

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 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 THE  
ALLIANCE OF AUTOMOBILE MANUFACTURERS, INC.**

The Alliance of Automobile Manufacturers, Inc. (the “Alliance”) submits these comments in response to the Further Notice of Proposed Rulemaking (“FNPRM”) issued by the Federal Communications Commission (“FCC” or “Commission”) in the above captioned proceeding.<sup>1</sup> The Alliance urges the Commission to refrain from adopting rules that would assess USF contributions based on assigned telephone numbers or network connections. Replacing the current revenue-based USF regime with such a flat rate approach would undermine the public interest by inhibiting the development and widespread adoption of in-vehicle connectivity services. Additionally, a numbers- or connections-based methodology would be contrary to Section 254(d) of the Communications Act, as amended, because of the inequitable and discriminatory harm that it would cause to providers of in-vehicle connectivity services.

**I. BACKGROUND**

The Alliance is an association of twelve of the world’s leading car and light truck manufacturers, including BMW Group, Chrysler Group LLC, Ford Motor Company, General

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<sup>1</sup> Universal Service Contribution Methodology, WC Docket No. 06-122; A National Broadband Plan for Our Future, GN Docket No. 09051, *Further Notice of Proposed Rulemaking*, FCC 12-46 (rel. Apr. 30, 2012) (“*FNPRM*”); *see also* Wireline Competition Bureau Announces Deadlines for Comments on Universal Service Contribution Methodology Further Notice of Proposed Rulemaking, WC Docket No. 06-122, GN Docket No. 09-51, *Public Notice*, DA 12-905 (rel. June 7, 2012).

Motors Company, Jaguar Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi Motors, Porsche, Toyota, Volkswagen Group of America, and Volvo Cars.<sup>2</sup> Alliance members employ thousands of individuals in the United States and account for over 77 percent of all car and light truck sales. Encouraging the development and implementation of policies that enable the introduction of new technologies to support sustainable mobility is among the Alliance's most important objectives.

As the Commission knows, the Alliance's members have invested substantial resources to develop telematics and other in-vehicle connectivity services that dramatically improve public safety by delivering unparalleled access to emergency responders and medical professionals.<sup>3</sup> These offerings provide subscribers with emergency-related services (such as automatic crash response and emergency assistance), security-related services (such as stolen vehicle recovery, roadside assistance, and remote door unlock), navigation services, and remote and real-time vehicle diagnostic services. In-vehicle connectivity will play an even greater role in enhancing public safety in the future as next generation wireless capabilities emerge that allow emergency responders and other medical providers to obtain, receive, and analyze even more information (including voice, video, and data) related to emergency and roadside incidents.

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<sup>2</sup> See Auto Alliance: Overview, at <http://www.autoalliance.org/index.cfm?objectid=2F2A6C30-637F-11DF-BA61000C296BA163>.

<sup>3</sup> See, e.g., Comments of OnStar, LLC, Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010, CG Docket No. 10-213, 2-4 (Apr. 25, 2011); Reply Comments of Mercedes-Benz USA, LLC, Framework for Next Generation 911 Deployment, PS Docket No. 10-255, 2 (Mar. 14, 2011); Reply Comments of Toyota Motor Sales, Inc., Framework for Next Generation 911 Deployment, PS Docket No. 10-255, 1-3 (Mar. 14, 2011); Ex Parte Letter from Francis J. Dance, Telematics Business Development Manager, BMW of North America, LLC, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, WC Docket No. 06-122, CC Docket No. 01-92 (Aug. 13, 2009); Ex Parte Letter from Jonathan Miller, Volvo Group North America, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, WC Docket No. 06-122 (Nov. 26, 2008).

## II. THE FCC SHOULD NOT ADOPT A NUMBERS- OR CONNECTIONS-BASED USF CONTRIBUTION METHODOLOGY FOR IN-VEHICLE CONNECTIVITY SERVICES

### A. A Flat Rate Approach Would Undermine the Public Interest by Inhibiting the Development and Widespread Adoption of In-Vehicle Connectivity Services.

