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

To: Wireless Telecommunications Bureau

COMMENTS OF

THE RURAL TELECOMMUNICATIONS GROUP, INC.

RURAL TELECOMMUNICATIONS GROUP, INC.

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Summary

RTG applauds the Commission for moving forward to reform a universal service fund ("USF") contribution methodology that has clearly become outdated. As the Commission proceeds, RTG urges the Commission to keep an eye on the future in order to ensure a sustainable base of USF contributors. The Communications industry continues to experience a shift in the technology and services consumers utilize – a shift toward services provided over broadband networks. The shift has caused the current contributions base to shrink, and as it continues to shrink, the USF contribution factor will continue to remain high, putting further pressure on those that are required to contribute to universal service, and increasing the competitive advantage for those who are not contributing. The Commission must make sure that its reforms to the contributions system are forward-thinking enough to take into account shifts in technology and services.

The Commission's first step should be to require all providers of broadband Internet access services and all providers of non-interconnected or "one-way" Voice over Internet Protocol ("VoIP") service to contribute to the USF. Using its permissive authority pursuant to Section 254(d) of the Communications Act, the Commission should bring these services into the base of contributors to universal service. Such a move is in the public interest. Now that universal service supports broadband, broadband Internet access providers and one-way VoIP providers that have not had to contribute to universal service in the past must be required to do so. The Commission must also maintain the statutory requirement that universal service contributions be made on an equitable and nondiscriminatory basis. If the Commission ultimately decides to assess mobile wireless providers' traditional text messaging revenues, it must also assess the revenues of other, similar messaging services.

As part of its consideration of whether to move to a completely new system for assessing USF contributions, the Commission must fully address the inherent flaws contained in both a connections-based and a numbers-based methodology. Moving to either of these new systems will allow certain services or providers to escape USF contribution obligations, could pose very complex problems, and would likely take significant time to implement, which could bog down the overall universal service and intercarrier compensation reform process.

Finally, the Commission should ensure that all those that benefit from broadband networks are helping to support them by contributing to the USF. It is time for a fair system that splits the contribution obligation between network operators and network beneficiaries. Network beneficiaries burden networks with large amounts of traffic and have business models that would not be possible or profitable without the existence of a ubiquitous national broadband network. Requiring these entities to support the USF will result in more robust networks, which will in turn help network beneficiaries reach more and more users. All those who benefit from a ubiquitous broadband communications network must be required to help support it.

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The Rural Telecommunications Group, Inc. ("RTG"),[1] by its attorneys, hereby submits its comments in response to the Federal Communications Commission's ("FCC" or "Commission") Further Notice of Proposed Rulemaking in the above-captioned proceeding.[2] The time for reforming the universal service fund ("USF") contributions methodology is long overdue, and RTG applauds the Commission for taking this next, difficult step on the path to comprehensive USF reform.

It is clear that the current contribution methodology has become outdated. As the Commission undertakes comprehensive reform of the way the USF is funded, it must keep an eye on the future. The communications industry continues to experience a shift in the

[1] RTG is a Section 501(c)(6) trade association dedicated to promoting wireless opportunities for rural telecommunications companies through advocacy and education. RTG's members have joined together to speed delivery of new, efficient, and innovative communications technologies to the populations of remote and underserved sections of the country. Many of RTG's members are competitive eligible telecommunications carriers. RTG's members are comprised of both independent wireless carriers and wireless carriers that are affiliated with rural telephone companies. Each of RTG's members serves less than 100,000 subscribers.

[2] *Universal Service Contribution Methodology*, WC Docket No. 06-122, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, Further Notice of Proposed Rulemaking, FCC 12-46 (Apr. 30, 2012) ("*FNPRM*").

technology and services consumers utilize. Specifically, consumers are moving away from traditional services – services that are assessable under the current USF contributions methodology – toward new broadband services that are not assessable. From June 2010 to June 2011, the number of retail switched access lines decreased from 122 million to 112 million.[3] Over the same two-year period, the total number of reported U.S. Internet connections over 200 kbps in at least one direction grew from 157 million to 206 million.[4] With the advent of digital and Internet Protocol ("IP") technology and the shift away from circuit-based technology to IP technology and the resulting advance of higher speed internet access and increased broadband usage, it is time that these service providers begin participating in funding universal service.

