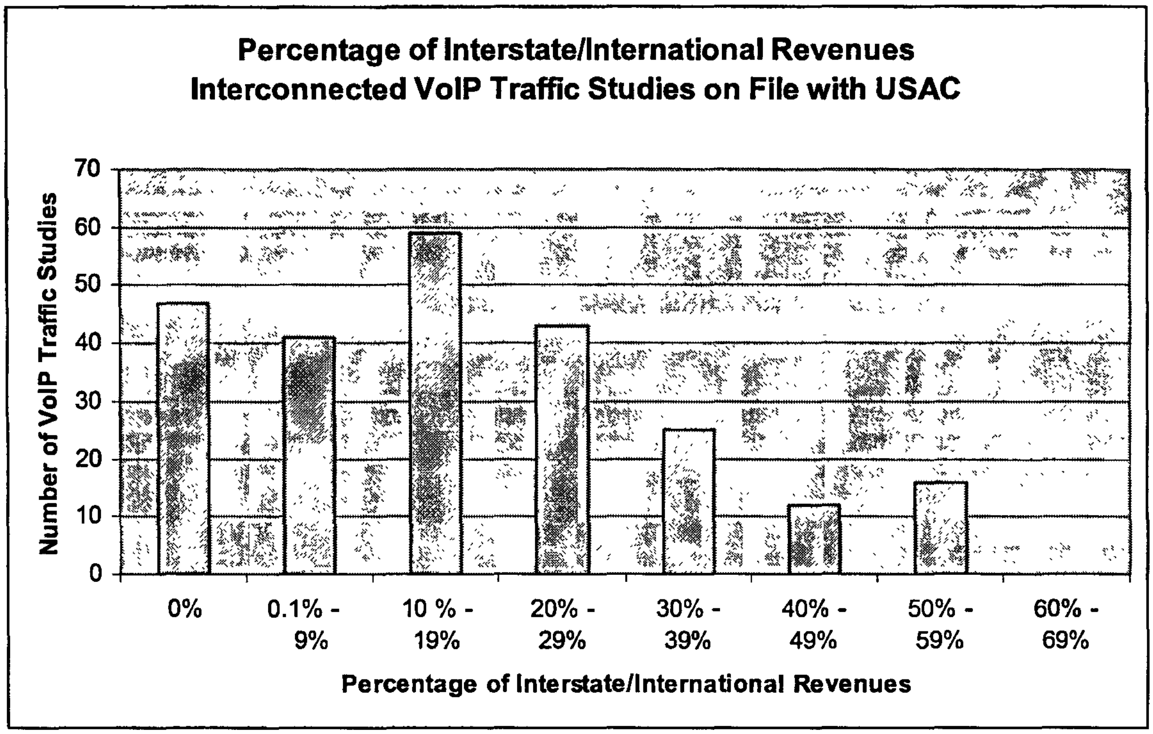
Chart 4



126. The Commission has not codified any rules for how contributors should allocate revenues between the interstate and intrastate jurisdictions for contributions purposes,[246] nor has it adopted any rules specifying how precisely companies should classify their traffic when conducting a traffic study. The fact that there is such a wide disparity in the reported percentages for wireless and mobile providers suggests that companies may be utilizing different methods in how they classify calls in their traffic studies, which lessens predictability and may lead to competitive distortions. The lack of standards in this area may give providers an incentive "to bias any traffic studies [or good-faith estimates] to minimize their amount of interstate and international end-user revenues and thereby minimize their Fund contributions" with "no countervailing market forces to offset these incentives."[247]

127. *Discussion.* We seek comment on modifying or eliminating the requirement that carriers are assessed based on interstate and international revenues. While that requirement may have made sense when the Commission initially implemented the Act, the marketplace has changed dramatically since 1996 and will evolve with the continued deployment of IP-based networks. For each approach discussed below, we ask commenters to address what would the impact be, if any, on the states' ability to assess revenues to support their state universal service funds.

128. As a general matter, we seek comment on whether the Act compels us to only assess a portion of revenues associated with services that operate interstate, intrastate, and internationally. We also seek comment on whether as a policy matter we should require that revenues be allocated based on

[246] While there are no codified rules on how to allocate revenues, the FCC Form 499-A Instructions provide some guidance. The Instructions direct contributors to report all of the revenues for private lines as 100 percent interstate if more than 10 percent of the traffic on that line is interstate, and to report federal number portability charges and subscriber line charges as 100 percent because those charges are tariffed in the federal jurisdiction. *2012 FCC Form 499-A Instructions* at 24-25. The Instructions implicitly assume that the regulatory classification of the service in question determines how it should be treated for contribution purposes.

[247] *2006 Contribution Methodology Order*, 21 FCC Rcd at 7535, para. 32.

the jurisdiction that regulates the associated service. Does this construct make sense in an environment where many contributors are not rate regulated, and many of the services they offer are only lightly regulated?

129. One approach would be to adopt a rule that requires all providers that are subject to contributions to report and contribute on all of the revenues derived from assessable services rather than require providers to allocate revenues between the interstate and intrastate jurisdictions. Since many services offered today are not priced and sold separately as intrastate or interstate service, any designated allocation between jurisdictions may be arbitrary to some extent.[248] In the *TOPUC* decision, the court found that the Commission did not have jurisdiction to assess federal universal service contribution on intrastate revenues.[249] Given the changes in the marketplace, would the *TOPUC* decision prohibit assessing a federal universal service fee on the entire service?

130. The State Members of the Joint Board argue that the regulatory jurisdiction over a service should not determine whether that service contributes to universal service. They note that the states may constitutionally impose sales taxes on both interstate and intrastate telecommunications, and they suggest that the U.S. Constitution does not prohibit there being both a federal universal service surcharge and a state universal service surcharge on all services delivered over the public communications network. They acknowledge that the 1999 *TOPUC* decision limited the Commission from imposing universal service surcharges on intrastate services, but they contend that *TOPUC* was wrongly decided.[250] We seek comment on the State Members' analysis and ask commenters to address whether it would be consistent with section 254(d) for the Commission to require contributions on all revenues derived from services delivered over a public network.

131. Would a rule that assesses all revenues from services that operate interstate, intrastate, and internationally without allocation for intrastate operations advance our proposed goals for reform? How would such a rule impact the contribution base, today and in the future? We note that the sum of interstate, international, and intrastate revenues for all filers was $210 billion in 2010, while the contribution base (the total of reported assessable revenues) for 2010 was $67 billion.[251] If such a rule had been in place in 2010, *i.e.*, a rule that assesses all interstate, intrastate, and international revenues, the contribution factor would have been roughly four percent, instead of 14 percent on an annualized basis.[252] Would such a system be significantly simpler to administer, reducing the costs of complying with our contribution rules? How would such a system affect states? How would such an approach affect the allocation of the contribution burden, especially between residential consumers and enterprise consumers? For example, would residential consumers end up paying (in USF pass through charges) a substantially higher portion of the USF burden than they do today, compared to enterprise customers? If so, are there ways to offset or limit this effect? Commenters are encouraged to provide additional data and analysis regarding the impact of such a rule change.

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[248] *See, e.g.*, USTelecom Mar. 28, 2012 *Ex Parte* Letter at 2-3 (stating that "most wireless services are based on pricing models, and state boundaries are simply irrelevant to how consumers select and buy communications services" and that, "from a financial perspective of most consumers. . . a 'long distance call' is meaningless.").

[249] *TOPUC*, 183 F.3d at 417-18.

[250] State Members of Joint Board CAF Comments at 121-24.

[251] The $210 billion is the sum of interstate, international, and intrastate revenues for all filers in calendar year 2010 -- without deducting exempt LIRE and *de minimis* revenues. This information was calculated based on a review of the Telecommunications Reporting Worksheets filed in April 2011.

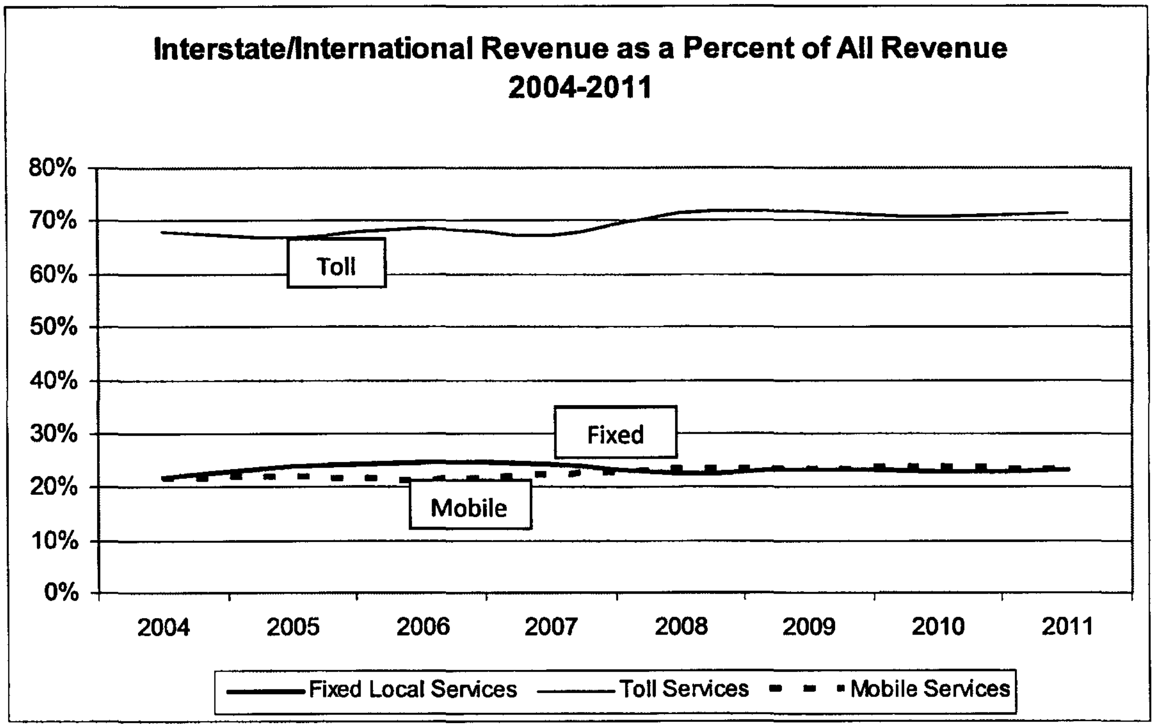
[252] In 2010, program demand and administrative expenses were $8.4 billion. 2011 Monitoring Report, Table 1.10. Multiplying 4 percent times $210 billion equals $8.4 billion. During 2010, the quarterly contribution factor ranged from 12.9 percent to 15.3 percent.