Adopting a flat rate USF contribution model, such as one based on assigned telephone numbers or network connections, would be contrary to the public interest because it would place an unfair and disproportionate USF obligation on Alliance members and other telematics providers, thereby inhibiting the development and consumer adoption of in-vehicle connectivity services. Unlike traditional wireless and wireline telecommunications services, telematics services do not consume a substantial amount of network capacity or airtime. Instead, subscribers principally rely upon in-vehicle connectivity for isolated events, during times of emergency or roadside incidents, not as an everyday means of communicating with others. Consequently, even though each telematics-equipped vehicle is assigned a telephone number and requires a network connection, the actual amount of “telecommunications” used by telematics is minimal compared to more conventional services subject to USF contribution obligations.<sup>4</sup> In fact, a substantial amount of in-vehicle connectivity transmissions do not rely at all upon human communications, but rather employ machine-to-machine connections to monitor, measure, and report data.

By ignoring the extent of telematics services’ actual use of the telecommunications network, a numbers- or connections-based USF contribution system would require telematics providers to bear an inequitable USF burden. Such a modification could reasonably be expected to yield a dramatic and prejudicial increase in the USF assessment borne by telematics providers, and in many cases cause telematics providers’ USF obligations to exceed the interstate

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<sup>4</sup> See, e.g., Ex Parte Letter from Thomas Jeffers, Vice President for Public Policy, OnStar, to Marlene Dortch, Secretary, FCC, WC Docket No. 06-122, CC Docket No. 96-45 (Nov. 18, 2010).

telecommunications revenues generated from the provision of telematics.<sup>5</sup> Such a result would undermine the Commission’s objective of fairness in this proceeding, as well as the guiding principle that the USF regime be “fair for contributors.”<sup>6</sup>

The prejudicial impact of a numbers- or connections-based USF contribution regime would be especially problematic in view of the unique and transformative ways that telematics enhances public safety. The Commission has long recognized how critical telematics services are in promoting public safety, and that consumers rely on telematics in a variety of situations, emergency and non-emergency alike.<sup>7</sup> For this reason, the Commission has deemed telematics service to be an effective alternative to E911-capable commercial wireless services.<sup>8</sup>

A flat-based USF contribution methodology would also undermine the public interest by imposing a significant obstacle to the evolution of next-generation telematics systems (and the enhancements to public safety such new systems will bring). A number of Alliance members are currently striving to implement next-generation capabilities in their future fleets.<sup>9</sup> However, “[t]here are many challenges to designing next generation telematics and infotainment solutions, including supporting safe and responsible driving, advancing vehicle-to-vehicle solutions and

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<sup>5</sup> See Comments of OnStar Corporation, Universal Service Contribution Methodology, WC Docket No. 06-122, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, 4-7 (Nov. 26, 2008); Comments of Toyota Motor Sales, Inc., Universal Service Contribution Methodology, WC Docket No. 06-122, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, 8 (Nov. 26, 2008); Ex Parte Letter from David L. Sieradzki, Counsel to OnStar, to Marlene Dortch, Secretary, FCC, WC Docket No. 06-122 (Nov. 20, 2008) (discussing ex parte meeting between the FCC and representatives from OnStar, Toyota, ATX, Hughes Telematics, and Volvo Group North America); Ex Parte Letter from Francis J. Dance, Telematics Business Development Manager, BMW of North America, LLC, to Marlene Dortch, Secretary, FCC, WC Docket No. 06-122 (Dec. 3, 2008); Comments of the ATX Group, Inc., WC Docket No. 06-122, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, 11-13 (Nov. 26, 2008).

<sup>6</sup> *FNPRM* ¶ 24.

<sup>7</sup> Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Report and Order and Second Further Notice of Proposed Rulemaking*, 18 FCC Rcd 25340 ¶ 72 (2003).

<sup>8</sup> *Id.* ¶ 76.

<sup>9</sup> See Press Release, Verizon Wireless, Verizon Joins With Leading Global Auto Companies to Establish 4G Venture Forum for Connected Cars (June 6, 2012).

improving sustainability, among others.”<sup>10</sup> Adopting one of the proposed flat-rate USF contribution methodologies would only compound the development hurdles. By contrast, maintaining a revenue-based contribution system would promote the development and adoption of next-generation in-vehicle connectivity services, consistent with the Commission’s longstanding goal of fostering new connectivity products and services.<sup>11</sup>

B. A Flat Rate Approach Would Violate Section 254(d) by Discriminating Against Providers of In-Vehicle Connectivity Services.

