

**Before the
FEDERAL COMMUNICATIONS COMMISSION**

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
)	

JOINT COMMENTS OF INTERNATIONAL CARRIER COALITION

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SUMMARY

The International Carrier Coalition, comprised of numerous international telecommunications providers and submarine cable operators, supports the Commission's efforts to reform, modify and modernize the existing revenue-based contribution methodology for the Universal Service Fund. The contribution methodology can be reformed and expanded without violating relevant federal court precedent addressing the Commission's authority to assess contributions. Specifically, the Commission must maintain its exemption of international-only carriers and the related Limited International Revenue Exemption ("LIRE") in order to avoid inequitable contribution obligations for carriers with small amounts of interstate revenue and to comply with existing judicial precedent. However, the Commission can and should address problems with the growing contribution factor by expanding the contribution base to include broadband Internet access services. Such an expansion would eliminate any need to separately create specialized rules to address the classification of enterprise services.

With these revisions, the Commission can effectively reform the existing system without introducing unnecessary and burdensome complications such as a valued-added contribution system that will heavily burden the providers of wholesale services or the adoption of completely new methods such as connections- or numbers-based methodology that would not provide any improvements and instead would introduce additional uncertainties.

In addition, the Commission should move forward to reform the contribution requirements for prepaid calling card providers to ensure they are not required to contribute more in USF fees than they collect from customers. Finally, the Commission should not prohibit the use of pass-through fees to recover USF charges, but could reform the billing disclosures if necessary.

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The International Carrier Coalition (“Coalition”), comprised of Bestel USA, Inc., Brasil Telecom of America, Inc. (d/b/a GlobeNet), Cedar Cable Ltd., Columbus Networks USA, Inc., Iusatel USA, Inc., Primus International, Telefónica Internacional USA, and T.A. Resources NV, submit the following Joint Comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Further Notice of Proposed Rulemaking addressing contribution methodology for the Universal Service Fund (“USF” or “Fund”).¹

I. INTRODUCTION

The Coalition is a collection of providers of international telecommunications services with their own international capacity including submarine cable operations. These carriers provide dark and lit fiber services, international traffic services, private line services, enterprise services including MPLS and VPN and prepaid calling cards. The Coalition includes the following members:

¹ *Universal Service Contribution Methodology, A National Broadband Plan for Our Future*, Further Notice of Proposed Rulemaking, WC Docket No. 06-122, GN Docket No. 09-51, FCC 12-46 (rel. April 30, 2012) (“FNPRM”).

- Bestel USA, Inc. is a facilities-based competitive carrier affiliated with a Mexican non-dominant telecommunications carrier which provides interstate and international services for U.S. carriers;
- Brasil Telecom of America, Inc. (d/b/a GlobeNet) operates a high capacity submarine cable system between the U.S., Brazil, Venezuela and Bermuda and provides capacity for other carrier and enterprise customers;
- Cedar Cable Ltd., an affiliate of The Bermuda Telephone Company Limited, is the facilities-based operator of the CB-1 cable system connecting the U.S. and Bermuda and used by other Bermuda based carriers and enterprise customers;
- Columbus Networks USA, Inc., a subsidiary of Columbus Communications, operates the ARCOS-1 and CFX-1 submarine cable systems linking the U.S. and multiple countries in the Caribbean, and Central and South America; offering broadband and IP services to carriers, Internet Service Providers, cable operators, network integrators and others;
- Iusatel USA, Inc. is a non-dominant international telecommunications providers that providers competitive telecommunications services between the U.S. and Mexico;
- Primus Telecommunications, Inc. is a U.S.-based carrier that provides interstate and international telecommunications services between the U.S. and other countries;
- Telefónica Internacional USA, is a U.S. subsidiary of Telefónica S.A., one of the world's leading integrated operators in the telecommunications sector providing communications, information and entertainment solutions. Telefónica's activities in the U.S. include the Tier-1 carrier Telefónica International Wholesale Services

(TIWS) that operates the SAM-1 submarine cable system and Telefónica USA (TUSA) that offers enterprise services; and

- T.A. Resources N.V., is the non-dominant telecommunications provider of services between the U.S. and Aruba and is an affiliate of Setar N.V., the incumbent telecommunications provider in Aruba.

