

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

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

COMMENTS OF GOOGLE INC.

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Google Inc. (“Google”) files these comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Further Notice of Proposed Rulemaking seeking comment on reform and modernization of the Universal Service Fund (“USF”) contribution mechanism.¹

INTRODUCTION AND SUMMARY

The need to reform the federal USF system is more important now than ever before. The FCC has already concluded that innovation, economic growth, and public welfare are best attained by a nationwide shift to all-Internet Protocol (“IP”) networks and broadband infrastructure. Modernizing USF distribution to include support for broadband was a critical first step. To create an efficient, fair, and sustainable USF system, however, it is also necessary to update the mechanism by which USF contributions are assessed and collected.

The FCC should shift the foundation of USF contributions to a connections-based approach. A mechanism based on communications access connections (both wired and

¹ *Universal Service Contribution Methodology, Further Notice of Proposed Rulemaking*, WC Dkt. 06-122, *et al.*, FCC 12-46 (rel. Apr. 30, 2012) (“FNPRM”).

wireless) will best reflect the FCC’s policies promoting network modernization and directly serve the goals delineated in the FNPRM and the mandates of Section 254 of the Communications Act (“Act”). By extending USF contribution obligations to all connections, including broadband, the universal service burden will be more equitably spread among diverse users of communications infrastructure. In contrast to other contribution mechanisms, this approach embraces evolving broadband and IP networks, diminishing the likelihood the system will become obsolete as technology evolves. Notably, this contribution structure could be implemented with limited expenditure of administrative resources by leveraging data already collected by the FCC in Form 477.

Instituting significant alterations to the revenues-based contribution system regarding who should contribute and how revenues should be assessed (*e.g.*, modifications to international service calculations, inclusion of one-way VoIP, texting), even on an interim basis, will only divert agency and industry resources from the task at hand. Rather than making such broad changes at this time – when industry proposals are forming regarding a connections-based contribution system – the FCC should work cooperatively with all stakeholders to refine a connections-based mechanism that equitably achieves USF modernization in a sustainable way.

DISCUSSION

I. There Is a Need to Replace the Current Revenues-Based Contribution Mechanism

Since the passage of the Telecommunications Act of 1996, investment in IP networks has grown substantially.² The Commission has adopted as a paramount

² *See id.* ¶ 20.

national goal the widespread deployment of IP networks that are capable of delivering advanced communications services.³ The Commission has taken important steps to effectuate this goal, including establishing the Connect America Fund, directing USF support to networks that provide advanced services in addition to voice services and mandating that carriers that receive USF support invest in broadband-capable networks.⁴ As USF distributions transition to support broadband, and as new broadband-capable networks replace legacy, single-use voice networks supported by the fund, it is appropriate to adopt a corresponding forward-looking framework for USF contributions.

Such a framework should also avoid the current artificial line-drawing distinctions among products and services for purposes of determining whether a particular offering is or is not subject to assessment for USF contribution purposes (*e.g.*, whether telecommunications are “local” or “toll,” “interstate” or “intrastate”). Many of today’s services are also jurisdictionally-agnostic, with no distinction between interstate and intrastate calling, adding additional complexity to contribution calculations.

Although the Commission has attempted incrementally to modify the USF contribution system, these measures have made the system less efficient, more burdensome, and subject to variable determinations by contributors and potential

³ *See, e.g., Connect America Fund et al., Report and Order and Further Notice of Proposed Rulemaking*, 26 FCC Rcd. 17663, ¶¶ 9, 11, 15, 34-35 (2011), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011) (“USF/ICC Transformation Order”). *See also* Omnibus Broadband Initiative, *Connecting America: The National Broadband Plan* at 59, GN Dkt. 09-51 (rel. Mar. 16, 2010) (“National Broadband Plan”).

