

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

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

COMMENTS OF CINCINNATI BELL INC.

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July 9, 2012

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SUMMARY

All competitors should be treated fairly and equally so that no provider is given an unfair advantage and that everyone who benefits from the Universal Service Fund (“USF”) contributes in an equitable manner. The Commission should develop clear goals for USF contribution reform and evaluate specific proposals against those goals. The Commission must be very cautious before abandoning the current revenue-based system for a new approach. Cincinnati Bell agrees with the goals identified by the Commission and recommends additional goals of competitive neutrality, consumer equitability and predictability.

USF contribution reform should minimize compliance burdens and costs. There should be simple rules that can be easily understood and applied consistently by all without subjective judgments. Similar products and services should be treated the same, regardless of the technology used or the type or identity of the provider. USF should not influence consumer choice of one service or provider over another. USF assessments should not unduly burden consumers and should recognize the value of the service to the consumer. The system should have the flexibility to quickly adapt to future changes in the marketplace and technology.

The USF contribution base should be as broad as possible within the confines of the law. CBI prefers a broad definitional approach for determining the base together with the annual issuance of a list of assessable services. At this time CBI is not prepared to endorse either a numbers or connections approach as preferable to a revenue-based system. The shortcomings of the current revenue-based system may be corrected through small adjustments without replacing the entire system with something that may have more problems. The major problems with the current system are apportioning revenue from bundled services, allocating revenue to the interstate and intrastate jurisdictions, and the issue of wholesale services.

CBI supports the adoption of bright line rules for allocation of bundled revenues. The Commission still may not assess intrastate revenues, but could develop proxy interstate percentages to be used with mixed services. One proxy could be set for most voice services, while different proxies might be needed for various categories of data services. For enterprise private line services, the current 10% rule should be abandoned and the jurisdiction determined by the originating and terminating points of the circuit. CBI opposes assessing USF on wholesale revenues, which would be considerably more complex and more difficult to administer. The current wholesale exemption should be retained, but the administration simplified.

A connections-based system is not obviously preferable to a revised revenue-based system. However, if the Commission adopts a connections mechanism, basing it on facilities would be preferable to basing it on services, which may be susceptible to gaming and be more costly to implement and audit. A connections mechanism introduces the complexity of setting the level of assessment for different types of connections.

A numbers-based mechanism sounds simple, but may be complicated in reality. If the Commission assesses broadband services, it would need to identify those services with some means other than telephone numbers. The Commission must also address the problem of assigned numbers that are not actually in use.

A hybrid system would impose additional costs and complexities due to the use of multiple systems and should be avoided unless it can be demonstrated to better satisfy the overall goals of USF contributions reform.

Service providers should be allowed to recover their USF contributions from end users via a separate line item on customer bills, which CBI would support as a requirement for all service providers so that consumers can compare prices among competing providers.

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I. INTRODUCTION

Cincinnati Bell Inc. (“CBI”) hereby submits comments in response to the Commission’s Further Notice of Proposed Rulemaking (“FNPRM”) in the above captioned proceeding. CBI is an integrated communications service provider with headquarters in Cincinnati, Ohio, and, through various subsidiaries offers local and long distance voice, wireless, data and video services. CBI appreciates the Commission’s recognition that the current Universal Service Fund (“USF”) contribution mechanism needs to be reformed in order to eliminate many of its inherent problems and to reduce the contribution assessment rate.

The complexities and subjective nature of the current revenue-based mechanism impose significant compliance burdens on providers as well as on the Commission and the Universal Service Administrative Company (“USAC”) to enforce the rules. The inconsistent application of the current USF rules to various competing services has led to inequities between providers that result in competitive disadvantages. Differing applicability of USF to various services by different providers is also confusing to consumers trying to compare options.

The current assessment rate is also of great concern to both service providers and consumers. Although recent reforms to the high cost and low income portions of the fund are

positive steps to stem its growth, the USF assessment rate can only realistically be reduced by broadening the USF contribution base. The most obvious means to do this is to include broadband services. As high cost funding support transitions from supporting only traditional voice networks to include support of broadband networks in order to expand broadband connectivity throughout the country, it is appropriate to expand the contribution base in a similar fashion.

CBI believes that each of the alternative means for assessing USF contributions outlined in the FNPRM (revenue, telephone numbers and connections) has some meritorious features, but each also has certain drawbacks. It is important that the Commission develop clearly defined goals and evaluate each specific proposal that is submitted against those goals. Although it is unlikely that any one proposal will completely fulfill every policy goal, the Commission should strive to develop an approach that most completely satisfies the goals. Moreover, before abandoning the current revenue-based system for an entirely new approach, the Commission must have clear, compelling evidence that the new system would substantially better meet each of the established goals. Otherwise the presumption should be to retain the existing system with appropriate adjustments.