The Coalition supports the Commission’s efforts to reform, modify and modernize the existing revenue-based contribution methodology. This method can be reformed and expanded without violating relevant federal court precedent addressing the Commission’s authority to assess contributions under Section 254(d) of the Communications Act. Specifically, the Commission must maintain its exemption of international-only carriers and the related Limited International Revenue Exemption (“LIRE”) in order to avoid inequitable contribution obligations for carriers with small amounts of interstate revenue and to comply with existing judicial precedent. However, the Commission can and should address problems with the growing contribution factor by expanding the contribution base to include broadband Internet access services. Such an expansion would eliminate any need to separately create specialized rules to reclassify enterprise services such as MPLS and VPN, which are typically tied to a broadband-enabled transmission service, since revenue from their underlying connections would already be subject to contribution. With these revisions, the Commission can effectively change the existing system without introducing unnecessary and burdensome complications such as a valued-added contribution system that will heavily burden the providers of wholesale services or the adoption of completely new methods such as connections- or numbers-based methodology that would not provide any improvements and instead would introduce additional uncertainties. In addition, the Commission should move forward to reform the contribution requirements for

prepaid calling card providers to ensure they are not required to contribute more in USF fees than they collect from customers. Finally, the Commission should not prohibit the use of pass-through fees to recover USF charges, but could reform the billing disclosures if necessary.

II. THE COMMISSION DOES NOT HAVE THE AUTHORITY TO EXPAND THE CONTRIBUTION SYSTEM TO INCLUDE INTERNATIONAL-ONLY CARRIERS OR ELIMINATE THE LIMITED INTERSTATE REVENUE EXEMPTION

Section 254(d) of the Act provides that “[e]very 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 services.”² Based on the plain language of the statute, the Commission has no authority to require international-only providers to contribute to the Fund since they provide no “interstate telecommunications services.” In addition, in *Texas Office of Public Utility v. FCC*,³ the Fifth Circuit determined that the Commission has no authority to impose USF contributions on international-only providers. In *TOPUC*, the court held that the Commission’s requirement for interstate carriers to contribute to USF on both international and interstate revenues was “arbitrary and capricious” because it forced some carriers to contribute more to USF than they actually generated in interstate revenue.⁴ While the Commission has asserted that the court’s decision does not limit their authority, and they retain “significant discretion to revise its rules regarding contributions on international revenues,”⁵ the decision does in fact tie the hands of the Commission. In that case, the court held it was discriminatory for the FCC to force carriers who had contribution amounts higher than their interstate revenue

² 47 U.S.C. § 254(d) (emphasis added).

³ *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (“TOPUC”).

⁴ *Id.* at 434-35.

⁵ *FNPRM* at ¶ 201.

to contribute to the Fund.⁶ Should the FCC impose USF contributions on international-only carriers, who have *zero* interstate revenue, the Commission would automatically violate this judicial precedent. Regardless of whether or not the Commission believes this decision was ill-advised, it is still bound by it until a higher court reverses it or the underlying statute changes, neither of which has occurred in the intervening 13 years.

Furthermore, the Commission's argument that they may impose contribution requirements on international-only carriers because "these providers also benefit from being able to originate or terminate traffic in the United States"⁷ has also been rejected by the court. Specifically, in rejecting the Commission's argument that it was equitable to require carriers to contribute more than they make in interstate revenue, the Fifth Circuit stated that "it is difficult to know what the FCC would consider inequitable, because any carrier could conceivably benefit from universal service."⁸ The same principle applies here. It was inequitable to require these contributions in 1999 and, with no change in the underlying governing federal statute; it remains inequitable, discriminatory and contrary to Section 254(d) to require such a contribution today.