⁴ *See* USF/ICC Transformation Order at ¶¶ 20-22.

contributors.⁵ As a result, serious doubt exists as to whether the revenues-based contribution system is “specific” and “predictable,” and whether all telecommunications service providers are making “equitable and non-discriminatory” contributions, consistent with the Act.⁶

Moreover, administration of the revenues-based USF contribution system is currently plagued by high costs, which now exceed \$100 million annually.⁷ Compliance burdens on both contributors and consumers have also become increasingly costly and confusing. Currently, Form 499 consists of 45 pages of instructions and worksheets that must be filed five times each year, with providers required to distinguish among 22 different categories of toll, local, and mobile services.⁸

The Commission must ensure that a new contribution mechanism will reduce the high USF administration costs and will result in streamlined, simple and efficient procedures for reporting information required for the assessment of contribution obligations to the Commission and the Universal Service Administrative Company. An overhaul of the current revenues-based system is necessary to address these compliance burdens, as well as the audit process, which is increasingly protracted, expensive, and inefficient.⁹

⁵ For example, the FCC has allowed the use of safe harbor percentages and traffic studies for purposes of calculating interstate revenues and good faith estimates of interstate and international revenues attributable to bundled local/toll services.

⁶ See 47 U.S.C. § 254(b)(4).

⁷ See Universal Service Administrative Company, 2011 USAC Annual Report, at 5 (2012).

⁸ See FCC Form 499-A, Line 105.

⁹ See FNRPM at ¶ 371.

II. The FCC Should Adopt a Connections-Based Approach for USF Contributions

Google and others have long advocated that comprehensive USF reform must consider both the distribution of broadband connectivity support and the contributions required to meet those subsidy obligations.¹⁰ In the face of a changing communications landscape and an increasingly problematic contribution system,¹¹ the FCC should transition away from the broken revenues system to a technology-neutral, administratively simple mechanism.

A logical starting point for a new USF contribution mechanism is to focus on access connections,¹² which best reflect the evolving communications landscape. Building upon definitions and data collections already used in FCC Form 477, an access connection definition would be based on the physical facility used to connect users rather than on the service or services provided over a physical facility.¹³ For example, an access connection would include a wireline, wireless, or broadband connection.¹⁴ In particular, by expanding the base of USF contributors to include broadband access connections, the

¹⁰ See, e.g., Letter from Donna N. Lampert, Counsel for Google, to Marlene H. Dortch, Secretary, FCC, at 2, WC Dkt. 10-90, *et al.* (filed Aug. 1, 2011); Letter from Ad Hoc, *et al.*, to Julius Genachowski, Chairman, *et al.*, FCC, at 6-7, WC Dkt. 10-90, *et al.* (filed Aug. 18, 2011) (“*High Tech Users Letter*”); Comments of Google at 27, WC Dkt. 10-90, *et al.* (filed Aug. 24, 2011); Letter from Richard S. Whitt, Director and Managing Counsel, Telecom and Media Policy, Google, to Marlene H. Dortch, Secretary, FCC, at 3, WC Dkt. 10-90, *et al.* (filed Sept. 21, 2011); Letter from Cheryl L. Parrino, Parrino Strategic Consulting Group, to Marlene H. Dortch, Secretary, FCC, at 2, WC Dkt. 10-90, *et al.* (filed Sept. 29, 2011);

¹¹ See *supra* Part I.

¹² FNRPM at ¶ 219.

¹³ *Id.* ¶¶ 226-240 (asking whether the definition of “connection” should focus on the facility or the services that are delivered over the facility). See also *High Tech Users Letter* at 7.

¹⁴ See, e.g., Instructions for Local Telephone Competition and Broadband Reporting (FCC Form 477), p. 20 (defining “broadband connections” as “lines (or wireless channels) that terminate at an end user location and enables the end user to receive information from and/or send information to the Internet at information transfer rates exceeding 200 [kbps] in at least one direction”).

Commission will alleviate pressures on the USF created by technology and marketplace changes.