In these comments, CBI will review the goals that should be established, discuss the issue of who should contribute and offer some thoughts on each of the proposed assessment mechanisms. CBI does not intend to present a specific USF funding plan, however, should other commenters submit specific plans, CBI may offer comments on those plans in reply comments.

II. THE COMMISSION SHOULD ADOPT CLEARLY DEFINED GOALS FOR USF CONTRIBUTIONS REFORM

The Commission proposes three primary goals for the USF system – efficiency, fairness and sustainability. CBI agrees with these goals, however, it recommends that the fairness goal

be separated into two distinct goals – competitive neutrality and consumer equitability. An additional goal – predictability – should be included as well. Below are some thoughts on each of these goals.

A. Efficiency

As a USF contributor CBI appreciates the need for a system that minimizes compliance burdens and reduces compliance costs. The complexity and uncertainty of the current system causes contributors to spend countless hours analyzing their services and revenues to determine whether they are subject to assessment and if so how to determine the amount of the assessment. Even after making such a determination, providers still have no certainty whether their interpretations are correct. In most cases, they will never know unless they are subjected to an audit at some point in the future.

Other aspects of the current system also lead to inefficiencies, for example, the need to perform traffic studies to determine the amount of interstate usage for wireless or VoIP traffic to avoid using unrealistic safe harbors which penalize both the provider and its customers. The wide disparity in the results of individual traffic studies as reported by the Commission (see, FNPRM at paragraphs 124-125) calls into question whether providers are using appropriate assumptions and properly conducting those studies. For private line services, the need to obtain certification from customers as to the amount of interstate traffic placed on those circuits is confusing and burdensome for providers and their customers. Requiring service providers to obtain certifications from their wholesale customers is another burdensome, confusing and inefficient aspect of the current system.

The reformed mechanism should contain straightforward rules that can be easily understood and applied consistently by all contributors without varying interpretations.

Furthermore, the rules should be easy for the Commission and USAC to audit and enforce. To achieve this goal, the system must eliminate the subjective judgments involved in so much of today's system. In doing so, it will also help to achieve several of the other goals as well.

B. Fairness/Competitive Neutrality

This goal should be viewed from two different perspectives. First, is the broad concept that the system should treat similar products or services the same, regardless of the technology used to provide the service or the type of provider. Voice service should be assessed in the same manner regardless of whether it is provided using wireline or wireless facilities, circuit-switched or packet-switched technology, or is provided by an ILEC, CLEC, cable, wireless or over-the-top VoIP provider. Beyond the broad concept of treating similar services similarly, the system must also ensure that the same service provided by different providers is assessed uniformly. This will result more directly from a system that satisfies the efficiency goal. A system that eliminates the guess work, subjective judgments and loopholes that permeate the existing system will ensure that all providers of the same services treat them uniformly for USF purposes. Service providers should not find themselves in the untenable position of competing for customers against another provider who is exploiting a loophole or interpreting the rules in a very different way, resulting in a significantly lower USF contribution for the same service.

MPLS is a perfect example. There are no clear rules whether this service is assessable or not, and, if so, to what extent, so there is a wide disparity in how providers are treating the service for USF contribution purposes. Some providers classify it as an information service not subject to USF at all, some contribute on a portion of the revenue, while others may be contributing on the entire revenue amount. This disparate treatment is far from competitively neutral among providers of the same service. Other examples of inconsistent application of USF

to services that have existed in the past or may still be present include audio conferencing, text messaging, and private line services.

C. Fairness/Consumer Equitability

As opposed to the aforementioned goal of competitive neutrality, this goal is primarily focused on fairness from a consumer perspective. Not only should the system treat similar services similarly to ensure that the assessment of USF does not influence consumer choice of one service or service provider over another, it should also ensure that USF assessments do not unduly burden consumers. Moreover, there must be some recognition of the value of the service to the consumer when determining the level of the assessment. For example, a system should not assess the same flat charge on every type of broadband connection with no recognition that a lower capacity (e.g., 1Mbps) connection has more limited capabilities, and is priced much lower than, a higher capacity (e.g., 1Gbps) connection. In order to be equitable, the USF charge associated with a service should bear a relationship to its consumer value.