In response to the court's decision, the Commission developed LIRE.⁹ The LIRE policy "exempts international revenues from reporting and contribution where a provider's interstate revenue is less than 12 percent of its combined interstate and international revenue."¹⁰ The intent

⁶ *TOPUC* at 434-35. In addition to addressing proposed contribution assessments on international revenue, the court also held that the Commission does not have authority to impose contribution requirements on intrastate revenue. *See TOPUC* at 448. While most of the Coalition members receive very little, if any, intrastate revenue, the Coalition members nevertheless hereby go on record with their disagreement with any suggestion by the Commission or the Joint Board that the TOPUC decision was wrongly decided and strongly urge the Commission to not adopt contribution requirements for intrastate revenues.

⁷ *FNPRM* at ¶ 200.

⁸ *TOPUC* at 434.

⁹ *See Universal Service, Rule Changes Required by Texas Office of Public Utility Counsel v. FCC*, Sixteenth Order on Reconsideration, 15 FCC Rcd 1679 (1999) (adopting a new rule that if a carrier obtains less than 8% of its revenue from interstate services, then its international revenue will not be included in USF contribution calculations). The 8% measurement was later increased to 12% to account for an increase in the contribution factor.

¹⁰ *FNPRM* at ¶ 196.

of LIRE was to avoid the results found to be inequitable by the court in *TOPUC*.¹¹ Admittedly, the application of LIRE has resulted in some distortions in contributions and has been unpredictable and difficult for carriers to administer. However, given the Fifth Circuit's decision, the Commission cannot merely throw out the exemption. Instead, the Coalition respectfully urges the Commission to either reform LIRE so that it provides "an adequate margin of safety" and is adjusted to account for a contribution factor that has been significantly higher than 12% in recent years,¹² or exclude international revenue entirely from USF contribution calculations.

III. EXISTING REVENUE-BASED CONTRIBUTION SYSTEM CAN WORK WITH REFORMS AND AN EXPANDED CONTRIBUTION BASE

The current revenue-based contribution system represents the most balanced and fair process since it requires retail carriers providing services to end-users to contribute based upon the interstate telecommunications revenue they receive from those users. This system fulfills the purpose of the underlying statute and Congressional intent in forming the USF system. The Coalition recognizes however that the growth of USF contribution factor is not sustainable, and there are elements of the revenue-based system that must be corrected and modified. This rise in the factor is a result of an increase in demand for the Fund and reduction in the contribution base and can be corrected through controlling demand and broadening the base.

First, the Commission has already adopted significant measures to reduce unnecessary demand for USF funds and increase efficiency by strengthening efforts to reduce waste, fraud

¹¹ The TOPUC court did not directly approve or authorize the LIRE process. A later appeal of the LIRE regulations was dismissed on procedural grounds and thus the court has never reviewed or passed judgment on LIRE. *See Comsat Corp. v. FCC*, 250 F.3d 931 (5th Cir. 2001).

¹² *FNPRM* at ¶ 204. As noted in n.9, the Commission raised the LIRE percentage from eight to 12 percent to accommodate the rate exceeding eight percent. When the rate again exceeded the LIRE percentage, the Commission's response was to require carriers to request a special exemption in order to not pay more in USF than their interstate revenue. This result must be revised in order to bring the current contribution system into compliance with the precedent; having carriers bear the burden of enforcing a court decision when the Commission is in the best position to do so, by simply raising the percentage, is not-equitable. Of course, if the contribution rate goes down as a result of the reforms contained in this proceeding, such an increase may not be necessary.

and abuse. Through substantial changes to the legacy high-cost fund, the Commission has reduced not only growth, but also the size of the high-cost fund.¹³ While the Connect America Fund (“CAF”) may place significant demands on the Fund initially, based on the Commission’s estimates and its goals for the program, there will be reduction in demand in the long-term. Similarly, the Commission’s revisions to both the high-cost and low-income programs through its adoption of procedures to reduce waste, fraud and abuse, establishment of fixed budgets for these programs, as well as efforts to improve administration of the these funds is already leading to a reduction in demand.¹⁴ While any initial savings resulting from changes to the funds will initially be channeled into the CAF program,¹⁵ as the demand for those funds are reduced over time, the net result will be a reduction in the size of the Fund. Because the contribution rate is directly tied, in part, to the size of the Fund, a reduction in the size of the Fund will almost certainly result in a reduction to the contribution rate.