The shift has also caused the current contributions base to shrink, and as it continues to shrink, the USF contribution factor will continue to grow, putting further pressure on those that are required to contribute to universal service,[5] and increasing the competitive advantage for those that are not contributing. The Commission must make sure that its reforms to the contributions system are forward-thinking enough to be able to take into account shifts in technology and services. The Commission should start by requiring all providers of broadband Internet access services and all providers of non-interconnected or "one-way" Voice over

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[3] *Local Telephone Competition: Status as of June 30, 2011*, Industry Analysis and Technology Division, Federal Communications Commission Wireline Competition Bureau, page 2, Figure 1 (June 2012), available at http://transition.fcc.gov/wcb/iatd/comp.html. From June 2010 to June 2011, the number of interconnected VoIP subscriptions increased from 29 million to 34 million. *Id*.

[4] *Internet Access Services: Status as of June 30, 2011*, Industry Analysis and Technology Division, Federal Communications Commission Wireline Competition Bureau, p.16, Table 1 (June 2012), available at available at http://transition.fcc.gov/wcb/iatd/comp.html.

[5] The universal service contribution factor is set quarterly based on FCC Form 499-Q filings. It reached a record high of 17.9 percent in the first quarter of 2012. *See Proposed First Quarter 2012 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 11-2020 (Dec. 14, 2011).

Internet Protocol ("VoIP") to contribute to the USF. The Commission should also strive to strike a competitive balance between assessable and non-assessable services, fully address the inherent flaws contained in connections-based and numbers-based methodologies, and ensure that all those that benefit from a ubiquitous national broadband network help support the USF.

I. The Commission Should Take Immediate Action to Broaden the Base of Providers and Services that Must Contribute to the Universal Service Fund.

The Commission should bifurcate this proceeding to address issues that require immediate attention. While RTG recognizes that adopting and implementing comprehensive, forward-thinking reforms may take a long time, this does not mean that the Commission should delay acting on certain issues where such action will result in immediate public interest benefits. The Commission should bifurcate this proceeding so that it may take immediate action to broaden the base of contributors to the USF. The public interest supports broadening the base. Requiring more providers to contribute to the USF will spread USF costs among a broader base, lower the contribution requirement for current providers, and provide assurances of broadband services for those consumers in need, regardless of the methodology used to assess contributions.

As soon as possible, the Commission should exercise its permissive authority[6] to broaden the base of USF contributors by requiring all providers of broadband Internet access service and all providers of one-way VoIP service to contribute to the USF. The Commission has ample permissive authority to include broadband providers in the contribution system. For example, not too long ago, the Commission exercised its permissive authority to make interconnected

[6] Section 254(d) provides the FCC with both mandatory and permissive authority to assess USF contributions, as well as exempt carriers whose contribution would be *de minimis*. *See* 47 U.S.C. § 254(d).

VoIP providers contribute to the USF.[7] The Commission took action despite the fact that VoIP has not been classified as either a telecommunications or information service.

A. All Broadband Internet Access Service Providers Should Contribute to the Universal Service Fund.

In the *FNPRM*, the Commission asks whether broadband Internet access service providers should contribute to the USF. RTG supports requiring broadband providers to contribute to the USF. The FCC is reforming the high cost portion of the USF to primarily support the deployment of broadband networks. The contributions mechanism must be reformed in a way that reflects this purpose. Now that universal service supports broadband, many broadband providers that have not had to contribute in the past must be required to do so. The contribution methodology ultimately adopted must be equitable and must work for the foreseeable future. The only way to ensure an equitable technology-neutral approach to contributions that will continue to work as technologies continue to evolve is to assess contributions on broadband providers. Providers that deliver Broadband Internet access over any platform should be required to contribute to the USF, including but not limited to cable companies, satellite Internet access providers, and terrestrial wireless providers.