D. Sustainability

The USF system must have the flexibility to quickly adapt to changes in the marketplace as well as technological changes. Because no system can anticipate every change, processes must be established for the Commission to quickly address new services and/or new ways of packaging services to ensure that the contribution base remains stable and that the other goals are not violated. For example, when new services are introduced that do not clearly fit within the definition of assessable services, the Commission must have a process for quickly addressing the USF treatment of the service for all providers. Until such clarification is provided, no provider should be liable to contribute on the service.

E. Predictability

Service providers need stability and certainty for budgeting purposes and development of business plans. Consumers also need certainty when purchasing services how much the total charge for the service will be. A system where the USF assessment varies widely from quarter to quarter or from year to year creates problems for service providers and their customers alike. The Commission should adopt rules that will result in a stable base and rate.

III. THOSE WHO BENEFIT FROM THE SERVICES SUPPORTED BY THE USF SHOULD CONTRIBUTE

In general, CBI believes that the contribution base should be as broad as possible within the confines of the applicable law and the goals outlined above. Who contributes should bear a strong relationship to the services that are supported by the USF/CAF. It would be incongruous for services to be subsidized by the fund and not also contribute to it.

The FNPRM asked for comment on two approaches – one a case-by-case basis with respect to providers of specific services and the other a broad definitional approach. CBI proposes a hybrid approach whereby the Commission follows the broad definitional approach, but then also utilizes a process much like that of the Schools and Libraries program whereby the Commission would issue an annual list of assessable services that fall under that definition.

Although a broad definitional approach as proposed by the Commission might eliminate the need to continually update the rules, it would also necessarily be somewhat broad and generic such that it may still leave service providers having to make judgments whether or not a particular service falls under the definition. Over-the-top VoIP providers, for example, might conclude that they do not provide transmission unless given clear direction by the Commission of the circumstances under which a VoIP provider is considered to be providing transmission.

Under CBI's proposed approach, the Commission would issue a Public Notice each year listing the services that it has identified as falling under the definition of an assessable service. A comment period would be provided for parties to present evidence whether a listed service fits within the definition and also to identify other new services that the Commission may have excluded from the list. After the completion of the comment period, the Commission would issue a final list of assessable services for the upcoming year. The final list should be released at least six months prior to the beginning of the calendar year so that service providers have adequate time to update their billing systems to accommodate any new assessable services. After the initial list is developed, the presumption would be that any services on the list will remain on the list for future years. In subsequent years, the Public Notice would only need to focus on new services that had been identified since issuance of the previous list. The Public Notice might also reexamine services that had been reviewed in previous years but not included on the list, if new evidence or information suggests that the service now meets the definition. Once the list is finalized, there would be no guesswork whether a service is assessable or not. If the service is not on the list, it is not assessable that year. This would satisfy the efficiency, competitive neutrality, sustainability, and predictability goals identified above.

The rules could also identify particular services that are exempt from assessment, even though they might otherwise meet the broad definition of an assessable service. It might be appropriate to exempt or forbear from enforcing USF contributions on certain services in order to better meet the overall USF goals. Undoubtedly numerous parties will offer suggestions on services that should be exempt from USF contributions. These claims should be weighed in the context of the USF goals. At this time, CBI refrains from addressing specific exemptions, but reserves the right to offer specific recommendations in reply comments.

IV. A SIMPLIFIED REVENUE-BASED MECHANISM MAY BEST MEET THE DEFINED GOALS

The FNPRM suggests three possible bases on which contributions might be assessed, but does not propose a specific methodology. CBI has considered all three potential systems and offers some thoughts on each. Although both the connections and telephone numbers approaches have some positive attributes, until a specific proposal is put forth for consideration, CBI is not prepared to endorse either as preferable to a revenue-based system.

The revenue-based funding mechanism has several flaws, as the FNPRM clearly describes, but it has the advantage of having been thoroughly vetted over the years so that its shortcomings are known and the Commission may be able to correct them through small adjustments without replacing the entire system. No system is impervious to gaming and CBI is concerned that if either a connections or numbers-based methodology is adopted, would-be contributors will find new loopholes and complexities will quickly present themselves that may take years to ferret out and correct. In the meantime, many of the USF goals will be unattainable. Moreover, service providers may have to invest significant sums of money and time to develop new systems to track and bill based on connections and/or numbers.

A. Suggested Reforms to the Current Revenue-Based System

The FNPRM identifies the major problems with the current system as (1) how to apportion revenue from bundled services, (2) allocating revenue between the interstate and intrastate jurisdictions, and (3) how to handle wholesale services.

