

USAC's assessment of its universal service contribution obligation and has filed an appeal with USAC or the Commission.⁵⁸³ USAC, in its role as the Administrator of the USF, has formalized this as the pay-and-dispute policy.⁵⁸⁴ If a contributor does not pay the disputed amount, USAC cannot waive any late fees, interest charges, or penalties unless the disputed charges are later found to be a result of a USAC error, or USAC is directed to do so by the Commission.⁵⁸⁵

363. *Discussion.* We propose to amend section 54.713 of our rules to adopt a pay-and-dispute rule as follows:

*If a universal service fund contributor fails to make full payment of the monthly amount established by the contributor's applicable Form 499-A or Form 499-Q, or the monthly invoice provided by the Administrator, on or before the date due, the payment is delinquent. Late fees, interest charges, and penalties for failure to remit any payment by the date due shall apply regardless of whether the obligation to pay that amount is appealed or otherwise disputed unless the Administrator or the Commission (pursuant to section 54.719) finds the disputed charges are the result of clear error by the Administrator.*⁵⁸⁶

364. Although the Bureau has consistently upheld USAC's implementation of the pay-and-dispute requirement, contributors continue to challenge USAC's use of the pay-and-dispute requirement in specific instances by withholding payment pending resolution of a disputed charge.⁵⁸⁷ Adopting as a Commission policy or rule or, at a minimum, affirming the pay-and-dispute requirement could lessen administrative burdens for both USAC and Commission staff, while also putting all contributors on notice of the procedures for appealing contested invoices. We seek comment on this analysis.

365. We seek comment on whether adopting the pay-and-dispute requirement serves our proposed reform goals. We specifically seek other proposals that create the proper incentive for contributors to pay their invoices in a timely manner.

366. In 2004, the Commission adopted rules implementing the requirements of the Debt Collection Improvement Act of 1996 (DCIA).⁵⁸⁸ The Commission's DCIA rules require that entities or

⁵⁸³ See USAC, Program Integrity: Appeals, available at <http://www.usac.org/cont/about/program-integrity/appeals.aspx> (last visited Apr. 16, 2012).

⁵⁸⁴ *Id.* See, e.g., *Universal Service Contribution Methodology; Emergency Request for Review of Universal Service Administrator Decision by Level 3 Communications, LLC, et al.*, WC Docket No. 06-122, Order, 25 FCC Rcd 1115, 1120, para. 9 (Wireline Comp. Bur. 2010), *application for review pending (Level 3 Order)* (noting that contributor could have avoided incurring late fees, interest charges, and penalties by paying the full invoiced amount in compliance with the pay-and-dispute policy); *Federal State Joint Board on Universal Service et al.*, CC Docket No. 96-45, WC Docket No. 06-122, Order, 23 FCC Rcd 10096, 10097-98, para. 5 (Wireline Comp. Bur. 2008) (granting waiver of the FCC Form 499-Q revision deadline due in part to contributor's compliance with the pay-and-dispute policy); *Universal Service Contribution Methodology; Requests for Waiver of Decisions of the Universal Service Administrator by Achieve Telecom Network of Massachusetts, LLC, et al.*, WC Docket No. 06-122, Order, 23 FCC Rcd 17903 (Wireline Comp. Bur. 2008), *petition for reconsideration pending* (dismissing requests as moot because petitioners' contributions had been corrected in the true-up process).

⁵⁸⁵ See USAC, Program Integrity: Appeals, <http://www.usac.org/cont/about/program-integrity/appeals.aspx> (last visited Apr. 16, 2012).

⁵⁸⁶ See Appendix A, 47 C.F.R. §54.713(b).

⁵⁸⁷ See, e.g., *Level 3 Order*, 25 FCC Rcd at 1121, para. 9.

⁵⁸⁸ See 47 C.F.R. Part 1, Subpart O. Congress enacted the DCIA to strengthen federal debt collection procedures. Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996).

individuals doing business with the Commission pay their debts in a timely manner. The rules also explain how entities or individuals are notified of debts owed to the Commission, and how the Commission will collect those debts. We seek comment on whether adopting USAC's pay-and-dispute requirement is consistent with the Commission's DCIA rules. We also seek comment on any other changes to our rules that would ensure better compliance with our rules and the Debt Collection Improvement Act.

D. Oversight and Accountability

367. One proposed goal for reform is to increase administrative efficiency, which should reduce the costs of compliance associated with USF contributions. At the same time, we must ensure accountability for all contributors. In this section, we seek comment on various issues relating to oversight and accountability for the contributions system.

368. No system is fair when some telecommunications providers play by the rules and others do not. To ensure that data actually reported closely approaches our best estimate of industry-wide assessable services, should we establish a performance goal of reducing the number of contributors that do not satisfy their contributions obligations? If so, what information should we rely upon to track that goal?

369. USAC employs several practices to identify entities that should register and contribute to the Fund. For example, during contributor audits, USAC obtains a list of resellers from the auditee and identifies companies that have not registered. USAC contacts these companies to determine why they are not registered or contributing to the Fund. USAC also contacts companies that it independently identifies from industry news sources and whistleblowers. We seek comment on additional steps that could be taken to identify those telecommunications providers that are not meeting their contribution requirements. What measures could the Commission direct USAC to take to ensure industry-wide compliance with our contribution rules?

370. We seek comment on the extent to which potential rule changes that could simplify the contribution system discussed in this Notice could help ensure that contribution assessments are made and collected in accordance with Commission rules and requirements. Further, we seek comment on how we could measure the benefits of simplification in the contribution system. What information would we need, and what would be an appropriate performance goal?

371. *USAC Audits.* Audits have been, and will continue to be, an important part of our efforts to ensure compliance with universal service contribution requirements. USAC initiates a certain number of audits each year drawing from a random, representative sample of contributors. We seek comment on processes and procedures that USAC could implement to make the contributor audit process more efficient. We seek public comment on how to most efficiently use our administrative resources to ensure that contributions are made in accordance with the Commission's rules and requirements, while minimizing compliance burden on companies subject to audit.

372. In the *Lifeline Link Up Reform and Modernization Order* and the *USF/ICC Transformation Order and FNPRM*, the Commission directed USAC to provide an updated audit plan to the Commission's Office of the Managing Director (OMD) and the Wireline Competition Bureau, in light of the reforms made in the orders.⁵⁸⁹ The Commission directed OMD and the Bureau to work with USAC to ensure that there is consistency in the compliance standards. We seek comment on whether we should require USAC to produce a similar audit plan for OMD and the Bureau for USF contribution purposes.

⁵⁸⁹ See *Lifeline and Link Up Reform and Modernization Order*, FCC 12-11 at para. 286; *USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 17866, para. 628.

How many audits should USAC initiate (at a minimum) each year? How should USAC ensure that audits encompass a representative sample of the industry?

373. *Timely and Efficient Reporting.* Efficient operation of the contribution system depends on reporting entities timely filing their quarterly and annual Telecommunications Reporting Worksheets. We seek comment on whether we should adopt as a performance goal that a specified percentage of reporting entities file their Worksheets on time. The target threshold could be established by the Bureau and periodically revisited. Timely filing is especially important for the quarterly Worksheet given the fact that USAC must compile the results of those Worksheets for the Commission within thirty days. We seek comment on what additional outreach and training USAC may need to do to encourage more reporting entities to file their Worksheets on time and electronically. We also seek comment on any revisions to our rules that would create the proper incentives for timely filing. We seek comment on this analysis and the time frame in which we should implement and monitor our progress towards meeting such a goal, if adopted.

