

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

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

COMMENTS OF GVNW CONSULTING, INC.

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Executive Summary

Prudent public policy dictates expanding the contribution base to ensure long-term sustainability. This should be accomplished by requiring USF assessments on services including, but not limited to: broadband internet access, text messaging, one-way VoIP, and enterprise communications services with a telecom component. Much work remains to maintain the universal service mandate so we believe that the public interest does require expanding the base. Simply stated, the Commission is permitted to assess all providers of interstate telecommunications, even those that do not “offer” telecommunications on a stand-alone basis.

Since at least the 1997 *Universal Service First Report and Order*, this Commission has held that competitive neutrality means that universal service rules should neither unfairly advantage or disadvantage providers or technologies. This is vital in the emerging, converging world of telecommunications, and should result in a policy end game that produces substantially equivalent contributions.

Forgotten in much of the discussion about growth in this sector, broadband usage trends **are possible only due to the ongoing presence of a wired network** for backhaul and last mile connectivity. This is quite odd, as this data has been prominently included in the public record for the last SIX years in multiple dockets that GVNW has filed in.

The history of the last two decades of federal USF contribution assessment has been one of continued and persistent attempts to avoid being subject to assessment. While understandable from the perspective of individual economic motivation, prudent public policy dictates a consideration of the greater good that is achieved from fostering and maintaining the overarching policy of universal service.

While we recommend a continuation of a revenues-based approach, we also recognize that the Commission will need to consider using other approaches in situations where a revenues-based system is not practical.

INTRODUCTION AND BACKGROUND

In its *USF/ICC Transformation Order*, the Commission started an effort to comprehensively reform and modernize the universal service and intercarrier compensation systems. One important issue that was excluded from this *Transformation Order* was the important issue of assessing contributions to fund federal universal service programs. The espoused public policy goal of contribution reform is to address needed changes in contribution assessment.

The purpose of these comments is to respond to the Commission's *Further Notice of Proposed Rulemaking* that was released on April 30, 2012. In the instant *Further Notice*, the Commission seeks comments on these important contribution mechanism issues.

GVNW Consulting, Inc. (GVNW) is a management consulting firm that provides a wide variety of consulting services, including regulatory and advocacy support on issues such as universal service, intercarrier compensation reform, and strategic planning for communications carriers in rural America. We are pleased to have the opportunity to offer comments addressing the contribution assessment issues the Commission has raised in the *Further Notice*.

THE COMMISSION HAS THE ABILITY TO ASSESS ALL PROVIDERS OF INTERSTATE TELECOMMUNICATIONS

Prudent public policy dictates expanding the contribution base to ensure long-term sustainability as required by current federal law. The process that should be undertaken in this regard is discussed in the following section of these comments.

Permissive authority is the policy foundation in this area

In the Telecommunications Act of 1996, Section 254(d) set forth the requirement that interstate telecommunications service providers shall contribute so as to support specific, predictable¹ and sufficient mechanisms necessary to preserve and advance universal service. Section 254(d) also includes a relevant permissive contribution clause that brings into the contribution assessment base “*any other provider ... if the public interest so requires.*”

Over the last nearly two decades, the issue of who ultimately must contribute and what constitutes meeting the public interest has been argued before both this Commission and in the courts².

To date, a broad interpretation that views the term “provide” from the supplier side as opposed to the demand side (e.g., customer view) provides a rationale for expanding the contribution base into the four services cited below.

Other cases (*TOPUC v. FCC*, in the 1999 5th Circuit decision) have clarified the public interest standard to mean that universal service obligations extend to those that benefit from universal service programs due to connection via the public network that

¹ In this instant filing, we focus solely on the specific contribution issues in the Further Notice, and defer commentary on whether the Transformation Order has abrogated the Congressional mandate to maintain specific, predictable and sufficient universal service support mechanisms to other open Commission dockets and to the appellate process currently underway.

² See, for example, *Vonage Holdings Corp. v. FCC*, 489 F.3d 1232-1240 (D.C. Cir. 2007).

otherwise would not be available. Much work remains to maintain the universal service mandate so we believe that the public interest does require expanding the base. Simply stated, the Commission is permitted to assess all providers of interstate telecommunications, even those that do not “offer” telecommunications on a stand-alone basis.

Competitive neutrality issues come into play

Since at least the 1997 *Universal Service First Report and Order*, this Commission has held that competitive neutrality means that universal service rules should neither unfairly advantage or disadvantage providers or technologies. This is vital in the emerging, converging world of telecommunications, and should result in a policy end game that produces substantially equivalent contributions.

This should be accomplished by expanding USF assessments to services including, but not limited to: broadband internet access, text messaging, one-way VoIP, and enterprise communications services with a telecom component. We discuss the rationale for this approach for each in turn:

Broadband Internet access

For the most important addition to the assessment base over the longer-term, we recommend that the Commission assess all retail broadband Internet access services for USF contributions, without exception. Paragraph 72 of the Further Notice highlights the current anomaly that exists with rate-of-return carriers being required to contribute to USF from their stand-alone broadband transmission service regulated under Title II, and other providers not being treated in a similar manner.

Operationally, this would include all wired platforms (telephone, cable and power), satellite networks, and both fixed and mobile wireless networks. In each case, the provider includes telecommunications as a part of its broadband Internet access service. This will provide much-needed sustainability to federal USF.