1) Bright-line Rules Should be Established for Bundled Services

When providers offer a bundled package consisting of assessable and non-assessable services, the current rules present the provider with two equally unattractive safe harbors which often lead to the same result. The provider can apportion the bundled revenue based on the

unbundled service offering prices with no discount from the bundled offering being apportioned to the telecommunications service; or the provider can treat the entire bundled revenue as telecommunications revenue subject to assessment. Because bundles are usually heavily discounted, the first option often results in a disproportionate amount of the total revenue being attributed to assessable services, with perhaps as much as the full price of the bundle being considered as telecommunications service revenue. That is necessarily the result of the second method.

If providers attempt to use an alternative method of allocating bundled revenues, they face uncertainty whether the selected method will be considered reasonable unless and until they are subject to an audit or enforcement proceeding. If their methodology is determined to be unreasonable, the provider could be subject to an assessment for a substantial amount of unpaid USF contributions with the inability to recover the contribution from its end users. Thus, there is a strong incentive to use the first safe harbor.

CBI supports the adoption of a bright line rule for allocation of bundled revenue as suggested in paragraph 106 of the FNPRM, with the potential for providers that do not offer the assessable service on a standalone basis to present a market analysis of stand-alone services offered by other carriers that compete in the same market. Providers presenting such studies should be required to file them with the Commission and USAC when they file their Form 499-A and the studies should be available for public review. In addition, the Commission should establish parameters for what constitutes a standalone service and a provider relying upon its own standalone pricing must disclose this on its Form 499-A and be able to substantiate that its service meets the criteria for a standalone service. This information would also assist the

Commission and USAC when evaluating whether the studies of standalone service prices that other providers file are reliable.

Information services that contain an interstate telecommunications transport component are, in essence, just a variation of the bundled service offering allocation problem discussed above. CBI also supports a clear rule addressing how such revenue should be allocated. If the rule proposed in paragraph 117 is adopted, the Commission must clearly define parameters for what constitutes a standalone transmission service and providers that do not offer such transmission service on a standalone basis should be allowed to present studies showing the market price of such transmission service as discussed above for bundled services. For certain common information services (*e.g.*, residential broadband Internet access and certain enterprise services) it would be appropriate for the Commission to develop proxy prices for the transmission service or a fixed percentage of the retail price that would be allocated to the transmission service, based upon an analysis of the market for the transmission component of the particular service. The MPLS Industry Group proposal is an example of how the Commission might establish a proxy for the transmission component of a service. With respect to services for which the Commission does not establish proxies initially, it might later find that it has sufficient data to do so based upon the standalone pricing data that companies file with their Form 499-A and the market studies filed by providers that do not offer standalone transmission service. When the Commission establishes a proxy for the transmission component of an assessable information service, the proxy should be updated periodically and published along with the annual assessable services list discussed above.

2) Fixed Interstate Allocators Should be Established for Major Categories of Service

The *TOPUC*¹ decision prohibits the Commission from assessing intrastate revenues for federal USF programs. Accordingly, where services are used entirely for intrastate purposes, they may not be assessed for federal USF. Where services are used for both intrastate and interstate purposes and the revenue is allocable between the two jurisdictions, only the interstate revenue may be assessed.

As the nature of services has changed over the years, it has become increasingly difficult for providers to accurately allocate revenue between the interstate and intrastate jurisdictions. Moreover, the allocation methods that providers develop become less meaningful as services continue to evolve and more and more services are simply becoming broadband Internet applications. As the Commission indicates in paragraph 121, to the vast majority of consumers the jurisdiction of a service is irrelevant as they pay the same price regardless of where the traffic originates and terminates. Even rates for long distance voice service will cease to differ by jurisdiction once the Commission's intercarrier compensation reforms are fully in place.

While the Commission remains legally constrained by the *TOPUC* decision, it could significantly improve the current revenue-based system by adopting fixed allocators for the major categories of services. The Commission used a similar approach in the past with respect to access charges when it allocated 25% of ILEC loop costs to the interstate jurisdiction. The Commission could use the many years of data it has collected on Form 499-As to develop these percentages. The suggestion presented in paragraph 132 of using just two allocators, one for voice and one for data has considerable merit. Providers of voice service compete against each other regardless of the technology used to provide service. Consumers clearly consider

¹ *Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393, 428 (5th Cir. 1999) (*TOPUC*).

traditional wireline, cable, VoIP and wireless to be viable alternatives to each other, so there should not be different allocations for different types of providers or technologies. As noted in footnote 254 and Chart 5 in the FNPRM, there is little variation in the percentage of interstate usage amongst the various types of voice service providers. The only voice service that has a significantly higher interstate percentage is standalone toll. However, separately billed toll is rapidly declining as consumers subscribe to plans that offer unlimited local and long distance or at least provide for some bucket of long distance minutes combined with local service.