374. *Prompt Payment and Collection of Contribution Obligations.* The Commission has already taken several measures under the DCIA to ensure prompt collection of contribution obligations.⁵⁹⁰ We seek comment on adopting several performance goals related to that task. First, we seek comment on adopting a performance goal of decreasing the aggregate number and dollar amount of delinquent contributions payments. Second, we seek comment on adopting performance goals of reducing the percentage of contributors that are delinquent in payments, the percentage of contributors delinquent more than 30 days, and the percentage of contributors delinquent more than 90 days. We seek comment on these performance goals and also on the specific targets that USAC and the Commission should strive to reach. We seek comment on what additional outreach and training USAC may need to do to encourage more contributors to pay their debts on time, and whether any revisions to our rules would encourage timely payment. We seek comment on what allowances we can and should make in consideration of any economic conditions impacting the industry.

375. We seek comment on whether these measures would assist the Commission with monitoring either the costs of compliance for contributors or the contributions burden on consumers and businesses, especially when coupled with other proposals in this Notice. We seek specific comment on whether any particular reforms identified in this Notice would help or hinder oversight over the contribution system. We also invite parties to suggest additional or alternative goals and measures for assessing the performance of the contribution system.

E. Paper-Filing Fees

376. The Commission has implemented several initiatives to encourage and facilitate electronic filing of forms.⁵⁹¹ In this section, we propose to adopt a filing fee for contributors that choose to submit the Telecommunications Reporting Worksheets by paper rather than electronically.

⁵⁹⁰ See *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight et al.*, WC Docket No. 05-195 *et al.*, Report and Order, 22 FCC Rcd 16372, 16377-82, paras. 11-18 (2007) (2007 *Comprehensive Review Order*).

⁵⁹¹ See, e.g., Cable Operations and Licensing System (COALS) Website, available at <http://fjallfoss.fcc.gov/coals7/> (last visited Apr. 16, 2012) (permitting electronic filing of Cable Operator and Multichannel Video Programming Distributor forms with the FCC); Electronic Comment Filing System (ECFS) Home Page, available at <http://apps.fcc.gov/ecfs/> (last visited Apr. 16, 2012) (permitting electronic access to rulemakings and docketed proceedings); International Bureau Electronic Filing System (MyIBFS), available at <http://licensing.fcc.gov/myibfs/> (last visited Apr. 16, 2012) (allowing electronic filing of applications and forms, including space station, earth station and cable landing licenses).

377. *Background.* The majority of reporting entities presently file their annual and quarterly worksheets electronically.⁵⁹² Electronic filings substantially reduce administrative costs allowing for computerized processing instead of additional labor costs for manual data entry.⁵⁹³

378. *Discussion.* In order to increase efficiency in program administrative, we propose to amend section 54.711 to require that reporting entities file the Telecommunications Reporting Worksheet electronically:

*Electronic Filings. Reporting entities must file the Telecommunications Reporting Worksheet electronically. The Administrator shall assess a \$25 fee on reporting entities for filing paper copies of the quarterly Telecommunications Reporting Worksheet. The Administrator shall assess a \$50 fee on reporting entities for filing paper copies of the annual Telecommunications Reporting Worksheet. The Administrator shall not assess a paper-filing fee on reporting entities that electronically file their Telecommunications Reporting Worksheet, but such entities must also submit either a paper or electronic certification attesting to the accuracy of the information reported therein under penalty of perjury.*⁵⁹⁴

379. Based on information provided by USAC, the proposed paper-filing fees would be set at a level so as to compensate the Fund for the additional costs incurred by USAC to manually process these paper filings and encourage more reporting entities to file electronically.⁵⁹⁵ We seek comment on this analysis.

380. We seek comment on the merits and technical aspects of a rule change assessing a paper filing fee. What is the potential impact on contributors and the Fund if we adopt a paper filing fee? We seek specific comment on setting the appropriate size of a paper filing fee so that reporting entities would have an appropriate incentive to file electronically and in a timely manner. We seek comment on any other changes to our rules that would ensure better compliance with our rules and the Debt Collection Improvement Act. The above proposed rule requires electronic filers to submit either a paper or electronic certification attesting the accuracy of the electronic filing. We seek comment on what procedures we should adopt to facilitate the certification to be done electronically, per the E-Sign Act.⁵⁹⁶ In addition, we seek comment on what modifications, if any, USAC should make to its electronic filing system to ensure that it is accessible to persons with disabilities.⁵⁹⁷ In lieu of imposing a filing fee, is there a different approach that would incent contributors to file electronically?

⁵⁹² According to USAC, approximately 76% of reporting entities filed their 2011 annual Telecommunications Reporting Worksheet electronically and 77% filed the November 2010 quarterly Worksheet electronically.

⁵⁹³ See 1998 Biennial Regulatory Review—Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, CC Docket No. 98-171, Report and Order, 14 FCC Rcd 16602, 16626, para. 52 (1999) (*Telecommunications Reporting Worksheet Consolidation Order*).

⁵⁹⁴ See Appendix A, 47 C.F.R. § 54.711(e).

⁵⁹⁵ USAC has estimated that the incremental costs of processing a paper (versus an electronic) FCC Form 499-Q are approximately \$15 per form, and the incremental costs for the FCC Form 499-A are approximately \$35 per form. These amounts were calculate assuming a per hour rate of the employees multiplied by the amount of time needed to process a hardcopy form, excluding management oversight and overhead.

⁵⁹⁶ See 15 U.S.C. §§ 7001-7006, especially at § 7001(b)(2).

⁵⁹⁷ See 29 U.S.C. § 794D. In 1998, Congress amended the Rehabilitation Act of 1978 to require Federal agencies to make their electronic and information technology accessible to people with disabilities. *Id.*

F. Filer Registration and Deregistration

381. *Background.* Under our current requirements, within thirty days of the commencement of providing services, telecommunications carriers and interconnected VoIP service providers must register with the Commission and designate agents for service of process in the District of Columbia.⁵⁹⁸ USAC routinely conducts outreach to newly-registered providers to inform them of their reporting and contribution requirements. USAC typically sends regular notifications to all registered contributors alerting them of contribution filing deadlines, and providing other useful information including notification of any missed filing deadlines. One of the purposes of registration is that it allows the Commission to better monitor registered providers for compliance with our rules and regulations. In addition, a filer registration requirement provides transparency to the public, making available important information including the relevant regulatory contact information.⁵⁹⁹ In order to facilitate the registration requirement, and the public's access to registration information, the Commission maintains a Form 499 Filer Database with the registration information it collects from all Form 499 reporting entities.⁶⁰⁰ In addition, the Commission requires wholesale carriers to confirm the registration status of potential carrier customers before commencing service with such resellers.⁶⁰¹

382. Currently, the Commission's Form 499 Filer Database does not always include information from telecommunications providers that are not common carriers, because certain of these providers are not subject to the Commission's registration requirement.⁶⁰² These providers, however, file Form 499-A (and complete the registration information contained therein) on the normal Form 499-A filing schedule. There are also non-common carrier telecommunications providers that may be unaware of their obligations to file the Telecommunications Reporting Worksheet. Furthermore, our current rules require common carriers to check the registration status of their carrier customers, but do not put such an obligation on non-common carrier telecommunications providers that offer telecommunications for resale.⁶⁰³ This difference may create disparate burdens for common carriers versus telecommunications providers that are not common carriers.