132. Another alternative would be to adopt bright-line rules for how companies should allocate revenues between jurisdictions for broad categories of services. If we were to adopt such rules, how narrowly or broadly should we define the relevant services? As shown in Chart 5 below,[253] the percentage of end user revenues that are reported as interstate/international have remained relatively stable for the major subcategories of revenue that have been reported on FCC Form 499 between 2004 and 2011. Should we adopt a separate allocator for each major category of service presently reported on Form 499 (fixed local services, mobile services, toll services), or should we follow a simpler approach, for instance, with just two allocation rules: one for voice and one for data services? For instance, we could adopt a standard allocator for all voice revenues, regardless of technology (fixed or mobile, traditional telephony or interconnected VoIP). Under such an approach, we could specify that voice revenues should be allocated according to a specified ratio, such as 20 percent interstate and 80 percent intrastate.[254] Should the interstate allocation be higher or lower? Is there any policy justification for setting a different percentage for voice based on the type of carrier or technology used?

[253] Percentages based on actual revenue information filed with USAC on FCC Form 499-A for 2004 through 2011. *See* Appendix C for supporting data. Revenue information for 2011 is preliminary and may be adjusted.

[254] We note that based on traffic studies on file, VoIP providers that file traffic studies on average report 21.5 percent interstate/international revenues, while wireless providers on average report 23 percent interstate/international. In 2010, for example, incumbent LECs reported that 16.9 percent of their circuit-switched local exchange revenues were assessable (*i.e.*, interstate or international), competitive LECs reported that 17.3 percent of their circuit-switched local exchange revenues were assessable, and interconnected VoIP providers reported that 22.7 percent of their local exchange revenues were assessable. These numbers are based on revenues reported on the 2011 Telecommunications Reporting Worksheets (reporting calendar year 2010 data). It is unclear to what extent the variation among different classes of filers is a product of different methodologies for allocating revenues among the jurisdictions, or different calling patterns of different customer bases.

Chart 5



133. In other contexts, the Commission has recognized that Internet access services are jurisdictionally interstate because end users access websites across state lines.[255] We seek comment whether a similar finding should be made for USF contribution purposes. Specifically, if we use our permissive authority to expand or clarify USF contribution requirements to include enterprise communications services, text messaging services, and broadband Internet access services (both fixed and mobile), should we find that for USF contribution purposes, revenues from such services should be reported as 100 percent interstate? Alternatively, should we use an allocator lower than 100 percent interstate for contribution purposes, to preserve a revenue base that could be assessed for state universal service funds?

134. What data should be considered when developing that fixed percentage of interstate and intrastate revenues for services? Appendix C presents in more detail the percentage of end user revenues that are reported as interstate/international for each individual subcategory of end user revenue reported on FCC Form 499 for the periods of 2004 through 2011.[256] For 2011, filers reported $73.5B in total

[255] *See, e.g.*, *National Association of Regulatory Utility Commissioners Petition for Clarification or Declaratory Ruling that No FCC Order or Rule Limits State Authority to Collect Broadband Data*, WC Docket No. 09-193, Memorandum Opinion and Order, 25 FCC Rcd 5051, 5054 n.24 (2010) ("Although the Commission has acknowledged that broadband Internet access service traffic may include an intrastate component, it has concluded that broadband Internet access service is properly considered jurisdictionally interstate for regulatory purposes."); *2008 Comprehensive Reform FNPRM*, 24 FCC Rcd at 6484–85, para. 21 & n.69 (reaffirming the "interstate nature of ISP-bound traffic" and noting that the Commission has "consistently found that ISP-bound traffic is jurisdictionally interstate" and that "services that offer access to the Internet are jurisdictionally interstate services"), *affirmed by Core Commc'ns, Inc. v. FCC*, 592 F.3d 139, 144 (D.C. Cir. 2010) ("Petitioners do not dispute that dial-up internet traffic extends from the ISP subscriber to the internet, or that the communications, viewed in that light, are interstate.").

[256] Percentages based on actual revenue information filed with USAC on the 2011 FCC Form 499-A. Revenue information for 2011 is preliminary and may be adjusted.

revenues for fixed local revenues, with 30 percent allocated to the interstate category and 0.6 percent allocated to the international category.[257] For mobile services, filers reported $106.6 billion in total revenues in 2011, with 22.8 percent allocated to the interstate category and 0.4 percent allocated to the international category.[258] For toll services in 2011, filers reported $34.3 billion in total revenues, with 50.3 percent allocated to the interstate category, and 21.4 percent allocated to the international category.[259] We note that there is significant variation in some of the individual subcategories of revenues as currently reported on FCC Form 499. How should our decision be informed by the interstate percentages reported for individual subcategories of service as reported on the current Form 499, such as fixed local exchange (line 404) and mobile services monthly and activation charges (line 409)?

135. To what extent should we take into account ratios reported by wireless carriers and interconnected VoIP providers in their traffic studies? If we were to adopt a ratio applicable to the broad category of "mobile services," for instance, should we base the percentage for mobile services, on the average (23 percent) or median (19 percent) ratio that carriers have reported in their most recent traffic studies? Commenters that support a different percentage should explain why adoption of that alternative is preferable.

136. If we were to adopt such a rule specifying that a set percentage of revenues should be reported as interstate for a category of service, should carriers still be permitted to make a particularized showing that a higher percentage of their traffic is intrastate? Should the Commission adopt a mechanism to periodically update the percentage and, if so, what would be the basis for updating the fixed percentage factor? How would such a rule impact the contribution base, today and in the future? Commenters are encouraged to provide additional data and analysis regarding the impact of such a rule change.

137. Would adopting a fixed allocation method for categories of services, or an across the board fixed allocation method, further our proposed goals for contribution reform? Using a single allocation factor for contribution purposes could potentially minimize competitive distortions among providers offering similar services. Would a single allocation factor help stabilize the contribution base by eliminating incentives for providers to underreport their interstate telecommunications revenues? Would a single allocation factor lessen providers' compliance burdens by eliminating the need to perform traffic studies or to maintain and update the methodology used to establish their good-faith estimates? Would using a single allocation factor potentially provide greater predictability?

138. We seek comment on whether, if we were to adopt a rule imposing a fixed interstate allocator, we would be legally required to adopt a procedure by which a provider could "opt-out" of using the single allocation factor and instead make an individualized showing.[260] We seek comment on whether allowing any telecommunications provider to opt-out would negate the administrative simplicity of adopting a single allocator for purposes of universal service contributions. To the extent that any commenter believes there should be a mechanism to "opt-out" of the fixed allocation factor, it should explain what showing should be required to opt out, and what steps the Commission should take to minimize competitive distortions that may arise if alternative allocations are used for certain types of providers or for certain types of traffic. For example, should a provider that opts out of the fixed

[257] *See* Appendix C.

[258] *Id.*

[259] *Id.*

[260] *Cf. Smith v. Ill. Bell Telephone Co.*, 282 U.S. 133, 151 (1930). The Supreme Court recognized with respect to separations of revenues and expenses for purposes of regulated ratemaking for incumbent telephone companies many decades ago, "extreme nicety is not required." *Id.* at 150.

allocation factor be required to allocate revenues on a customer-by-customer basis, given that each customer actually uses the purchased telecommunications differently?

139. We also seek to develop a factual record on the regulatory compliance costs stemming from the current requirement to allocate revenue between the intrastate and interstate jurisdictions. We seek comment and data submissions regarding the costs imposed on companies today to separate their revenues in this fashion, and the costs associated with performing a traffic study on an annual basis. We encourage companies to provide estimates not only of the costs associated with their legal and regulatory personnel, but also to include any other costs that compliance with such requirements may pose on other personnel, including accounting, billing, sales, network, IT, and marketing staff, and any costs associated with hiring outside resources, such as attorneys or consultants, to assist in implementing such requirements or responding to any audits or investigations relating to this aspect of our contribution rules.

140. To the extent commenters have concerns about any of these proposals, they should present alternative methods for simplifying the allocation of revenues between the interstate and intrastate jurisdictions and explain how their proposals would meet the proposed contribution reform goals set forth in this Notice. If we do not adopt a fixed factor or factors to allocate telecommunications revenues, what modifications should we consider making to the current rules?

141. If we continue to allow use of traffic studies to estimate the allocation of interstate revenues, should we codify specific requirements or provide greater detail in the Form 499 instructions for how traffic is categorized in traffic studies to ensure that reporting entities are conducting the studies in a competitively neutral manner? We seek comment on current practices for classifying traffic for traffic studies. We have some concerns that contributors may be using different methodologies in conducting traffic studies, given the broad variation in reported ratios. It is surprising, for instance, that nine wireless providers report no interstate or international revenues at all. Similarly, the fact that 47 VoIP filers report no interstate/international revenues, while some others report ratios relatively close (but slightly under) the current 64.9 percent safe harbor, also suggests that VoIP providers may be classifying their traffic in significantly different ways, and there may be a need to provide more standardized guidance regarding how to perform a traffic study. We seek comment on this analysis.

142. We seek comment on what steps would need to be taken to implement the approaches above or alternative approaches to simplify the allocation of interstate and intrastate revenues for federal USF contribution purposes. We also seek comment on how much time, if any, parties would need to transition to any new allocation method.

4. Contribution Obligations of Wholesalers and Their Customers

143. In this section, we seek comment on potential rule changes to address recurring USF contribution compliance issues that arise in instances involving the allocation that wholesale carriers must make between "carrier's carrier revenues" and "end-user revenues." First, we seek comment on a value-added approach, under which the Commission would eliminate the current exemption from contribution obligations for wholesalers and instead assess each provider, with credits provided to subsequent providers in the value chain. In the alternative, we seek comment on modifying the current reseller certification process to provide greater clarity regarding contribution obligations when wholesale inputs are incorporated into other services that are not telecommunications services.

144. *Background.* Under today's rules, wholesale carriers generally do not contribute on sales to their customers that contribute to the Fund (carrier's carrier revenues), but may be required to contribute on sales to customers that do not contribute to the Fund (end-user revenues).[261]

[261] *See supra* Section II.A. for a discussion of carrier's carrier revenues and end-user revenues.

145. In recent years, there have been disputes over how to comply with this general requirement, with USAC concluding in some cases that contributors have failed to properly report their end-user revenues, and contributors facing significant financial liability for unpaid contributions.[262] Issues relating to contribution obligations of wholesalers and their customers are pending in a number of appeals of USAC decisions. While we intend to address specific factual circumstances in the context of several adjudicatory proceedings in the near future, here we seek comment more broadly on how to address such issues going forward under a revenues-based system, consistent with our proposed goals of promoting efficiency, fairness, and the sustainability of the Fund.

