-51
	)	

FURTHER NOTICE OF PROPOSED RULEMAKING

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By the Commission: Chairman Genachowski and Commissioners McDowell and Clyburn issuing separate statements.

TABLE OF CONTENTS

Heading Paragraph #

I. INTRODUCTION 1
II. BACKGROUND 7
A. Today's Contribution System 7
B. Industry Developments and Contribution Reform Efforts 18
III. GOALS OF CONTRIBUTION METHODOLOGY REFORM 22
IV. WHO SHOULD CONTRIBUTE TO UNIVERSAL SERVICE 28
A. Statutory Authority to Require Contributions 31
1. "Provider of Interstate Telecommunications" 32
2. "If the Public Interest So Requires" 35
B. Determining Contribution Obligations on a Case-by-Case Basis with Respect to Providers of Specific Services 36
1. Enterprise Communications Services Providers 41
2. Text Messaging Providers 49
3. One-way VoIP Service Providers 57
4. Broadband Internet Access Service Providers 65
5. Listing of Services Subject to Universal Service Contribution Assessment 73
C. Determining Contribution Obligations Through a Broader Definitional Approach 74
V. HOW CONTRIBUTIONS SHOULD BE ASSESSED 95
A. Reforming the Current Revenues-Based System 98
1. Apportioning Revenues from Bundled Services 101
2. Contributions for Services with an Interstate Telecommunications Component 114
3. Allocating Revenues Between Inter- and Intrastate Jurisdictions 121
4. Contribution Obligations of Wholesalers and Their Customers 143
5. Reporting Prepaid Calling Card Revenues 179
6. International Telecommunications Providers 193
7. Reforming the *De Minimis* Exemption 209
B. Assessing Contributions Based on Connections 219

1. Legal Authority 223
2. Defining "Connections" 226
3. Trends in Connections 245
4. Assessment and Use of Speed or Capacity Tiers 249
5. Policy Arguments Related to Connections-Based Assessment 264
6. Implementation 270
C. Assessing Contributions Based on Numbers 284
1. Legal Authority 290
2. Defining Assessable Numbers for Contribution Purposes 294
3. Trends in Numbers 310
4. Differential Treatment of Certain Types of Numbers 312
5. Use of a Hybrid System with a Numbers-Component 322
6. Policy Arguments Related to Numbers-Based Assessment 325
7. Implementation 332
VI. IMPROVING THE ADMINISTRATION OF THE CONTRIBUTION SYSTEM 342
A. Updating the Telecommunications Reporting Worksheet 344
B. Revising the Frequency of Adjustments to the Contribution Factor 350
C. Pay-and-Dispute Policy 360
D. Oversight and Accountability 367
E. Paper-Filing Fees 376
F. Filer Registration and Deregistration 381
VII. RECOVERY OF UNIVERSAL SERVICE CONTRIBUTIONS FROM END USERS 387
A. Pass-Through of USF Contributions as Separate Line Item Charge 389
B. Segregation of USF Pass-Through Charges 398
C. Limiting Pass-Through of USF Charges to Lifeline Subscribers 401
VIII. PROCEDURAL MATTERS 411
A. Filing Requirements 411
B. Initial Regulatory Flexibility Analysis 414
C. Paperwork Reduction Act Analysis 415
IX. ORDERING CLAUSES 416
APPENDIX A – Proposed Rules
APPENDIX B – Summary Analysis of Wireless and Interconnected VoIP Traffic Studies
APPENDIX C – Form 499-A Reporting of Interstate/International Revenues
APPENDIX D – Data Analysis for Prior Period Adjustments
APPENDIX E – Initial Regulatory Flexibility Analysis

I. INTRODUCTION

1. Today we seek comment on proposals to reform and modernize how Universal Service Fund (USF or Fund) contributions are assessed and recovered. In doing so, we take the next step in the Commission's ongoing efforts to modernize its universal service programs to efficiently bring the benefits of 21st century broadband networks, and the economic growth, jobs and opportunities they provide, to all Americans.[1]

2. The universal service contribution system is the system by which the Commission's various universal service programs are funded. The total amount of money that must be collected each year is determined based on quarterly projections of demand for each of the four universal service

[1] *See Joint Statement on Broadband*, GN Docket No. 10-66, Joint Statement on Broadband, 25 FCC Rcd 3420, 3421 (2010) (identifying comprehensive universal service reform as an essential goal for the Commission).

programs.[2] In October 2011 and January 2012, the Commission adopted sweeping reforms to modernize the High-Cost (now known as the Connect America Fund) and Low-Income components of the Fund to ensure that robust, affordable voice and broadband service are available to Americans throughout the nation. These reforms also adopted, for the first time, a budget for the Connect America Fund, and set a savings target of $200 million for 2012 for the USF Lifeline program.[3] Along with the existing caps for the Schools and Libraries (commonly referred to as the E-Rate) and Rural Health Care components of the Fund, these reforms will assist in limiting the overall contribution burden.

3. Building on our efforts to limit the overall contribution burden, in this Further Notice of Proposed Rulemaking (Notice) we seek comment on a variety of proposals to reform the system by which universal service demand is met. Since the adoption of the current contribution system after the Telecommunications Act of 1996,[4] the communications ecosystem has undergone extensive changes that have brought tremendous benefits to consumers. Consistent with the pro-competitive goals of the 1996 Act, many firms have entered into the telecommunications marketplace and given consumers and businesses many more choices for purchasing communications services. Most consumers now subscribe to mobile wireless services. Many service providers now offer Internet Protocol-based (IP) services that deliver voice, data, and video functionality to consumers and businesses. Meanwhile, the Commission's universal service contribution system has not kept pace with some of these changes.

4. The evolution in the communications ecosystem has led to a series of stresses on the contribution system. The contribution system has become increasingly complex for the Commission and the Universal Service Administrative Company (USAC) to administer and burdensome for contributing telecommunications providers to comply with. Some aspects of today's contributions methodology may result in competitive distortions because different contribution obligations may apply to similar services depending on how a service is provided. Furthermore, the USF contribution base, largely comprised of assessable telecommunications service revenues reported by companies,[5] has recently begun to shrink as residential and business customers have begun to migrate to communication services that do not contribute to the Fund.

5. This Notice seeks comment on ways to reform the USF contribution system in an effort to promote efficiency, fairness, and sustainability. In particular, we seek comment on:

- *Who Should Contribute.* We seek comment on clarifying or modifying the Commission's rules on what services and service providers must contribute to the USF in order to reduce uncertainty, minimize competitive distortions, and ensure the sustainability of the Fund. In particular, we seek comment on two alternative approaches to defining what services or providers should be subject to contribution obligations: (1) using our permissive authority, and/or other tools to clarify or modify on a service-by-service basis whether particular services or providers are required to contribute to the Fund; or (2)

[2] 47 C.F.R. § 54.709(a)(2).

[3] *See Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order and FNPRM*), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011); *Lifeline and Link Up Reform and Modernization Order et al.*, WC Docket No. 11-42 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (rel. Feb. 6, 2012) (*Lifeline and Link Up Reform and Modernization Order*).

[4] *See* 47 U.S.C. § 254(d); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act). The 1996 Act amended the Communications Act of 1934 (Communications Act or Act).

[5] As discussed later in the Notice, *see infra* paras. 9-10, certain provisions of telecommunications, like private line service, do not constitute a telecommunications service as that term is defined in the Act, but are included in the USF contribution base. *See* 47 C.F.R. § 54.706(a).

adopting a more general definition of contributing interstate telecommunications providers that could be more future proof as the marketplace continues to evolve.

- *How Contributions Should Be Assessed.* We then seek comment on how contributions should be assessed – specifically, what methodology we should use to determine the relative contribution obligations among those providers who are required to contribute. In particular, we seek to refresh the record and update proposals to assess based on revenues, connections, numbers, or a hybrid approach. For each alternative, we ask parties to address the current and projected impact on the relative contribution burden for consumers and businesses in light of marketplace trends.

- *How the Administration of the Contribution System Can Be Improved.* We also seek comment on potential rule changes that would reduce the costs associated with complying with contribution obligations and promote the transparency and clarity of the contribution system. For example, we seek comment on whether to adopt an annual review of the instructions and content of the form that telecommunications providers must submit to determine the scope of their contribution obligations (FCC Form 499). We also seek comment on ways to improve administration of the contribution system, such as setting performance goals for timely reporting by contributors and prompt payment of contributions.

- *Recovery of Universal Service Contributions from Consumers.* Finally, we seek comment on whether the Commission could promote fairness and transparency by modifying the methods by which providers recover the costs of universal service contributions from consumers. In particular, we seek comment on whether to require additional information on customer bills about contributions, whether to limit the flexibility of contributors to pass through contribution costs as a separately stated line item on customer bills, and whether to extend to non-incumbent eligible telecommunications carriers our existing rules that preclude incumbent carriers from recovering from their Lifeline subscribers universal service contributions for Lifeline offerings. We also seek comment on measures to ensure contributions are made by contributors that become insolvent.

6. We encourage detailed input from all stakeholders on our efforts to reform the universal service contribution methodology. Input from contributors, potential contributors, consumers (both individuals and business users, who ultimately pay for USF),[6] and consumer advocacy groups will be crucial in fully evaluating the impact of potential reforms to the contribution system. We also specifically solicit input from state governments, with whom we have had an historic partnership in ensuring universal service, and Tribal governments, who play a crucial role in overseeing telecommunications services provided on Tribal lands.[7]

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[6] *See USF/ICC Transformation Order and FNPRM,* 26 FCC Rcd at 17682-83, para. 57; *Lifeline and Link Up Reform and Modernization Order*, FCC 12-11 at 22, para. 37.

[7] Throughout this Notice, "Tribal lands" include any federally recognized Indian tribe's reservation, pueblo or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian Allotments, as well as Hawaiian Home Lands—areas held in trust for native Hawaiians by the state of Hawaii, pursuant to the Hawaiian Homes Commission Act, 1920, Pub. L. No. 67-34, 42 Stat. 108, *et seq.*, as amended (1921). This definition is consistent with the definition of Tribal lands recently adopted in our orders establishing the Connect America Fund and reforming the Low-Income universal service support mechanism. *USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 17739, para. 126, n.197; *Lifeline and Link Up Reform and Modernization Order,* FCC 12-11 at 5-6, para 4, n.4.

II. BACKGROUND

A. Today's Contribution System

7. The Commission's authority to require contributions to the USF derives from section 254(d) of the Act, which 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."[8] Under this mandatory contribution provision, every provider of interstate telecommunications services must contribute,[9] although the Commission has authority to exempt a carrier or class of carriers if their contributions would be *de minimis*.[10] Section 254(d) also vests the Commission with broader, permissive authority to assess contributions, such that "[a]ny other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires."[11]

8. Several concepts historically have guided the Commission's approach to universal service contributions. First, since the initial implementation of section 254 after passage of the 1996 Act, the Commission has held that the universal service rules should be competitively neutral and should "neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another."[12] Thus in developing the existing contribution methodology in 1997, the Commission endeavored to reduce the "possibility that carriers with universal service obligations [would] compete directly with carriers without such obligations."[13] Second, the Commission found it appropriate to extend universal service contribution obligations to providers that compete with common carriers, because common carriers are subject to mandatory contributions. In reaching that conclusion in 1997, it noted that those who benefit from access to the public switched telephone network (PSTN), which is supported by the universal service fund, should contribute.[14] As the U.S. Court of Appeals for the Fifth Circuit has explained, "Congress designed the universal service scheme to exact

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[8] 47 U.S.C. § 254(d).