Requiring all broadband providers to contribute to the USF will broaden the base of contributors lowering the amount paid by each current telecommunications provider. It should also be noted that assessing broadband Internet access will not discourage broadband adoption. The Commission is currently in the planning stages of building a broadband Lifeline program to increase adoption. This program requires broadband providers to contribute to the USF to support the Commission's efforts.

[7] *See Universal Service Contribution Methodology et al.*, WC Docket No. 06-122 *et al.*, Report and Order and Notice of Proposed Rulemaking, FCC 06-94 (June 27, 2006) ("*2006 Contribution Methodology Order*").

Broadband Internet access service is classified as an information service, and is not subject to the same regulations as telecommunications service. Even though such service is classified as an "information service," and revenues from information services have never been included in the base of USF contributions, the Commission can assess USF contributions on providers of such services because there is a telecommunications component of such services. In the *FNPRM*, the Commission reminded the industry that broadband Internet access service includes the provision of telecommunications service.[8] The Commission should exercise its permissive authority and assess broadband Internet access providers because such service includes telecommunications. Broadband Internet access services are inherently interstate, and the Commission should assess contributions on these services.

B. All One-Way/Non-Interconnected Voice Over Internet Protocol Service Providers Should Contribute to the Universal Service Fund.

The FCC's goal for reforming the USF contributions methodology should be to broaden its base. A larger base will bring down the contributions amount for current contributing service providers and ultimately the consumers to whom these fees are passed through. In the *FNPRM*, the Commission asks if "one-way" VoIP providers (such as Skype) should contribute to the USF. One-way VoIP providers should be required to contribute to the USF. One-way VoIP service provides users with the capability to originate calls to the PSTN *or* terminate calls from the PSTN.[9] Interconnected VoIP service "[p]ermits users generally to receive calls that originate on the public switched telephone network *and* to terminate calls to the public switched telephone

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[8] *FNPRM* at ¶66, fn.182 (citing *Nat'l Cable & Telecomm. Ass'n v. Brand X Internet Servs*., 545 U.S. 967, 987-89 (2005); *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities et al*., CC Docket No. 02-33 *et. al*., Report and Order and Notice of Proposed Rulemaking, FCC 05-150, ¶¶10, 15 (2005).

[9] *FNPRM* at ¶58.

network."[10] In other words, there is only one very small difference between one-way VoIP and interconnected VoIP. Both services provide users with the nearly the same capabilities, but because one service, interconnected VoIP, provides users the ability to make *and* receive calls, it is a USF assessable service. Nevertheless, one-way VoIP provides consumers with the ability to make a voice call similar to a call using a traditional telephone line, and should be subject to USF contributions. The Commission has ample authority to assess one-way VoIP service providers, because as shown above, there is only a slight difference between interconnected VoIP and one-way VoIP – a difference that does not warrant one service being assessable and the other not assessable. The Commission should find that one-way VoIP is "telecommunications" just as it has previously determined interconnected VoIP is telecommunications.[11]

One-way VoIP services are nearly identical to interconnected VoIP services, but providers of such services currently do not have to contribute to the USF. This "cost advantage" harms carriers such as RTG members who are assessed USF contributions because consumers are increasingly replacing assessable services with less costly non-assessable services. The Commission must strike a competitive balance between assessable and non-assessable services. Services that are functionally equivalent and directly compete with each other should be treated similar under a reformed contribution methodology. Subjecting similar services to similar

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[10] 47 C.F.R. § 9.3 (emphasis added).

[11] *2006 Contribution Methodology Order* at ¶41. The Commission extended USF contribution obligations to interconnected VoIP providers without classifying the service as either a telecommunications service or an information service. *Id*. at ¶35.

treatment will fulfill the Communications Act's requirement that contributions to universal service be made on an equitable and non-discriminatory basis.[12]

C. If the Commission Assesses Mobile Wireless Providers' Text Messaging Revenues, It Should Assess all Providers of Competing Messaging Services.