146. In the 1997 *Universal Service First Report and Order*, the Commission required telecommunications providers to contribute to the USF based on end-user telecommunications revenues.[263] The Commission made a policy decision to exclude wholesale revenues from the contribution requirements, though nothing in the Act requires such a result. In some wholesale/resale situations, a reseller purchases telecommunications service from a carrier (the wholesaler) at a wholesale discount, and resells such telecommunications services in unchanged form to customers (the end user) with a retail mark-up.[264] In other situations, the reseller may purchase one service that is used to provide another service.[265] In adopting the existing wholesale-resale distinction, the Commission concluded that basing contributions on end-user revenues would relieve a wholesale carrier (in a wholesale/resale distribution chain) from making direct contributions to the USF because the wholesale carrier does not earn revenues directly from end-users.[266] Instead, the reseller that provides the service to the end user, and thereby earns end-user revenues, should contribute directly to the USF.[267]

147. At that time, the Commission did not directly focus on the potential implementation difficulties that such a rule would pose in situations where a wholesaler sells a service to another firm that incorporates that wholesale telecommunications into a different offering for its retail customers that is not subject to assessment. In some instances, the revenues from the finished offering may be assessable, while in other cases, such as broadband Internet access service, the retail revenues may not be subject to a contribution obligation.

148. The Commission has directed wholesalers to have in place "documented procedures" to ensure that the wholesaler reports as "revenues from resellers" only revenues from resellers that "reasonably would be expected to contribute" to the Fund.[268] This system may present two sources of

[262] USTelecom Mar. 28, 2012 *Ex Parte* Letter at 3.

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

[264] *See* 47 U.S.C. § 251(c)(4). In the *Local Competition Order*, the Commission described "resale" in this fashion: "carriers reselling incumbent [local exchange carrier (LEC)] services are limited to offering the same service an incumbent offers at retail. This means that resellers cannot offer services or products that the incumbents do not offer. The only means by which a reseller can distinguish the services it offers from the incumbent is through price, billing services, marketing efforts, and to some extent, customer service." *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98, 95-185, First Report and Order, 11 FCC Rcd 15499, 15667, para. 332 (1996) (*Local Competition Order*).

[265] In the original Universal Service Worksheet instructions, the Commission provided an example of interexchange carriers that use access services from other contributors (*i.e.*, local exchange companies) to provide switched toll service. *Universal Service Second Order on Reconsideration,* 12 FCC Rcd at 18508, App. C.

[266] *Universal Service First Report and Order* at 9207, paras. 846-47.

[267] *Id.*

[268] *Universal Service Second Order on Reconsideration,* 12 FCC Rcd at 18508, App. C; *see also Universal Service Contribution Methodology; Request for Review of Decision of the Universal Service Administrator by Network*
(continued...)

complexity and inefficiency. First, wholesalers may incur non-trivial compliance costs in documenting and enforcing procedures to support determinations that they "reasonably expect" that their customers are contributing to the Fund. Such wholesalers may be concerned that if they fail to demonstrate a reasonable expectation that their customers are contributing, they may be held accountable for USF contribution obligations of their customers. Second, the procedures that many companies follow to demonstrate that reasonable expectation regarding contributions by their customers may result in an unintended loss of revenues to the Fund in situations where the customer of the wholesale provider provides both assessable and non-assessable services to its retail customer.[269]

a. Value-Added Approach to Assessing Contributions

149. We seek comment on whether we should modify the existing universal service contribution methodology to assess "value-added" revenues rather than "end-user" revenues. Under this value-added approach, each telecommunications provider in a service value chain (including both wholesalers and resellers) would contribute based on the value the provider adds to the service.[270] Thus, in a revenue-based system, a wholesaler would contribute on its wholesale revenues, and a reseller of those services would contribute based on its retail mark-up.[271]

150. Table 1 illustrates how reported revenues and contributions could be determined under a value-added revenues system. In the table and throughout this section, *A*, *B*, and *C* are telecommunications providers, and *EU* is the end user. We use the symbol $A \rightarrow B$ to mean that *A* provides a service to *B*. Also, we assume for purposes of illustration that the contribution factor is ten percent.

(Continued from previous page)
Enhanced Telecom, LLP, WC Docket No. 06-122, Order, 25 FCC Rcd 14533, 14539, para. 15 (Wireline Comp. Bur. 2010) (*NetworkIP Order*) ("The Commission requires... that wholesalers have a 'reasonable expectation' that its reseller customers would contribute to universal service and have in place documented procedures to demonstrate compliance with this requirement").

269 *Universal Service Contribution Methodology; Request for Review of the Decision of the Universal Service Administrator and Emergency Petition for Stay by U.S. TelePacific Corp. d/b/a TelePacific Communications*, WC Docket No. 06-122, Order, DA 10-752, paras. 13-15 (Wireline Comp. Bur., rel. Apr. 30, 2010) (*TelePacific Order*).

270 In 1997, the Joint Board recommended a value-added system, but the Commission adopted an end-user revenue system. *See Universal Service First Report and Order*, 12 FCC Rcd at 9205-06, paras. 842-44.

271 While we discuss the value added system in the context of maintaining a revenues-based system in this section, we note that similar issues exist if we were to move to a connections-based approach. We seek comment below on whether all connections, whether they serve end users or not, should be subject to assessment. *See infra* para. 242.

Table 1[272]

	Service Price	*USF Line-Item* *	*Total Price***	*Seller*	*Seller's Direct Contribution****
A→B	$100	$10	$110	A	$10
B→C	$150	$15	$165	B	$5 10% ($150 – $100)
C→EU	$200	$20	$220	C	$5 10% ($200 – $150)
EU Price	$200	Aggregate Contributions to USF			$20

151. As reflected in the table above, under this value-added revenues approach each provider in a distribution or value chain would contribute based on the provider's total interstate and international revenues, less a credit for any telecommunications services or telecommunications purchased from other contributors in the distribution or value chain. Contributors would not, therefore, need to distinguish between revenues from end users and revenues from other telecommunications providers.

152. We seek comment on the following potential rule change, which could implement a value-added revenues system:

> *A contributor must contribute based on its projected assessable revenue less a credit for telecommunications services or telecommunications purchased from other contributors. Contributors shall report such revenues on the FCC Form 499-A and 499-Q Telecommunications Reporting Worksheets or such other forms or filings as the Commission may prescribe from time to time. Projected revenue information shall be subject to an annual true up, as prescribed from time to time by the Commission in its Telecommunications Reporting Worksheet instructions.*

153. We ask whether the proposed value-added revenues approach would meet the proposed goals of improving administrative efficiency, while ensuring sustainability of the Fund. For example, how would a value-added system further our proposed goals of simplifying administration and oversight of the contribution system? Would a value-added system reduce incentives to structure transactions to avoid contribution obligations? Would adoption of a value-added system have unintended consequences that undermine our proposed goals in reforming the system? What records should contributors be required to retain to demonstrate compliance with a value-added system? For example, if we adopted the rule proposed above, should contributors be required to retain (and/or report) back-up for the "credit for telecommunications services or telecommunications purchased from other contributors"?

154. As an alternative to reporting on the revenues earned minus any amounts paid for telecommunications service inputs, should we implement a value-added methodology in which carriers instead subtract from their final contribution liability any pass-through charges paid to other contributors?

[272] Notes for Table 1:

* The *"USF Line-Item"* is the amount passed through to a customer as a line-item charge and equals the Service Price times the Contribution Factor.

** The *"Total Price"* is the total amount a customer pays and equals the Service Price plus the USF Line-Item.

*** The *"Seller's Direct Contribution"* is the amount the seller contributes to universal service as a direct payment to USAC and equals the revenues earned from its service minus the amounts paid for services provided by the seller's underlying provider, times the contribution factor.

If so, should we require or permit telecommunications providers to pass through an explicit universal service line-item charge to customers that are also telecommunications providers? Would a pass-through charge in these limited circumstances enable telecommunications providers and USAC to verify the universal service charges paid by one contributor to another for purposes of calculating the credit the contributor should receive against its own contribution obligation? Would mandated pass-through charges benefit competition by eliminating the ability of wholesale providers to distinguish service offerings based on whether or how they pass through universal service charges to their reseller customers? Would allowing providers to retain discretion over whether to recover their contributions implicitly or via an explicit line-item charge further our proposed goals of ensuring competitive neutrality and simplicity in the USF contribution system? Under a value-added assessment system, how should we treat transactions between wholesale providers and non-carriers (*e.g.*, retailers or distributors of prepaid calling cards), or transactions between wholesale providers and entities that are currently exempt from directly contributing to the Fund (*e.g.*, non-profit schools, non-profit libraries, non-profit colleges, non-profit universities, and non-profit health care providers)?[273]

155. If we adopt a value-added system based on credits for pass through charges paid to other providers, we seek comment on whether we should scale or otherwise limit the credit a telecommunications provider receives to account for the fact that this system may exclude some telecommunications revenues from assessment. To illustrate the point, consider the retail chain in Table 1, but assume that provider *C* qualifies for the LIRE exemption and its international revenues are not included in the contribution base. If *C*'s offering to the end user (*EU*) consists of $10 of interstate service and $190 of international service, *C*'s assessable revenues from this sale would be $10 (the interstate portion), and *C*'s contribution obligation would be $1 (10 percent of $10), which *C* could pass through to *EU*. To calculate *C*'s payment to the Fund as proposed above, the value-added system would normally take *C*'s contribution obligation and subtract the USF surcharge that *C* paid its underlying provider. But in this case, the credit *C* would receive for USF surcharges paid ($15) would exceed *C*'s contribution obligation ($1). Accordingly, applying a non-scaled credit when a contributor's own contribution obligations are reduced by exemptions may create a situation in which the Fund effectively subsidizes certain offerings of those contributors. We seek comment on this analysis and any proposed solutions. For example, should we limit a carrier's credit to no more than its own contribution obligation?

156. We also seek comment on the implementation of a value-added system. What would be an appropriate time frame for implementing such a rule? For example, to what extent would the existence of long-term contracts warrant delaying implementation of a value-added revenues system? If we delay implementation, what would be a reasonable period of time to transition to this system?

157. We request clear and specific comments on the type and magnitude of likely benefits and costs of the suggested rule, and request that parties claiming significant costs or benefits provide supporting analysis and facts, including an explanation of how data were calculated and identification all underlying assumptions.