[9] Section 254(d) refers to "telecommunications carriers," which are defined as "any provider of telecommunications services." 47 U.S.C. § 153(51).

[10] 47 U.S.C. § 254(d).

[11] *Id.*

[12] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8801, para. 47 (1997) (*Universal Service First Report and Order*) (*subsequent history omitted*); *see also Federal-State Board on Universal Service et al.*, CC Docket No. 96-45 *et al.*, Further Notice of Proposed Rulemaking and Report and Order, 17 FCC Rcd 3752, 3759, para. 15 (2002) (*2002 First Contribution Methodology Order and FNPRM*) (identifying the following goals in considering reform to the USF contribution system: ensuring stability and sufficiency of the universal service fund as the marketplace continues to evolve; ensuring that contributors continue to be assessed in an equitable and nondiscriminatory manner; and minimizing the regulatory costs of complying with universal service obligations).

[13] *Universal Service First Report and Order,* 12 FCC Rcd at 9183–84, para. 795.

[14] *Id.* at 9184-85, paras. 796-97 (extending contribution obligations to payphone aggregators because they interconnect with the public-switched telephone network); *see also Universal Service Contribution Methodology et al.*, WC Docket No. 06-122 *et al.*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, 7540, para. 43 (2006) (*2006 Contribution Methodology Order*).

payments from those companies benefiting from the provision of universal service."[15] Third, the Commission has sought to ensure that the contribution rules are easy to comply with and administer.[16]

9. *Contributors*. The current system requires contributions both from common carriers[17] (under the Act's mandatory contribution requirements), and certain other providers of telecommunications (under the Commission's permissive authority). Specifically, in 1997, the Commission exercised its permissive authority to require payphone aggregators and private carriers (*i.e.*, companies that sell services on an individualized contractual basis) to contribute to the Fund.[18] More recently, in 2006, the Commission exercised its permissive authority to require interconnected Voice over Internet Protocol (VoIP) providers to contribute as a means of ensuring a level playing field among direct competitors.[19] The Commission has exempted common carriers whose contributions would be *de minimis* and declined to exercise permissive authority over various providers of interstate telecommunications that generally do not compete directly with common carriers.[20] Today, about 2,900 telecommunications providers contribute to the USF. 3,100 providers that would otherwise be required to contribute qualify for the *de minimis* exemption.[21] Nearly three-quarters of USF contributions come from five companies: AT&T Inc., CenturyLink, Inc., Sprint Nextel Corporation, T-Mobile USA, Inc., and Verizon Communications, Inc.[22] Contributors commonly recover their universal service contribution

[15] *Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393, 428 (5th Cir. 1999) (*TOPUC*).

[16] *Universal Service First Report and Order*, 12 FCC Rcd at 9206, para. 843.

[17] The D.C. Circuit has affirmed the Commission's interpretation that "telecommunications service" means "essentially the same as common carrier" service. *See Virgin Islands Telephone Corp. v. FCC*, 198 F.3d 921 (D.C. Cir. 1999) (*VITELCO*).

[18] *See Universal Service First Report and Order*, 12 FCC Rcd at 9183–85, paras. 794–98.

[19] *See 2006 Contribution Methodology Order*, 21 FCC Rcd at 7541, para. 44 (extending contribution obligations to interconnected VoIP service providers). Although the Commission has not addressed the regulatory classification of interconnected VoIP services under the Act, the Commission has concluded that interconnected VoIP providers are "providers of interstate telecommunications" for purposes of universal service. *Id.* at 7537, para. 35 (citing 47 U.S.C. § 254(d)).

[20] 47 C.F.R. § 54.708 ("If a contributor's contribution to universal service in any given year is less than $10,000 that contributor will not be required to submit a contribution . . . ."); 47 C.F.R. § 54.706(d) ("The following entities will not be required to contribute to universal service: non-profit health care providers; broadcasters; systems integrators that derive less than five percent of their systems integration revenues from the resale of telecommunications."); *Universal Service First Report and Order*, 12 FCC Rcd at 9186, para. 800 (holding that "government entities that purchase telecommunications services in bulk on behalf of themselves," entities that offer "interstate telecommunications to public safety or government entities" but not to others, and "public safety and local governmental entities licensed under Subpart B of Part 90 of our rules" are not required to contribute to universal service); *Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45 *et al.*, Fourth Order on Reconsideration and Report and Order, 13 FCC Rcd 5318, 5476, para. 284 (1997) (*Universal Service Fourth Order on Reconsideration*) (non-profit schools, colleges, universities, and libraries "should not be made subject to universal service contribution requirements.").

[21] This information was calculated based on a review of the annual Telecommunications Reporting Worksheets filed in April 2011.

[22] Universal Service Monitoring Report, Dec. 2011, CC Docket No. 98-202, Table 1.6, *available at* http://www.fcc.gov/wcb/stats (last visited Mar. 20, 2012) (*2011 Universal Service Monitoring Report*). In 2011, Qwest Communications International and CenturyTel, Inc. merged to become CenturyLink, Inc. T-Mobile USA, Inc. is a subsidiary of Deutsche Telekom AG.

costs from their customers, and providers that bill their customers on a monthly basis often include a line item on the consumer bill for such USF pass-through charges.[23]

10. *Contribution Base.* When the Commission implemented the 1996 Act, it chose to assess contributions based on end-user revenues.[24] Under this system, contributions are currently assessed based on a contributor's "projected collected interstate and international end-user telecommunications revenues, net of projected contributions."[25] In determining what revenues should be assessed and how contributors must report those revenues, the Commission requires contributors to distinguish revenues in three ways, as illustrated in Diagram 1 below. First, contributors are required to allocate between revenues derived from either "telecommunications services"[26] or certain provisions of "telecommunications" (whether offered on a common carrier or private carrier basis),[27] and revenues derived from "information services"[28] or consumer premises equipment (CPE).[29] Revenues from interstate telecommunications services have always been part of the contribution base, and the codified rules specifically enumerate services that generate assessable revenues, such as cellular telephone service, paging service, and prepaid calling cards.[30] This includes revenues from "stand-alone broadband telecommunications service [offered] on a common carrier basis," as described in the *Wireline Broadband Internet Access Order.*[31]

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[23] *See supra* n.6. We note that carriers also have the flexibility to recover their contribution costs through the rates they charge for service.

[24] The Commission had sought comment on basing contributions on gross revenues, net telecommunications revenues (gross revenues net of payments to other carriers for telecommunications services), or a per line or per-minute charge. *Universal Service First Report and Order*, 12 FCC Rcd at 9205, para. 842.

[25] 47 C.F.R. § 54.706(b); *see also Federal-State Joint Board on Universal Service; Access Charge Reform*, CC Docket Nos. 96-45, 96-262, Sixteenth Order on Reconsideration and Eighth Report and Order, Sixth Report and Order, 15 FCC Rcd 1679, 1685, para. 15 (1999) (*Universal Service Eighth Report and Order*) (establishing a single contribution obligation for all universal service support mechanisms); *Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45 *et al.*, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 24969, para. 29 (2002) (*2002 Second Contribution Methodology Order and FNPRM*) (establishing projected collected revenues (net of contributions) as the appropriate contribution base).

[26] *See* 47 U.S.C. § 153(53) (defining "telecommunications service" 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").

[27] *See* 47 U.S.C. § 153(50) (defining "telecommunications" 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"); *Universal Service First Report and Order*, 12 FCC Rcd at 9173, para. 777 (requiring those who offer telecommunications on a common-carriage basis for a fee to contribute); *id.* at 9183, para. 795 (requiring those who offer telecommunications on a private-carriage basis for a fee to contribute).

[28] *See* 47 U.S.C. § 153(24) (defining "information service" as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications").

[29] *Policy and Rules Concerning the Interstate, Interexchange Marketplace et al.*, CC Docket Nos. 96-61, 98-183, Report and Order, 16 FCC Rcd 7418, 7446, para. 47 (2001) (*CPE Bundling Order*).

[30] 47 C.F.R. § 54.706(a)(1)-(19). This list, however, is not comprehensive, as the rule states that "[i]nterstate telecommunications include, but are not limited to. . . ." To support our troops, the Commission has carved out an exemption for "revenues derived from prepaid calling cards sold by, to, or pursuant to contract with the Department of Defense (DoD) or a DoD entity." 47 C.F.R. § 54.706(d).

[31] *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities et al.*, CC Docket No. 02-33 *et. al.*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, 14916 n.357 (2005) (*Wireline Broadband Internet Access Service Order*) (*subsequent history omitted*). Small rate of return carriers that provide broadband transmission through the National Exchange Carrier Association (NECA) tariff contribute on those revenues.

Revenues from interstate telecommunications to which the Commission has extended its permissive authority are also included in the contribution base.[32] In contrast, revenues from information services (including retail broadband Internet access services) have never been included in the contribution base.[33] A contributor that provides a mix of these different types of services must therefore apportion its revenues between telecommunications and non-telecommunications sources for purposes of contribution assessment.[34]

11. Second, because our present rules require contribution only once along the distribution chain (when a contributor provides telecommunications to an "end user"), a contributor also must apportion its telecommunications revenues between two categories: (1) revenues derived from sales by one carrier or provider to another carrier or provider that is expected to contribute, known as "carrier's carrier" or wholesale revenues; and (2) revenues derived from sales to all other entities, known as "end-user" or retail revenues.[35] "Carrier's carrier" revenues are not currently assessed. "End-user" telecommunications revenues include revenues from sales to carriers or providers that do not contribute to USF, such as *de minimis* carriers and exempted providers of interstate telecommunications.[36] To ensure that all telecommunications revenues are assessed only once,[37] contributors must treat a customer as an end-user unless that customer "incorporates the purchased telecommunications . . . into its own offerings and . . . can reasonably be expected to contribute to support universal service based on revenues from those offerings."[38]

12. Third, contributors must determine how much of their end-user telecommunications revenues are derived from the provision of intrastate, interstate, and international services.[39] Intrastate

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[32] *See Universal Service First Report and Order*, 12 FCC Rcd at 8797, para. 39.

[33] *See Wireline Broadband Internet Access Service Order*, 20 FCC Rcd at 14909, para. 102 (classifying wireline broadband Internet access service as an information service). Prior to the *Wireline Broadband Internet Access Service Order*, facilities-based wireline broadband Internet access service providers were required to contribute to the Fund on the transmission component of the service. *See id.* at 14921-22, para. 12.

[34] *See infra* Section V.A.1. In this Notice, the use of the term "non-telecommunications" refers to services that are not currently in the USF contribution base. Included in this category are certain information services. We note, however, that this should not be read to suggest that information services do not include a telecommunications component that may be assessable.