Except for standalone toll service, for which carriers can readily distinguish intrastate and interstate usage, it would make sense for the Commission to develop a single intrastate/interstate apportionment factor that would be applied to the total service revenue derived from voice services. For traditional wireline carriers, revenue from all of the various voice service components (local service, EAS, federal and state SLCs, etc.) could be combined into one voice revenue category and the proxy interstate usage factor applied to determine the amount of revenue assessable for USF. This would make LEC voice revenues comparable to those of wireless and VoIP carriers that charge a single price for their service without breaking the total price into specific components. This would place all carriers on equal footing with regard to USF funding and consumers would know, much like sales tax for example, that a fixed percentage of their voice service price would be assessed for USF. Standalone toll service providers would continue to contribute as today, based only on the revenue from interstate calls.

For data services, it seems widely accepted that Internet access traffic almost universally crosses state lines and is, therefore, by its very nature interstate. For other data services, for example broadband data transmission services typically sold to enterprise business customers, it is appropriate to develop some bright line rules for allocating the revenue between jurisdictions.

Currently, for most of these services providers must seek certifications from their customer regarding the jurisdiction of the traffic according to the Commission's 10% rule. This is a difficult rule for carriers to explain to customers and a concept that may be incomprehensible to even sophisticated enterprise customers. Under the current 10% rule, even if a carrier supplies a circuit wholly located within one state, if the customer combines that circuit with another facility and uses it to transport traffic that is more than 10% interstate, the carrier is required to make USF contributions for the entire value of that local circuit.

CBI recommends, for point to point data circuits, that the jurisdiction of the revenue be determined by the originating and terminating points of the circuit as provisioned by the carrier, rather than the originating and terminating points of the traffic traversing the circuit as combined by the customer with other facilities. Under this approach, if the circuit that a provider sells to a customer originates and terminates in the same state, it would be considered intrastate, regardless of whether the customer might ultimately forward some of that traffic to an interstate location via another provider's network. Conversely, a circuit that crosses state boundaries is clearly 100% interstate. This is an easy concept for customers to understand and would considerably simplify the process leading to efficiencies for service providers, their customers and the Commission and USAC. It would no longer be necessary to obtain customer certifications as to the usage of circuits. Moreover, it would eliminate yet another opportunity for disparity between providers – the inconsistent reporting by customers of their interstate usage of circuits - thereby making the system more competitively neutral.

3) The Wholesale Services Exemption Should be Retained, But Simplified

The Commission asks whether USF contributions should be made on only retail revenues or whether it should assess wholesale revenues. This is a complicated subject and could result in

substantial change in how USF contributions are made, billed and collected and could make the system considerably more complex and open up new loopholes. If all services and carrier relationships were as simple as presented in the theoretical example in Table 1 of the FNPRM, a value-added approach might be workable, but the reality is far from that simple. Providers buy many different types of services from other providers and incorporate them into their own services in many different ways. It is rarely as simple as reselling the service in exactly the same form but with a simple markup. For example, a long distance provider buys a flat-rated special access circuit from a LEC and uses it to provide toll service to its end users on a per minute basis. Under the value-added approach, how does the long distance provider determine the markup?

Under the current system, only end-user revenues are subject to USF assessment. Wholesale providers who sell services to middlemen who in turn deal with end users do not contribute to USF. Although shifting to a wholesale collection approach has some theoretical merit with respect to the problem of bundling and packaging of services, CBI believes any theoretical advantages are likely outweighed by the practical administrative difficulties of designing and implementing such a system. Moreover, the substantial changes to the reporting and collection system necessary to focus on wholesale revenue, as well as the large number of new contributors that would have to be identified and potentially audited negate any theoretical benefit.

Instead, CBI recommends that the wholesale exemption be retained, but the administration be simplified. Specifically, the Commission should clarify that if a wholesale customer is a USF contributor, then all services the customer purchases from a wholesale provider are exempt from USF. Although the CBI entities request that wholesale customers