In the *FNPRM*, the FCC observes that text messaging revenues were approximately $11 billion in 2008 and $16 billion in 2009, and estimates that those revenues were approximately $17 to $19 billion in 2010 and 2011.[13] The *FNPRM* asks whether providers of text messaging services should be required to contribute to the USF and seeks comment on the future of the text messaging marketplace.[14] If the Commission ultimately decides to assess mobile wireless providers' traditional text messaging revenues, it must also assess the revenues of other, similar messaging services.[15] The Communications Act requires universal service contributions to be made on an equitable and nondiscriminatory basis.[16] This requires the Commission to ensure universal service contribution obligations are equal among competing services—traditional text messaging and text messaging services that "ride" on mobile wireless carriers' data networks.

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[12] 47 U.S.C. § 254(b)(4).

[13] *FNPRM* at ¶54.

[14] *See* FNPRM at ¶¶49-56.

[15] For example, Kik Messenger is one the most popular mobile messaging apps among younger smartphone users. It is available free for iPhone, Android, Windows Phone 7, Symbian, and BlackBerry. Kik utilizes a user's data plan or WiFi to send and receive messages. Less than 1KB of data is used to send messages on Kik and it uses approximately 100KB to send or receive a picture. *See* http://kik.com/support, (Kik Mobile Messenger Support, FAQ, Question 7). Additionally, numerous other messaging services are available for every type of wireless phone and mobile operating system (*i.e.*, WhatsApp Messenger, Yahoo! Messenger, Bobsled Messaging, ICQ Messenger, and Facebook Messenger). These messaging service providers receive revenue and should be assessed.

[16] "Every telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service." 47 U.S.C. § 254(d).

Indeed, mobile wireless carriers are experiencing a drop-off in text messaging because of third-party text messaging services. To ensure competitive neutrality and an equitable and nondiscriminatory contribution methodology, the Commission must make sure its regulations include the next form of text messaging, such as third-party messaging services, if it ultimately decides to assess mobile wireless carriers' traditional text messaging revenues.

II. There Are Flaws in a Connections-Based Methodology and a Numbers-Based Methodology.

The Commission is considering the advantages and disadvantages of adopting an entirely new USF contributions methodology. It is also considering whether it should maintain and modify the current revenues-based system that is currently used. Keeping and modifying the current revenues-based system is in the public interest. Moving to a new system could pose complex problems and would likely take significant time to implement delaying the public interest benefits associated with USF contribution reform. The added burdens of switching to a new system could bog down the overall USF/ICC reform process. Universal service and consumers will be harmed if the FCC does not correctly update the USF contributions methodology. If the FCC ultimately adopts either a numbers-based or a connections-based system, it must first address how it will correct the glaring defects and obvious disadvantages contained in both. However, if the FCC ultimately retains the existing revenues-based methodology, it should also correct the known flaws in its current approach.

A. Numbers-Based Methodology

A numbers-based methodology would cover voice services provided using wireline, wireless, and interconnected VoIP technology. These voice services require telephone numbers. A numbers-based methodology would assess a flat fee on every telephone number, regardless of the voice technology used. Relying on a count of North American Numbering Plan phone numbers to determine how much carriers pay in to the USF is neither workable nor forward-thinking. While the amount of working telephone numbers may continue to grow, the amount of broadband services being used without a telephone number to access the Internet is growing faster. Relying on a numbers-based system would not capture the amount of usage and would enable numerous service providers and beneficiaries to avoid supporting universal service. For example, broadband providers would not be assessed under this system for broadband-only connections they provide to consumers.

The Commission must not adopt a contributions methodology that enables companies to avoid paying their fair share in to the USF. A numbers-based methodology simply will not be able to capture all those providers and services that should be contributing to the USF.