[35] *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.; Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 97-21, Report and Order and Second Order on Reconsideration, 12 FCC Rcd 18400, 18507 (1997) (*Universal Service Second Order on Reconsideration*).

[36] *Universal Service Second Order on Reconsideration*, 12 FCC Rcd at 18507 (App. C); *Universal Service Fourth Order on Reconsideration*, 13 FCC Rcd at 5482, para. 298 ("Entities that resell telecommunications and qualify for the *de minimis* exemption must notify the underlying facilities-based carriers from which they purchase telecommunications that they are exempt from contribution requirements and must be considered end users for universal service contribution purposes.").

[37] *Universal Service First Report and Order*, 12 FCC Rcd at 9206-07, paras. 844-46.

[38] *Universal Service Second Order on Reconsideration*, 12 FCC Rcd at 18507 (App. C).

[39] Telecommunications providers with purely intrastate or international revenues are not required to contribute. *Universal Service First Report and Order*, 12 FCC Rcd at 9174, para. 779; *Universal Service Eighth Report and Order*, 15 FCC Rcd at 1685, para. 15. Moreover, to the extent that a contributor's universal service obligation would exceed its total interstate revenues, our rules provide a limited international revenues exemption (LIRE), which allows carrier to omit projections of, and contributions based on, collected international end-user telecommunications revenues if the contributor's interstate end-user telecommunications revenues comprise less than 12 percent of its combined projected collected interstate and international end-user telecommunications revenues. *See infra* Section V.A.6.

transmission is the heart of telecommunications,[139] and has classified data transmission services that have "traditionally" and "typically" been used for basic transmission purposes, such as "stand-alone ATM service, frame relay, gigabit Ethernet service, and other high-capacity special access services," as telecommunications services.[140]

44. We have not formally addressed enterprise communications services such as Dedicated IP, VPNs, WANs, and other network services that are implemented with various protocols such as Frame Relay/ATM, MPLS and PBB for purposes of determining USF contribution obligations. To the extent that such enterprise communications services would not fall within the definition of telecommunications services, should we exercise our permissive authority with respect to providers of those services? Are such enterprise communications services substitutes for other enterprise communications services that are subject to mandatory contributions, and would such an exercise of permissive authority increase clarity and fairness?[141] If we were to exercise our permissive authority over enterprise communications services that may be information services, should we enumerate the specific services that would be subject to a contribution obligation, or should we attempt to craft a more general definition that would capture future generations of such services that deliver similar functionality, regardless of technology used, in order to promote the sustainability of the Fund? What would be the appropriate transition period for such changes?

45. If we choose to exercise our permissive authority in this fashion, how would that affect the size of the contribution base? To what extent would assessing enterprise communications services bring additional contributors into the system that do not otherwise contribute today directly or indirectly?[142] How would an assessment of additional enterprise communications services affect the distribution of contribution obligations among various industry segments? How would such assessment affect the relative distribution of contribution obligations between services provided to enterprise and residential customers? How would such assessment affect the average contributions of different categories of residential end users, such as low-volume versus high-volume users, or vulnerable populations such as low-income consumers?

46. To the extent we conclude that Dedicated IP, VPNs, WANs, or other communications services for which contribution obligations have been in dispute should not be subject to contribution obligations, should we exercise our forbearance authority under section 10 of the Act to exempt these services from mandatory contribution insofar as they may be viewed as telecommunications services? How would that impact the current contribution base, and the relative distribution of contribution obligations between enterprise and residential consumers? Do these services differ from other explicitly assessed enterprise communications services in a way that makes their exemption from contribution appropriate, and would the section 10 criteria otherwise be met?

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[139] *Petition for Declaratory Ruling that Pulver.com's Free World Dialup is Neither Telecommunications nor a Telecommunications Service*, WC Docket No. 03-45, Memorandum Opinion and Order, 19 FCC Rcd 3307, 3312, para. 9 (2004) (*Pulver Order*).

[140] *Wireline Broadband Internet Access Service Order*, 20 FCC Rcd at 14860–61, para. 9.

[141] Consistent with precedent, the Commission may exercise its permissive authority to subject a provider or service to universal service contribution requirements without classifying such a provider or offering as a "telecommunications service" or "information service," as those terms are defined in the Act. *See, e.g., 2006 Contribution Methodology Order*, 21 FCC Rcd at 7537, para. 35.

[142] For example, systems integrators, which are defined in the *Universal Service Fourth Order on Reconsideration* as entities that do not provide services over their own facilities, may contribute indirectly to the Fund (even if they are not direct contributors to the Fund) if their underlying providers pass through USF surcharges to them. *See Universal Service Fourth Order on Reconsideration*, 13 FCC Rcd at 5472, para. 278.

enterprise services that are provided over networks utilizing these newer technologies, and the Commission has several pending appeals or requests for guidance involving the contribution requirements for such services.[134]

42. *Discussion.* We seek comment on clarifying the contribution obligations of various enterprise communications services that include the provision of telecommunications, without classifying those services as telecommunication services or information services, to advance our proposed goals for contributions reform, namely, creating greater efficiency, fairness, and sustainability of the Fund.[135] Several commenters have stated that uncertainty over the appropriate treatment of certain services today increases regulatory costs and results in gaming that has unfairly disadvantaged carriers who make good-faith attempts to comply with their contribution obligations.[136] For example, BT Americas Inc. has argued that a continued lack of clarity on which MPLS-enabled services are assessable "will lead one or more providers (whether a network services-based provider, systems integrator, or other) to leverage the lack of clarity and not pay into the [F]und," and that "[c]ustomers may use this situation to demand that other providers do the same." BT Americas further argues that it "is not realistic for one or more providers to charge corporate customers 11 to 12 percent more in USF fees on MPLS-enabled services and maintain market share when other providers do not assess their customers for such fees."[137]

43. We note that, as stated above, the Act defines telecommunications 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."[138] The Commission has found that

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(Continued from previous page)
AT&T Inc. and BellSouth Corp. Application for Transfer of Control, WC Docket No. 06-74, Memorandum Opinion and Order, 22 FCC Rcd 5662, 5698, para. 63 & n.180 (2007).

[134] *See* USAC 2009 Guidance Request, *supra* note 123. Masergy Communications Inc. Petition for Clarification, WC Docket No. 06-122 *et al.*, at 2 (filed Mar. 27, 2009) (Masergy Petition for Clarification) (seeking clarification from the Commission on the classification of MPLS service revenues); Request for Review by XO Communications Services, Inc. of a Decision of the Universal Service Administrator, WC Docket No. 06-122 (filed Dec. 29, 2010) (XO Request for Review) (challenging USAC's reclassification of MPLS revenues); Equant, Inc. Request for Review of Decision of the Universal Service Administrator, WC Docket No. 06-122 (filed Jan. 3, 2012) (Equant Request for Review) (challenging USAC's reclassification of IP-based virtual private network revenues).

[135] We note that to the extent that enterprise communications services are telecommunications services, they are already subject to mandatory contribution obligations under section 254(d). 47 U.S.C. § 254(d). *See, e.g.*, Comments of Verizon and Verizon Wireless, WC Docket No. 05-337 *et al.* (filed Oct. 28, 2009) (Verizon Oct. 28, 2009 Comments) (stating that whether a particular service that uses ATM or FR technology is assessable for USF purposes depends on whether that particular service meets the statutory definition of a telecommunications service); Comments of the United States Telecom Association, CC Docket No. 96-45 *et al.*, at 7 (filed Oct. 28, 2009) (stating that services that use MPLS technology can be either telecommunications or information services depending on product characteristics).

[136] *See, e.g.*, Masergy Petition for Clarification, at 2-3 (discussing how the diversity of methods used by carriers to collect USF for MPLS services creates artificial competitive advantages for carriers that do not collect USF on the underlying transport); Equant Request for Review (arguing that USAC's reclassification of Equant's VPN revenues as telecommunications revenues will place Equant at a competitive disadvantage vis-a-vis other carriers who have elected to classify all of their VPN revenues as non-telecommunications); NTT America Comments, WC Docket No. 06-122 (filed June 8, 2009) (seeking clarification on classification of MPLS and stating that the lack of clarity surrounding the classification of MPLS will allow uncertainty to persist among USF contributors).

[137] BT Americas June 8, 2009 Comments at 11 (arguing that lack of clarity on the proper classification of MPLS-based services will lead providers to avoid contribution obligations).

[138] 47 U.S.C. § 153(50).

Text messaging service;

One-way VoIP service; and

Broadband Internet access services.

1. Enterprise Communications Services Providers

41. *Background.* In the *Wireline Broadband Internet Access Service Order,* the Commission noted that carriers and end users, including enterprise customers, have traditionally used services such as standalone Asynchronous Transfer Mode (ATM) service, frame relay (FR), gigabit Ethernet service, and "other high-capacity special access services" for basic data transmission purposes.[127] The Commission distinguished these services from broadband Internet access services, which it concluded intertwined information-processing capabilities with data transmission.[128] Data transmission services based on older technologies, such as standalone ATM[129] and frame relay[130] are currently subject to contribution obligations. In recent years, however, enterprises have increasingly replaced such legacy services with new services that perform substitutable functions, but are based on other technologies.[131] The current generation of services, such as Dedicated IP, Virtual Private Networks (VPNs), and Wide Area Networks (WANs) that are implemented with various protocols such as ATM/FR, Multiprotocol Label Switching (MPLS),[132] and Provider Backbone Bridging (PBB), allow providers to create a single integrated network infrastructure that can be used to provide multiple services to the enterprise customer, including (but not limited to) voice-over-IP service; data transmission service; managed email; corporate intranets; website and data hosting; caching; managed application services; Internet Protocol television (IPTV); and/or video conferencing.[133] USAC has sought Commission guidance regarding the classification of certain

[127] *Wireline Broadband Internet Access Service Order*, 20 FCC Rcd at 14860-61, para. 9.

[128] *Id.*

[129] ATM is a "high bandwidth, low-delay, connection-oriented packet-like switching and multiplexing technique" in which "[u]sable capacity is segmented into 53-byte fixed-sized cells, consisting of header and information fields [and] allocated to services on demand." *See Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, CC Docket No. 01-337, Memorandum Opinion and Order, 17 FCC Rcd 27000, 27003, para. 6 n.22 (2002) (quoting Harry Newton, *Newton's Telecom Dictionary: The Official Dictionary of Telecommunications and the Internet* 63 (17th ed. 2001)). The ATM technique was developed, in part, to address the need to carry real time voice and video across data networks.

[130] Frame Relay is a "high-speed packet-switched technology used to communicate digital data between, among other things, geographically dispersed local area networks." *Independent Data Communications Manufacturers Association, Inc.; American Telephone and Telegraph Company*, Memorandum Opinion and Order, 10 FCC Rcd 13717, 13720, para. 6 (1995) (*Frame Relay Order*). For a discussion of frame-relay technology, *see id.* at 13720-21, paras. 6-8.