158. *Value-Added Approach for Alternative Contribution Methodologies.* The value-added revenues system discussed above assumes retaining a revenues-based contribution system. We seek comment below on moving from a revenues-based contribution system to a system based on assessing connections or numbers.[274] Commenters should indicate whether a value-added system could and should be developed for a connections-based or numbers-based contribution system. If value-added is needed or

[273] *See* 47 C.F.R. § 54.706(d). We note that while such entities are exempt from direct USF contribution obligations, there is no rule that prohibits carriers from passing through USF charges to such entities.

[274] *See infra* Sections V.B. and V.C.

advisable for such other contribution systems, commenters should explain the basis for such analysis, and should indicate how a value-added system would work in such instances.

159. We note that one of the considerations in crafting the current revenue-based system focused on end users was to avoid "double counting" revenue.[275] We ask commenters whether a connections or numbers-based system may also raise concerns of double counting, and if so, how a value-added proposal could be crafted to address this issue. More generally, we seek comment on whether avoiding double counting remains a significant policy concern, and if it should inform the structure of a contributions methodology system.

160. In particular, we seek comment here on whether a value-added system similar in concept to the value-added revenues proposal set forth above for a revenues-based system may be desirable for connections, and if so, how such a system would operate. If we were to adopt a service-based definition of connections, there could be situations in which a wholesaler sells a "connection" to a reseller who adds value by separately selling more than one service over that connection. For instance, to the extent Carrier A sells a connection to Carrier B, and then Carrier B sells two connections to the retail customer, would it simplify administration of a connections-based system if both Carrier A and B are assessed based on the connections provided to their respective customers, with Carrier B receiving a credit for the number of connections it has purchased from a wholesale provider so that, in this example, Carrier A and B would each be assessed for one connection?

161. We also seek comment on how one might adopt a value-added approach for a numbers-based methodology. Would a value-added approach work in which each provider of interstate telecommunications in a service value chain (including both wholesalers providers and their customers) that provides a number to a customer would contribute on that number, with a credit provided to the extent a carrier obtains lines with numbers from another provider? Alternatively, would it make sense to adopt a system in which a wholesaler could contribute on its wholesale numbers at a lesser adjusted rate, and its customer could contribute based on a higher per-unit rate for numbers associated with services provided to retail customers, with an adjustment made for any pass-through charges paid to the wholesale provider?

b. Contributor Certificates

162. In this section, we seek comment on alternatives to the value-added approach that would further our proposed goals of improving administrative efficiency, fairness and sustainability of the Fund.

163. Part of the complexity that exists in wholesale-resale relationships today stems from the fact that in some instances, a wholesaler may sell services to an entity that incorporates telecommunications (such as a private line, which is subject to contributions) into a different finished offering (such as broadband Internet access, which is exempt from contributing to the Fund).[276] In such instances, the Commission requires wholesalers to treat revenues from services to these non-contributing

[275] *Universal Service First Report and Order*, 12 FCC Rcd at 9207-08, paras. 845-48. The Commission was concerned that basing contributions on gross revenues would distort competition by disadvantaging resellers that compete against non-resellers offering the same retail service. A reseller with a similarly priced service would have to contribute on the revenues from its retail service as well as pay the USF contribution charge that its underlying carrier would likely pass through to the reseller.

[276] Such exempt resellers may include: (1) *de minimis* telecommunications providers; (2) carriers that do not resell services as telecommunications or telecommunications services to ultimate end-user customers; (3) systems integrators that incorporate only a minimal amount of telecommunications into their sales; (4) broadcasters that provide non-common carrier interstate telecommunications to others, and (5) non-profit schools, colleges, universities, libraries, and health care providers. *See 2012 FCC Form 499-A Instructions* at 4-5.

customers as "end user" revenues. To implement this end-user revenues system, the instructions to the Telecommunications Reporting Worksheet provide for wholesalers to distinguish between (1) revenues from sales to telecommunications providers that "can reasonably be expected to contribute to" the Fund (carrier's carrier revenues) and (2) revenues from all other sources (end-user revenues, including revenues from sale directly to end users as well as revenues from sale to non-contributing resellers or other non-contributing entities).[277]

164. While the Commission has not codified rules specifying the precise manner in which wholesalers verify that their customers are contributing, most providers obtain certifications from their customers specifying that the customer "is purchasing service for resale in the form of U.S. telecommunications" and that it "contributes directly to the federal universal service support mechanisms."[278] The Form 499 Instructions caution that if a customer does not provide such a certification, the wholesaler should not assume that the customer contributes to the Fund on those services, and should therefore report revenues from services provided to such customers as subject to USF assessment.[279] In such a scenario, the wholesale provider typically passes through a universal service contribution charge to these customers.

165. The Telecommunications Reporting Worksheet instructions have been amended several times in an effort to provide additional guidance on how a telecommunications provider may establish a reasonable expectation.[280] For example, the instructions have been revised to explain that wholesalers should obtain annual certifications from their resellers, certifying that the reseller will resell the services it purchases from the wholesaler, and that it will contribute to the Fund.[281] The instructions also direct telecommunications providers to implement policies and procedures to comply with this requirement to ensure they properly report carrier's carrier revenues.[282]

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[277] *See, e.g.*, *Universal Service Second Order on Reconsideration*, 12 FCC Rcd at 18424, para. 43; *id.* at 18507–08 (adopting the Worksheet to collect information about end-user revenues for USF contribution purposes); *2012 FCC Form 499-A Instructions* at 21.

[278] *2012 FCC Form 499-A Instructions* at 19. We note, however, that a facilities-based carrier must determine whether a carrier has registered with the Commission before it may offer services to that carrier for resale. *See* 47 C.F.R. § 64.1195(h).

[279] *See 2012 FCC Form 499-A Instructions* at 22 ("Filers that do not comply with the above procedures will be responsible for any additional universal service assessments that result if its customers must be reclassified as end users.").

[280] *See, e.g.*, 2000 Instructions to the Telecommunications Reporting Worksheet, Form 499-A at 13 (*2000 FCC Form 499-A Instructions*); 2001 Instructions to the Telecommunications Reporting Worksheet, Form 499-A at 15 (*2001 FCC Form 499-A Instructions*) (clarifying that a "reseller" did not need to be a "telecommunications service provider" but could also be any "telecommunications provider" reasonably likely contribute); 2002 Instructions to the Telecommunications Reporting Worksheet, Form 499-A at 15-16 (*2002 FCC Form 499-A Instructions*) (clarifying that "resellers" incorporate the purchased telecommunications into their "own telecommunications offerings," advising providers to collect a reseller's "Filer 499 ID," and notifying providers of an online database of current contributors); 2003 Instructions to the Telecommunications Reporting Worksheet, Form 499-A at 15-16 (*2003 FCC Form 499-A Instructions*) (clarifying that a reseller should resell the purchased telecommunications in the form of telecommunications and "not as information services"); 2004 Instructions to the Telecommunications Reporting Worksheet, Form 499-A at 16-17 (*2004 FCC Form 499-A Instructions*) (clarifying that providers should submit documentation about resellers to the Administrator or Commission upon request and advising providers that they may be responsible if their customers must be reclassified as end users).

[281] *2012 FCC Form 499-A Instructions* at 22.

[282] *Id.* Even these measures may be insufficient to safeguard the Fund. As discussed below, our rules currently exempt providers with far more international revenues than interstate revenues from contributing on the international revenues (known as the LIRE or limited international revenues exemption). *See infra* Section V.A.6.
(continued…)

166. *Reasonable Expectation Standard.* Implementing the "reasonable expectation standard" has become a time consuming and complicated case-by-case exercise. Many carriers argue that the current reseller certificate process is burdensome and ineffective, in essence requiring wholesale providers to act as "enforcement agents to the Commission" by requiring them to collect certifications from reseller customers attesting to being a USF contributor.[283] A number of carriers have appealed USAC audit findings reclassifying certain reseller revenues as end-user revenues, with the contributor arguing that it had a reasonable expectation that its customer(s) would contribute to universal service.[284] USAC and the Commission have to devote resources to detect evasion of contribution obligations, and companies that purchase wholesale inputs from others can derive substantial monetary benefits by providing a reseller certificate. Indeed, the end-user revenues system as currently structured may even create incentives for a purchaser of wholesale telecommunications to claim falsely that it directly contributes to the Fund, to avoid the universal service charge that the underlying provider would likely otherwise pass through if the customer did not claim it contributes directly. We seek comment on potential bright line rules that we could adopt that would provide greater clarity to contributors as to what steps they must take to properly report their assessable revenues and lessen the need to engage in such fact-intensive inquiries, if we maintain a revenue-based contribution methodology.

167. Complying with the requirement to distinguish wholesale from end-user revenues likely imposes non-trivial regulatory costs on firms with significant wholesale businesses. We seek comment and data submissions regarding the costs imposed on companies today to separate their wholesale from their retail revenues, and the costs associated with complying with the requirement that they demonstrate a reasonable expectation that their customers are contributing to USF. We encourage companies to provide estimates not only of the costs associated with their legal and regulatory personnel, but also to include any other costs that compliance with such requirements may pose on other personnel, including accounting, billing, sales, IT, and marketing staff, and any costs associated with hiring outside resources, such as attorneys or consultants, to assist in implementing such requirements or responding to any audits or investigations relating to this aspect of our contribution rules.

168. We seek comment on whether we should adopt a rule mandating greater specificity in contributor certifications regarding the services on which the certifying entity is contributing, so that wholesalers are in a better position to determine which of their revenues should be classified as carrier's carrier revenues. Many contributors may obtain such certifications from their customers only on an entity-wide basis, rather than on a service-specific basis, because the model certification language provided in the instructions beginning in 2007 does not specify service-specific certifications.[285]

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If a provider sells both interstate and international telecommunications to a reseller that qualifies for this exemption, the reseller will not contribute on the basis of the international telecommunications it offers (because of this exemption) and the underlying provider will not contribute on the basis of the international telecommunications it offers (because the reseller is not an end user for these purposes). In other words, our end-user methodology may unintentionally exempt certain revenue streams from the contribution base entirely.

[283] *See, e.g.*, USTelecom Mar. 28, 2012 *Ex Parte* Letter at 3; Request for Review of Decision of Universal Service Administrator by Global Crossing Bandwidth, Inc., CC Docket No. 96-45 at 17 (filed Sept. 16, 2009) (Global Crossing Request for Review).

[284] XO Request for Review at 40-43; Global Crossing Request for Review at 11-12.