Under a connections-based approach, facilities-based providers of access connections could be required to contribute based on the number of access connections in service with only one contribution assessment required per connection, even if multiple services ride over the connection.¹⁵ This would mean, for instance, that a broadband connection would contribute once regardless of whether additional services, such as a voice service, were also provided over the broadband connection. This “general rule” approach to defining who contributes, rather than a service-specific, case-by-case determination, will help eliminate confusion among contributors by streamlining direct contribution requirements and avoid potentially unfair and overly burdensome contribution obligations.¹⁶

Significantly, a connections-based mechanism reflects the evolving structure of the communications marketplace by recognizing the enormous growth of all-IP networks, and accommodating future unforeseen developments. By assessing contribution obligations on underlying network connections rather than on the services used over a network, the FCC (and service providers) will not be required to review every new service introduced into the marketplace to determine whether or not an additional

¹⁵ See *High Tech Users Letter* at 7. Thus, a consumer would incur only one assessment per connection, in contrast to a service-based definition that would assess each service a consumer uses over a connection. FNPRM at ¶ 236 (describing “if a customer purchases two services that we have determined are assessable and that are delivered over the same facility, the provider would be assessed for two connections” under a service-based access connection definition).

¹⁶ FNPRM at ¶¶ 28-94 (seeking comment on whether the determination of who should contribute to the federal USF should be made on a case-by-case basis or through a broader definitional approach).

contribution may be owed. As such, this system promotes the stability and sustainability of the USF over time. This network-focused approach also adds to the predictability and fairness of the contribution base by eliminating the need to draw service distinctions, removing the guesswork and gaming of regulatory classifications and assessable revenues that is prevalent under the current revenues-based system.¹⁷

Notably, preliminary analysis of existing data indicates that a connections-based mechanism would be sufficient to meet the distribution demands of the fund and result in a lower monthly assessment on residential and business consumers than any other contribution proposal, including suggested reforms to the current revenues-based system. Requiring contributions only on the underlying network connection, with consumers free to utilize as many services “riding on top” of the network as they wish without incurring additional USF charges, also minimizes consumer contribution burdens, further ensuring the mechanism is sufficient to meet distribution demands. Ensuring consumers are not effectively penalized for making numerous uses of a platform also encourages adoption of multiple services and broadband generally.

This mechanism has the added benefit of reducing administrative costs and compliance burdens, long-time problems that have plagued the current system.¹⁸

Leveraging existing FCC data collections in Form 477 could reduce compliance costs and

¹⁷ *See, e.g., id.* ¶ 17, n.74 (noting the current system allows a contributor to determine how much of the revenue from a bundled offering should be assessable, which can incentivize the contributor to game the system by allocating the revenue in a manner that reduces contributions burdens); ¶ 23 (“Clearer, simpler rules that can be applied in new situations could deter gaming of the system and save consumers, companies, and the government money.”); ¶ 42 (noting “commenters have stated that uncertainty over the appropriate treatment of certain services today increases regulatory costs and results in gaming that has unfairly disadvantaged carriers who make good-faith attempts to comply with their contribution obligations”).

¹⁸ *See supra* Part I.

aid in the administrative simplicity of the mechanism. Further, the existence of an “access connection” can be objectively verified, minimizing USF-related audits and verification checks. In this way, the FCC can help reduce various forms of fraud, waste, and abuse that have been ongoing concerns.¹⁹

As such, a connections-based mechanism is fully consistent with the statutory provisions and principles of the Act, and the FCC’s stated goals of reform. It is stable, predictable, and sufficient,²⁰ benefitting consumers, contributors, USF recipients, and administrators. By requiring every provider of telecommunications services to contribute either directly or indirectly to the USF through a connections-based mechanism, the base of contributors will be expanded in an equitable and predictable manner.²¹

The FCC’s permissive authority is more than ample to include contributions from broadband connections as it is well-settled that broadband Internet access service includes telecommunications.²² The Act also allows the FCC to exclude certain *de minimis* contributors and to require (or not to require) contributions from “other providers

¹⁹ See, e.g., FNPRM at ¶ 105. See also *Lifeline and Link Up Reform and Modernization et al., Report and Order and Further Notice of Proposed Rulemaking*, WC Dkt. 11-42, *et al.*, FCC 12-11, ¶¶ 180-81 (2012); *High-Cost Universal Support, et al., Order on Remand and Report and Order and Further Notice of Proposed Rulemaking*, 24 FCC Rcd. 6475, ¶ 63 (2008).