identify the services that they purchase from CBI that are resold to end users as telecommunications services/interconnected VoIP services versus services that they purchase that are not resold as telecommunications services/interconnected VoIP services, the vast majority of wholesale customers certify that all of the services they purchase from CBI are resold as telecommunications services or interconnected VoIP services on which they contribute to USF. CBI suspects that this is the case for most wholesale customers, regardless of the wholesale provider. Therefore, clarifying that wholesale providers need only ascertain whether their wholesale customers are USF contributors or not should suffice for purposes of determining whether to assess USF on the services the wholesale customer purchases. With this clarification, the wholesale customers would only need to provide the wholesale provider with their Form 499 ID and the wholesale provider could check this against the FCC's Form 499 Filer ID database to determine whether the customer is a USF contributor. There would be no need for cumbersome USF exemption certification processes and record keeping requirements. The only records the wholesale provider would need to keep would be its wholesale customers' Form 499 ID numbers and documentation showing the results of the provider's check against the Form 499 ID database. If the Commission is concerned that the wholesale customers may be escaping payment of USF on some services that are not used to provide assessable services to end users, it could provide a mechanism on the Form 499-A for the wholesale customer to report any services that it purchased from a wholesale provider that were not incorporated into an assessable end user service. This would take the onus off of the wholesale provider to police the activities of its wholesale customers and place responsibility for accurately reporting USF liability on the wholesale customer where USAC can audit and enforce compliance directly with the entity who has the responsibility for accurately reporting how they used the services they purchased.

Additional steps the Commission can take to simplify compliance for providers is to simplify Block 3 of the Form 499-A. As long as all types of wholesale revenue are exempt from assessment, there is no reason why providers should have to report wholesale revenue at the level of detail currently requested on the Form 499-A. Block 3 could be condensed into a single line for wholesale revenue, or at the most three lines – Fixed Local Service, Mobile Services and Toll Services. Furthermore, since wholesale revenue is not assessed, there should be no need for providers to report interstate revenue. The only instance in which it would be necessary to identify interstate wholesale revenue is when a provider uses Block 5 of the Form 499-A to exclude revenue from non-USF contributing resellers from the TRS contribution base. Only those providers that avail themselves of the Block 5 exclusion should be required to report interstate wholesale revenue. There is no reason to burden all providers with extra reporting requirements that serve no useful purpose except for a few providers.

B. Connections-Based System

Although CBI is not convinced that a connections-based system would be preferable to a revised revenue-based system, it nonetheless offers some comments on a connections-based system should the Commission decide to move forward in that direction.

1) Facilities-Based vs. Service-Based Definition

A facilities-based definition would be easier to comply with, less costly to administer, result in less gaming by contributors, and be easier for consumers to understand than a service-based definition. Without a clearly defined list of assessable services, it would be very easy for providers to game the system by creatively packaging their services. In addition, a service-based mechanism might be more costly for providers to implement since billing systems generally do not count the individual services on an account, particularly for the many subscribers who purchase bundles containing both assessable and non-assessable services. Auditing could prove

difficult for administrators as they would have to investigate each and every service and bundle in order to determine if the provider counted the appropriate number of services for each account. Moreover, it might be difficult to explain to consumers why they have multiple assessments on their bill and how this will change depending upon the services or packages they subscribe to. It might also discourage consumers from subscribing to certain services depending upon the level of the assessment, particularly if the same flat-rated assessment applies to each service.

A facilities-based charge seems more straight-forward to apply, less subject to gaming, easier to audit, and easier to tier based on speed or capacity, which may help equate it more to the value and capability of the services provided over the connection. Since providers already track and report broadband connections for the Form 477, they already have some mechanism for counting connections. However, there still would be costs involved to modify billing systems in order to assess USF on a connections basis. A facilities-based mechanism would be simpler for providers to implement than a service-based assessment because it would avoid the need to count the number and type of services provided over the connection. Moreover, a facilities-based assessment would be less prone to gaming as it is a relatively straight-forward determination as to whether a company provides a connection or not. From the consumer perspective, this approach also would be easier for consumers to understand.

CBI has concerns about how the level of assessment per connection would be established and believes that a single flat-rate assessment per connection is inappropriate due to the regressive nature of such a charge. For example, assessing a 64kbps connection the same amount as a 100Mbps broadband connection would be regressive and could also hasten the decline of access lines. Therefore, it is important that any connections-based assessment be

tiered, and that the selection of tiers consider the capabilities of the connection (*e.g.*, should a 1.5 Mbps DSL connection be assessed the same amount as a 1.5 Mbps T-1; should an asymmetrical connection be assessed the same amount as a symmetrical connection?). A drawback to this tiered approach however, is that it would need updating as technology changes and setting the level of the assessment and the tiers would be subjective. This would be contrary to the goals of sustainability and predictability and, unless the tiers are carefully set, calls into question the goal of equitability as well.

There is another problem with a connections-based assessment in the case of wireless service. With wireline service, the consumer pays for and receives a fixed connection from a specific location. Although the speed may vary somewhat from the maximum speed advertised, the consumer generally receives a fairly consistent speed from their fixed location. With wireless, however, the subscriber purchases a device and a plan that enables them to use the device on various networks, the speed of which may vary considerably based upon the combination of their device and current network. Thus, under a tiered connections-based mechanism, for example, would a wireless subscriber with a data plan and a 4G device who is traveling during the month and only within range of 2G or 3G networks most of the time be charged the same assessment as a wireline customer receiving a consistent speed throughout the month?