[285] The 2012 Form 499-A instructions state, in relevant part, that each filer should have documented procedures to ensure that it reports as "revenues from resellers" only revenues from "entities" that reasonably would be expected to contribute to support universal service. In addition, the instructions state that reseller certifications should include a statement that "the company [*i.e.*, the reseller] contributes directly to the federal universal service mechanisms." *See 2012 FCC Form 499-A Instructions* at 22.

169. We seek comment on adopting a rule that would establish the following language for customer certifications:

> *I certify under penalty of perjury that the company is purchasing service which is incorporated into the company's offerings. I also certify under penalty of perjury that either my company contributes directly to the federal universal support mechanisms for those offerings that incorporate this wholesale service, or that each entity to which the company, in turn, sells those offerings has provided the company with a certificate in the form specified by Commission rules.*
>
> *OR*
>
> *I certify under penalty of perjury that the company is purchasing service for which is incorporated into the company's offerings. I also certify under penalty of perjury that:*
>
> *(check one)*
>
> ____ *The company contributes directly to the federal universal service support mechanisms for those service offerings that incorporate the wholesale service, or if the company resells the service to another contributor, that the company has received a certification from each customer in a form specified by Commission rules that the customer will contribute directly based on revenues from each such service.*
>
> ____ *The company contributes on [number] percent of the revenues for services that incorporate the wholesale service, or has received a certification from its customer stating that the customer will contribute directly based on revenues from the service. On the remaining [number] percent of the revenues of the service that incorporates the wholesale service, the company does not directly contribute, and it does not sell that service to another contributor.*
>
> *I also certify under penalty of perjury that the company will notify [name of wholesale provider] within [30 or 60 days] if the information provided in this certification changes.*

170. *Specificity as to Incorporation of Wholesale Services into a Finished Service.* It appears that under our current requirements, certain revenues may be escaping assessment altogether, in situations where a wholesaler does not contribute on revenues derived from customers that it believes to be contributing when in fact the customer is not contributing on those revenues.[286] For example, there may be situations where a wholesaler provides wholesale circuits to a customer, some of which are used for an assessable service, such as voice telephony, and some of which are used to provide retail broadband Internet access service, which is not assessable. In some cases, the usage of a given circuit may vary over the course of the year, or even at the request of the customer, between assessable and non-assessable services.[287] If the customer executes a certificate consistent with the model certification language

[286] USTelecom Mar. 28, 2012 *Ex Parte* Letter at 3.

[287] A number of business services dynamically allocate bandwidth to voice and broadband Internet access, depending on customer demand. *See, e.g.*, OneLink Voice and Data Circuit, *Telnes Broadband*, http://www.telnesbroadband.com/services/onelink-voice-and-data (last visited Apr. 2, 2012); SIP Trunking with (continued…)

guidance provided in the current Form 499 instructions – stating "the company [*i.e.*, the customer incorporating the telecommunications into its finished offering] contributes directly to the federal universal service mechanisms" – there is no way for the wholesaler to know that the customer is not contributing on revenues derived from all of the circuits. We seek comment on the magnitude and prevalence of this problem. In these and other analogous situations, should there be an affirmative obligation on the part of the entity that purchases the wholesale telecommunications to specify in its certification the extent to which the wholesale input is incorporated into assessable services versus non-assessable services? For instance, should we adopt the following rule:

> *To the extent a company purchases services that are incorporated into its own offerings, with some of the offerings subject to universal service contributions and some of the offerings not subject to universal service contributions, the purchaser has an affirmative obligation to provide information to its wholesale provider sufficient for the wholesaler to allocate the revenues associated with its service as carrier's carrier revenue or end-user revenue.*

171. What burdens would such a rule impose on entities that purchase wholesale telecommunications to incorporate into their finished offerings, and what measures could be implemented to minimize such burdens?[288] If we were to adopt such a rule, what metric should the purchasing entity use in developing the relevant allocations? For instance, should it base the percentage on the number of circuits, the revenues associated with individual circuits (to the extent that can be determined), the average usage of a circuit, or something else?

172. We seek comment on whether to adopt a rule imposing an affirmative obligation on entities purchasing wholesale telecommunications that sign certifications to notify their wholesale carrier within a specified period of time, such as 30 or 60 days, if their contribution status changes over the course of the year. For instance, we seek comment on the following rule:

> *Providers who provide contributor certifications to their wholesale carriers must notify their wholesale carrier within [30 or 60] days if the contribution status provided in the certifications changes.*

173. Today, there may be situations where an entity certifies in good faith at the beginning of the year that it is a contributor with respect to the services provided to its retail customers, but subsequently it ceases to be a contributor. This could occur, for instance, if the entity purchases a special access circuit from a wholesaler, and initially expects to provide special access to a retail customer, but ultimately uses that circuit to provide broadband Internet access service, which is not assessable under our current rules. Or an entity purchasing wholesale telecommunications may expect to contribute, but ultimately it turns out to be a *de minimis* contributor due to lower than expected revenues. In both situations, the wholesaler would not contribute on the services (because it has a contributor certificate

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AT&T IP Flexible Reach, *AT&T Enterprise*, http://www.business.att.com/enterprise/Service/voice-services/voip/sip-trunking/ (last visited Apr. 3, 2012); VoIP and Data Bundle, *Windstream*, http://www.windstreambusiness.com/enterprise/data-solutions/voip-and-data-bundle (last visited Apr. 3, 2012); VoIP for Your Small Business, *XO Communications*, http://smallbusiness.xo.com/small-business-voip.html (last visited Apr. 3, 2012).

[288] One party in an adjudicatory proceeding, for instance, has argued that it would be virtually impossible for wholesale providers to classify their revenues based on the end user services provided by their carrier customers and unreasonably burdensome for the wholesaler's resale customers to comply with a service-specific certification system. Opposition of U.S. TelePacific Corp. d/b/a TelePacific Communications to Petition for Clarification or In the Alternative for Partial Reconsideration, WC Docket No. 06-122, at 10-11 (filed July 6, 2010).

from its customer), but its customer ultimately does not contribute, resulting in revenues not being subject to contributions at any point in the value chain. Commenters should address the time frame in which such notification should occur, and what specific procedures should be followed. To the extent that parties support elimination of certifications in favor of an alternative system or a bright line, we ask them to provide specific details on how any such alternatives would be implemented, administered, and enforced.[289]

174. Another alternative on which we seek comment is whether we should assess wholesalers at their point of sale, but not their customers, so long as the wholesaler certifies that the contribution has been or will be paid. Would such an approach be easier to administer? Are there disadvantages to such an approach? Commenters should indicate, to the extent possible, the reduction to the contribution base if we were to adopt such an approach and how such an approach would impact contribution burdens.

175. *Improved Certification Requirements Compared to Value Added Revenues System.* We discuss above a value-added revenues system to address recurring issues arising in the wholesale/resale context.[290] Commenters are encouraged to compare and comment on both the improved certification system discussed here and the value-added system discussed immediately above in this Notice.[291] Is there a particular advantage over one approach over the other? Do aspects of both approaches need to be adopted? If we adopt a value-added revenues system, should we adopt modifications to our contributor certification rules on an interim or transitional basis while we implement the value-added approach?

176. *Improved Certification Requirements for Alternative Contribution Methodologies.* The improved contributor certification requirements discussed above assume retaining a revenues-based contribution system. In this Notice, we also seek comment on moving from a revenues-based contribution system to a system based on assessing connections or numbers.[292] Commenters should indicate whether similar contributor certification requirements as discussed above should be developed for a connections-based or numbers-based contribution system. If improved certification requirements are needed or advisable for such other contribution systems, commenters should explain the basis for such analysis, and should indicate how the contributor certifications would work in such instances.

177. We ask commenters whether a connections or numbers-based system may also raise concerns of double counting, and if so, how a contributor certification could be crafted to address this issue.[293] More generally, we seek comment on whether avoiding double counting remains a significant policy concern, and if it should inform the structure of a contributions methodology system.

178. In particular, we seek comment here on whether improved contributor certifications similar in concept to the proposals discussed above might be desirable for connections, and if so, how such a system would operate. If we were to adopt a service-based definition of connections, there could be situations in which a wholesaler sells a "connection" to a customer who adds value by separately selling more than one service over that connection. We also seek comment on how one might adopt contributor certifications for a numbers-based system.

[289] At least one industry group has suggested that the Commission consider elimination of "provider-to-provider certifications" in favor or a bright-line rule based on widely accessible information in a Commission-maintained database. *See* USTelecom Mar. 28, 2012 *Ex Parte* Letter at 7.

[290] *See supra* Section V.A.4.a.

[291] *Id.*

[292] *See infra* Sections V.B. and V.C.

[293] *See supra* para. 159 & n.275.

5. Reporting Prepaid Calling Card Revenues

179. Our rules require prepaid calling card providers to contribute to the Fund based on their end-user revenues. We seek comment on modifying existing rules to provide clarity to the industry in response to requests from USAC and record evidence suggesting different prepaid calling card providers may be interpreting our rules in different ways, which may result in an unlevel playing field for competitors of these services. In this section we seek comment on revising the rules for prepaid calling card providers, consistent with our proposed reform goals of simplifying compliance and ensuring fairness across competitors.

180. *Background.* On the Telecommunications Reporting Worksheet, contributors report revenues based on the amount paid by end users for prepaid cards, whether the prepaid calling card is purchased by the end user directly from the prepaid calling card provider or from a marketing agent, distributor, or retailer.[294] On August 24, 2009, USAC sought guidance on universal service reporting and contribution obligations on revenues from prepaid calling card services.[295] In particular, USAC asked the Commission to provide guidance on how prepaid calling card providers must report revenues where: (1) the prepaid calling card does not have a face value, or where the customer pays less than face value because of discounting; (2) the prepaid calling card provider does not know how much the end user paid for the card;[296] and (3) the cards are measured in units of time rather than by dollar amounts.[297] USAC also asked the Commission to clarify when prepaid calling card providers should report revenues from prepaid calling card services.[298] Many parties assert that the Commission should adopt rules or requirements that clarify contribution obligations for prepaid calling card providers and address the unique characteristics of prepaid calling card services.[299]

181. *Discussion.* We seek comment on adopting a rule to require prepaid calling card providers to report and contribute on all end-user revenues, and who should be deemed the end user for purposes of such a rule. We ask whether prepaid calling card providers should only report amounts paid by the entity to which the provider directly sells the prepaid service. Alternatively, we seek comment on adopting a rule to require prepaid calling card providers to contribute based on the amounts paid by end users for prepaid cards, whether the prepaid calling card is purchased by the end user directly from the prepaid calling card provider or from a marketing agent, distributor, or retailer. We also ask about the application of the value-added contribution paradigm, discussed above, to assessment of prepaid calling card service. In addition, we seek comment on measures to standardize how providers report prepaid calling card revenues, eliminating incentives or opportunities for providers to avoid their USF

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[294] *See, e.g., 2012 FCC Form 499-A Instructions* at 17-18.