²⁰ 47 U.S.C. § 254(d). See also FNPRM at ¶¶ 22-27 (setting forth efficiency, fairness, sustainability, and ensuring the delivery of affordable communications to all Americans as the goals for USF contribution reform).

²¹ 47 U.S.C. § 254(d).

²² See *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Report and Order and Notice of Proposed Rulemaking*, 20 FCC Rcd. 14853, ¶ 15 (2005) (finding that “wireline broadband Internet access service inextricably combines the offering of powerful computer capabilities with telecommunications”); *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities, Declaratory Ruling and Notice of Proposed Rulemaking*, 17 FCC Rcd. 4798, ¶ 39 (2002), *aff’d Nat’l Cable & Telecomm. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967, 987-89 (2005) (finding that “[c]onsistent with the statutory definition of information service, cable modem service provides the capabilities described above ‘via telecommunications.’”).

of interstate telecommunications” as the public interest dictates,²³ giving the FCC sufficient flexibility to tailor a connections-based mechanism that achieves its overarching reform goals.²⁴ Expansion of the contribution base in this way also is consistent with Recommendation 8.10 of the 2010 National Broadband Plan, which recognized a growing consensus for assessing contribution obligations on broadband connections,²⁵ and with the specific goals of this proceeding, including maintaining the long-term sustainability of the USF and promoting broadband innovation, investment, and adoption.²⁶

A connections-based mechanism is also equitable and nondiscriminatory, as required by the Act.²⁷ All network technologies are treated the same under a connections-based system, and no discriminatory assessments are placed on certain access connections over others. Assessing USF contributions in this technology-neutral manner also promotes competitive neutrality. Moreover, assessing each connection, regardless of whether it is a residential or business connection, avoids drawing arbitrary distinctions based upon service descriptions and types of users. It also helps reduce consumer costs, a bottom-up driver of economic growth, and stem waste, fraud, and abuse.

²³ 47 U.S.C. § 254(d).

²⁴ Indeed, over time, the FCC may wish to consider using such a mechanism to incentivize high-capacity connections as our nation’s innovation needs and economic growth warrant.

²⁵ See National Broadband Plan at 149.

²⁶ See FNPRM at ¶¶ 25, 26.

²⁷ 47 U.S.C. § 254(b)(4).

III. The FCC Should Focus On True Modernization, Rather than Piecemeal Reform, to Create an Optimal Contribution Framework

While ultimately benefiting consumers and the marketplace generally, a comprehensive and forward-looking overhaul of the current contribution system undoubtedly will have a significant and positive effect on all facets of the communications industry. Due to the far-ranging reach of contribution reform, the ultimate conclusions of a cross-industry collaboration effort may very well lead to a “future proof” contribution mechanism that accounts for forecasted technology developments. Such collaboration to develop solutions that address difficult issues associated with unique connections, such as new wireless devices that may require particular consideration,²⁸ is ongoing. Similarly, in this context, the industry is also likely to analyze and structure proposals in a way that minimizes the impact of change on the billing systems of service providers.²⁹

As such, participation by all industry segments – as well as affected stakeholders – will best accomplish efficient and effective reform that comports with the practical realities that companies face.³⁰ Input from all stakeholders, including users and consumer groups, is critical to ensure the new mechanism meets universal service goals and will

²⁸ See, e.g., FNPRM at ¶¶ 89-90 (raising questions about the appropriate treatment of e-book devices with 3G wireless connections that may or may not permit users to access any location on the Internet). See also *id.* ¶ 251 (questioning whether free services, telematics, wireless prepaid plans, and family plans should be eligible for special consideration or exemption under a connections-based approach).