Moreover, if the Commission were to assess only broadband connections, a wireless provider could not determine whether a wireless data subscriber is subject to USF. Wireless providers generally sell data plans based on usage (consumption), not speed or capacity. A customer using a 3G or 4G device would be able to access the network at broadband speeds, while a customer subscribing to the same plan but using a 2G device would not have broadband

service. The provider does not know with 100% accuracy whether the customer is using a broadband capable device or not. Even if a customer purchased a 2G device when subscribing to a data plan with the provider, that does not preclude the customer from switching to a 3G or 4G device or vice versa. In addition, a customer may choose to switch between devices throughout their billing period which could afford them different access to the network and data speeds. Although a typical customer using a 3G or 4G device is likely to consume more data in a month than a 2G customer, the provider cannot necessarily assume that all subscribers using less than a certain amount of data are not using broadband. For example, a subscriber with a 3G device who uses it infrequently might use the same or lesser amount of data as a subscriber with a 2G device who uses it on a regular basis. Or, a customer with a 3G or 4G device may travel into areas, or primarily use their device during the billing period in areas that are served by 2G only speeds and as a result, consume far less data than a typical smartphone user during that period.

2) Connections-based Implementation Issues

If the Commission proceeds with a connection-based mechanism, it is imperative that it also update the TRS, NANP, LNP and regulatory fees assessment mechanisms to conform to the USF system. It makes no sense to maintain two separate systems. The additional costs imposed on providers, USAC, the Commission and consumers to maintain two different assessment mechanisms cannot be justified.

The ultimate details of a connections-based mechanism would determine the amount of time providers would need to implement the new system. If it is very simple with few exemptions and adjustments, twelve months might be sufficient time to implement the billing, tracking and reporting systems. However, if the system is complicated by exemptions, adjustments and calculations that are not readily employed by providers now, implementation could take considerably longer and be far more costly.

If the assessment is simple and readily tracks to items already in billing systems, it might even be feasible to consider a monthly collect and remit type assessment where the provider reports each active connection on an account the prior month and pays the appropriate assessment on each active connection. The assessment should not be tied to whether the connection was billed to an end user because it would encourage gaming whereby the provider would offer the connection for free, but charge more for other non-assessable services. If the connection is provisioned for a customer, regardless of the price charged for it, it should be assessable for USF.

C. Telephone Numbers-Based System

A numbers-based mechanism sounds very simple on the surface, however, in reality it could be complicated if the Commission is urged to create exceptions for various types of numbers and/or categories of customers. There are further concerns as to the sustainability of a numbers-based system as services evolve and it becomes more common for consumers to use telecommunications without telephone numbers. That is already the case with broadband Internet access. Should the Commission determine that it can and should assess USF on the telecommunications transport provided in connection with broadband Internet access, it would need a means of identifying those services other than through telephone numbers (perhaps IP addresses, for example). While, for the foreseeable future, telephone numbers will remain widely used, at least for voice service, and would provide a relatively predictable funding base for USF in the short term, over time more and more telecommunications activity will take place independent of telephone numbers, which calls into question whether a pure numbers-based mechanism will be sustainable, equitable and competitively neutral in the long term.

If it could be applied uniformly across all service providers, technologies, and services without exception, a numbers-based assessment would be competitively neutral, efficient, and predictable in the short term. It would also be easy for consumers to understand and predictable for consumers, providers and administrators. However, many of these positive attributes of a numbers-based system may be lost as the system is adjusted to address perceived inequities that numerous parties will raise. The primary drawback to a numbers-based assessment is the apparent disconnect between the funding source (numbers, which primarily equate to voice service) and the programs funded by the USF, which are transitioning to broadband service. Although most consumers will continue to use voice services associated with telephone numbers even though they have broadband services, a consumer that only uses voice service and receives no direct benefit from the broadband network that the USF is now supporting would contribute the same amount as a consumer who is heavy broadband user.

1) Definition of Assessable Number

CBI's primary concern with the definition of assessable number proposed in paragraph 296 is the concept of numbers in use by an end user. For mass market end users this would not be a problem, however, for enterprise customers, service providers do not know whether a number assigned to a business is actually in use. Many business customers obtain blocks of numbers for use in their PBX or VoIP systems. The provider's switch shows those numbers as working numbers and directs calls dialed to those numbers to the business, but the business may not have assigned or activated all of those numbers in its system. A business can activate or deactivate the numbers in its block at its discretion and the service provider has no idea whether the numbers are working at a particular point in time. If service providers were required to survey their customers to ascertain whether the numbers assigned to them are working, it would increase the compliance costs, impose new costs on business customers, introduce incentives for

providers and customers to game the system, make enforcement difficult, and make the system less predictable.