[131] *See, e.g.*, 2012 TIA Review and Forecast at 3-39 ("carrier Ethernet is gaining ground for companies with high bandwidth requirements .... Although Ethernet remains a small component of the overall market in terms of spending, it surpassed all legacy connections in 2011 in terms of bandwidth.... For companies with less extensive bandwidth needs, the dominant trend in recent years is the migration to IP VPNs from frame relay and ATM, while the leased line market continues to hold on, supported in part by growth in the dedicated IP VPN market, which uses leased lines for connectivity.").

[132] A group of carriers has submitted a proposal for how the Commission could assess MPLS-based services under the current revenues-based system, focusing on how to properly allocate revenues from such services for contributions purposes. *See* Letter from Sprint Nextel *et al,* to Marlene H. Dortch, FCC, WC Docket No. 06-122 (filed Mar. 29, 2012) (*Industry MPLS Proposal*). In Section V.A.2 below, we seek comment on this proposal.

[133] *See, e.g.*, BT Americas June 8, 2009 Comments. Many services currently offered in the enterprise market are not limited to a single protocol, but can enable the transmission of data between networks that rely on different protocols (for example, FR/ATM service, which allows seamless data transfer between Frame Relay and ATM networks). (continued...)

whether certain enterprise communications services are currently assessable as telecommunications services or non-assessable as information services has led to significant disputes, uncertainty,[122] and incentives for providers to attempt to characterize their services in a particular way in order to avoid contribution requirements, resulting in a pending request for guidance from USAC regarding the treatment of certain services.[123] Likewise, the question of whether text messaging is currently assessable has been disputed, and there is a pending request for guidance from USAC regarding text messaging.[124] In contrast, one-way VoIP services and broadband Internet access services are clearly not in the contribution base today, although various parties have argued they should be assessed.[125] We seek comment on these arguments.

39. We seek comment on addressing the contribution obligations of such services, regardless of their statutory classification as information services or telecommunications services, in order to provide clarity for contributors and greater stability for the Fund.[126] We also seek comment on whether exercising our permissive authority would ensure that competitive services are not unfairly disadvantaged by disparate contribution obligations, while further simplifying the requirements imposed on contributors.

40. We seek comment on adopting the following rule, in whole or in part:

Providers of the following are subject to contributions:

* * *

Enterprise communications services that include a provision of telecommunications;

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[122] *See e.g.*, Comments of BT Americas Inc., WC Docket No. 06-122, at 11 (filed June 8, 2009) (arguing that lack of clarity on the proper classification of Multiprotocol Label Switching (MPLS)-based services will lead providers to avoid contribution obligations) (BT Americas June 8, 2009 Comments).

[123] *See* Letter from Richard A. Belden, USAC, to Julie Veach, Wireline Competition Bureau, FCC, WC Docket Nos. 06-122, 05-337 (filed Aug. 24, 2009) (USAC 2009 Guidance Request).

[124] Letter from Richard A. Belden, USAC, to Sharon Gillett, Wireline Competition Bureau, FCC, WC Docket No. 06-122 (filed Apr. 26, 2011) (USAC 2011 Guidance Request).

[125] *See* Letter from Michael R. Romano, National Telecommunications Cooperative Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, Attach. at 8 (filed Jan. 24, 2011) (arguing that including one-way VoIP service revenues in the contribution base would help remedy the "supply" of universal service funding); Letter from Robert W. Quinn, Jr., AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, at 2 (filed Aug. 14, 2009) ("Our entire universal service support system . . . is modeled around TDM-based interstate voice services and the revenues associated with those services. That business model is eroding faster than anyone could have imagined 10 years ago. Voice service and revenues associated with it are plummeting in the developing packet-based communications industry. Whether we are talking about voice replacements like Skype In, Skype Out (neither of which contributes directly to universal service because the services do not meet the definition of 'Interconnected VoIP service'), Google-Voice, or Magic Jack . . . it is clear that the existing, traditional voice-based business model is disappearing and with it will go the universal service support provided by those traditional services today.").

[126] In this Notice, we are not proposing to classify any of these services as telecommunications services or information services. We note, however, that to the extent that a service is a "telecommunications service" under the Act, it would be subject to mandatory USF contributions, unless the Commission were to conclude that the carrier's contribution would be *de minimis* under section 254(d) or the statutory requirements for section 10 forbearance are met. To the extent that there exists any question as to whether a particular service is a telecommunications service, we seek comment on whether to exercise our permissive authority under section 254(d) to bring the service into the contribution base, or, to the extent it is a telecommunications service, whether to forbear from contribution obligations.

marketplace? Should we assess providers of services that are capturing a growing portion of overall communications spending as a means of achieving sustainability? Should we consider whether those services are being used in ways that may replace, partially or wholly, services that are subject to mandatory assessment? Does the public interest analysis differ depending on whether we are considering consumer services or business/enterprise services? What other factors should we take into account?

B. Determining Contribution Obligations on a Case-by-Case Basis with Respect to Providers of Specific Services

36. In this section, we seek comment on whether and if so, to what extent, the Commission should exercise its permissive authority contained in section 254(d) of the Act to clarify or modify contribution requirements for providers of several specific services, or if we should otherwise modify or clarify the contribution obligations of such services. As discussed above, the Commission has exercised its permissive authority on several occasions to expand or clarify contribution obligations on a service-specific basis.[116] In the *Universal Service First Report and Order*, it required private line service providers and payphone aggregators to contribute to the Fund, reasoning that the services offered by these entities rely on access to the PSTN and compete with services offered by mandatory contributors to the Fund (*i.e.*, common carriers).[117] In 2006, the Commission assessed interconnected VoIP services without reaching the statutory classification of such services. The Commission concluded that deciding the statutory classification was unnecessary, because even if interconnected VoIP services did not fall under the mandatory contribution provision of section 254(d), it was appropriate to assess such services as an exercise of permissive authority.[118] The Commission determined that an immediate extension of contribution obligations to interconnected VoIP service was warranted due to the growth in demand for the Fund, the decline in the contribution base overall, and the "robust growth in subscribership" to interconnected VoIP services, from 150,000 subscribers in 2003 to 4.2 million subscribers in 2005.[119]

37. We seek comment on continuing this general approach of addressing the contribution obligations of specific services on a service-by-service basis. First, we seek comment on exercising permissive authority with respect to certain services for which contribution obligations are currently subject to dispute. To the extent commenters believe that any such services should be non-assessable, we also seek comment on alternative approaches to clarifying contributions, including forbearing from any applicable contribution obligations to the extent these services are telecommunications services, and we seek comment on the effect of such approaches on the contribution base and the sustainability of the Fund. Second, we seek comment on exercising permissive authority with respect to other services that are clearly not currently assessable, but which various commenters have proposed should be assessed.

38. In particular, we seek comment on exercising our permissive authority to require contributions from providers of enterprise communications services that include interstate telecommunications;[120] text messaging; one-way VoIP;[121] and broadband Internet access services. Each of these services has found a significant niche in today's communications marketplace. The question of

[116] *See, e.g.*, 47 C.F.R. § 54.706(a) (listing services subject to assessment); *2006 Contribution Methodology Order*, 21 FCC Rcd at 7538-41, paras. 38-45 (exercising permissive authority over interconnected VoIP services).

[117] *Universal Service First Report and Order*, 12 FCC Rcd at 9183–85, paras. 794–97.

[118] *2006 Contribution Methodology Order*, 21 FCC Rcd at 7537, para. 35.

[119] *Id.* at 7528–29, para. 19.

[120] For purposes of this discussion, we use the term "enterprise" to include service provided to both commercial business customers and community anchor institutions that may have significantly different requirements than the typical residential consumer.

[121] "One-way VoIP" is defined below. *See infra* para. 58.

The Commission has drawn a distinction between what is "offered" from a demand perspective (*i.e.*, what the customer perceives to be the integrated product),[110] and what is "provided" from a supply perspective *i.e.*, what the provider is furnishing or supplying to the end user, including not only the integrated product but also the discrete components of the product).[111] Second, the Commission has previously held that "provide" is broader than "offer."[112] Under this view, an entity may both "provide" and "offer" telecommunications, but an entity may also provide telecommunications without offering telecommunications. Many participants in today's marketplace do not separately offer telecommunications to end users, but instead offer integrated services that include both telecommunications (*i.e.*, transmission) and non-telecommunications components. For such integrated services, however, the service provider still "provides" telecommunications as part of the "offering." The D.C. Circuit has upheld the Commission's interpretation.[113] In light of the marketplace changes over the last decade, should the Commission revisit its interpretation of what it means to "provide" or to be a "provider of" telecommunications?

34. *"Telecommunications."* The Act defines the term "telecommunications" 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."[114] Here and in Section IV.C below, we seek comment on how we should interpret each component of this definition for purposes of potentially exercising our permissive authority.

2. "If the Public Interest So Requires"

35. We seek comment on what factors we should consider in deciding whether the public interest warrants exercising our permissive authority. We seek comment generally on whether the public interest would be served, and to what extent exercising our permissive authority would achieve any or all of the goals set forth above – efficiency, fairness, and sustainability. For example, is it in the public interest to exercise permissive authority over a provider of telecommunications if the telecommunications is part of a service that competes with or is used by consumers or businesses in lieu of telecommunications services that are subject to assessment? In the past, the Commission has stated that the principle of competitive neutrality dictates that it should assess contributions from entities that are not mandatory contributors, but benefit from access to the PSTN.[115] Is that consideration relevant in today's

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telecommunications) and did not intend to make any sort of statement about how the terms "offer" and "provide" should be interpreted relative to each other. *Id.* at 7539 n.139.

[110] *Cable Broadband Internet Access Service Order*, 17 FCC Rcd at 4820-24, para. 34-41; *Nat'l Cable & Telecomm. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 990 (2005) (*Brand X*) ("It is common usage to describe what a company 'offers' to a consumer as what the consumer perceives to be the integrated finished product, even to the exclusion of discrete components that compose the product . . . . One might as well say that a car dealership 'offers' cars, but does not 'offer' the integrated major inputs that make purchasing the car valuable, such as the engine or the chassis. It would, in fact, be odd to describe a car dealership as 'offering' consumers the car's components in addition to the car itself.").

[111] *2006 Contribution Methodology Order*, 21 FCC Rcd at 7539, para. 40; *Vonage Holdings Corp. v. FCC*, 489 F.3d 1232, 1240–41 (D.C. Cir. 2007) (*Vonage*) ("Returning to *Brand X*'s car dealership hypothetical, we see nothing strange about the statement that a dealership provides both cars *and* engines. Indeed, one could reasonably interpret the statement that a dealership 'does not provide engines' to mean that it sells cars without engines, not that it won't sell disconnected engines." (emphasis in original)).

[112] *2006 Contribution Methodology Order*, 21 FCC Rcd at 7539, para. 40.

[113] *Vonage*, 489 F.3d at 1232.

[114] 47 U.S.C. § 153(50).

[115] *Universal Service First Report and Order*, 12 FCC Rcd at 9173-74, para. 796.

affect the total amount of contributions collected or the overall size of the Fund. The size of the Fund is determined by demand projections, independent of how contributions are assessed.[103] The Commission recently adopted reforms that will limit growth in the Fund over time.[104] Here we address how those contributions can be best collected in ways that promote efficiency, fairness, and sustainability. We seek comment on how the proposals below will affect the distribution of contribution obligations among different industry segments and the impact of contributions among different categories of end users.