²⁹ See *id.* ¶ 274 (asking what the incremental cost would be to modify existing billing systems to comply with a connections-based system).

³⁰ *Id.* ¶ 222 (recognizing that “the industry as a whole has not reached consensus” on the best way to reform the contribution system). See also *Universal Service Contribution Methodology, Report and Order and Notice of Proposed Rulemaking*, 21 FCC Rcd. 7518, ¶ 21 (2006) (noting a consensus approach to reform had not yet developed and adopting only discrete interim reform pending further opportunities for the industry to address the challenges of fundamental reform).

reduce burdens and costs for consumers. Approaching reform in this comprehensive and forward-looking fashion will serve well the FCC and the public. While industry discussions regarding a comprehensive proposal for reform are ongoing, there has been significant progress and collaboration that Google expects will soon come to fruition.

In the meantime, the FCC should avoid incremental alterations to the current revenues-based system. The enormous number of questions and issues set forth in the FNPRM on how to reform the revenues-based contribution scheme underscore the problems with the existing mechanism.³¹ Rather than attempting to “fix” the revenues-based system through piecemeal (yet significant) changes as to who is assessed and how, the FCC should focus scarce and valuable agency and industry resources on creating a comprehensive, sustainable long-term solution.

For example, proposed modifications to international telecommunications service revenue calculations, expansion of assessable service revenues to include one-way VoIP services and text messaging, and changes to allocation of revenues for jurisdictionally-mixed and bundled services will unnecessarily divert agency and industry resources, even if implemented on an interim basis. The logistics of implementing these significant changes to the revenues-based system almost certainly will create a host of new uncertainties and distract all stakeholders from efforts to create a mechanism that is being developed. In short, the “fixes” are likely to complicate and delay the ultimate goal of creating a simpler, more viable long-term contribution system.

³¹ In particular, the FNPRM presents almost 40 full pages of issues for consideration, many of which raise new legal questions that will inevitably lead to prolonged litigation. FNPRM at ¶¶ 98-218.

Further, the proposed interim modifications – which would become obsolete when comprehensive reform is implemented – would not come without other costs. Many of the suggested changes, such as broadly requiring revenues-based contributions for all services with an interstate telecommunications component (perhaps even including all retail information service revenues)³² or expanding assessments to services never before deemed assessable, are likely to dampen investment and innovation. Technological innovation is a bright spot in the nation’s economy, and the FCC must take care that its actions are not unfair to consumers and do not undermine growth and competitiveness. The proposed broad changes run the risk of sidetracking all stakeholders from the important job of providing consumers newer, better and cheaper communications offerings.

Indeed, it is not clear that the FCC may lawfully undertake some of the modifications in question. Reform, while clearly needed, must be consistent with the FCC’s statutory authority. Efforts to reach outside the constraints of the Act – which provides the FCC substantial but not unlimited authority to create a sustainable USF mechanism – could ultimately jeopardize the agency’s ability to enact long-term comprehensive reform. For example, while thus far there seems to be agreement that “pure content” should not be assessed,³³ the expansive nature of the FNPRM’s proposals to broaden the contribution base raises a real risk that the FCC could exceed its legal authority in the inevitable line-drawing exercises that would be required to pursue

³² *Id.* ¶ 115.

³³ *Id.* ¶ 115, n.235.

changes of this nature. Protracted litigation and its associated uncertainty will not serve the FCC's specific goals or the public interest.

CONCLUSION

Just as the FCC has updated the USF distributions system to both prepare for and promote the broadband future that consumers are increasingly demanding, it is time for the FCC to adopt a forward-looking contribution mechanism based on physical connections that will work with, not against, technological and marketplace trends. The FCC should support and encourage a broad stakeholder consensus to this end.

Respectfully submitted,



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