B. Connections-Based Methodology

Moving to a connections-based methodology is also problematic. Similar to a numbers-based approach, a pure connections-based methodology will allow certain services to dodge contribution obligations. Certain services, such as one-way/non-interconnected VoIP, would not be assessed because they do not provide a connection, but ride on top of a connection. Accordingly, a connection-based methodology would be inequitable and short change the contribution base.

Transitioning to a new connections-based methodology could also take an enormous amount of time. The Commission would have to first define "a connection." This raises several threshold questions. For example, are interconnection points assessed? are specialized connections, such as those used by ebook readers, assessed? are special access circuits assessed? How are backbone connections to be assessed? Are Internet peering points assessed? What about machine-to-machine connections? Deliberating over the answers to these questions will bog down the process and slow the ability to continue to fund broadband services in high cost areas and to provide lifeline support for broadband services.

C. Revenues-Based Methodology

Retaining the existing revenues-based system is the best solution as long as the Commission increases the contribution base. By expanding the base of contributors to include broadband Internet access providers and one-way VoIP providers, the Commission will ensure that those that profit from broadband services will also contribute to the build out of broadband services in high-cost areas and support those who rely on lifeline support for a broadband connection.

In adopting such a change, the FCC should also re-evaluate the 37.1 percent wireless safe harbor for determining interstate revenues. The wireless safe harbor provides wireless carriers a way to account for interstate and international telecommunications revenues. Mobile wireless carriers that utilize the safe harbor report 37.1 percent of their telecommunications revenues as interstate on their quarterly telecommunications worksheet. The safe harbor was last increased in 2006, when the Commission raised it from 28.5 percent to 37.1 percent. The Commission chose the 37.1 percent safe harbor because it was "the highest percentage of interstate and international usage by a wireless company supported in the record."[17]

A number of reasons were cited by the Commission to justify raising the safe harbor to 37.1 percent. The Commission stated that it was raising the safe harbor to "sustain the sufficiency of the Fund," and to better reflect the mobile wireless industry's interstate revenues

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[17] *2006 Contribution Methodology Order* at ¶25. The 37.1 percent is based on a traffic study conducted by TNS Telecoms for TracFone Wireless, which showed interstate minutes of use ranged from 11.9 percent to 37.1 percent.

in light of the extraordinary growth of wireless services.[18] In other words, the Commission raised the safe harbor partly as a way for the Commission to further support the USF through the growth of mobile wireless carrier revenues.

The Commission should now adopt an updated contributions methodology that takes pressure off the wireless industry. Wireless carriers contribute a very large amount to the USF, but USF support was cut dramatically by new rules adopted in the *USF/ICC Transformation Order*. The Commission should no longer look to mobile wireless carriers to sustain the sufficiency of the fund, but should instead take action to increase the base of contributors to the USF. When it does, such a high safe harbor for wireless will not be justified. The Commission should undertake a separate proceeding to gather data to determine what is appropriate. Regardless of the determination on the safe harbor, the Commission should retain mobile wireless carriers' ability to undertake company-specific traffic studies to determine their actual interstate end-user telecommunications revenues.

III. The Commission Should Fund Universal Service Through Contributions From All Beneficiaries of a Ubiquitous National Broadband Network.

The public interest is best served by all beneficiaries of broadband services contributing to a fund that ensures broadband universal service in the United States. Companies that rely heavily on consumers accessing the Internet to utilize their services are currently not contributing in any way to support universal access to broadband services. These companies often benefit from broadband usage more than the carriers and consumers who are currently supporting universal service. The FCC should develop a revenues-based methodology for these beneficiaries of broadband access to also contribute to the universal service fund. RTG proposes a methodology that would split the contribution obligation between network operators and

[18] *2006 Contribution Methodology Order* at ¶23.