A. Statutory Authority to Require Contributions

31. Section 254(d) of the Act speaks to classes of providers who must contribute to the Fund. "[E]very telecommunications carrier that provides interstate telecommunications services" is a mandatory contributor to the Fund.[105] In addition, the Commission's "permissive" authority extends to "any... provider of interstate telecommunications... if the public interest so requires."[106] Over time, the Commission has periodically exercised its permissive authority to extend contribution obligations to particular classes of providers on a service-specific basis. In this section we seek comment on the scope of our permissive authority, including how we should interpret the statutory terms that define that authority.

1. "Provider of Interstate Telecommunications"

32. The threshold issue in exercising permissive authority is whether an entity is "providing" interstate "telecommunications" as defined in the Act.[107] We seek comment on how we should interpret these terms and whether it is appropriate to revisit any previous Commission interpretations based on the evolution of the industry and significant marketplace changes over the last decade.

33. *Provide.*" In exercising our permissive authority, we must determine whether an entity is a "provider" of interstate telecommunications as specified in section 254(d). Although Congress has not defined the terms "provide," "provider," or "provision," the Commission has addressed these terms in several orders.[108] First, the Commission has concluded that "provide" is a different term from "offer."[109]

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USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122 *et al.*, at 2 (filed Mar. 29, 2012) (urging Commission to consider whether it is appropriate to include a broader range of participants in the broadband ecosystem to participate in funding universal service).

[103] 47 C.F.R. § 54.709(a)(2).

[104] *See, e.g., USF/ICC Transformation Order and FNPRM,* 26 FCC Rcd at 17710-11, para. 123 (establishing a defined budget for the high cost component of the universal service fund); *Lifeline and Link Up Reform and Modernization Order* at 170, para. 357 ("as the reforms adopted in this Order take effect, they will substantially constrain program growth").

[105] The term "telecommunications service" means 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(53). The D.C. Circuit has affirmed the Commission's interpretation that "telecommunications service" means "essentially the same as common carrier" service. *See VITELCO,* 198 F.3d at 922. A "telecommunications carrier" is defined as "any provider of telecommunications services." 47 U.S.C. at § 153(51).

[106] 47 U.S.C. § 254(d).

[107] Interstate/intrastate jurisdictional issues will vary depending on the assessment methodology. Therefore, these issues are discussed below in Sections V.A.3, V.B.5 and V.C.6.

[108] *2006 Contribution Methodology Order,* 21 FCC Rcd at 7539, para. 40.

[109] *Id.* In the *2006 Contribution Methodology Order*, the Commission acknowledged that the Commission had, prior to that order, sometimes used the terms "offer" and "provide" interchangeably. The Commission noted, however, that in those instances the Commission was clearly discussing telecommunications services (rather than (continued...)

numbers, or a connections/numbers hybrid approach as discussed in past Notices, we would still need to determine which providers and services are appropriate to assess.[98] We would still need to determine, for example, whether it would be in the public interest to assess connections or numbers/connections associated with certain information services. We therefore invite commenters to address the question of who should contribute, even if those commenters advocate an alternative assessment methodology to the Commission's current revenues-based approach.[99]

29. In determining whether it is appropriate to assess a particular provider or service, we must first determine whether that provider or service is within the scope of our statutory authority to assess "providers of interstate telecommunications," and whether assessing that provider or service would be in the public interest. Therefore, we begin by seeking comment on how to interpret the scope of the Commission's permissive authority under section 254(d). We then seek comment on two basic approaches to increase clarity as to what services and providers contribute to universal service and to address various proposals to expand the base of contributors: (1) using our permissive authority, and/or other tools, such as forbearance,[100] to address outstanding contribution issues, and clarify or modify on a service-by-service basis whether particular services or providers are required to contribute to the Fund; or (2) adopting a more general definition of contributing interstate telecommunications providers that could be more future proof as the marketplace continues to evolve.

30. Throughout this section, we seek data to help us evaluate how proposed methods of exercising our permissive authority would impact the contribution base.[101] We observe that although assessing additional providers and services might expand the contribution base and affect the relative obligations of who contributes,[102] nothing we propose in this section or anywhere else in this Notice will

[98] Below we seek comment on how to define the terms "connections" and "numbers" for contributions purposes if the Commission were to adopt an alternative contribution methodology. *See infra* Part V.

[99] In some circumstances the method of assessment may have implications for who we would assess. For example, if we were to adopt a numbers-only approach that was limited to North American Numbering Plan (NANP) numbers, fixed broadband as provided in today's marketplace would not be assessed. However, wireless broadband might be assessed, because NANP numbers are often assigned to wireless devices that only have data connections (such as air cards). The question, therefore, of who should contribute remains relevant even if we adopt a narrowly defined assessment methodology.

[100] Pursuant to section 10 of the Act, the Commission may forbear from applying any requirement of the Act or of our regulations to a telecommunications carrier if and only if the Commission determines that: (1) enforcement of the requirement is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of that requirement is not necessary for the protection of consumers; and (3) forbearance from applying that requirement is consistent with the public interest. 47 U.S.C. § 160(a)–(b). In making a public interest determination, section 10(b) requires the Commission to consider whether forbearance will promote competitive market conditions.

[101] While we ask about the revenues associated with certain services in this section, this does not prejudge whether we ultimately will maintain the existing revenue-based system or move to an alternative contribution methodology. Even if we exercise our permissive authority with respect to specific providers or specific services, we still must decide the appropriate methodology for determining how much each provider will contribute. In Section V below, we separately seek comment on the methodology we should use to assess contributions.

[102] A number of stakeholders have suggested that broadening the base is a necessary prerequisite for any reform of the contribution methodology. *See, e.g.*, Letter from Jill Canfield, Senior Regulatory Counsel, National Telecommunications Cooperative Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, at 2–4 (filed Oct. 8, 2010) (NTCA Oct. 8, 2010 *Ex Parte* Letter); XO Sept. 17, 2010 *Ex Parte* Letter at 7–10; Letter from Shana Knutson, Nebraska Public Service Commission, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, at 1 (filed Aug. 20, 2010); Letter from Todd Daubert, Counsel for SouthernLINC Wireless, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, at 1 (filed Aug. 20, 2010). *See also* Letter from David B. Cohen, (continued...)

protect robust competition on service and price. We also seek to reform the system in a way that is fair to consumers, both residential and business, who ultimately bear the cost of universal service contributions. Accordingly, we propose that a second goal for reform should be ensuring fairness and competitive neutrality in the contribution system.

25. *Sustainability*. There is widespread agreement that the methodology for universal service contributions should be dynamic enough to keep pace with changes in the marketplace.[93] The National Broadband Plan recognized the need to ensure the Fund remains sustainable over time and recommended that the contribution base be broadened.[94] Universal service goals could be undermined by declines in the contribution base. Such declines could result in the obligation to support universal service being borne by a shrinking pool of contributors and, ultimately, consumers. Parties have argued that changes in today's marketplace have created potential loopholes in our current system as providers grapple with how to classify services for USF assessment purposes, with competing providers coming to different conclusions as to their contribution obligations.[95] One of the proposed goals for reform is to create an improved system that will adapt to market changes and stabilize the contribution base.

26. As we undertake contributions reform, we are guided by our overarching goal of ensuring the delivery of affordable communications to all Americans.[96] This includes ensuring that any reforms to the contributions system must safeguard the core Commission objectives of promoting broadband innovation, investment and adoption.[97] Similarly, we propose that reforms should incorporate appropriate transition periods to allow service providers and consumers to adapt.

27. We seek comment on these goals for contribution methodology reform and whether we should be guided by any additional goals.

IV. WHO SHOULD CONTRIBUTE TO UNIVERSAL SERVICE

28. In this section we seek comment on clarifying or modifying the Commission's rules on what services and service providers must contribute to USF in order to reduce uncertainty, minimize competitive distortions, and ensure the sustainability of the Fund. The question of who should contribute is at the core of much of the uncertainty and competitive distortions that plague the system today. The question is also in many ways distinct from the question of how contributions should be assessed. Even if we were to shift from a revenues-based approach to an alternative approach, such as connections,

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Secretary, FCC, WC Docket No. 06-122, at 2 (filed Sept. 17, 2010) (arguing for "contribution rules that are transparent and competitively neutral, to ensure that all market participants operate on a level playing field"); Verizon Aug. 13, 2010 *Ex Parte* Letter at 1 (complaining that today's system "skew[s] the competitive landscape" because "companies that use different technologies to compete for the same customers pay into the [F]und in different ways").

[93] See 47 U.S.C. § 254(d) (requiring telecommunications carriers to contribute to specific, predictable and sufficient mechanisms to preserve and advance universal service). Many recognize that if the contribution base itself is not sustainable, that could jeopardize universal service goals. *See, e.g.*, Verizon Aug. 13, 2010 *Ex Parte* Letter at 1 (arguing that the contribution methodology must be sustainable); AT&T Aug. 24, 2010 *Ex Parte* Letter at 1 (suggesting that system should be "fair and sustainable").

[94] *National Broadband Plan* at 149.

[95] *See, e.g.*, Letter from David B. Cohen, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122 *et al.*, at 4 (filed Mar. 28, 2012) (USTelecom Mar. 28, 2012 *Ex Parte* Letter) (noting differences in classification of prepaid calling card revenue in the IDT and AT&T 2006 contributor appeals).

[96] *See generally* 47 U.S.C. § 254(b).

[97] *See* FCC Strategic Plan for FY 2012-2016 at 4, available at http://www.fcc.gov/encyclopedia/fcc-strategic-plan.

23. *Efficiency*. Since the contribution system was put in place more than a decade ago, it has become increasingly complex for all stakeholders in light of changes in the marketplace. As noted above, bundling of different kinds of services and a blurring of the line between local and toll service make it more challenging for contributors to allocate revenues as required under the current contributions methodology. Meanwhile, the emergence of new services has complicated contribution obligations over time, and exacerbates concerns that some providers are contributing on specific services, while other providers are not. In light of these problems, we propose that one goal for reform should be to make compliance with and administration of the contribution system more efficient (1) by developing rules that operate clearly within the evolving structure of the marketplace, and (2) by closing loopholes. Many stakeholders encourage the Commission to adopt reforms that would simplify the USF contribution system and limit undue provider discretion.[87] Stakeholders also have urged the Commission to avoid any changes to the contribution system that would increase its complexity.[88] Clearer, simpler rules that can be applied in new situations could deter gaming of the system and save consumers, companies, and the government money.