[295] USAC 2009 Guidance Request at 2. USAC also sought guidance on other issues not related to reporting requirements for prepaid calling card providers. *Id.*

[296] This may occur where the prepaid calling card provider does not sell the cards directly to the end user.

[297] USAC 2009 Guidance Request at 1–2.

[298] *Id.* at 2. Several parties filed comments on the issue of contribution reporting requirements for prepaid calling card providers in response to USAC's request for guidance. *See* Letter from Jonathan S. Marashlian, Ad Hoc Coalition of International Telecommunications Companies, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-337 *et al.*, at 1–6 (filed Nov. 18, 2009); Comments of AT&T Inc., WC Docket No. 05-337 *et al.*, at 6-11 (filed Oct. 28, 2009) (AT&T Guidance Comments); Comments of Network Enhanced Telecom, LLP, WC Docket No. 05-337 *et al.*, at 1-10 (filed Oct. 28, 2009) (NetworkIP Oct. 28, 2009 Comments); Verizon Oct. 28, 2009 Comments at 7–9; Comments of STi Prepaid, LLC, WC Docket No. 05-337 *et al.*, at 1–10 (filed Oct. 28, 2009) (STi Oct. 28, 2009 Comments).

[299] *See, e.g.*, USTelecom Mar. 28, 2012 Ex Parte Letter at 7-8; Request for Review of AT&T Inc. of Decision of the Universal Service Administrator, CC Docket No. 96-45, at 17-20 (filed Oct. 10, 2006) (AT&T Prepaid Calling Card Request for Review); STi Oct. 28, 2009 Comments.

contribution obligations. We also solicit comment on whether adopting these reforms would further our proposed goals for reform and the potential impact on the Fund if we were to adopt the measures described below.

182. *Defined Terms.* We first seek comment on modifying the definition of prepaid calling cards as explained below. The terms "prepaid calling cards," and "prepaid calling card providers" are defined in section 64.5000 of our rules, as adopted by the Commission in the *Prepaid Calling Card Services Order*.[300] The definition of a prepaid calling card is fairly expansive, encompassing not just physical cards that require the input of a personal identification number (PIN) but also any "device" that provides end users with the same or similar functionality.[301] Although we propose retaining these definitions, we seek comment on whether we should add the phrase "or service" to the definition to make clear that our prepaid calling card rules will encompass new ways to market prepaid telecommunications services that do not involve using a PIN or a device. Such a modification could read as follows (new language in italics):

> (a) Prepaid calling card. The term "prepaid calling card" means a card or similar device *or service* that allows users to pay in advance for a specified amount of calling, without regard to additional features, functions, or capabilities available in conjunction with the calling service.
>
> (b) Prepaid calling card provider. The term "prepaid calling card provider" means any entity that provides telecommunications service to consumers through the use of a prepaid calling card.

183. We also seek comment on whether we should define, for purposes of prepaid calling cards, the term "prepaid calling card distributor" as we use it in the context of reporting prepaid calling card revenues. The use of such term would acknowledge that prepaid calling cards are often sold by means of marketing agents, distributors or retailers. We seek comment on the following proposed definition:

> *Prepaid calling card distributor. A marketing agent, distributor, retailer, or other third party that sells or resells prepaid calling cards on behalf of a prepaid calling card provider.*

184. *Reporting Prepaid Calling Card Revenues.* We also seek comment on alternative methods prepaid calling card providers should use to report revenues from prepaid calling card services. Today, prepaid calling card providers are required to report and contribute on the end-user revenues from the sale of prepaid calling card services.[302] The current version of the Telecommunications Reporting

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[300] *Regulation of Prepaid Calling Card Services*, WC Docket No. 05-68, Declaratory Ruling and Report and Order, 21 FCC Rcd 7290, 7316 (2006) (*Prepaid Calling Card Services Order*); 47 C.F.R. § 64.5000.

[301] *See* 47 C.F.R. § 64.5000; *see also* Letter from Pete Pattullo, Chief Executive Officer, Network Enhanced Telecom, LLP, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, Attach. at 1-2 (filed Sept. 28, 2010) (NetworkIP Sept. 28, 2010 *Ex Parte* Letter) (noting the growing trend toward "CARD-less and PIN-less prepaid products," and questioning if these products qualify as prepaid calling cards under our rules).

[302] *See Universal Service Second Order on Reconsideration*, 12 FCC Rcd at 18505, App. C (identifying prepaid calling card providers as contributors); *AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services; Regulation of Prepaid Calling Card Services*, WC Docket Nos. 03-133, 05-68, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 4826, 4827, paras. 4-5 (2005) (*AT&T Prepaid Calling Card Services Declaratory Ruling*); *Prepaid Calling Card Services Order*, 21 FCC Rcd at 7300, para. 27; *see also* 2012 Telecommunications Reporting Worksheet, FCC Form 499-A, Line 411; *2012 FCC Form 499-A Instructions* at 17–18.

Worksheet instructions calls for reporting of such revenues by the prepaid calling card provider, whether the end user purchases the card from the prepaid calling card service provider or a marketing agent, distributor, or retailer.[303] Some stakeholders contend that this method, which requires providers to report the "face value" of a card as assessable revenue—not the amount actually paid by the provider's end-user customer—is unrealistic considering that many cards do not have a face value, and contributing providers often do not know and have no control over the ultimate retail price of a calling card.[304]

185. We first seek comment on limiting the contribution and reporting requirements of prepaid calling card providers to report amounts paid only by the person or firm to whom the provider directly sells the prepaid card. Prepaid calling card providers that sell directly to an end-user customer would, as now, easily identify and report the assessable revenue amount. However, in situations where the provider sells the card to an intermediate distributor or retailer, rather than an end-user customer, under this paradigm we would require the provider to report revenue actually received from the intermediate distributor. This concept presumably would make it simpler for prepaid providers to report accurate revenues because they would recognize actual assessable revenue amounts from the sale to the end-user customer or the intermediate distributor and would not be required to estimate the amount paid by an end-user customer with whom the provider has no retail relationship. This approach could benefit providers and the Fund by permitting providers to report the revenue realized in a more timely fashion. We seek comment on this alternative and ask whether including an intermediate distributor or retailer in the definition of an end user for the purpose of reporting prepaid calling card revenue would create any competitive distortions or create disparities among different types of contributors.

186. In the alternative, we seek comment on codifying in greater detail the approach reflected in the existing Form 499 instructions. We first specifically inquire how prepaid calling card providers should report revenues from sales of prepaid calling card services to marketing agents, distributors, or retailers. The Form 499 instructions state that the revenue to be included in a provider's contribution calculation is the amount actually paid by the end-user customer, not the price paid to the prepaid calling card provider by intermediate marketing agents, distributors, or retailers, even when the distributor pays a different amount than the end user.[305]

187. Should there be symmetry in the way that prepaid calling card service transactions and other transactions are treated for USF contribution purposes? For example, the Form 499 instructions also state that payphone providers should not deduct from reported revenues commission payments to owners of premises where payphones are located.[306] Should we also adopt a rule that payphone providers may deduct from reported revenues discounts provided to intermediate distributors? We seek comment on potential bright lines that would simplify administration of contributions reporting for prepaid calling providers.

188. Under the current system, filers may be using disparate methods for reporting prepaid calling card revenues when the prepaid cards do not have a face value or the customer paid less than face

[303] *See, e.g., 2012 FCC Form 499-A Instructions* at 17-18.

[304] *See* USTelecom Mar. 28, 2012 *Ex Parte* Letter at 7-8.

[305] *Universal Service Second Order on Reconsideration,* 12 FCC Rcd at 18510, App. C ("[Line 411] should include all revenues from prepaid calling cards provided either to customers or to retail establishments. Gross billed revenues should represent the amount actually paid by customers and not the amounts paid by distributors or retailers, and should not be reduced or adjusted for discounts provided to distributors or retail establishments. All prepaid card revenues are classified as end-user revenue."). In 2002, the FCC Form 499-A instructions were clarified to include "distributors." *2002 FCC Form 499-A Instructions* at 20.

[306] *See 2012 FCC Form 499-A Instructions* at 16 (prohibiting payphone providers from deducting commission payments to premises' owners).

value because of discounting.[307] Our current contribution reporting requirements permit prepaid calling card providers to use "good faith estimates" where actual revenues cannot be determined from the provider's books of account.[308] The lack of a uniform and bright-line standard for estimating end-user revenues may give some prepaid calling card providers undue discretion, with an inherent incentive to underreport such revenues.[309] The lack of a bright-line standard may also limit the ability for USAC and the Commission to conduct meaningful audits of reported revenues. Adopting a bright-line standard for reporting end-user revenues could reduce or eliminate competitive disparities among providers of similar services.[310] We seek comment generally on adopting a bright-line standard that contributors must use to report prepaid calling card revenues. Would a bright-line standard create an incentive for prepaid calling card providers to establish a process with their marketing agents, distributors, and retailers to specifically identify and report the *actual* prices paid by end users? Should we also consider implementing a safe harbor for providers to estimate end-user revenues when the price paid by the end-user customer cannot readily be determined by the prepaid calling card provider?[311]

189. If we adopt a bright-line standard as suggested above, we seek comment on what mark-up would be appropriate for prepaid calling card providers to use in determining end-user revenues. Previously, Verizon suggested that a 35 percent mark-up on the price paid by marketing agents, distributors or retailers to the prepaid calling card provider, would be a reasonable proxy for determining the price paid for the card by end users, in part because the Internal Revenue Service (IRS) historically used that percentage to calculate and report prepaid calling card revenues for excise tax purposes.[312] AT&T notes that mark-ups of 50 percent are common in its experience,[313] while others have suggested mark-ups as high as 100 percent.[314] Given this wide range of estimated mark-ups, we seek comment on whether a standard mark-up of 50 percent would be a reasonable mid-point between the various estimates that have previously been suggested by commenters. We also seek comment on whether a higher or lower standard mark-up would be more representative of industry practice or would better serve in creating an incentive for providers to work with their marketing agents, distributors and retailers to

[307] USAC 2009 Guidance Request at 1–2; *see, e.g.*, AT&T Guidance Comments at 7–9; NetworkIP Oct. 28, 2009 Comments at 10.

[308] 47 C.F.R. § 54.711(a).