"network beneficiaries" initially using a 75/25 approach. Network operators consist of the entities that currently contribute to the USF with the addition of Internet access service providers and one-way VoIP providers, while network beneficiaries are those entities that have built their businesses on access to broadband networks and produce large amounts of network traffic. Over the next five years, the percentage of support provided by network beneficiaries should increase by five percent a year so that it eventually becomes a 50/50 split between network providers and the network beneficiaries. The process would work similar to the USF contributions methodology that is currently being used today, but it would split the contributions burden in a more equitable manner among network operators and network beneficiaries. Under RTG's proposal, the network beneficiaries share more equally in ensuring that all consumers (including those in high cost areas and those who are not in a position to afford services) have the ability to obtain broadband services.

Under an operator/beneficiary contributions system, the Universal Service Administrative Company ("USAC") would determine the overall size of the USF or total contribution obligation. The obligation would then be split into two parts, one totaling 75% of the total and another making up 25% of the total contribution obligation. Assessments from broadband network providers would make up the 75% portion, and assessments from network beneficiaries would make up the 25% portion.

Under RTG's proposal, 75% of USF contributions would come from broadband network operators based on a revenues-based methodology. The methodology would apply to all entities currently assessed, plus broadband Internet access providers and one-way VoIP providers as discussed above. Assessed revenue would also include revenues derived from text messaging services. USAC would calculate a contribution factor and apply it to broadband network operators' revenues, similar to the way the USF contributions system works today.

The other 25% of USF contributions would come from "network beneficiaries." Network beneficiaries cause large amounts of network traffic and have business models that would not be possible or profitable without the existence of a national ubiquitous national broadband network (*e.g.*, Google, Facebook, Ebay, Amazon, NetFlix, Hulu, etc.). Network beneficiaries would also include those who provide cloud computing and electronic storage services (Microsoft, Apple, Cisco, etc.). The Commission would need to undertake a further proceeding involving such parties in order to determine how broadly to define network beneficiaries and the best methodology for assessing their contributions. For example, the beneficiaries share could be based on revenues or the amount of traffic each network beneficiary puts on carriers' networks.

Under the current USF contributions system, the contribution factor fluctuates depending on the overall size of the fund and the amount of interstate revenues produced. Under the proposed operator/beneficiary system, the 75/25 amount could also fluctuate. If the beneficiaries overall use of carriers' networks drops, the 25% assessment amount would drop, and vice versa.

There is justification for a contribution system that is divided between network operators and network beneficiaries, and there is justification for fluctuating contribution amounts between the two. Network beneficiaries are causing overwhelming demand on broadband networks and are providing non-assessable services that compete with network providers' services that are assessed under the current USF contributions methodology. Network operators have to face these burdens on their own. When "network beneficiaries" cause more traffic to be carried over a network, the network operators must upgrade equipment and increase overall capacity (i.e., local network bandwidth, backbone connections, and fiber connections to wireless towers). The "network beneficiaries" do not contribute any support to make these upgrades. However, in order to have a truly equitable and nondiscriminatory USF contributions methodology, network beneficiaries must be included. It is in the interest of network beneficiaries to help support broadband networks. The increase in the amount of data traffic flowing across broadband networks shows no signs of slowing down. The number of connected devices will only continue to grow. Helping to support more robust networks will in turn help network beneficiaries reach more and more users.

IV. Conclusion

The current USF contributions methodology, in which wireless carriers make payments that account for a large share of the USF while having their USF support cut at an unprecedented rate, along with a shrinking base of contributors, results in an increasingly high contribution factor. It is clear that burdening wireless carriers on the contribution side of USF is becoming increasingly unfair. The time has come for the Commission to adopt a more equitable and non-discriminatory USF contributions methodology as it expands the fund to include broadband serivices. The first step toward a more fair contributions system is requiring all providers of broadband Internet access services and all providers of non-interconnected or "one-way" VoIP to contribute to the USF. The Commission should also level the playing field for all providers by addressing the competitive disparities between assessable and non-assessable services. Finally, the Commission should ensure that all those that benefit from a ubiquitous national broadband network help support the USF.

Respectfully submitted,

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