383. *Discussion.* We seek comment on tightening our registration requirements so that all telecommunications providers with FCC Form 499-A reporting obligations (whether they are common carriers or not) have the obligation to register within thirty days of commencing service. We propose to amend section 54.706 to include the following proposed rule:

⁵⁹⁸ See 47 C.F.R. § 1.47(h); 47 C.F.R. § 64.1195(a); *2006 Contribution Methodology Order*, 21 FCC Rcd at 7549 n.205.

⁵⁹⁹ See 47 C.F.R. § 64.1195(b).

⁶⁰⁰ See 47 C.F.R. § 64.1195(h); see also FCC Form 499 Filer Database, available at <http://apps.fcc.gov/cgb/form499/499a.cfm?CFID=178928&CFTOKEN=89260093&jsessionid=phZFPvyR1XSLz65gpBxVypXc1cg5G3hQltQL7KqHGRWjCNfW54s0!-690065246!1331832945195> (last visited Apr. 16, 2012).

⁶⁰¹ See 47 C.F.R. § 64.1195(h). Although this requirement was adopted in the context of combating slamming violations, the application of the rule has never been confined to that context. See *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers*, CC Docket No. 94-129, Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996, 16027, paras. 65-66 (2000) (*Slamming Order*).

⁶⁰² See 47 C.F.R. § 1.47(h); 47 C.F.R. § 64.604(c)(4); *Contributions to the Telecommunications Relay Service Fund*, CG Docket No. 11-47, Report and Order, 26 FCC Rcd 14532, 14542, para. 21 (2011) (adopting rule requiring non-interconnected VoIP providers with interstate end-user revenues to register prior to commencing services.)

⁶⁰³ See 47 C.F.R. § 64.1195(h)

*(f) Registration Requirements. Every common carrier subject to the Communications Act of 1934, as amended, and every entity required to submit a Telecommunications Reporting Worksheet shall register with the Commission in accordance with the provisions of 47 C.F.R. § 64.1195(a)-(c) and the Instructions to the Telecommunications Reporting Worksheet within thirty days of the commencement of provision of service.*⁶⁰⁴

384. *Deregistration Requirements.* We also propose to require registered entities that no longer meet the requirements to register to file a deregistration with the Commission. A deregistration requirement could ensure that the Commission's Form 499 Filer Database is current and complete. Currently, if a contributor has previously filed a Form 499-A or Form 499-Q, but has not notified USAC that it no longer provides telecommunications services, USAC estimates the provider's quarterly revenues and sends an invoice to that provider for its estimated contributions.⁶⁰⁵ This may create confusion and generate late fees for providers that no longer provide service. A formal deregistration requirement could streamline USAC's and the Commission's processes by eliminating unnecessary invoices and removing entities that no longer provide service from the Commission's database. We propose to amend section 54.706 to include the following proposed rule:

*(g) Deregistration Requirements. If a registrant stops providing interstate and international telecommunications to others, it shall deregister with the Commission within thirty days of its last provision of telecommunications. To deregister, a registrant must comply with the Instructions to the Telecommunications Reporting Worksheet.*⁶⁰⁶

Would adoption of such a rule simplify the process of billing contributors, and thereby lessen USAC's administrative costs? Would adoption of such a rule further other proposed reform goals?

385. *Wholesale-Reseller Confirmation Requirements.* As discussed above in this Notice, we seek comment on adopting a value-added revenue system to address recurring USF contribution issues that arise in instances where wholesale carriers provide services to other carriers.⁶⁰⁷ To the extent that we do not adopt a value-added system, however, we seek comment on requiring all registrants that provide telecommunications to other carriers to check the registration status of their customers.⁶⁰⁸ We seek comment on whether imposing such an obligation could "deter [registrants] from providing service to resellers that have not registered with the Commission, which will, in turn, make it more difficult for 'bad actor' resellers to stay in business."⁶⁰⁹ We propose to amend section 54.706 to include the following proposed rule:

Customer Confirmation Requirements. A telecommunications carrier or provider providing telecommunications to other carriers or providers shall have an affirmative duty to ascertain whether a customer that is required to register

⁶⁰⁴ See Appendix A, 47 C.F.R. § 54.706(f).

⁶⁰⁵ See 47 C.F.R. § 54.709(d).

⁶⁰⁶ See Appendix A, 47 C.F.R. § 54.706(g).

⁶⁰⁷ See *supra* Section V.A.4(a).

⁶⁰⁸ *Id.*

⁶⁰⁹ *Slamming Order*, 15 FCC Rcd at 16027, para. 66.

*has in fact registered with the Commission prior to offering service to that customer.*⁶¹⁰

386. Would adoption of each of the above proposed rules increase the likelihood that all potential contributors register with the Commission and comply with universal service contribution reporting obligations? What are the costs and benefits of imposing such an obligation on FCC registrants, and how would that vary if the Commission adopts other rule changes discussed in this Notice? For instance, if the Commission were to require contributions from wholesalers, would that lessen the potential policy rationale for ensuring the reseller is registered with the Commission?

VII. RECOVERY OF UNIVERSAL SERVICE CONTRIBUTIONS FROM END USERS

387. In this section, we seek comment on issues relating to recovery of universal service contributions from customers. We request clear and specific comments on the type and magnitude of likely benefits and costs of each of the rules discussed in this section, and request that parties claiming significant costs or benefits provide supporting analysis and facts, including an explanation of how they were calculated and identification of all underlying assumptions.

388. The statutory framework established by Congress in the Act governs the recovery of universal service contributions by telecommunications service providers.⁶¹¹ Although a contributor may generally recover its universal service contributions from its customers, the Commission has placed two restrictions on doing so. First, a “federal universal service line-item charge” may not “exceed the interstate telecommunications portion of that customer’s bill times the relevant contribution factor.”⁶¹² Second, eligible telecommunications carriers (ETCs) that are incumbent LECs may not pass through a federal universal service line-item charge to their Lifeline subscribers except to recover “contribution costs associated with the provision of interstate telecommunications services that are not supported by the Commission’s universal service mechanisms.”⁶¹³ In practice, this means that incumbent ETCs historically have not been permitted to pass through to Lifeline subscribers the contribution costs associated with the subscriber line charge (which is deemed 100 percent interstate), but they may pass through contribution costs associated with other interstate services, such as long distance calling. There is no comparable restriction for competitive ETCs that serve Lifeline subscribers.

A. Pass-Through of USF Contributions as Separate Line Item Charge

389. In this section, we seek comment on ways to improve transparency relating to the amount of universal service contribution charges that are being passed through by the carriers to their customers.

390. *Providing Clarity in Customer Bills.* Under today’s system, the contribution factor is typically applied to only a fraction of the total end user revenues derived from a customer. Currently, section 54.712(a) only addresses line items on customer bills and does not address situations in which there is no billing relationship. Moreover, our rules do not require contributors to indicate how the universal service charge on a customer’s bill is calculated. In many instances, customer bills include a line item for USF, but do not indicate the USF contribution factor used to determine such line item, or the portion of the bill to which the contribution factor was applied. We seek comment on whether we should

⁶¹⁰ See Appendix A, 47 C.F.R. § 54.706(h).

⁶¹¹ 47 U.S.C. §§ 201, 202.

⁶¹² 47 C.F.R. § 54.712(a).

⁶¹³ See 47 C.F.R. §§ 69.131, 69.158; *Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45 *et al.*, Order and Second Order on Reconsideration, 18 FCC Rcd 4818, 4822, para. 10 (2003) (*2003 Interim Contribution Methodology Recon Order*).

limit the flexibility currently afforded contributors in the recovery of universal service obligations or adopt measures to provide greater transparency regarding such recovery to enable consumers to make informed choices regarding their service. For example, we could adopt a rule that contributors must identify on the consumer bill the portion of the bill (whether based on revenues or another unit) that is subject to assessment. This could enable end users to determine whether they are being properly charged a USF pass-through charge. What modifications, if any, would we need to make to section 54.712 of the existing rules, which prohibits a carrier from charging more than the interstate portion of the bill times the relevant contribution factor.