CBI believes that a preferable alternative would be to use the definition of assigned numbers used in conjunction with the NRUF report together with assigned toll-free and 500-NXX numbers. Providers have been tracking and reporting numbers for NRUF purposes for many years so no new tracking systems would have to be developed and auditing guidelines have already been established. Adjustments would be necessary for ported numbers, as is done today for wireless carriers' regulatory fees assessment, but this information is readily available from the LNP database administration system.

2) Numbers-based Implementation Issues

As with the connections-based assessment, if a numbers-based assessment were kept simple without exemptions, a monthly report and remit type system could be established under which providers would report the number of assigned numbers in service on the last day of the month and remit their payment each month. Alternatively, the assessment could be calculated every six months based upon that data reported on the NRUF report with reconciliation for ported numbers from the LNP database. Implementation of a simple numbers-based assessment could be done relatively quickly (perhaps 12 months) if it is tied to existing systems that track numbers. However, if new tracking and major modifications to billing systems must be developed, providers will need 18 months or more for implementation.

D. Hybrid Systems

CBI's primary concern with a hybrid mechanism is the significant additional costs it would impose on providers and administrators relative to single source mechanism. Tracking, billing, reporting, auditing and enforcing a hybrid mechanism would be more cumbersome as providers would have to maintain data from a variety of systems and administrators would have

to become familiar with multiple systems and conventions that providers use to track and report each. Consumers might also find a hybrid system more difficult to understand. Thus, unless a hybrid proposal is presented that is shown to have significant advantages over a single source mechanism in satisfying the all of the goals of USF reform, the Commission should avoid imposing the additional cost of a hybrid system on providers and consumers.

V. PROVIDERS SHOULD BE ALLOWED TO RECOVER THEIR USF ASSESSMENT VIA A SEPARATE END USER CHARGE

A prohibition against recovery of USF assessments via a separate line item on customer bills should be rejected. The Commission should continue to permit service providers to recover their USF contributions from end users via a USF line item as most providers do today. Prohibiting a separate USF line item on customer bills, in essence forcing providers to include the USF assessment in the price of service, is problematic because the USF assessment percentage is constantly changing. Service prices are generally fixed and established by contracts, so carriers could be forced to absorb marginal increases in USF assessments that could not be included in service rates. Consumers could also be negatively impacted by a prohibition on USF line item charges. If providers' only option is to include their USF assessment in their prices, consumers would have no idea how much of the price of their service is used to support the advancement of universal service. Not only does it support the right to pass USF assessments on to customers, CBI would support a rule requiring providers to recover USF via a separate line item on customer bills. This would ensure that consumers are aware of the USF and the amount they pay to support it. Consumers have the right to know how much they pay to support government mandated programs.

Moreover, if providers' only option is to recover the USF in the price of their services, they would have an incentive to recover their USF contributions by increasing prices on their

least competitive services or services which are purchased by consumers who may be less savvy about competitive options and therefore less likely to switch providers. If a separate USF line item is included on all customer bills, consumers will know how much they are being billed for USF and regulators will be able to evaluate the impact of the USF contribution system on consumers relative the programs it funds to determine whether the goals of universal service are being satisfied.

If the USF contribution reforms the Commission adopts eliminate the current disparities in the way different providers and technologies are assessed for competing services there should be no need to mandate that providers address the USF in their advertising because it would apply the same to all service providers. And, if service providers are required to separately state USF charges on customer bills, consumers will be able to compare prices for service without having to figure out if one provider is including USF in its price whereas another is not. Rather than having to police service providers' advertising, if the Commission sets clear rules for how USF is assessed on services, it could serve as the single, consistent source of information for consumers seeking to understand how USF applies on the services they are evaluating.

VI. CONCLUSION

CBI appreciates the opportunity to address USF contribution reform. CBI urges the Commission to take a practical approach to this subject and to ensure that any changes to the current USF contribution system can be implemented efficiently and without the need for radical changes to billing systems or significant expense. Any reforms should assure that all competitors are treated fairly and equally so that the burden of supporting USF is shared appropriately and no provider is given an unfair advantage. Moreover, it should ensure that

everyone who benefits from the USF contributes in an equitable manner with no one group of providers and consumers shouldering the burden.

Respectfully submitted,

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