In addition, the most important factor in reducing the contribution rate, and reforming the overall revenue-based system, is an expansion of the contribution base by including additional providers and services, provided that such additional services are permitted by statute and/or judicial precedent. With the expansion of the Internet, growth of broadband services and development of new technologies, providers and customers have transitioned certain traditional services to these new technologies and the amount of revenue subject to contribution has

¹³ See *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 54 CR 637, FCC 11-161, ¶ 18, n.16 (2011) (establishing “a firm and comprehensive budget for the high-cost programs within USF” and noticed that “over time several of our existing support mechanisms will be phased down and eliminated”) (“CAF Order”).

¹⁴ *CAF Order* at ¶ 84 (adopting reforms, including certification requirements, to reduce waste, fraud and abuse of the Fund); *Lifeline and Link Up Reform and Modernization*, Report and Order and Further Notice of Proposed Rulemaking, 55 CR 471, FCC 12-11 (2012). The Commission has also established a savings target for the low-income program. See *id.* at ¶ 358.

¹⁵ *Id.* at n.221 (“To the extent that savings were available from CAF programs, the Commission could reallocate that funding for broadband adoption programs.... Alternatively, savings could be used to reduce the contribution burden.”).

decreased. As a result of this transition, the inclusion of broadband Internet access services as part of the contribution base was recommended by the State Members of the Federal-State Universal Service Joint Board (“Joint Board”) and supported by multiple carriers.¹⁶ The inclusion of these services would not only reform the contribution method by including a vast number of new services that are replacing traditional voice services, but broadband services also generate billions of dollars in annual revenue, which would significantly expand the contribution base and reduce burdens on consumers by lowering the contribution factor.¹⁷

Furthermore, by making broadband services subject to contribution, there is no need to directly address the classification of mixed services such as MPLS and VPN with specialized rules. These types of enterprise services are largely dependent upon, and operate over, broadband-enabled transmission lines that are currently treated as exempt from USF contributions. By removing that exemption, revenue generated by the underlying transmission services will be subject to contribution. The remaining components of MPLS and VPN services can be examined consistent with long-standing Commission precedent. To the extent that VPN, MPLS and other over-the-top services offer the functionalities and capabilities necessary to meet the definition of information service, they could still be considered information service and except from USF contributions, a concept that pre-dates the *Wireline Broadband Order*.¹⁸ With such a ruling, that affirms the Commission’s decades-old precedent while bringing broadband (which was only relatively recently exempted) back into the base, the Commission can expand

¹⁶ *FNPRM* at 65, n.179.

¹⁷ National Broadband Plan, Section 3.3 Networks, at p.18, *available at*: <http://download.broadband.gov/plan/national-broadband-plan.pdf> (“Network service providers are an important part of the American economy. The 10 largest providers have combined annual revenue of more than \$350 billion.”).

¹⁸ *See Amendment of Section 64.702 of the Commission’s Rules and Regulations (Second Computer Inquiry)*, 77 FCC 2d 384 (1980); *Amendment to Section 64.702 of the Commission’s Rules and Regulations (Third Computer Inquiry, Phase II)*, Memorandum Opinion and Order on Reconsideration, 3 FCC Rcd 1150 (1988). *See also* Ex Parte Letter from Marybeth Banks, Director - Government Affairs, Sprint Nextel Corp., et al. to Marlene Dortch, FCC, Universal Service Contribution Methodology, WC Docket No. 06-122 (filed March 29, 2012).

the base and remove much of the ongoing confusion that persists with MPLS and other so-called “Enterprise Services.”¹⁹

IV. THE PROPOSED VALUE-ADDED METHOD WILL RESULT IN SIGNIFICANT NEGATIVE CONSEQUENCES

One of the proposed changes to modify the existing contribution methodology is to determine the amount of value each carrier in the service chain adds to the service and assess contributions based on that value.²⁰ Under this method, instead of assessing contributions only on the end-user revenue, it would be assessed on each provider in a chain of providers. While this type of value-added methodology may work reasonably well for taxes of general applicability such as sales and use taxes, this methodology would be unworkable, burdensome, and likely to result in severe negative consequences for both carriers and the Fund if applied to USF contributions. The Coalition agrees that the existing revenue-based system with contributions assessed on end-user revenue does need to be revised and modernized, but asserts that it fulfills the essential purpose of the Fund as assessed on end-user revenue alone, which the Commission concluded was the most equitable way of assessing contributions.²¹ The proposal to replace the current system with a value-added method is misguided and will lead to significant confusion.