391. Publication of a separate line item has the potential benefit of informing the end user of the extent to which his or her payments are contributing to the preservation and advancement of universal service. Preventing such publication would obscure, from the consumer's standpoint, the nature of the contribution burden that each end user bears. We seek comment on the value of making the burden of the universal service contribution plain, and whether this can be obtained without distorting the pricing strategies of individual providers. For example, would it be possible to require that the advertised price include the universal service contribution, while allowing the continued publication of the universal service contribution as a line item in end-users' bills? What additional rules should the Commission adopt to provide clarity to customers regarding USF pass-through charges? How should these rules be enforced? What benefits to consumers and/or cost burden to providers would such rules result in?

392. *Advertising USF Charges.* In addition, should we also mandate that carriers disclose at the time of initial service subscription the amount of the quoted rate or other assessable units that would be subject to assessment? Are there alternative approaches the Commission should take to ensure greater disclosure of such charges to customers in a way that advances price comparison and evaluation?⁶¹⁴

393. *Mass Market Customers vs. Business Customers.* If we were to adopt either of these rules, should the rule apply broadly to all customers, or be limited to mass market customers, who typically have less leverage than businesses, institutions and governmental entities that purchase communications services? If we were to adopt such a distinction, how should we define "mass market" for these purposes?⁶¹⁵

394. *Eliminating Line Items.* An alternative approach to the rules described above would be to limit carrier flexibility to recover their universal service contributions from end users through a line-item or "surcharge" on end-user bills.⁶¹⁶ Under such an approach, while contributors would retain the flexibility to include the cost of contributing to the universal service fund in determining their overall rate structure, they would not be permitted to represent any line item on end-user customer bills as a federal universal service charge.⁶¹⁷ For instance, section 54.712 of the Commission's rules, which currently

⁶¹⁴ See, e.g., *Consumer Information and Disclosure et al.*, CG Docket No. 09-158 *et al.*, Notice of Inquiry, 24 FCC Rcd 11380, 11389-92, 11395 paras. 25-34, 45 (2009) (seeking comment on information needed by consumers to make purchasing decisions); *Truth-in-Billing and Billing Format; National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing*, CC Docket Nos. 98-170, 04-208, Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, 20 FCC Rcd 6448, 6476-77, paras. 55-56 (2005) (seeking comment on disclosures at the point of sale and tentatively concluding that "carriers must disclose the full rate, including any non-mandated line items and a reasonable estimate of government mandated surcharges, to the consumer at the point of sale").

⁶¹⁵ See *supra* n.192.

⁶¹⁶ See 47 C.F.R. § 54.712(a).

⁶¹⁷ We note that carriers are not permitted to recover interstate TRS costs as part of a specifically identified charge on end users' lines. See *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, Order on Reconsideration, Second Report and Order, and Further Notice of Proposed Rulemaking, 8 FCC Rcd 1802, 1806, para. 22 (1993).

specifies that line items may not exceed the assessable portion of the bill times the contribution factor, could be replaced with the following rule:

Federal universal service contribution costs may not be recovered by contributors as a separate line-item charge on a customer's bill.

395. We seek comment on the relative advantages of any of these potential changes over our current rules regarding the recovery of universal service contributions. In particular, we invite commenters to address whether such rules would benefit consumers by requiring contributors to quote prices for their services that are subject to USF obligations. What cost/burdens would this impose on service providers, and how can such cost/burdens be mitigated? We additionally ask commenters to address whether such rules would result in bills that are simpler and easier to understand. We particularly seek comment from consumer groups on the benefits or disadvantages of such a rule. We also seek comment on whether a rule limiting the pass through of USF charges would unnecessarily reduce carriers' pricing flexibility, resulting in fewer options for consumers.

396. We seek comment on our authority to impose these constraints on contributors' recovery of universal service contributions from their customers. We seek comment on whether sections 4(i), 201, 202, and 254 of the Act, or other statutory provisions, provide sufficient authority to adopt these proposals.⁶¹⁸ Could the Commission adopt such requirements pursuant to its authority to regulate common carrier billing practices under section 201(b) of the Act?⁶¹⁹ Because sections 201 and 202 of the Act only apply to "common carriers" or "telecommunications carriers," could the Commission make these rules applicable to the broader category of "telecommunications providers" under its authority to regulate universal service contribution obligations pursuant to section 254(d) of the Act?

397. We also ask commenters to address whether any of these rules would raise First Amendment or other constitutional concerns, and, if so, how we should address those concerns. Would such rules be consistent with the Commission's other policies and regulations, including the Commission's goals of promoting competition, deregulation, innovation, and universal service?

B. Segregation of USF Pass-Through Charges

398. When a telecommunications provider files bankruptcy, the funds collected by the provider from end-user customers to recover universal service contribution costs are often claimed as part of the bankruptcy estate for the benefit of all the carrier's creditors, rather than for the benefit of the Fund. From 2001 through 2011, the USF was unable to collect, due to provider bankruptcies, \$80 million of the \$90.7 million in funds that such providers had collected as universal service line items. The Fund collected the remaining \$10.7 million through participation in the providers' bankruptcy cases, but only after significant delays and the expenditure of attorneys' fees.

399. We seek comment on whether we should take steps to ensure contributions are made by contributors that become insolvent. Should we adopt a rule specifying that telecommunications providers that impose line items on their customers for federal universal service contributions are acting on behalf of the Fund? Would such a codified rule strengthen the position of USAC and the Commission in bankruptcy proceedings?

⁶¹⁸ See 47 U.S.C. §§ 154(i), 201, 202, 254.

⁶¹⁹ Section 201(b) of the Act requires that all charges, practices, classifications, and regulations "for and in connection with" interstate communications service be just and reasonable, and gives the Commission jurisdiction to enact rules to implement that requirement. See 47 U.S.C. §§ 201(b), 202(a).

400. One potential solution to this problem would be to amend section 54.712 of our rules to require contributors that recover their contribution obligation from end-users to segregate those end-user payments in dedicated trust accounts for the sole benefit of the USF. We seek comment on whether the Commission should adopt such a requirement, and the particulars of its implementation. Should we, for instance, require the account to be interest-bearing? Should we require that USAC have access to or be a co-signatory on each account? In the event of late payment, should we permit contributors to use the trust funds to pay interest, penalties and/or costs assessed against the contributor under our rules for late payment? How would such a requirement best be enforced? We also seek comment on alternative means of ensuring payment of contribution amounts to the Fund in cases of insolvency and financial distress, and their advantages and disadvantages.

C. Limiting Pass-Through of USF Charges to Lifeline Subscribers

401. An increasing number of non-incumbent carriers are serving low-income individuals as eligible telecommunications carriers -- and in doing so bundling long-distance calling, voicemail, text messaging, and other unsupported services into the package purchased by those customers. Indeed, in 2011, more than 69 percent of Lifeline support was provided to competitive ETCs serving low-income consumers.⁶²⁰ Many Lifeline service providers offer a Lifeline offering that provides the consumer with a set number of minutes per month, which can be used for both intrastate and interstate calls in the continental U.S.