24. *Fairness*. Section 254(d) is grounded on the principle that the contributions system should be fair for contributors.[89] The Commission has been committed to competitive neutrality since it first implemented the 1996 Act.[90] Over time, however, the industry and the technology used to provide telecommunications have evolved, so that service providers that once were thought to compete in wholly distinct markets may now compete with each other. By treating similar or substitutable services differently, our contributions rules may create unintended market distortions.[91] Stakeholders have urged that any reforms to the contribution system should be designed to provide that similar services are treated in a similar manner, regardless of technology or type of provider.[92] Treating competitors equally could

[87] Letter from Mary L. Henze, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, at 1 (filed Aug. 24, 2010) (AT&T Aug. 24, 2010 *Ex Parte* Letter) ("[I]t is most critical to establish 'bright-line' rules regarding the entities that are obligated to contribute and on what basis."); NASUCA Sept. 7, 2010 *Ex Parte* Letter at 1–2 (arguing against a system that would be complicated, complex, or subject to claims of arbitrage); Letter from Norina Moy, Sprint, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-337 *et. al.*, at 1 (filed Aug. 20, 2010) (Sprint Aug. 20, 2010 *Ex Parte* Letter) (arguing that reforms should make the system "easy to administer ... and unambiguous (not subject to interpretation or manipulation, a problem with the current contribution methodology)").

[88] *See, e.g.*, Letter from Joshua Seidemann, Independent Telephone & Telecommunications Alliance, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-337 *et. al.*, at 1 (filed Sept. 29, 2010) (ITTA Sept. 29, 2010 *Ex Parte* Letter) (arguing that "new contribution mechanisms should be administratively simple in order to contain associated costs"); Letter from Melissa E. Newman, Qwest, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, at 1–2 (filed Sept. 9, 2010) (Qwest Sept. 9, 2010 *Ex Parte* Letter) (arguing the importance of simplicity in reforming the contribution system); XO Sept. 17, 2010 *Ex Parte* Letter at 1, 4 (arguing against contribution systems that would increase the complexity of the system).

[89] See 47 U.S.C. § 254(d) (requiring telecommunications carriers to contribute on an equitable and non-discriminatory basis).

[90] In implementing section 254(b) of the 1996 Act, the Commission, based on the recommendation of the Federal-State Universal Service Joint Board, adopted the additional principle of competitive neutrality. *See* 47 U.S.C. §§ 254(b)(4), 254(d); *Universal Service First Report and Order*, 12 FCC Rcd at 8801, para. 47.

[91] *See supra* para. 4.

[92] *See, e.g.*, ITTA Sept. 29, 2010 *Ex Parte* Letter at 1–2 (arguing for "competitively equitable outcomes" and "regulatory parity"); Letter from Douglas D. Orvis II, Counsel for PAETEC Holdings, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, at 1 (filed Sept. 24, 2010) (stressing the "Act's requirement for competitively-neutral contributions"); Qwest Sept. 9, 2010 *Ex Parte* Letter at 2 ("[F]ewer buckets and similar contribution treatment across buckets will also help to keep contribution requirements competitively neutral."); Sprint Aug 20, 2010 *Ex Parte* Letter at 1 (arguing that the system should be "competitively neutral"); Letter from Tamar E. Finn, Counsel for U.S. TelePacific Corp. d/b/a TelePacific Communications, to Marlene H. Dortch, (continued...)

the viability and sustainability of the Fund. In 2002 and 2006, the Commission adjusted upwards the wireless safe harbor percentage to reflect increased usage of wireless phones for placing interstate calls.[83] In addition, in 2006, the Commission extended universal service contribution obligations to providers of interconnected VoIP services, as consumers are increasingly purchasing VoIP service instead of traditional phone service.[84] Finally, the Commission has sought comment several times on whether and how broadband Internet access service providers should contribute to the Fund.[85]

III. GOALS OF CONTRIBUTION METHODOLOGY REFORM

22. In this portion of the Notice, we seek comment on our proposed goals for reforming the contribution methodology both in the short term and in the long term. Although stakeholders may have differing views on the specifics of how to reform the contribution system,[86] as discussed below, many parties have suggested that our overarching objectives should be to simplify compliance and administration, maintain competitive neutrality, and ensure long term sustainability of the Fund to achieve our objectives of ensuring that robust and affordable voice and broadband services are available to Americans across the nation.

(Continued from previous page)
record and on telephone number-based proposals advocated by certain parties); *Commission Seeks Comment on Staff Study Regarding Alternative Contribution Methodologies*, CC Docket No. 96-45 *et al.*, Public Notice, 18 FCC Rcd 3006 (2003) (*2003 Staff Study PN*); *High Cost Universal Service Support et al.*, CC Docket No. 96-45 *et al.*, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6475, 6536–64, paras. 92–156 (2008) (*2008 Comprehensive Reform FNPRM*) (App. A: seeking comment on a proposal to modify the contribution methodology); *id.* at 6669–95, paras. 39–104 (App. B: same); *id.* at 6735–62, paras. 88–151 (App. C: same).

[83] *See, e.g.*, *Wireless Safe Harbor Order*, 13 FCC Rcd at 21258–59, paras. 13–15; *2002 Second Contribution Methodology Order and FNPRM*, 17 FCC Rcd at 24983–95, paras. 66–95; *2006 Contribution Methodology Order*, 21 FCC Rcd at 7531–38, paras. 23–37.

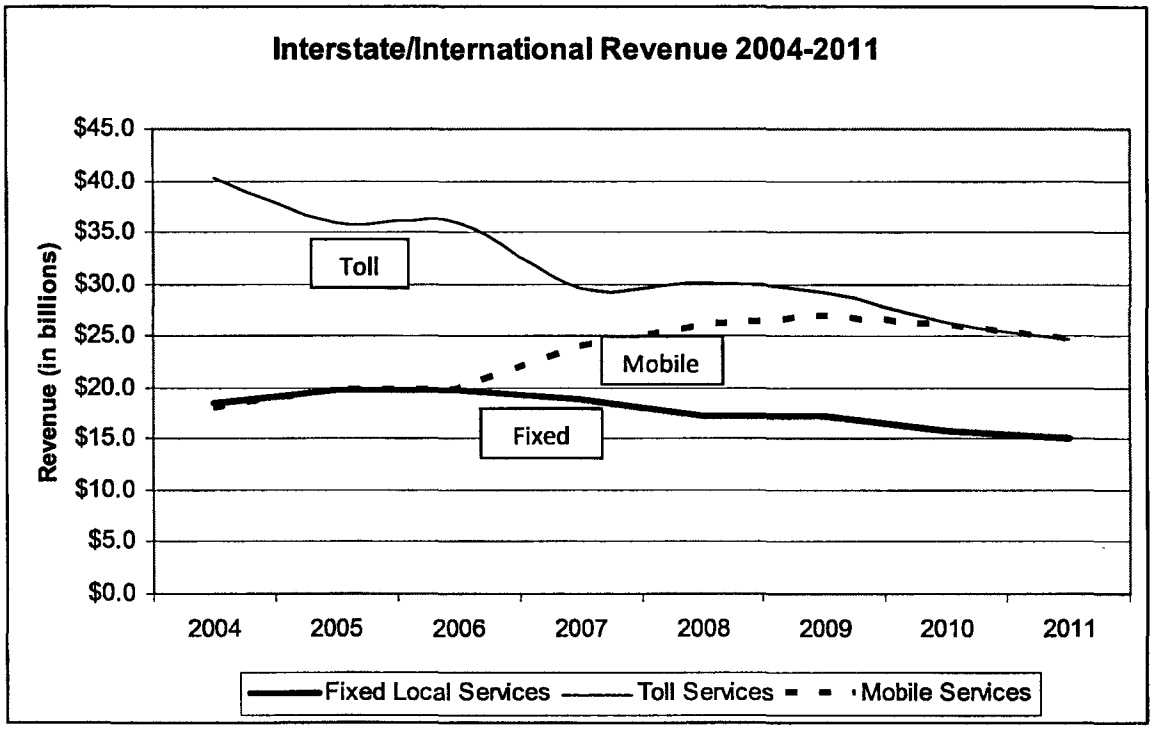
[84] *2006 Contribution Methodology Order*, 21 FCC Rcd at 7540, para. 43.

[85] *Appropriate Framework for Broadband Access to Internet over Wireline Facilities*, CC Docket No. 02-33 *et al.*, Notice of Proposed Rulemaking, 17 FCC Rcd 3019, 3048–56, paras. 65–83 (2002) (*Wireline Broadband NPRM*) (seeking comment on whether requiring wireline broadband Internet access service providers and other facilities-based providers of broadband Internet access services to contribute to universal service would be in the public interest); *see also IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863, 4905–06, paras. 63–64 (2004) (seeking comment on whether non-facilities-based providers of broadband Internet access services and other IP-enabled service providers should contribute to universal service); *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, GN Docket No. 00-185, CS Docket No. 02-52, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798, 4853, para. 110 (2002) (*Cable Broadband Internet Access Service Order*); *2002 Second Contribution Methodology Order and FNPRM*, 17 FCC Rcd at 24983–95, paras. 66–95 (seeking comment on how to stabilize the contribution base, including the assessment of broadband data connections).

[86] *Compare, e.g.*, Letter from Brad E. Mutschelknaus, Counsel for XO Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, at 7 (filed Sept. 17, 2010) (XO Sept. 17, 2010 *Ex Parte* Letter) (arguing for improving the revenues-based system); Letter from David C. Bergmann, Chair, NASUCA Telecommunications Committee, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, at 1 (filed Sept. 7, 2010) (NASUCA Sept. 7, 2010 *Ex Parte* Letter) (same), *with* Letter from Alan Buzacott, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, at 1 (filed Aug. 13, 2010) (Verizon Aug. 13, 2010 *Ex Parte* Letter) (arguing for a numbers-based system); Letter from Jennifer K. McKee, National Cable & Telecommunications Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-337 *et. al.*, at 2 (filed Aug. 20, 2010) (NCTA Aug. 20, 2010 *Ex Parte* Letter) (same); Letter from John P. Janka, Counsel for ViaSat, Inc. and WildBlue Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, GN Docket No. 09-51, Attach. at 3 (filed Sept. 9, 2010) (arguing for a connections-based system) (WildBlue Sept. 9, 2010 *Ex Parte* Letter).

distance rates.[79] Meanwhile, reported mobile revenue, which typically is a combination of interstate and intrastate revenues, has increased significantly.[80]

Chart 2



21. Recognizing the impact of new market entrants, growth in the wireless sector, the advent of IP telephony, and increased bundling of services, the Commission began a proceeding in 2001 to revisit the universal service contribution methodology.[81] On several occasions, the Commission has sought to develop the record on alternative methodologies to the current system that assesses contributions based on revenues.[82] In addition, the Commission has taken several interim steps to ensure

[79] As discussed in the *USF/ICC Transformation Order and FNPRM*, retail toll charges fell sharply after the 2000 *CALLS Order*, by 18 percent in 2000 alone. Competitive pressure from wireless providers led to fixed line carriers offering unlimited domestic calling, at lower prices. *See USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 17910-11, para. 751.