[309] *Cf.* Reply Comments of AT&T Inc., WC Docket No. 05-337 *et al.*, at 5-6 (filed Nov. 12, 2009) (AT&T Nov. 12, 2009 Comments); STi Oct. 28, 2009 Comments at 4-6; Reply Comments of Verizon and Verizon Wireless, WC Docket No. 06-122 at 5-6 (filed Nov. 12, 2009) (Verizon Nov. 12, 2009 Comments).

[310] USTelecom Mar. 28, 2012 *Ex Parte* Letter at 4.

[311] *See Wireless Safe Harbor Order,* 13 FCC Rcd at 21255-257, paras. 6-11 (creating safe harbor percentages to approximate the percentage of interstate revenue because providers asserted they could not identify without substantial difficulty, the amount of their revenues that are interstate as opposed to intrastate.

[312] *See* Verizon Oct. 28, 2009 Comments at 9; 26 C.F.R. § 49.4251-4. The IRS determined that a 35% mark-up "corresponds to markups in the retail sector generally" in 2000 for purposes of collecting an excise tax. T.D. 8855, 2000-4 I.R.B. 374 (Jan. 24, 2000). We note that the excise tax no longer applies to long-distance service or bundled service. I.R.S. Notice 2006-50, 2006-25 I.R.B. 1141.

[313] AT&T Nov. 12, 2009 Comments at 9 (stating that markups of 50% are common in the industry).

[314] *See* STi Oct. 28, 2009 Comments at 4 n.5 ("'Most prepaid calling cards are sold through retailers, who sell the cards at face value but purchase them at discounts of up to 50 percent.'") (quoting Sprint Reply Comments, WC Docket No. 05-68, at 7 n.21 (filed Oct. 23, 2006)). If a prepaid calling card distributor purchases a card at a 50% discount, then the end-user revenues from that card are 100% higher than the price paid by the prepaid calling card distributor. *See also* NetworkIP Sept. 28, 2010 *Ex Parte* Letter at 3 (describing how prepaid calling card distributors regularly pay 55–75% of the face value of the card to the prepaid calling card provider; for example, if a prepaid calling card has a face value allowing the end user $100 of call time, the retailer purchasing such card would pay the underlying carrier from $55 to $75).

identify the actual price paid by end-users. Adopting a standard mark-up that falls at the higher end of the scale, for example, may provide a greater incentive for prepaid calling card providers to determine and report the actual prices paid by end users. Parties should provide specific data to support their arguments.

190. To further ensure that all reporting entities are reporting prepaid calling card revenues in a consistent manner under the current system, we seek comment on requiring prepaid calling card providers to report revenues derived from the sale of prepaid calling cards not later than 60 days after the date the cards are sold by the prepaid calling card provider to a prepaid calling card distributor. The Telecommunications Reporting Worksheet instructions presently state that prepaid calling card providers should report their prepaid calling card revenues at the time the cards are sold to the end user, as opposed to the time the end user activates the prepaid minutes on the card.[315] In the case of cards sold indirectly through prepaid calling card distributors, the underlying service provider may not, in some instances, be able to identify the actual date the cards are purchased or activated by the end users. Adopting a rule that creates an appropriate time limit for recognizing revenue derived from the sale of prepaid calling cards could serve to further reduce competitive distortions that arise from disparate interpretations and application of our rules. We seek comment on this analysis. We also seek comment on whether it is reasonable to expect that most cards are sold within sixty days of the date the provider bills the prepaid calling card distributor for the cards, taking into account a 30-day billing cycle and an additional 30 days for the end user to purchase the card.

191. We seek comment on whether these alternative ideas further our proposed goal of ensuring that contribution assessments are fair. Would such a rule be simple to administer? Are there policy reasons prepaid calling card providers should be allowed to reduce or adjust reported revenues based on discounts provided to prepaid calling card distributors?

192. We also ask about the relationship between assessment of prepaid calling card providers and the "value-added" approach to assessing revenues discussed above.[316] Under this approach, each telecommunications provider in a service value chain (including wholesalers, distributors, and reselling retailers) would contribute based on the value the provider adds to the service.[317] As applied to the prepaid calling card marketplace, any firm that derives revenue from the sale of prepaid calling card services would report and contribute based on that revenue and would be permitted to take a credit based on contributions made by other contributors in the chain. Given the structure of the prepaid marketplace, this concept would presumably require any intermediate distributor or retailer to report and make contributions, including some retail stores that would be contributing to the Fund for the first time. We seek comment generally on this approach and inquire about the potential impact on firms that are not already reporting revenue or contributing to the Fund, such as retailers and other non-contributors. Should we consider an exemption from any reporting and contribution obligations for certain categories of retailers or distributors? If so, what would be the basis for such an exemption? What would be the impact on other contributors in the prepaid card chain, such as the service provider? Should we also consider a more limited exemption such that we require these companies only to report revenue derived from the card in order to ensure the Fund is fully compensated? Finally, we seek comment on what steps would need to be taken to implement any of the ideas discussed above or any alternative proposals to modify the contribution reporting requirements for prepaid calling card revenues. We also seek comment on how much time parties would need to transition to any such new rules.

[315] *See, e.g., 2012 FCC Form 499-A Instructions* at 17-18.

[316] *See supra* Section V.A.4.a.

[317] In 1997, the Joint Board recommended a value-added system, but the Commission adopted an end-user revenue system. *See Universal Service First Report and Order*, 12 FCC Rcd at 9205-06, paras. 842-44.

6. International Telecommunications Providers

193. In this section, we seek comment on whether we should eliminate the limited exemption for providers whose revenues are exclusively or predominantly international. In addition, consistent with our proposed goals, we seek comment on how we could modify our rules regarding international revenues so as to avoid competitive distortions in the market.

194. *Background.* As currently used in the USF contributions system, interstate and international telecommunications means communications or transmission between a point in one state, territory, possession of the United States or the District of Columbia and a point outside that state, territory, possession of the United States or the District of Columbia.[318] "International revenues" do not currently include revenues between two points outside of the United States and its territories. Also, carriers that only have international revenues, but have no interstate revenues, are not currently required to contribute to the Fund.

195. Section 254(d) 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. . . . Any other provider of *interstate* telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires".[319] In the *Universal Service First Report and Order*, the Commission concluded that contributions to the Fund will be based on the interstate and international revenues of providers of interstate telecommunications services.[320] Regarding contributors' international revenues, the Commission determined that interstate providers that also provide international telecommunications services should contribute to universal service based on revenues derived from both their interstate and international services. The Commission reasoned that contributors that provide international telecommunications services benefit from universal service because they must either terminate or originate telecommunications on the domestic public switched telephone network. The Commission did not include in the revenue base revenues derived from communications between two international points or foreign countries.[321] Nor did the Commission require carriers that provide only international telecommunications services to contribute to universal service because such carriers are not "telecommunications carriers that provide interstate telecommunications," as required by section 254(d) of the Act.[322]

196. The Commission created the current international-revenues exemption even though the Commission recognized that it would result in some providers of international services being treated differently from other such providers and that international-only providers benefited from federal universal service policies.[323] Later, in response to the Fifth Circuit's *TOPUC* decision, the Commission created a limited international revenues exemption (LIRE) for providers that offer predominantly

[318] *2012 FCC Form 499-A Instructions* at 22. "International" for USF purposes includes all "foreign communication," which is defined as "communication or transmission from or to any place in the United States to or from a foreign country, or between a station in the United States and a mobile station located outside the United States." 47 U.S.C. § 153(21).

[319] 47 U.S.C. § 254(d) (emphasis supplied).

[320] *Universal Service First Report and Order*, 12 FCC Rcd at 9205, para. 841.

[321] *Id.* at 9174, para. 779.

[322] *Id.*

[323] *Id.*

international service.[324] The LIRE exempts international revenues from reporting and contribution where a provider's interstate revenue is less than 12 percent of its combined interstate and international revenue.[325] The LIRE is designed to ensure that no contributor's universal service obligation exceeds its total interstate revenues[326] and allows a qualifying contributor to exclude its international telecommunications revenues from its contribution base.[327]

197. Industry trends highlight the need to take a fresh look at how international end-user telecommunications revenues are assessed under the contribution system.[328] Although the Commission once predicted that the "disparity among providers [caused by the international-revenues exemption] should be minimal,"[329] recent data suggest otherwise. As an example, the prepaid calling card market has grown from $955 million in revenues in 1997 to $2.0 billion in 2010.[330] Because many of the calls placed using prepaid calling cards are international and because per-minute rates for international calls tend to be higher than rates for interstate calls, it is unsurprising that 87.2 percent of prepaid calling card revenues are international revenues,[331] or that many providers that specialize in prepaid calling cards qualify for the LIRE and thus do not contribute on their international revenues.[332] A provider that does not qualify for the LIRE may not be able to compete in the prepaid calling card market because it must contribute on its international prepaid calling card revenues, suggesting that the current exemption may distort the competitive market among international-only providers, LIRE-qualifying providers, and providers that must contribute on all of their international revenues.

198. In 1999, the international revenue exemptions were minimal—international revenues not subject to assessment totaled only $333 million, or 0.4 percent of the total assessable revenue base.[333]

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[324] The Fifth Circuit in *TOPUC* held that the Commission's previous rule, which had required providers with limited interstate telecommunications revenues to contribute based on both their interstate and international revenues but exempted providers without interstate telecommunications revenues, was not "equitable and nondiscriminatory." *TOPUC*, 183 F.3d at 434.

[325] *See* 47 C.F.R. § 54.706(c).

[326] *See Universal Service Eighth Report and Order*, 15 FCC Rcd at 1687, para. 19.

[327] *See* 47 C.F.R. § 54.706(c) (allowing reporting entities whose projected collected interstate telecommunications revenues are less than 12% of all assessable revenues to exclude their international revenues from their contribution base).

[328] *Universal Service First Report and Order*, 12 FCC Rcd at 9175, para. 779. We note that ending the exemption for international-only telecommunications providers would not change our contribution rules' treatment of revenues from telecommunications that neither originate nor terminate in the United States or its territories or possessions.

[329] *Id.*

[330] *See* 2011 Telecommunications Reporting Worksheets, FCC Form 499-A (reporting calendar year 2010 revenues). *See also 1997 Revenues Report*, Table 6.

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

[332] *See, e.g.*, Letter from Craig Neeld, Budget Prepay Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-68, at 2 (filed Sept. 28, 2010) (reporting that only 4.5% of Budget Prepay's interstate and international prepaid calling card revenues were interstate); Letter from Wael Manasra, ChitChat Communications, Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-68, at 2 (filed Sept. 30, 2010) (reporting that only 2.9% of ChitChat's interstate and international prepaid calling card revenues were interstate).