402. As noted above, historically incumbent ETCs have not been allowed to pass through universal service contribution obligations associated with the subscriber line charge although they are free to recover any USF contributions associated with interstate (*i.e.*, long-distance) calling.⁶²¹ Nothing in our rules prevents non-incumbent ETCs from passing universal service contribution assessments through to their Lifeline subscribers, regardless of how they structure their Lifeline offering. We understand that some competitive ETCs have sought informal staff guidance regarding to what extent, if any, they may pass a universal service line-item charge through to their Lifeline subscribers.

403. Recently, the Commission adopted a number of significant changes to the Lifeline program to modernize the program in light of current marketplace conditions. It revised the definition of Lifeline to be “voice telephony service,” and it replaced the former system – which linked Lifeline support amounts to the subscriber line charge – to a uniform \$9.25 per month flat rate of support for all providers.⁶²²

404. *Discussion.* We seek comment on rule changes to provide a more level playing field among incumbent ETCs and competitive ETCs regarding their recovery of universal service pass-through charges.⁶²³ In particular, we propose to extend the current rules that apply only to incumbent carriers by

⁶²⁰ See 2011 USAC Annual Report at 44 (reporting that more than 69% of low-income support was distributed to competitive ETCs in 2011). In the recent *Lifeline Reform Order*, the Commission noted that prepaid wireless ETCs account for more than 40 percent of all Lifeline support. *Lifeline and Link Up Reform and Modernization Order*, FCC 12-11, at para. 23.

⁶²¹ See *supra* para. 388.

⁶²² See *USF/ICC Transformation Order and FNPRM*, FCC 11-161 at para. 77; *Lifeline and Link Up Reform and Modernization Order*, FCC 12-11 at para. 58.

⁶²³ Competitive ETCs includes Lifeline-only ETCs. ETCs typically are designated and eligible to receive both high-cost and low-income universal service support. Lifeline-only ETCs, however, are carriers authorized to receive support only for the provision of the Lifeline supported services to eligible low-income consumers. These carriers are not eligible to receive high-cost universal service support. See *Lifeline and Link Up Reform and Modernization Order*, FCC 12-11 at n.647.

amending section 54.712 to prohibit competitive ETCs from recovering USF charges for Lifeline offerings from Lifeline subscribers as follows:

*Lifeline Subscribers. Eligible telecommunications carriers covered by §69.131 and §69.158 are subject to the limitations on universal service end user charges set forth therein. All other eligible telecommunications carriers shall not recover federal universal service contribution costs from Lifeline services to Lifeline subscribers. This limitation does not apply to services to Lifeline subscribers that are not supported by Lifeline, such as per-minute or other additional charges beyond the service for which the customer receives Lifeline support.*⁶²⁴

Such a rule could offer an easily administrable bright-line rule: ETCs would be free to pass along contribution costs through a line-item (or prepaid charge in the case of prepaid cards or services) only if the Lifeline subscriber chooses to purchase additional services beyond the basic Lifeline service. We seek comment on this analysis.

405. The Commission has previously recognized that prohibiting recovery of universal service contributions for the supported Lifeline service from Lifeline subscribers “helps to increase subscribership by reducing qualifying low-income consumers’ monthly basic local service charges” and helps fulfill the statutory goal of making telecommunications services available to low-income consumers.⁶²⁵ As such, would it be appropriate to bar competitive ETCs from passing through universal service contribution costs associated with their basic Lifeline offering, comparable to the restriction that exists today for incumbent carriers?

406. We recognize that this proposed rule would prevent a competitive ETC from fully recovering its contribution costs attributable to a given Lifeline subscriber, to the extent it has a contribution obligation associated with its provision of service to such a customer.⁶²⁶ Would such a rule result in competitive ETCs reducing the number of minutes provided in a Lifeline offering? We note that competitive ETCs are not required to allocate their costs and tariff their basic local exchange service (as incumbent LECs generally must), and there may be no reliable way to determine whether a competitive ETC is effectively recovering the contribution costs associated with the eligible Lifeline service included in the package. How would the Commission treat Lifeline service offerings by competitive ETCs?

407. We seek to develop the record on carrier practices today regarding recovery of USF contribution costs for Lifeline offerings from Lifeline subscribers. For example, we seek comment and data on the extent to which ETCs that offer prepaid services supported by the Lifeline program effectively recover from their Lifeline subscribers the cost of their universal service contributions associated with that Lifeline plan. Do they recover those costs by adjusting the number of minutes provided for the established Lifeline rate? Do competitive ETCs providers that have monthly billing arrangements with Lifeline subscribers pass through USF contribution costs for Lifeline offerings?

⁶²⁴ See Appendix A, 47 C.F.R. § 54.712(b).

⁶²⁵ 2002 Second Contribution Methodology Order and FNPRM, 17 FCC Rcd at 24982, para. 62.

⁶²⁶ Under a revenues-based system, a competitive ETC may have a contribution obligation associated with the Lifeline service, for instance to the extent the Lifeline subscriber uses an all-distance Lifeline offering to make interstate calls. If the Commission were to adopt a connections- or a number-based contribution methodology, whether the provider would have a contribution obligation would depend on whether the Commission chose to exempt connections provided to Lifeline subscribers or numbers associated with Lifeline service offerings from any contribution obligation.

408. We seek comment on the potential impact of a rule prohibiting recovery of contribution costs for Lifeline offerings on Lifeline service providers and their Lifeline subscribers. Given the Commission's steps in the last decade to increase telephone penetration on Tribal lands via the low-income program,⁶²⁷ we are particularly interested in comment from Tribal governments and Tribally-owned and operated Lifeline service providers on the impact of such a rule on Tribal lands and their Lifeline subscribers. Commenters that oppose such a rule should provide specific alternative rules and explain how their proposals would support the goals of universal service.

409. As the Commission has previously noted, if an ETC offers additional unsupported services to a Lifeline subscriber, it historically has been permitted to recover its contribution costs attributed to those service offerings from the customer through line-item charges.⁶²⁸ We seek comment on whether we need to update our rules applicable to both incumbent and competitive ETCs in light of the emergence of Lifeline offerings that may permit the Lifeline subscriber to make calls across state lines as well as within the state. For instance, should we adopt a rule that expressly prohibits all ETCs from recovering any contribution costs associated with a Lifeline offering that provides all-distance calling from their Lifeline subscriber?

410. Finally, we also seek comment on the impact on low-income subscribers generally, *i.e.*, those subscribers that would be eligible for Lifeline, even if they do not participate in the program, of the different contribution methodologies discussed in Section V above. What is the average amount of USF pass-through charge imposed and collected today for low-income consumers?

VIII. PROCEDURAL MATTERS

A. Filing Requirements

411. *Ex Parte Rules.* The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.⁶²⁹ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through

⁶²⁷ See, e.g., *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas et al.*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208 (2000).

⁶²⁸ 2003 *Interim Contribution Methodology Recon Order*, 18 FCC Rcd at 4822, para. 10 (recognizing that "ETCs have always been free to recover" the USF contribution costs of long-distance and other unsupported services from these customers).

⁶²⁹ 47 C.F.R. §§ 1.1200 *et seq.*

the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

412. *Comments and Reply Comments.* Pursuant to sections 1.415 and 1.419 of the Commission's rules,⁶³⁰ interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).⁶³¹

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.
- **People with Disabilities:** To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

413. *Further Information:* For further information, contact Vickie S. Robinson, Telecommunications Access Policy Division, Wireline Competition Bureau at 202-418-7400 (voice), 202-418-0484 (tty).

B. Initial Regulatory Flexibility Analysis

414. As required by the Regulatory Flexibility Act of 1980, as amended,⁶³² the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) for this Notice, of the possible significant economic impact on small entities of the policies and rules addressed in this document. The IRFA is set forth as Appendix E. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice provided on or before the dates indicated on the first page of this Notice.