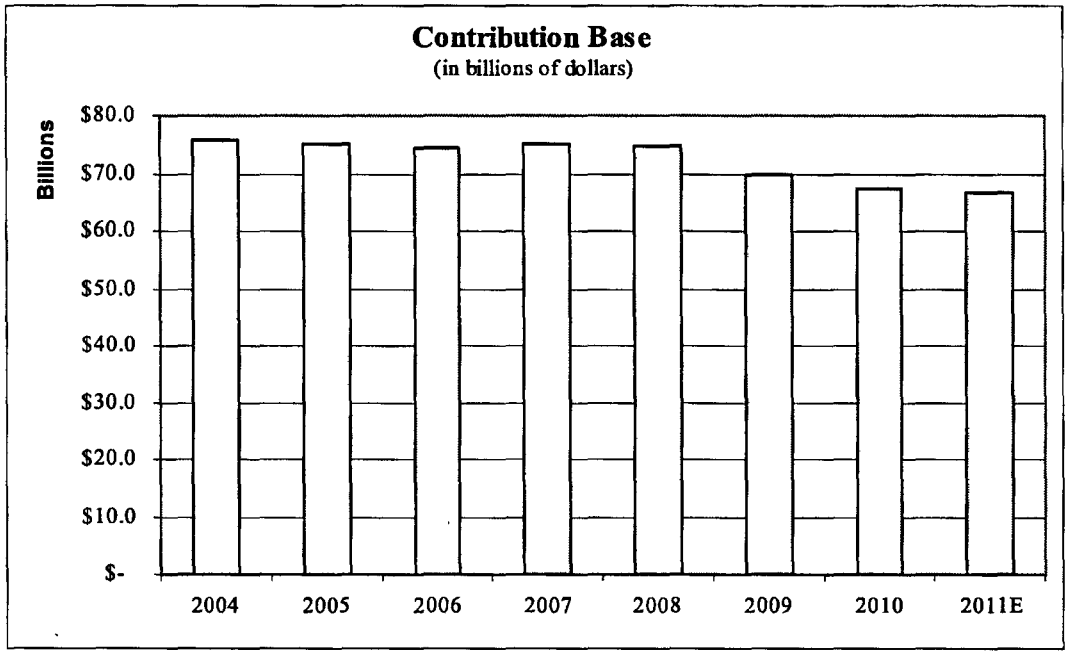
[80] *Compare 2009 Revenues Report*, Table 6, *with 2009 Revenues Report*, Table 7. In 1999, $4.58 billion in end-user mobile revenues were reported as interstate or international, out of the $44 billion total end-user mobile revenues. In comparison, by 2009, $29 billion in end-user mobile revenues were reported as interstate or international, out of $111 billion in total end-user mobile revenues. *Compare* Universal Service Monitoring Report, Sept. 2000, CC Docket No. 98-202, Table 1.6, *available at* http://www.fcc.gov/wcb/stats (last visited Mar. 20, 2012) (*2000 Universal Service Monitoring Report*), *with 2011 Universal Service Monitoring Report*, Table 1.6.

[81] *See Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45 *et al.*, Notice of Proposed Rulemaking, 16 FCC Rcd 9892, 9895 (2001) (*2001 Contribution Methodology Notice*).

[82] *See id.* at 9905–06, paras. 25–30 (seeking comment on modifications to the existing revenue-based contribution methodology and on replacing that methodology with one that assessed contributions on the basis of a flat-fee charge, such as a per line charge); *see also 2002 First Contribution Methodology Order and FNPRM*, 17 FCC Rcd at 3766–89, paras. 31, 34–83 (seeking comment on other universal service contribution methodologies, including moving to a numbers-based methodology); *2002 Second Contribution Methodology Order and FNPRM*, 17 FCC Rcd at 24983–97, paras. 66–100 (seeking comment on capacity-based proposals that had been developed in the (continued...)

increased, from $4.5 billion in 2000 to $8.1 billion in 2011.[76] As shown in Chart 1 below,[77] during this period, the revenue base for universal service contributions remained relatively stable from 2004 (approximately $75.8 billion) to 2008 (approximately $74.9 billion), but has fallen since 2008, declining to approximately $67 billion in 2011, as demonstrated in the following chart:

Chart 1



As shown in Chart 2 below,[78] reported toll revenue (*i.e.*, long-distance voice revenue), which historically comprised the largest share of the contribution base, has steadily declined over the last decade, due in part to intercarrier compensation reform occurring more than a decade ago that led to reductions in long

[76] According to USAC, the total amount of disbursements for all four support mechanisms in CY 2011 was $8.1 billion. Universal Service Administrative Company, *2011 Annual Report* at 1, *available at* http://www.usac.org/about/tools/publications/annual-reports/2011/index.html (last visited Apr. 17, 2012) (*2011 USAC Annual Report*). This number reflects payments that were actually issued to companies from January 1 – December 31, 2011. It does not necessarily reflect payments authorized during that time period, since (i) some payments may have been authorized prior to 2011, and (ii) some payments may have been authorized in 2011 but may not yet have been paid in that year.

[77] Staff analysis of actual revenue base information for 2004-2010 filed with USAC through FCC Form 499-A. The amounts shown include USF pass through charges, which are reported as revenues on Form 499. The revenue base estimate for 2011 is taken from 2011 quarterly fund size projections, *available at* http://www.usac.org/about/tools/fcc/filings/default.aspx.

[78] Staff analysis based on actual revenue base information for 2004-2011 filed with USAC through FCC Form 499-A. Revenue information for 2011 is preliminary and may be adjusted.

have also been dramatic in fixed networks, with 31 million Americans subscribing to interconnected VoIP service in 2010,[70] and rapid growth in residential broadband.[71] Over the last fifteen years, cable companies have entered the voice market, local exchange carriers have entered the long-distance, broadband, and video markets, and most telecommunications providers are marketing services in bundles, whether of fixed voice, broadband, and video, or mobile wireless voice, text messaging, and data.[72]

19. Changes to the telecommunications ecosystem complicate the methodology by which contributions are assessed. For example, the lines drawn to distinguish "local service" revenues and "toll" (*i.e.*, long distance) revenues have become increasingly blurred for industry participants even though contributors are required to classify their revenues in these categories for USF contributions purposes.[73] Bundling of intrastate and interstate voice calling with data services and equipment has further complicated the Commission's and providers' ability to identify the revenues that should be included in the contribution base.[74]

20. These changes to the marketplace also have led to a decline in the contribution base at the same time that the communications market has grown. Due in part to the introduction of new services into the marketplace, total revenues reported to the Commission by communications firms grew from $335 billion in 2000 to more than $444 billion in 2010.[75] Demand for universal service support also

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at http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201112.htm (last visited Feb. 21, 2012) (indicating that 31.6% of American homes had only wireless telephones); *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 10-133, Fifteenth Report, 26 FCC Rcd 9664, 9759-60, para. 160 (2011) (*Fifteenth Mobile Wireless Report*) (estimating that there were 290.7 million mobile wireless connections at the end of 2009); *id.* at 9776, para. 180 (noting that the trend of declining voice minutes may be due to the substitution by mobile messaging and other mobile data services, particularly among younger users); Nielsen, *Average U.S. Internet Usage for December 2011*, Nielsenwire, *available at* http://blog.nielsen.com/nielsenwire/online_mobile/december-2011-top-u-s-web-brands/ (last visited Feb. 7, 2012) (projecting that smartphones will outnumber cell phones in 2012); Federal Communications Commission, Connecting America: The National Broadband Plan, at 162 n.113 (rel. Mar. 16, 2010) (*National Broadband Plan*) (industry estimates project that wireless data revenue will expand at a 24.6% compound annual growth rate between 2009 and 2012).

[70] Indus. Analysis and Tech. Div., *Local Telephone Competition Status as of December 31, 2010*, Figure 1 (Wireline Comp. Bur., 2011), *available at* http://www.fcc.gov/wcb/stats (last visited Mar. 20, 2012) (*2010 Local Telephone Competition Report*).

[71] *See* Nielsen, *Average U.S. Internet Usage for December 2011*, Nielsenwire, *available at* http://blog.nielsen.com/nielsenwire/online_mobile/december-2011-top-u-s-web-brands/ (last visited Feb. 7, 2012) (stating that the average American spent 28 hours online in December 2011).

[72] *National Broadband Plan* at 38; *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 09-66, Fourteenth Report, 25 FCC Rcd 11407, 11437, para. 22 (2010) (*Fourteenth Mobile Wireless Competition Report*).

[73] *See* 2012 Instructions to the Telecommunications Reporting Worksheet, Form 499-A at 22–25 (*2012 FCC Form 499-A Instructions*).

[74] *2006 Contribution Methodology Order*, 21 FCC Rcd at 7531–38, paras. 23–37. When a contributor bundles assessable and non-assessable services in a single offering, the contributor must determine how much of the revenue from the offering should be allocated to the assessable service. This can incentivize the contributor to game the system by allocating the revenue in a manner that reduces contributions burdens.

[75] *See* Indus. Analysis and Tech. Div., *Telecommunications Industry Revenues: 2009*, Table 2 (Wireline Comp. Bur., 2011), *available at* http://www.fcc.gov/wcb/stats (last visited Mar. 20, 2012) (*2009 Revenues Report*).

Commission's universal service rules."[58] Commission rules also require contributors to retain for three years "records and documentation to justify information reported in the Telecommunications Reporting Worksheet, including the methodology used to determine projections."[59] Contributors must provide these records to the Commission or to USAC upon request.[60] USAC has the authority to audit contributors, and conducts both random and targeted audits pursuant to this authority.[61]

17. The Commission's rules penalize contributors that fail to comply with their universal service contribution obligations. If a contributor falsely claims exemption from filing, for example, it may be subject to criminal sanctions.[62] If a contributor fails to file a timely FCC Form 499-Q, USAC bills the contributor based on a reasonable estimate of the contributor's contribution obligation.[63] USAC may also assess the contributor for the reasonable costs USAC incurs because of the failure to file,[64] or impose a late fee, penalties, and interest on the contributor if the filing becomes more than 30 days overdue.[65] Consistent with section 503 of the Act,[66] the Commission's Enforcement Bureau actively pursues violators of section 254(d) of the Act and related Commission rules by means of independent investigations, which may result in citations, monetary forfeitures, suspensions and debarments of violators, and revocations of operating authority.[67]

B. Industry Developments and Contribution Reform Efforts

18. When the Commission first implemented the universal service requirements set forth in section 254 of the 1996 Act, wireline voice services produced the vast majority of the revenue in the contribution base.[68] Since then, network convergence and technological innovation have transformed the telecommunications industry. The use of mobile services has grown dramatically, driven by increased adoption of mobile phones and non-voice devices such as mobile broadband-enabled tablets.[69] Changes

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[58] 47 C.F.R. § 54.706(e).

[59] 47 C.F.R. § 54.711(a).

[60] *Id.*

[61] 47 C.F.R. § 54.707. *See* Universal Service Administrative Company, *Program Integrity: Audits & Assessments, available at* http://www.usac.org/cont/about/program-integrity/audits.aspx (last visited Apr. 17, 2012). Contributors that disagree with USAC audits findings may seek review by the Commission. *See* 47 C.F.R. § 54.722.

[62] 47 C.F.R. § 54.708.

[63] 47 C.F.R. § 54.709(d).

[64] 47 C.F.R. § 54.713(a).

[65] 47 C.F.R. § 54.713(c).

[66] 47 U.S.C. § 503.