Forgotten in much of the discussion about growth in this sector, broadband usage trends **are possible only due to the ongoing presence of a wired network** for backhaul and last mile connectivity. This is quite odd, as this data has been prominently included in the public record for the last SIX years in multiple dockets that GVNW has responded to. The citation has been as follows:

In this regard, the Commission must be cautious to recognize the interdependence that wireless carriers have on wireline networks. The mobility provider depends on the wireline provider in its call completion and transport architecture. Current wireless, VoIP, and satellite networks require a connection to land line infrastructure to provide full functionality. This network reality is documented in *Wireless Needs Wires: The Vital Role of Rural Networks in Completing the Call*, published by the Foundation for Rural Service in March, 2006. This paper states in part:

Without thoughtful consideration by policymakers of the challenges of providing wireless services in rural America, as well as the dependence of wireless services on wireline networks, portions of the nation are likely to remain underserved . . . Most importantly, one must recognize that without the underlying wireline network, wireless networks could not exist in their current form. In spite of this obvious fact, large wireless carriers and policymakers alike continue to pursue practices and policies that will in fact undermine the critical wireline network. While discussions on how to modify reciprocal compensation, access charges, and universal service continue, attention must be placed on ensuring these mechanisms are capable of maintaining the fiscal health of that wireline network.

This fact has been in the record for the past six years, but at times various parties including the FCC have found ways to studiously avoid it. The policy question that must be answered is whether it is fair to transition the focus to a broadband platform without including such broadband networks in the funding basis.

Text messaging

While the subject of debate since 2007, there are several simple reasons why text messaging should be assessed. First, texting in simplest terms permits a consumer to send or receive the message in written form in lieu of an audible message transmission. It involves the transmittal of short messages to and from a wireless device. Second, text messaging is fee-based and available on nearly every³ cell phone today. Third, the services that enable text messaging and services that are most comparable to text messaging are considered interstate telecommunications and thus assessable. Consumers use texts as a substitute for placing voice calls, but use the same infrastructure.

One-way VoIP

A current disparity exists between interconnected VoIP services being assessed for USF while “one-way” VoIP, as defined by the Commission at paragraph 58 that ostensibly permits receipt of calls that originate on the public switched telephone network, avoid assessment. These one-way VoIP services utilize the same network as do interconnected VoIP services. We believe that this proceeding is the proper time for the Commission to ameliorate this inequitable definitional dilemma.

Enterprise communications services with a telecom component

As the Further Notice indicates at paragraphs 41 and 42, the current state of affairs with regard to the obligations of enterprise communications providers has created a “gaming” environment that results in disparate treatment of providers that provide

³ Texting capability is likely on 99.999% of cell phones used by a teenager in this country. As teenagers become adults, this will assist in maintaining the viability of universal service.

functionally equivalent and substitutable services. For example, some of these providers contribute to USF, while others that employ different technologies do not.

In order to achieve equity, we recommend that the Commission issue a clarification that all enterprise communications services with a telecommunications component are subject to federal USF assessment. This will assist in building long-term sustainability for federal USF.

THE COMMISSION SHOULD AVOID CONTINUING EXEMPTIONS AND EXCLUSIONS

The history of the last two decades of federal USF contribution assessment has been one of continued and persistent attempts to avoid being subject to assessment. While understandable from the perspective of individual economic motivation, prudent public policy dictates a consideration of the greater good that is achieved from fostering and maintaining the overarching policy of universal service.

This Further Notice provides a good example of the problems we face in achieving stability in the assessment arena, with seven paragraphs devoted to possible exceptions. We respectfully request that the Commission focus on limiting exemptions and exclusions to USF assessment in order to provide a basis for meeting the federal legislative mandate of universal service for all Americans.

As to specific issues raised in the Further Notice, the paragraph 47 discussion related to whether to sustain an exemption for systems integration services provides a cogent example. At a minimum, the absolute size of the firm's assessable base should be included in the calculus. In a situation where a system integrator has a revenue base of \$5 Billion, but its telecom revenues total \$249,999,999, they would be assessed the grand sum of zero. With nearly a quarter billion dollar telecom revenue base, this entity dwarfs

the telecom revenue figures for the majority of current contributors. Such an outcome is appalling.

A BASIS OF REVENUES SHOULD BE SUPPLEMENTED BY ADDITIONAL BASES ON AN AS-NEEDED BASIS IN AN EVOLVING ENVIROMENT

While we recommend a continuation of a revenues-based approach, we also recognize that the Commission will need to consider using other approaches in situations where a revenues-based system is not practical.

While persuasive arguments can be made for revenues, numbers or connections, we believe continuing a modified revenues base enjoys advantages in terms of definitional clarity and transparency in enforcement.

As to definitional clarity, revenues clearly has the most standard and unambiguous definition. Revenues may be obtained from the company's books of account with little trouble. Numbers and connections both lack standard definitions.

As to enforcement transparency, revenues are subject to straightforward verification while both numbers and connections contain at a minimum considerable transitional challenges. If this solved the problem that would indeed be splendid. But, we don't believe the desired end game is this simple.

The Commission should employ multiple approaches to determining how to assess contributions for new services

Challenges will continue to present themselves as services and customers evolve. For example, certain non-interconnected VoIP providers have asserted that they do not collect revenues for the services they provide to their customers. One option in this regard is to use numbers for this class of contributor.

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In the other cases, parties may obtain access only through a peering arrangement.
In these scenarios, the use of connections may solve this assessment dilemma.

Respectfully submitted,

Via ECFS at 7/9/12

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