⁶³⁰ 47 C.F.R. §§ 1.415, 1.419.

⁶³¹ See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (May 1, 1998).

⁶³² 5 U.S.C. § 603.

C. Paperwork Reduction Act Analysis

415. This document contains proposed modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

IX. ORDERING CLAUSES

416. Accordingly, IT IS ORDERED that, pursuant to sections 1, 2, 4(i), 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, and sections 1.1 and 1.421 of the Commission's rules, 47 C.F.R. §§ 1.1, 1.421, this Further Notice of Proposed Rulemaking IS ADOPTED.

417. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

418. IT IS FURTHER ORDERED, pursuant to sections 1.4(b)(1) and 1.103(a) of the Commission's rules, 47 C.F.R. §§ 1.4(b)(1), 1.103(a), that this Further Notice of Proposed Rulemaking SHALL BE EFFECTIVE on the date of publication of a summary thereof in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

APPENDIX A

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 C.F.R. Part 54, Subpart H, as follows:

PART 54—UNIVERSAL SERVICE**Subpart H—Administration**

1. The authority citation for Part 54 continues to read as follows:

47 U.S.C. 151, 154(i), 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

2. Amend § 54.706 by adding paragraphs (f), (g), and (h) to read as follows:

§ 54.706 Contributions.

(a) * * *

(b) * * *

(c) * * *

(d) * *

(e) * * *

(f) *Registration Requirements.* Every common carrier subject to the Communications Act of 1934, as amended, and every entity required to submit a Telecommunications Reporting Worksheet shall register with the Commission in accordance with the provisions of 47 C.F.R. § 64.1195(a)-(c) and the Instructions to the Telecommunications Reporting Worksheet within thirty days of the commencement of provision of service.

(g) *Deregistration Requirements.* If a registrant stops providing interstate and international telecommunications to others, it shall deregister with the Commission within thirty days of its last provision of telecommunications. To deregister, a registrant must comply with the Instructions to the Telecommunications Reporting Worksheet.

(h) *Customer Confirmation Requirements.* A telecommunications carrier or provider providing telecommunications to other carriers or providers shall have an affirmative duty to ascertain whether a customer that is required to register has in fact registered with the Commission prior to offering service to that customer.

3. Amend § 54.711 by adding paragraphs (d) and (e) to read as follows:

§ 54.711 Contributor reporting requirements.

(a) * * *

(b) * * *

- (c) * * *
- (d) *Telecommunications Reporting Worksheet Revisions.* The Wireline Competition Bureau shall annually issue a Public Notice seeking comment on the Telecommunications Reporting Worksheets and accompanying instructions. No later than 60 days prior to the annual filing deadline, the Wireline Competition Bureau shall issue a Public Notice attaching the finalized Telecommunications Reporting Worksheet and instructions.
- (e) *Electronic Filings.* Reporting entities must file the Telecommunications Reporting Worksheet electronically. The Administrator shall assess a \$25 fee on reporting entities for filing paper copies of the quarterly Telecommunications Reporting Worksheet. The Administrator shall assess a \$50 fee on reporting entities for filing paper copies of the annual Telecommunications Reporting Worksheet. The Administrator shall not assess a paper-filing fee on reporting entities that electronically file their Telecommunications Reporting Worksheet, but such entities must also submit either a paper or electronic certification attesting to the accuracy of the information reported therein under penalty of perjury.

4. Amend § 54.712 by adding paragraph (b) to read as follows:

§ 54.712 Contributor recovery of universal service costs from end users.

- (a) * * *
- (b) *Lifeline Subscribers.* Eligible telecommunications carriers covered by §69.131 and §69.158 are subject to the limitations on universal service end user charges set forth therein. All other eligible telecommunications carriers shall not recover federal universal service contribution costs from Lifeline services to Lifeline subscribers. This limitation does not apply to services to Lifeline subscribers that are not supported by Lifeline, such as per-minute or other additional charges beyond the service for which the customer receives Lifeline support.

5. Amend § 54.713 by revising paragraph (b) to read as follows:

§ 54.713 Contributor's failure to report or to contribute.

- (a) * * *
- (b) If a universal service fund contributor fails to make full payment of the monthly amount established by the contributor's applicable Form 499-A or Form 499-Q, or the monthly invoice provided by the Administrator, on or before the date due, the payment is delinquent. Late fees, interest charges, and penalties for failure to remit any payment by the date due shall apply regardless of whether the obligation to pay that amount is appealed or otherwise disputed unless the Administrator or the Commission (pursuant to section 54.719) finds the disputed charges are the result of clear error by the Administrator. All such delinquent amounts shall incur from the date of delinquency, and until all charges and costs are paid in full, interest at the rate equal to the U.S. prime rate (in effect on the date of the delinquency) plus 3.5 percent, as well as administrative charges of collection and/or penalties and charges permitted by the applicable law (e.g., 31 U.S.C. 3717 and implementing regulations).
- (c) * * *
- (d) * * *

(e) * * *

APPENDIX B

Summary Analysis of Wireless and Interconnected VoIP Traffic Studies

Percentage of Interstate/International Revenues
Wireless Traffic Studies

Percentages	Number of Studies on File
30%	2
20-29.9%	100
10-19.9%	65
0.1-9%	40
0%	9

Percentage of Interstate/International Revenues
Interconnected VoIP Traffic Studies

Percentages	Number of Studies on File
50%-59.9%	16
40%-49.9%	12
30%-39.9%	25
20%-29.9%	43
10%-19.9%	59
0.1-9.9%	40
0%	47

Source: Traffic Studies on file as of January 19, 2012, Universal Service Administrative Company.

APPENDIX C

Summary of 2011 FCC Form 499-A Filings

Table 1
Interstate/International Revenue as a Percent of All Revenue
2004-2011

<i>Line</i>	<i>Year</i>	2004	2005	2006	2007	2008	2009	2010	2011
403	Federal or State USF Surcharges	91.4%	88.8%	89.6%	88.1%	88.5%	88.2%	89.6%	90.7%
Fixed Local Services									
404.1	Local portion of flat rate fixed monthly service	2.5%	6.0%	6.1%	1.2%	0.8%	1.6%	2.2%	1.0%
404.2	Toll portion of flat rate fixed local monthly service	--	--	--	36.7%	48.2%	46.7%	54.7%	54.3%
404.3	Fixed local service without interstate toll included	1.1%	0.7%	0.3%	0.1%	0.1%	0.2%	0.4%	0.3%
404.4	Interconnected VoIP offered with broadband	--	--	--	16.8%	11.4%	7.4%	13.4%	17.0%
404.5	Interconnected VoIP offered independent of broadband	--	--	--	47.1%	45.1%	35.4%	32.5%	33.5%
405	Subscriber line charge	97.1%	97.6%	97.4%	97.6%	97.7%	97.7%	97.3%	98.3%
406	Local private line and special access	57.9%	61.5%	65.0%	60.2%	47.6%	51.2%	45.5%	44.5%
407	Payphone	7.4%	3.3%	6.2%	3.1%	4.0%	4.9%	4.9%	3.4%
408	Other local telecom service	3.9%	5.5%	3.8%	5.4%	6.5%	6.8%	5.6%	4.5%
Subtotal Fixed Local Services		21.9%	23.9%	24.7%	24.3%	22.7%	23.1%	22.9%	23.3%