[67] *See* Federal Communications Commission, Enforcement Bureau, *Universal Service Fund Enforcement, available at* http://transition.fcc.gov/eb/usfc/Oth.html (last visited Mar. 14, 2012). Since 2003, the Enforcement Bureau has issued over 50 Notices of Apparent Liability, Forfeiture Orders, and Consent Decrees relating to universal service contribution compliance.

[68] *See, e.g.*, Indus. Analysis and Tech. Div., *Telecommunications Industry Revenues: 1997*, Table 7 (Common Carrier Bur., 1998), *available at* http://www.fcc.gov/wcb/stats (last visited Mar. 20, 2012) (*1997 Revenues Report*) (reporting that only 2.7% of interstate telecommunications revenues in 1997 were attributable to wireless service providers).

[69] *See* Telecommunications Industry Association, 2012 ICT Market Review and Forecast, 5-134 to 5-135 (2012) (2012 TIA Review and Forecast) (indicating that since 2010, consumer spending for wireless services has increased due to the increased reach of 3G and 4G networks that facilitate mobile data). *See also* Stephen J. Blumberg, Ph.D., and Julian V. Luke, Division of Health Interview Statistics, National Center for Health Statistics, *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, January-June 2011, available* (continued...)

14. *Administering the Contribution System.* The Commission has designated USAC as the entity responsible for administering the universal service support mechanisms.[46] Pursuant to the Commission's rules, contributors report their revenues by filing Telecommunications Reporting Worksheets quarterly (FCC Form 499-Q) and annually (FCC Form 499-A) with USAC.[47] An executive officer of the reporting entity must certify that historical data are true and accurate and that projections are good-faith estimates.[48]

15. Contributors project future quarters' revenues and also report prior quarters' actual historical revenues on the FCC Form 499-Q, which is generally due on February 1, May 1, August 1, and November 1 of each year.[49] Contributors may revise their quarterly filings (FCC Form 499-Q) up to 45 days after filing them.[50] Once USAC has processed and aggregated the information in each quarter's filings, it reports the total quarterly contribution base to the Commission.[51] USAC also projects the quarterly expenses for the universal service support mechanisms, adjusting those expenses to account for any excess or inadequate contributions from the prior quarter,[52] and submits its projections to the Commission.[53] The Commission uses the ratio of projected expenses to the projected contribution base to establish the quarterly contribution factor.[54] USAC then bills contributors for their universal service contributions based on this factor.[55] Contributors report their annual historical revenues for the prior calendar year on the FCC Form 499-A, which is generally due on April 1 of each year.[56] Contributors must revise their Form 499-A filings within one year if the revision would result in a decrease in the contributor's contribution obligation.[57]

16. *Oversight of the Contribution System.* The Commission's existing rules require contributors to "retain, for at least five years from the date of the contribution, all records that may be required to demonstrate to auditors that the contributions made were in compliance with the

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[46] 47 C.F.R. § 54.701; *Universal Service Second Order on Reconsideration*, 12 FCC Rcd at 18423–24, para. 41.

[47] 47 C.F.R. § 54.711(a); 47 C.F.R. § 54.708 ("all interconnected VoIP providers, including those whose contributions would be *de minimis*, must file the Telecommunications Reporting Worksheet."). In addition to *de minimis* interconnected VoIP service providers, certain other non-contributors are also required to file the Telecommunications Reporting Worksheets pursuant to the Commission's rules governing Telecommunications Relay Service, *see* 47 C.F.R. § 64.601 *et seq.*, numbering administration, *see* 47 C.F.R. § 52.1 *et seq.*, and the shared costs of local number portability, *see* 47 C.F.R. § 52.21 *et seq.*

[48] 47 C.F.R. § 54.711(a).

[49] *See* Universal Service Administrative Company, *Filing and Managing My 499s: Schedule of Filings*, *available at* http://www.usac.org/cont/499/filing-schedule.aspx (last visited Apr. 16, 2012) (USAC Form 499 Filing Schedule).

[50] *See id.*

[51] 47 C.F.R. § 54.709(a)(3).

[52] 47 C.F.R. § 54.709(b)-(c).

[53] 47 C.F.R. § 54.709(a)(3).

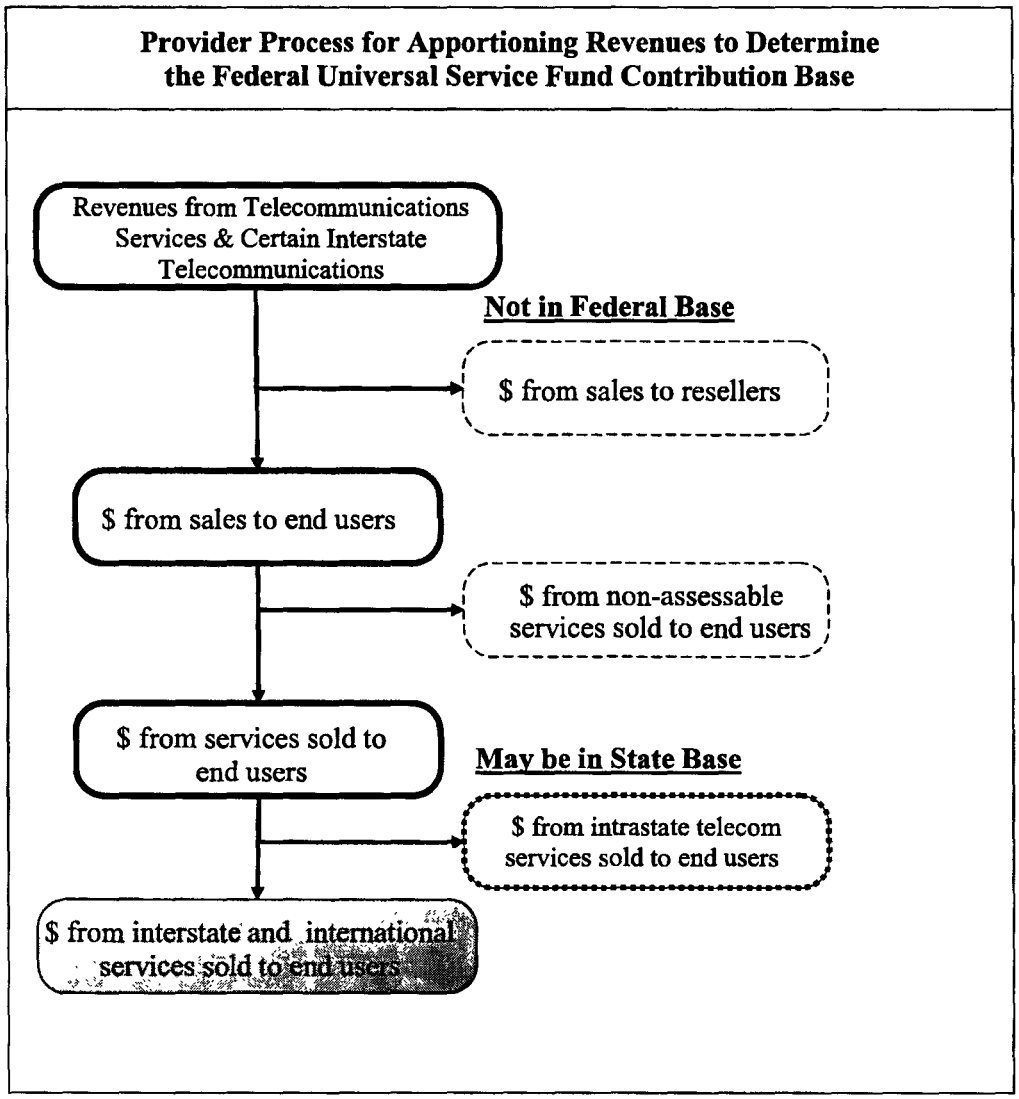
[54] 47 C.F.R. § 54.709(a)(2). In contrast to the USF contribution methodology, other regulatory programs are assessed based on a contribution factor determined annually by the Commission. *See, e.g.*, 47 C.F.R. § 64.604 (providing that contributors' contribution to the Interstate Telecommunications Relay Service (TRS) fund shall be the product of all subject revenues for the prior calendar and an annual contribution factor).

[55] 47 C.F.R. § 54.702(b); 47 C.F.R. § 54.709(a).

[56] *See* USAC Form 499 Filing Schedule.

[57] *See Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45 *et al.*, Order, 20 FCC Rcd 1012, 1013, para. 2 (Wireline Comp. Bur. 2004), *applications for review pending* (*One-Year Deadline Order*).

Diagram 1[43]



13. *Recovering Contributions.* A contributor may recover the costs of universal service contributions by passing through an explicit charge to its customers.[44] If a contributor chooses to pass through the contribution directly to its customers, the amount of the federal universal service line-item charge may not exceed the interstate telecommunications portion of that customer's bill multiplied by the relevant contribution factor.[45]

[43] We note that the more explicit reporting instructions for the Telecommunications Reporting Worksheet may be different in layout and content than this simplified diagram.

[44] 47 C.F.R. § 54.712(a). *See also infra* Part VII.

[45] 47 C.F.R. § 54.712(a). Section 54.709(a) provides, in relevant part, that contributions to the universal service support mechanisms shall be based on contributors' projected collected end-user telecommunications revenues and on a contribution factor determined quarterly by the Commission based on information submitted by USAC. The quarterly contribution factor is based on the ratio of total projected quarterly expenses of the universal service support mechanisms to total projected collected end-user telecommunications revenues. 47 C.F.R. § 54.709(a).

revenues are not assessed. All contributors are free to classify and report revenues based on the jurisdictional nature of all of their traffic during the relevant reporting period. In addition, the Commission has established safe harbors for allocating revenues for certain services.[40] If a contributor relies on an established safe harbor, the contributor's allocation of interstate/international revenues is presumed reasonable. Wireless and interconnected VoIP service providers also are free to allocate revenues based on a ratio derived from a sample of traffic in the relevant reporting period, also known as a traffic study. If such a provider chooses to allocate its end-user telecommunications revenues using a traffic study, it must submit that study to the Commission.[41] Whatever their choice, contributors are required to decide whether to report either actual or safe harbor revenues for all of their affiliated legal entities within the same safe harbor category.[42]

[40] The interstate safe harbor for analog Specialized Mobile Radio (SMR) revenues is 1%, *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, 21255, para. 6 (1998) (*Wireless Safe Harbor Order*), for paging revenues is 12%, *id.*, for wireless revenues is 37.1%, *2006 Contribution Methodology Order*, 21 FCC Rcd at 7532, para. 25, and for interconnected VoIP service revenues is 64.9%, *id.* at 7545, para. 53.

[41] *See 2006 Contribution Methodology Order*, 21 FCC Rcd at 7535–36, para. 32 (requiring wireless providers to submit traffic studies); *id.* at 7547, para. 57 (requiring interconnected VoIP service providers to submit traffic studies for pre-approval and review); *Vonage Holdings Corp. v. FCC*, 489 F.3d 1232, 1243 (D.C. Cir. 2007) (eliminating the pre-approval requirement for interconnected VoIP service providers).

[42] *See 2006 Contribution Methodology Order*, 21 FCC Rcd at 7535-36, para. 32.