One of the supposed benefits of the value-added method, reducing any incentive or ability to under report telecommunications components of a service that is comprised of both telecommunications and non-telecommunications services, is not necessary. As discussed above, the ability to employ this type of separation of revenues will be nearly eliminated by inclusion of broadband and broadband related services as part of the contribution base. By folding broadband

¹⁹ See *XO Communication Services, Inc. Request for Review of Decision of the Universal Service Administrator*, WC Docket No. 06-122 (filed Dec. 29, 2010).

²⁰ *FNPRM* at ¶¶ 149-161.

²¹ See *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC 8776 (1997).

into the base, carriers who incorporate wholesale telecommunications components into their combined broadband-telecommunications products will no longer have the opportunity to exempt the broadband portion of those services, and the corresponding revenue, from contribution.

Furthermore, the value-added method has significant potential to harm competition. The wholesale-reseller relationship is essentially a competitor-competitor relationship. This method will give wholesale carriers the opportunity and ability to assess both USF fees and other fees nominally associated with USF administrative costs on their carrier customers, who are also their competitors. This process would provide wholesalers with the opportunity to use the value-added method to increase pricing for their competitors with below the line charges. In a competitive market, retail carriers would be able to change suppliers, but when carriers are obtaining essential and non-fungible components from incumbent providers that are the sole source of last mile, special access, UNE or other components, these legacy providers can use the USF process and related fees to disadvantage their competitors without the threat of customer loss. It is illogical and inequitable for the Commission to set up a system whereby competitors are handed the ability, legitimized through the USF procedures, to disadvantage and harm their competitors.

Additionally, there would be significant administrative burdens to the implementation and management of this method. The tracking and monitoring of the value of input services from wholesales and value of outputs to retails would be unduly burdensome. In addition, many products include the mixing of both telecommunications and non-telecommunications services and the requirement to separate out these different streams of revenue from bundled services

incorporating multiple providers will be administratively burdensome, result in additional expenses and provide for manipulation of the system.

V. THE PROPOSED CONNECTIONS OR NUMBER-BASED CONTRIBUTION SYSTEMS ARE UNWORKABLE AND WILL NOT RESULT IN THE DESIRED EFFECT

The Commission has also proposed two alternatives to the existing revenue-based system: a contribution method based upon the number of connections or the number of telephone numbers provided by a carrier. The Coalition opposes both approaches.

First, a connections-based system will only encourage carriers to reduce their number of active connections and incentivize the elimination of redundant connections. As the FCC has previously found, redundant connections provide a viable backup communications system that is essential to public safety,²² and the adoption of a connections-based methodology would merely encourage carriers to reduce the number of their connections and thereby undermine this policy. In addition, the FCC's underlying premise in support of this method, namely that the number of connections will continue to grow, is flawed.²³ As already noted, carriers will reduce the number of connections they maintain in order to reduce their contribution amount. In addition, if USF contribution is based on the number of connections, the price of connections will increase and demand will decrease. In order to avoid these fees, consumers will purchase fewer connections and find other means, through potential new technologies, in order to maximize the use of connections already purchased.

²² See e.g., *Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks*, Order 22 FCC Rcd 10541 (2007) (discussing the need for increased redundancy in the communications network in case of national emergencies). See also Patricia Sullivan, *After storm, 911, phone service remains spotty*, The Washington Post (July 3, 2012) available at http://www.washingtonpost.com/local/after-storm-911-phone-service-remains-spotty/2012/07/02/gJQA33dHJW_story.html (Fairfax County officials call for investigation of 911 failures during storms in Northern Virginia and seeking information about redundancy and backup systems).