[333] *See* Indus. Analysis & Tech Div., *Telecommunications Industry Revenues: 1999*, Table 4 (Common Carrier Bur., 2000), *available at* http://www.fcc.gov/wcb/stats (last visited Apr. 3, 2012) (*1999 Revenues Report*). We use figures for 1999 because that is the first reporting year in which both the exemption for international-only providers and the LIRE were in effect.

Since that time, the revenues foregone through these exemptions have increased more than tenfold, with international revenues not subject to assessment representing about $3.4 billion, or almost five percent of the assessable revenue base in 2010.[334] One potential reason for this increase is that our contribution rules narrowly focus on the amount of a provider's end-user interstate revenues, rather than whether or not the provider provides interstate telecommunications. As such, these exemptions may shelter not only international providers with a limited presence in the domestic market, but also domestic providers that report limited revenues for interstate telecommunications provided to end users. For example, of the 383 filers who qualified for the LIRE in 2010, 86 filers reported that less than half of their total domestic revenues came from the sale of international telecommunications. Thirty filers reported higher interstate telecommunications revenues from resellers than from end users.[335] Indeed, other providers have even offered free interstate calling while only charging customers for international calls.[336] The current system's focus on the ratio of each provider's end-user interstate telecommunications revenues to its total interstate and international telecommunications revenues ignores the fact that international-only and LIRE-qualifying providers may have a substantial, non-*de minimis* presence in the domestic market—and amending the *de minimis* rules may be a better means of exempting telecommunications providers that truly have a *de minimis* presence.

199. *Discussion.* In this section, we seek comment on modifications to our current rules regarding the contribution obligations of international providers.

200. *Eliminating the "International Only" and the "Limited International Revenues" Exemptions.* We seek comment on whether the Commission should eliminate the exemption for international-only providers and LIRE-qualifying providers, and our legal authority for doing so. In 1997, the Commission interpreted section 254 of the Act, and specifically our authority to assess all "providers of interstate telecommunications," as drawing a three-way distinction between intrastate, interstate, and international telecommunications.[337] We seek comment on whether, in light of the changes in the industry and telecommunications marketplace, section 254's reference to interstate telecommunications in the context of universal service contributions is better viewed as drawing a jurisdictional line between the authority of the states (which have authority over providers of intrastate telecommunications under section 254(f)) and the authority of the Commission (which has authority over providers of interstate telecommunications under section 254(d)).[338] Such a reading of section 254 would parallel the Commission's reading of other sections of that Act that divide responsibility between the state and federal jurisdictions and include international services within the Commission's jurisdiction.[339]

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

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

[336] *See, e.g.*, David Pogue, *Google Shakes It Up Again With Free Phone Calls*, Pogue's Posts, N.Y. Times (Aug. 25, 2010), *available at* http://pogue.blogs.nytimes.com/2010/08/26/google-shakes-it-up-again-with-free-phone-calls/ ("The idea, clearly, is that Google will make enough money from the overseas calls to make the domestic ones free.").

[337] *See Universal Service First Report and Order*, 12 FCC Rcd at 9174–75, para. 779 (interpreting 47 U.S.C. § 254(d)).

[338] *Compare* 47 U.S.C. § 254(f) (giving states authority over "every telecommunications carrier that provides intrastate telecommunications services"), *with* 47 U.S.C. § 254(d) (Commission has authority over every "provider of interstate telecommunications").

[339] *See, e.g.*, 47 U.S.C. § 225(d)(3)(B) (stating that "costs caused by interstate telecommunications relay services shall be recovered from all subscribers for every interstate service and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction"); 47 C.F.R. § 64.604(c)(5)(iii)(A) (defining "interstate services" to include "international . . . services"); *see also, e.g.*, 47 U.S.C. § 410(c) (requiring referral of (continued...)

Alternatively, we seek comment on whether we could rely on section 254(b)(4)'s principle of "equitable and nondiscriminatory contributions" to require international-only and LIRE-qualifying providers to contribute because these providers also benefit from being able to originate or terminate traffic in the United States.[340] We note that the Act distinguishes "foreign communication" from both interstate and intrastate.[341] Does that distinction affect the Commission's authority to treat interstate and foreign telecommunications in the same manner?

201. We also seek comment on whether the *TOPUC* decision limits our ability to re-examine the international-only and LIRE exemptions today. The Fifth Circuit in *TOPUC* held that the Commission's previous rule, which had required providers with limited interstate telecommunications revenues to contribute based on both their interstate and international revenues but exempted providers without interstate telecommunications revenues, was not "equitable and nondiscriminatory."[342] The court held that the previous rule "damage[d] some international carriers [*i.e.*, limited-interstate-revenue providers] more than it harm[ed] others [*i.e.*, no-interstate-revenue providers]."[343] The court also found the rule inequitable because it required limited-interstate-revenue providers "to incur a loss to participate in interstate service."[344] The court did not, however, make any findings or opine about the Commission's jurisdiction to assess international revenues. Thus the Commission should have significant discretion to revise its rules regarding contributions on international revenues, consistent with the Fifth Circuit decisions, so long as the new rule is equitable and nondiscriminatory. We seek comment on this analysis and our ability to eliminate the LIRE and to assess one hundred percent of a contributor's interstate and international revenues, without a LIRE exemption.

202. Commenters that oppose the elimination of the "international only" and the "limited international revenues" exemptions should provide specific alternative rules and explain how their proposals will support the proposed goals set forth in this Notice. We ask commenters to provide data to quantify how our proposals or alternatives will impact the Fund and reduce compliance costs and burdens.

203. *Modifying the Limited International Revenues Exemption.* If we were to assess all international telecommunications revenues, as suggested above, should we also eliminate the LIRE? In the alternative, if we maintain an exemption for international-only providers, we seek comment on whether modifying the LIRE and the contribution obligations of LIRE-qualifying contributors may be appropriate.

204. Today's LIRE is designed to ensure that no contributor's universal service obligation exceeds its total interstate (*i.e.*, non-international) revenues.[345] As explained above, the exemption of

(Continued from previous page)
matters regarding the "jurisdictional separation of common carrier property and expenses between interstate and intrastate operations"); 47 C.F.R. Part 36 (requiring carriers to separate costs based on usage but not distinguishing between interstate and international telecommunications).

[340] 47 U.S.C. § 254(b)(4); *see* 47 U.S.C. §§ 154(i) ("The Commission may . . . make such rules and regulations . . . not inconsistent with this Act, as may be necessary in the execution of its functions."); 201(b) (The Commission "may prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this Act."); *see also AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 380 (1999) (Section 201(b) "explicitly gives the FCC jurisdiction to make rules governing matters to which the 1996 Act applies."); Telecommunications Act of 1996, Pub. L. No. 104-104, § 101(a), 110 Stat. 56, 71–75 (1996) (adding section 254 to the Act).

[341] *See, e.g.*, 47 U.S.C. §§ 151-153.

[342] *TOPUC*, 183 F.3d at 434.

[343] *Id.* at 435.

[344] *Id.*

[345] *See Universal Service Eighth Report and Order*, 15 FCC Rcd at 1687, para. 19.

international telecommunications revenues for LIRE-qualifying providers may potentially distort certain markets for international telecommunications. If we nonetheless retain the LIRE, modifying it may be appropriate to limit the advantage that LIRE-qualifying providers have over their competitors and to ensure that all providers fairly and equitably contribute to supporting universal service. Specifically, if we do not require LIRE-qualifying providers to contribute on *all* of their end-user international telecommunications revenues, we propose to require LIRE-qualifying providers to contribute on at least a portion of those revenues. Moreover, the LIRE-qualifying factor codified in our current rules (12 percent) may no longer provide the "adequate margin of safety" it once did for providers that primarily offer international services,[346] given that the contribution factor has remained above 12 percent over the past two years.[347] We therefore seek comment on ways to modify the LIRE-qualifying factor.

205. If we retain the LIRE, we seek comment on whether we should modify the LIRE as follows:

> *If the ratio of an entity's collected interstate end-user telecommunications revenues to its combined collected interstate and international end-user telecommunications revenues is less than that year's LIRE-qualifying factor, that entity's assessable revenues shall be its collected interstate end-user telecommunications revenues plus an equal amount of its collected international end-user telecommunications revenues, net of contributions.*
>
> *(1) The LIRE-qualifying factor for a given year shall be equal to the highest contribution factor established for any quarter of the previous year plus three percent.*
>
> *(2) For purposes of this subsection, an "entity" shall refer to the entity that is subject to the universal service reporting requirements and shall include all of that entity's affiliated providers of interstate and international telecommunications and telecommunications services.*

206. We seek comment and (if appropriate) examples of how the LIRE results in a competitive advantage for some providers. Providers that qualify for the LIRE compete against non-qualifying providers that must include *all* of their international revenues in calculating their contribution base.[348] LIRE-qualifying providers benefit from being able to originate and terminate both interstate and international calls in the United States. Further, we seek comment on whether the proposed modification of the LIRE would advance the goal of fairness by treating competitive providers in a like manner. Would it advance other of our proposed goals for contribution reform, such as ensuring a stable contribution base? Would requiring LIRE-qualifying providers to contribute based on an amount of their

[346] *2002 First Contribution Methodology Order and FNPRM*, 17 FCC Rcd at 3806, para. 125.

[347] The average contribution factor for 2010 was 13.97 percent and the average contribution factor for 2011 was 15.9 percent. The quarterly factor for the second quarter 2012 is 17.4 percent. *See Public Notices on Proposed Contribution Factors for 2010-2012*, Contribution Factor and Quarterly Filings—Universal Service Fund Management Support, *available at* http://www.fcc.gov/encyclopedia/contribution-factor-quarterly-filings-universal-service-fund-usf-management-support (last visited Mar. 8, 2012).

[348] As discussed above, the Commission adopted the LIRE in 1997 in response to the *TOPUC* decision. *See Universal Service Eighth Report and Order*, 15 FCC Rcd at 1687, para. 19; *TOPUC*, 183 F.3d at 433–35. The Fifth Circuit and the Commission focused at the time on the need to ensure that our rules do not discriminate against primarily international providers vis-à-vis purely international providers. *See, e.g.*, *TOPUC*, 183 F.3d at 435 (holding that requiring "companies such as COMSAT to incur a loss to participate in interstate service" is inequitable and discriminatory, especially when "the agency concedes that its rule damages some international carriers like COMSAT more than it harms others").