Appendix C, Table 1 – continued

Line	Year	2004	2005	2006	2007	2008	2009	2010	2011
Mobile Services									
409	Mobile monthly and activation charges	21.0%	21.4%	21.1%	22.2%	23.1%	23.4%	23.6%	23.3%
410	Mobile message charges including roaming and air time for toll	22.8%	22.7%	22.4%	23.1%	23.0%	22.9%	23.6%	21.8%
Subtotal Mobile Services		21.7%	21.7%	21.3%	22.3%	23.1%	23.3%	23.6%	23.1%
Toll Services									
411	Prepaid calling cards	88.1%	89.4%	94.3%	90.0%	90.2%	91.2%	90.4%	91.5%
412	International calls	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
413	Operator and toll calls	60.1%	56.0%	50.6%	41.2%	41.8%	40.6%	42.2%	42.8%
414.1	Long distance (all itemized toll on wireline and wireless, other than VoIP)	61.8%	59.8%	61.6%	62.0%	66.9%	67.3%	66.5%	66.8%
414.2	Interconnected VoIP long distance	--	--	--	70.8%	63.7%	64.6%	60.0%	62.3%
415	Long distance private line	82.7%	81.7%	81.5%	80.1%	80.9%	80.0%	73.3%	76.1%
416	Satellite	91.1%	93.8%	92.2%	90.8%	92.7%	96.2%	96.3%	95.0%
417	All other long distance	74.2%	74.2%	79.2%	62.7%	75.8%	70.7%	85.9%	89.7%
Subtotal Toll Services		68.1%	66.9%	68.8%	67.2%	71.6%	71.8%	70.7%	71.7%
Grand Total		35.5%	34.7%	34.6%	33.4%	33.7%	33.7%	33.5%	33.7%

Source: FCC Form 499-A End User Revenue Analysis as of January 19, 2012, Universal Service Administrative Company. Revenue information for 2011 is preliminary and may be adjusted.

Appendix C (continued)

Table 2
Interstate/International Revenue
2004-2011
(in billions)

<i>Line</i>	<i>Year</i>	2004	2005	2006	2007	2008	2009	2010	2011
403	Federal or State USF Surcharges	\$5.9	\$5.8	\$5.8	\$6.5	\$7.0	\$7.2	\$7.0	\$7.9
Fixed Local Services									
404.1	Local portion of flat rate fixed monthly service	\$0.4	\$1.2	\$1.2	\$0.2	\$0.1	\$0.1	\$0.1	\$0.1
404.2	Toll portion of flat rate fixed local monthly service	--	--	--	\$0.9	\$1.8	\$1.8	\$2.0	\$1.8
404.3	Fixed local service without interstate toll included	\$0.5	\$0.3	\$0.3	\$0.1	\$0.0	\$0.1	\$0.1	\$0.1
404.4	Interconnected VoIP offered with broadband	--	--	--	\$0.1	\$0.3	\$0.4	\$0.5	\$0.7
404.5	Interconnected VoIP offered independent of broadband	--	--	--	\$0.4	\$0.9	\$0.9	\$1.1	\$1.5
405	Subscriber line charge	\$11.9	\$11.4	\$11.4	\$10.6	\$9.9	\$9.1	\$8.1	\$7.3
406	Local private line and special access	\$5.6	\$6.9	\$6.9	\$6.6	\$4.2	\$4.8	\$3.7	\$3.6
407	Payphone	\$0.1	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0
408	Other local telecom service	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.1	\$0.0	\$0.0
Subtotal Fixed Local Services		\$18.5	\$19.9	\$19.9	\$18.9	\$17.3	\$17.2	\$15.8	\$15.1

Appendix C, Table 2 continued

Line	Year	2004	2005	2006	2007	2008	2009	2010	2011
Mobile Services									
409	Mobile monthly and activation charges	\$10.9	\$15.6	\$15.6	\$20.4	\$22.3	\$22.8	\$22.8	\$22.0
410	Mobile message charges including roaming and air time for toll	\$7.1	\$4.1	\$4.1	\$3.6	\$3.7	\$4.0	\$3.2	\$2.7
Subtotal Mobile Services		\$17.9	\$19.7	\$19.7	\$23.9	\$26.0	\$26.9	\$26.0	\$24.6
Toll Services									
411	Prepaid calling cards	\$3.0	\$3.4	\$3.4	\$1.9	\$2.5	\$2.5	\$2.0	\$1.8
412	International calls	\$0.6	\$0.6	\$0.6	\$0.7	\$0.8	\$0.8	\$0.7	\$0.5
413	Operator and toll calls	\$1.7	\$1.3	\$1.3	\$0.8	\$0.6	\$0.5	\$0.4	\$0.4
414.1	Long distance (all itemized toll on wireline and wireless, other than VoIP)	\$24.3	\$21.0	\$21.0	\$17.5	\$17.6	\$16.1	\$13.5	\$12.1
414.2	Interconnected VoIP long distance	\$0.0	\$0.0	\$0.0	\$0.3	\$0.6	\$0.9	\$1.0	\$1.2
415	Long distance private line	\$9.5	\$8.6	\$8.6	\$7.4	\$7.1	\$6.8	\$6.4	\$6.7
416	Satellite	\$0.3	\$0.3	\$0.3	\$0.3	\$0.4	\$0.4	\$0.4	\$0.4
417	All other long distance	\$0.8	\$0.6	\$0.6	\$0.8	\$0.6	\$1.2	\$1.8	\$1.6
Subtotal Toll Services		\$40.2	\$35.9	\$35.9	\$29.6	\$30.1	\$29.1	\$26.4	\$24.6
Grand Total		\$82.6	\$81.3	\$81.3	\$79.0	\$80.5	\$80.4	\$75.2	\$72.2

Source: FCC Form 499-A End User Revenue Analysis as of January 19, 2012, Universal Service Administrative Company

APPENDIX D

Data Analysis for Prior Period Adjustments

For illustrative purposes, the table below contrasts the effect that prior period adjustments (“PPAs”) has on the contribution factor under our existing rule (“Historical CF”) compared to the effect that would have occurred if prior period adjustments had occurred over two quarters (“Two Quarter CF”).

All data is from the Public Notices the Commission releases each quarter announcing the quarterly contribution factor.¹ All dollar figures are reported in millions. The demand excludes the effects of prior period adjustments. The Two Quarter PPA is a simple average of the Historical PPA for that quarter and the Historical PPA of the previous quarter. The column “No-PPA CF” represents what the contribution factor would have been if there had been no PPAs at all.