A numbers- or connections-based approach would violate Section 254(d) of the Communications Act, as amended, by requiring in-vehicle connectivity service providers to pay more in USF contributions than the services generate in interstate telecommunications revenues. Although the FCC maintains some discretion in devising a USF contribution methodology, Section 254(d) requires the FCC to ensure that telecommunications providers contribute to the USF “on an equitable and nondiscriminatory basis.”<sup>12</sup> For this reason, the U.S. Court of Appeals for the Fifth Circuit has held that a USF contribution system that requires a provider “to pay more than [it] can generate in interstate [telecommunications] revenues” is “arbitrary and capricious and

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<sup>10</sup> *Id.*

<sup>11</sup> *See, e.g.*, Fixed and Mobile Services in the Mobile Satellite Service Bands at 1525-1559 MHz and 1626.5 MHz, 1610-1626.5 MHz and 2483.5-2500 MHz, and 2000-2020 MHz and 2180-2200 MHz, *Report and Order*, 26 FCC Rcd 5710, 5716 ¶ 13 (2011) (concluding that flexible use in the 2 GHz band would “promote[] investment in the development of new services and additional innovative technologies”); Amendment of Part 22 of the Commission’s Rules to Benefit the Consumers of Air-Ground Telecommunications Services, Biennial Regulatory Review – Amendment of Parts 1, 22, and 90 of the Commission’s Rules, *Order on Reconsideration and Report and Order*, 20 FCC Rcd 19663, 19667 ¶ 7 (2005) (concluding that its decision will “promote the deployment of emerging broadband services”). Commissioner Pai likewise recently emphasized his desire to promote policies that will encourage the “develop[ment of] new products and services” and to “remove uncertainty that can deter businesses and investors from taking risks.” Statement of Ajit Pai, Federal Communications Commission, Hearing Before the United States Senate Committee on Commerce, Science, and Transportation: “Oversight of the Federal Communications Commission,” May 16, 2012.

<sup>12</sup> *FNPRM* ¶ 7; 47 U.S.C. § 254(d).

manifestly contrary to” Section 254(d).<sup>13</sup> It further found that a contribution method would be “discriminatory” under the Communications Act if it damaged financially some providers significantly more than others.<sup>14</sup>

The Commission has likewise suggested that a USF contribution assessment based on numbers could be unfair, discriminatory, and contrary to law in some contexts. In proposing USF reforms in 2008, the Commission indicated that a numbers-based USF contribution methodology would be inappropriate as applied to business service providers because it would yield “inequitable contribution obligations,” as some services do not use numbers to the same extent as others.<sup>15</sup> Although the Commission did not ultimately adopt the USF reform proposals at issue in that proceeding, such reasoning is consistent with the Commission’s understanding that Section 254(d) requires USF rules that are “competitively neutral,” and which “neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.”<sup>16</sup>

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<sup>13</sup> *Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393, 434-35 (5th Cir. 1999) (citing *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 844 (1984)).

<sup>14</sup> *Id.* at 435.

<sup>15</sup> High-Cost Universal Service Support, WC Docket No. 05-337, *Order on Remand and Report and Order and Further Notice of Proposed Rulemaking*, 24 FCC Rcd 6475, 6552 ¶ 130 (2008).

<sup>16</sup> *FNPRM* ¶ 8 (citing Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report and Order*, 12 FCC Rcd 8776, 8801 ¶ 47 (1997)). For example, the Commission has revised its USF safe harbor percentages in the past “to ensure that universal service contributions remained equitable and non-discriminatory.” See Universal Service Contribution Methodology, WC Docket No. 06-122, *Report and Order and Notice of Proposed Rulemaking*, 21 FCC Rcd 7518, 7523-24 ¶ 10 (2006).

### III. CONCLUSION

For the reasons stated herein, the Commission should not replace the current revenue-based USF contribution regime with a system based on telephone numbers or connections. Not only would such an approach be contrary to law, it would impose an unfair and disproportionate burden on existing telematics providers and stifle the development and deployment of next-generation in-vehicle connectivity services that will continue to play a critical role in enhancing road safety.

Respectfully submitted,

/s/ Ari Q. Fitzgerald

Robert Strassburger  
Vice President of Vehicle Safety

Ari Q. Fitzgerald  
Christopher J. Termini

Alliance of Automobile Manufacturers  
1401 Eye Street, N.W., Suite 900  
Washington, DC 20005  
Tel: (202) 326-5500  
Fax: (202) 326-5598

Hogan Lovells US LLP  
555 Thirteenth Street, NW  
Washington, DC 20004  
Tel: (202) 637-5423  
Fax: (202) 637-5910

July 9, 2012

*Counsel to the Alliance of Automobile  
Manufacturers, Inc.*