²³ *FNRPM* at ¶ 247.

A connections-based methodology will also result in contribution obligations that are disconnected from the revenue generated by a service. Certain types of telecommunications services provide many more connections than others, and yet this higher number of connections does not generate or result in any additional revenue. Such a disparity would be inequitable. Instead, if a connections methodology were adopted, the Commission would have to ensure that circuits are priced on a tiered basis. Because higher capacity lines are more likely to be sold for the capacity characteristics, instead of purely for the number of connections provided, these lines do not automatically generate greater revenue. Through the use of tiers, with each tier paying a flat fee as proposed by multiple carriers and service providers,²⁴ the methodology could more closely reflect the reality of how these lines are used and the revenue they generate.

Several members of the Coalition are owners of undersea cables with substantial international bearer circuits, and thus are aware of the inherent inequities of a connections based assessment based on their experience with the FCC's regulatory fee assessments, which previously determined some fees based on connections. Prior to 2009, the Commission employed a capacity-based methodology that based the International Bearer Circuit Regulatory Fees on the number of active circuits and non-common carrier submarine cable fees on all of the circuits sold through an infeasible right of use or through a lease.²⁵ These fees were calculated on a per voice grade equivalent circuit basis. Over many years, owners of international capacity complained that such per circuit fees unduly burdened sellers of large capacity circuits as there was substantial volume discounting associated with the circuits, meaning that for larger circuits, the regulatory fee could be a substantial portion of the overall cost of the circuit. The

²⁴ See *FNPRM* at ¶ 249, n.401 (listing the carriers and service providers who previously supported a tiered approach).

²⁵ *Assessment and Connection of Regulatory Fees for Fiscal Year 2009*, Second Report and Order, 24 FCC Rcd 4208, ¶ 4 (2009).

Commission eventually agreed with the carriers, and rejected this “connection-based” methodology, and instead required regulatory fees to be paid based on a per-cable landing license basis. The Commission found that the license based method would be competitively neutral, easier to administer, and would result in more accurate reporting of circuits by providers.²⁶ This regulatory change had positive effects on some members of the Coalition. The same principles hold true for USF contribution calculations and reporting, that once carriers will be assessed based on connections, the incentive to minimize the connections will be increased. The Commission must apply these experiences and findings to this process and see that a connections-based method is not more viable for USF contributions than it was for regulatory fees.

Furthermore, any contribution method based on telephone numbers or a hybrid approach of numbers and connections would also be untenable and administratively burdensome. First, a numbers system is likely to result in the assessment of contributions on numbers that generate none or very little revenue since they are used for technical purposes (such as telematics). This type of system is also likely to disproportionately assess contributions on low usage residential customers and therefore be found to be inequitable and discriminatory by a court.

VI. PREPAID CALLING CARD PROVIDERS SHOULD REPORT AND CONTRIBUTE BASED ON COLLECTED REVENUES

The Coalition supports the Commission’s proposal for prepaid calling card providers to report and contribute to USF based the revenue amount actually received for sale of the card.²⁷ Concerns about the current contribution method for these services are not new and have resulted

²⁶ *Id.* at ¶¶ 9-10.

²⁷ *FNPRM* at ¶ 185.

in numerous appeals to the FCC and a request for guidance from USAC.²⁸ This proceeding provides an important opportunity to reform the contribution system and correct serious inequities and problems with the current system under which these providers must make contributions based on the face value of the calling cards.²⁹ Because prepaid providers only collect a percentage of the value of each card, the current methodology results in them having to submit contributions on revenues they never received from the customer. Typically, the provider only receives money from the distributor, who in turn sells the card for whatever price they wish. The price the distributor pays is not the face value of the card. Unlike any other telecommunications providers, only prepaid providers are required to contribute on revenues they never receive from end user customers instead of revenues they have actually collected. This results in an effective contribution rate of more than 20 percent.