Quarter	Contribution Base	Demand	Historical PPA	Two Quarter PPA	Historical CF	Two Quarter CF	No-PPA CF
2005Q1	\$18,351.88	41,753.22	\$4.31	4(45.37)	10.7%	10.4%	10.7%
2005Q2	418,331.56	41,754.33	\$52.17	428.24	11.1%	10.9%	10.7%
2005Q3	418,370.22	41,784.91	\$(106.25)	4(27.04)	10.2%	10.7%	10.9%
2005Q4	417,869.74	41,748.15	\$(115.23)	4(110.74)	10.2%	10.2%	11.0%
2006Q1	418,450.88	41,798.63	\$(109.42)	4(112.32)	10.2%	10.2%	11.0%
2006Q2	418,317.96	41,807.18	\$(33.37)	4(71.40)	10.9%	10.6%	11.1%
2006Q3	418,773.68	41,780.05	\$(17.51)	4(25.44)	10.5%	10.5%	10.6%
2006Q4	419,362.70	41,777.42	\$(189.79)	4(103.65)	9.1%	9.6%	10.3%
2007Q1	418,549.12	41,833.08	\$(211.29)	4(200.54)	9.7%	9.8%	11.1%
2007Q2	418,013.57	41,843.83	\$12.50	4(99.39)	11.7%	10.9%	11.6%
2007Q3	418,566.48	41,886.09	4(18.65)	4(3.07)	11.3%	11.5%	11.5%
2007Q4	418,949.19	41,887.42	4(30.83)	4(24.74)	11.0%	11.1%	11.2%
2008Q1	419,193.84	41,892.96	4(147.40)	4(89.12)	10.2%	10.5%	11.1%
2008Q2	418,977.95	41,949.17	4(41.72)	4(94.56)	11.3%	11.0%	11.6%
2008Q3	419,039.35	41,984.23	4(65.97)	4(53.85)	11.4%	11.4%	11.8%
2008Q4	419,011.92	42,018.11	4(98.29)	4(82.13)	11.4%	11.5%	12.0%
2009Q1	418,871.05	41,872.54	4(262.34)	4(180.32)	9.5%	10.0%	11.2%
2009Q2	418,714.72	41,895.69	4(12.75)	4(137.55)	11.3%	10.5%	11.4%
2009Q3	418,032.83	41,991.58	437.37	412.31	12.9%	12.7%	12.6%
2009Q4	417,164.44	42,019.39	4(158.64)	4(60.64)	12.3%	13.1%	13.5%
2010Q1	417,254.24	42,037.21	469.33	4(44.66)	14.1%	13.2%	13.6%
2010Q2	416,637.88	42,100.79	479.58	474.46	15.3%	15.2%	14.6%
2010Q3	417,575.57	42,112.43	4(32.61)	423.49	13.6%	14.0%	13.8%
2010Q4	417,441.38	42,100.70	4(131.78)	4(82.20)	12.9%	13.3%	13.9%
2011Q1	416,674.39	42,051.02	4161.46	414.84	15.5%	14.3%	14.2%
2011Q2	416,403.46	42,070.42	427.22	494.34	14.9%	15.4%	14.6%

¹ See Federal Communications Commission, Contribution Factor & Quarterly Filings—Universal Service Fund, available at <http://www.fcc.gov/encyclopedia/contribution-factor-quarterly-filings-universal-service-fund-usf-management-support> (last visited Apr. 16, 2012).

APPENDIX E

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking (Notice). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rules

2. In the Notice, we seek public comment on approaches to reform and modernize how Universal Service Fund (USF or Fund) contributions are assessed and recovered. We seek comment on ways to reform the USF contribution system in an effort to promote efficiency, fairness, and sustainability. We seek comment in four key areas regarding the contributions system: (1) who should contribute to the Fund; (2) how contributions should be assessed; (3) how the administration of the contribution system can be improved; and (4) recovery of universal service contributions from consumers.

3. First, we seek comment on who should contribute to the Fund. Specifically, we seek comment on how we could exercise our permissive authority to define what services or providers should be subject to contribution obligations, either by: (1) clarifying or modifying on a service-by-service basis whether particular services or providers are required to contribute to the Fund;⁴ or (2) adopting a more general rule that would specify which interstate telecommunications providers must contribute without enumerating the specific services subject to assessment.⁵

4. Second, we seek comment on how contributions should be assessed. In particular, what methodology we should use to determine the relative contribution obligation among those providers who are required to contribute. In particular, we seek to refresh the record and update proposals to assess based on revenues,⁶ connections,⁷ numbers,⁸ or a hybrid approach.⁹ For each alternative, we ask parties to address the current and projected impact on the relative contribution burden for consumers and businesses in light of marketplace trends.

¹ See 5 U.S.C. § 603. The RFA has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). See 5 U.S.C. §§ 601–612.

² 5 U.S.C. § 603(a).

³ See *id.*

⁴ See *supra* Section IV.B (Determining Contribution Obligations on a Case-by-Case Basis with Respect to Specific Services), paras. 36 – 73.

⁵ See *supra* Section IV.C (Determining Contribution Obligations Through a Broader Definitional Approach), paras. 74 – 94.

⁶ See *supra* Section V.A (Reforming the Current Revenues-Based System), paras. 98 – 218.

⁷ See *supra* Section V.B (Assessing Contributions Based on Connections), paras. 219 – 283.

⁸ See *supra* Section V.C (Assessing Contributions Based on Numbers), paras. 284 – 341.

⁹ See *supra* Section V.C.5 (Use of a Hybrid System with a Numbers-Component), paras. 322 – 324.

5. Third, we seek comment on how to improve the administration of the contribution system. We seek comment on potential rule changes that could be implemented to provide greater transparency and clarity regarding contribution obligations, reduce costs of administering the program, and improve the operation and administration of the program. Specifically, we seek comment on potential rule changes in six areas that should improve administration: (1) updating the Telecommunications Reporting Worksheet and its instructions;¹⁰ (2) revising the frequency of adjustments to the contribution factor;¹¹ (3) codifying the pay-and-dispute policy;¹² (4) improving oversight and accountability;¹³ (5) mandating electronic filing of the Telecommunications Reporting Worksheet with a fee for paper filer;¹⁴ and (6) implementing a filer registration and deregistration requirement for all parties required to file the Telecommunications Reporting Worksheet.¹⁵

6. Finally, we seek comment on whether the Commission could promote fairness and transparency by modifying the methods by which providers recover the costs of universal contributions from consumers. Specifically, we seek comment on the following questions: (1) whether to limit the flexibility of contributors to pass through contribution costs as a separately stated line item on customer bills;¹⁶ (2) whether to implement measures to ensure contributions are made by contributors that become insolvent;¹⁷ and (3) whether to prohibit competitive carriers from recovering universal service contributions for Lifeline offerings from Lifeline subscribers.¹⁸

B. Legal Basis

7. The legal basis for any action that may be taken pursuant to the Notice is contained in sections 1, 2, 4(i), 4(j), 201, 202, 218-220, 254, and 303(r) of the Communications Act of 1934, as amended,¹⁹ and section 706 of the Telecommunications Act of 1996, as amended.²⁰

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

8. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.²¹ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”²² In addition, the term “small business” has the

¹⁰ See *supra* Section VI.A (Updating the Telecommunications Reporting Worksheet), paras. 344 – 349.

¹¹ See *supra* Section VI.B (Revising the Frequency of Adjustments to the Contribution Factor), paras. 350 – 359.

¹² See *supra* Section VI.C (Pay-and-Dispute Policy), paras. 360 – 366.

¹³ See *supra* Section VI.D (Oversight and Accountability), paras. 367 – 375.

¹⁴ See *supra* Section VI.E (Paper-Filing Fees), paras. 376 – 380.

¹⁵ See *supra*, Section VI.F (Filer Registration and Deregistration), paras. 381 – 386.

¹⁶ See *supra* Section VII.A (Pass-Through of USF Contributions as Separate Line Item Charge), paras. 389 – 397.

¹⁷ See *supra* Section VII.B (Segregation of USF Pass-Through Charges), paras. 398 – 400.

¹⁸ See *supra* section VII.C (Limiting Pass-Through of USF Charges to Lifeline Subscribers), paras. 401 – 410.

¹⁹ 47 U.S.C. §§ 151, 152, 154(i)–(j), 201, 202, 218-220, 254, 257, 303(r), 503, 1302.

²⁰ Telecommunications Act of 1996, Pub. L. No. 104-104, § 706(b), 110 Stat. 153 (codified at 47 U.S.C. § 157 note).

²¹ See 5 U.S.C. § 603(b)(3).

²² See 5 U.S.C. § 601(6).