This revision to the contribution methodology is consistent with how some carriers, including AT&T, already report their prepaid revenue to the Commission.³⁰ However, self-help through voluntarily disregarding the FCC's instructions on contribution is not the answer and results in inequitable contribution requirements for different providers. Since some carriers have already started to report their revenue based on collected revenues, instead of the face value of the cards, modifying this reporting requirement to reflect the realities of the service will have only a minor impact on the contribution base, but will be an important reform to correct existing inequities. Further limiting the impact of this rule change on the contribution base would be that increasingly carriers use direct-to-consumer marketing, such as through the Internet, to sell

²⁸ See Letter from Richard A. Belden, USAC, to Julie Veach, Wireline Competition Bureau, FCC, WC Docket Nos. 06-122, 05-337 (filed Aug. 24, 2001).

²⁹ Instructions to 2012 Telecommunications Reporting Worksheet Instructions, FCC Form 499-A, at 17 (“Gross billed revenues [for prepaid calling cards] should represent the amounts actually paid by end user customers and not the amounts paid by distributors or retailers.... All prepaid card revenues are classified as end-user revenues.”).

³⁰ See Comments of AT&T Inc., WC Docket No. 05-337 (filed Oct. 28, 2009).

cards. Typically, these cards yield a much higher percentage of collected revenue relative to the face value. In fact, it could be as much as 100 percent of the face value. This area is a fast growing portion of calling card sales, particularly for higher value cards that are purchased by customers who have ready Internet access. By contrast, lower value cards, typically purchased by lower income consumers, are still purchased through retail establishments for which the carrier does not receive the full value of the card.

VII. CARRIERS SHOULD NOT BE PROHIBITED FROM RECOVERING USF FEES FROM THEIR CUSTOMERS

The Coalition strongly urges the Commission to reject any proposal to prohibit carriers from recovering USF charges from their customers through pass-through fees on invoices. There is no policy interest in such a prohibition and it will not serve the public interest. While some parties have raised concerns with the Commission that customers are confused by or do not understand the USF and related fees that appear on their invoices,³¹ there are simpler and more equitable methods to address such issues. To correct any consumer confusion, the Coalition supports efforts by the Commission to clarify or supplement the requirements set forth in its truth-in-billing regulations³² to separate out or modify the required descriptions on invoices for these charges. However, the complete prohibition on recovery of these fees would be unreasonable, inequitable and would result in market distortions in the competitive market.

Should the Commission place an absolute ban on these USF pass-through fees, then it must also adopt a fresh look for all existing contracts. The Coalition members, many of whom buy and sell substantial amounts of international capacity, have numerous long-term agreements with significantly long terms and there is no ability to re-negotiate provisions of those agreements prior to their renewal. In addition international operators, particularly submarine

³¹ FNPRM at ¶ 391.

³² See 47 C.F.R. § 64.2400 *et seq.*

cable providers typically sell their services through Indefeasible Right of Use (“IRU”) agreements and long-term leases that cannot be re-priced or re-negotiated. These contracts may have a specific requirement allowing carriers to recover USF contributions from end-user customers. As such, if the Commission decides to limit USF recovery, it must also address the need to modify these agreements to address any changes in the rules governing USF pass-through fees and allow carriers to recover these additional costs through their rates.³³

Alternatively, the Commission could allow carriers with existing agreements to grandfather provisions addressing USF recovery until the expiration of those agreements. Without grandfathering the right to pass-through these fees, or allowing adjustments to agreements, carriers and submarine cable operators who cannot adjust their agreements and cannot recover these costs in an alternative fashion will be severely disadvantaged, treated in an inequitable fashion and suffer significant competitive harm, in violation of the mandates of the Act.

VIII. CONCLUSION

For the reasons set forth above, the Coalition respectfully urges the Commission to reform the current revenue-based contribution method through expansion of the contribution base. The Commission should not subject international-only carriers to contributions requirements or eliminate LIRE. It should reform the contribution methodology for prepaid calling cards and allow carriers to continue to pass through USF fees to their customers.

³³ The Commission has previously addressed the need adjust existing provider and customer agreements to account for changes in its regulations and it has the authority to do so in this case. *See Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 20235, ¶ 30 (2007) (holding that any exclusivity contractual provisions between MVPD distributors and multiple dwelling unit owners would be deemed null and void within 30 days after final adoption of its new rules).

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