

**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 EARTHLINK, INTEGRA, AND TW TELECOM

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EarthLink, Inc. (“EarthLink”), Integra Telecom, Inc. (“Integra Telecom”), and tw telecom inc. (“tw telecom”) (collectively, the “Joint Commenters”), through their undersigned counsel, hereby submit these comments on the Commission’s *FNPRM* in the above-captioned proceedings.¹

I. INTRODUCTION AND SUMMARY.

The Joint Commenters applaud the Commission for its commitment to “reform and modernize how Universal Service Fund (USF or Fund) contributions are assessed and recovered.”² In undertaking comprehensive reform, the Commission should be guided by the following principles.

First, the Commission should expand the contribution base as widely as possible. As the Commission recognizes, “the USF contribution base . . . has recently begun to shrink as residential and business customers have begun to migrate to communications services that do not

¹ *Universal Service Contribution Methodology; A National Broadband Plan For Our Future, Further Notice of Proposed Rulemaking, WC Dkt. No. 06-122 & GN Dkt. No. 09-51, 27 FCC Rcd. 5357 (2012) (“FNPRM”).*

² *Id.* ¶ 1.

contribute to the Fund.”³ As a result, “the contribution factor has increased more than 65% since the first quarter of 2009.”⁴ To reduce the burden on existing contributors and better align the source of contributions with the Commission’s universal service goals, the Commission should adopt a broad and inclusive approach to determining who should contribute. Most importantly, the Commission must use its permissive authority under Section 254(d) of the Act to impose contribution obligations on providers of broadband Internet access service. Absent this change, the Commission will not achieve its goals of limiting the overall contribution burden and establishing a stabilized and sustainable contribution base.

Second, the Commission should minimize the implementation and compliance costs associated with the contributions system. To achieve this goal, the Commission should retain a revenues-based contributions system and adopt the reforms to that system described herein. To the extent that the Commission adopts a new contributions system (*e.g.*, based on connections and/or numbers rather than revenues), the Commission must do everything possible to limit the administrative costs associated with such a change. For example, the Commission should ensure that the methodology used to assess contributions to all funds are the same. This means that, whatever contribution methodology is adopted for USF should also apply to the assessment of contributions to other funding mechanisms under the FCC’s jurisdiction (*i.e.*, annual regulatory fees and funding mechanisms for interstate telecommunications relay services (“TRS”), the administration of the North American Numbering Plan (“NANPA”), and the shared costs of local number portability (“LNPA”). Otherwise, service providers would be forced to develop entirely new billing systems and internal processes based on connections and/or numbers for USF

³ *Id.* ¶ 4.

⁴ FCC News Release, *Statement of FCC Commissioner Ajit Pai on the Proposed Third Quarter 2012 Universal Service Contribution Factor* (rel. June 11, 2012).

contribution purposes *and* simultaneously maintain existing billing systems and internal processes based on revenues for purposes of paying regulatory fees and contributing to the TRS, NANPA, and LNPA funding mechanisms.

Third, the Commission should eliminate the competitive distortions created by the current contributions system. As the Commission acknowledges, “[b]y treating similar or substitutable services differently, our contribution rules may create unintended market distortions.”⁵

Widening the contribution base will help remove some of these distortions. For example, including one-way VoIP providers in the contribution base will level the playing field between such providers and providers of assessable telephone and interconnected VoIP services.⁶

Irrespective of the type of contributions system the Commission establishes in this proceeding, the Commission will also need to eliminate the distortions in the broadband Internet access market that result from the existing system. As discussed in Part II.B.4 *infra*, under the current system, incumbent LECs contribute to the Fund on special access sold to competitive providers of broadband Internet access service (revenues from these special access inputs are treated as “end user revenues”) and the incumbent LECs pass this charge through to those competitors. But the incumbent LECs need not contribute to the Fund when they use their own facilities to provide broadband Internet access service. If the Commission retains a revenues-based contributions system, it can eliminate this inequity by imposing contribution obligations on providers of broadband Internet access service—regardless of whether they rely on their own facilities or special access inputs to provide such service. If the Commission does not broaden the contribution base to include broadband Internet access service providers, it could establish a

⁵ *FNPRM* ¶ 24.

⁶ *See id.* ¶ 61.

rule that wholesalers selling telecommunications services inputs to retail providers of broadband Internet access service must treat revenues from such inputs as “carrier’s carrier revenues” rather than “end user revenues” for USF contribution purposes.

Fourth, the Commission should minimize opportunities for arbitrage created by the existing contributions system. Reducing the contribution burden could help in this regard because contributors would have less incentive to find ways to minimize their contribution liability if the contribution factor is lower. But the Commission should take other steps as well. For example, under the current system, the Commission’s Form 499-A Instructions on how to allocate revenues (*e.g.*, from bundled services offerings and from MPLS-based services) for USF contribution purposes are not codified rules, thereby giving service providers undue discretion to underreport revenues and withhold contributions. The Commission should limit contributors’ discretion in allocating revenues from bundled services offerings and from MPLS-based services by, among other things, codifying the relevant guidance into clear, precise, enforceable rules. These steps would serve to level the playing field among providers of these services.

Fifth, the Commission should reduce regulatory uncertainty associated with USF contributions and increase the efficiency of the USF contribution process. For example, as discussed in Part II.B.3 *infra*, the Commission should clarify that, contrary to USAC’s interpretation of the so-called “10% rule,” carriers are not required to obtain certifications from their customers indicating that less than 10% of the traffic routed over a private line circuit is interstate in order to allocate revenues from that circuit as 100% intrastate. As discussed in Part II.B.4, the Commission should also alleviate many of the problems posed by the current wholesale customer certification process by imposing contribution obligations on providers of broadband Internet access service. In addition, the Commission should reduce the administrative

burden on carriers by issuing the Form 499-A and accompanying instructions well before the annual filing deadline. Finally, the Commissions should not make changes to how contributors can pass through USF contributions to end users (*e.g.*, by requiring carriers to include the universal service contribution in their advertised prices or eliminating the separate universal service line-item charge) that would increase the compliance burden for carriers.

II. DISCUSSION

A. The Commission Should Expand The Universal Service Contribution Base As Broadly As Possible.

In the *FNPRM*, the Commission seeks comment on whether it should use its permissive authority under Section 254(d) of the Act to (1) address the contribution obligations of specific services on a case-by-case basis,⁷ or (2) take a “broader definitional approach” in which it would “specify which ‘providers of interstate telecommunications’ must contribute, without enumerating the specific services subject to assessment.”⁸ The Joint Commenters urge the Commission to adopt the latter, “broader definitional approach” to determine who should contribute. The Commission should expand the contribution base as widely as possible for several reasons.

First, a broader contribution base will reduce the contribution burden on existing contributors—a burden which reached as high as 17.4% last quarter.⁹ In a revenues-based system, reducing the contribution factor will in turn diminish service providers’ incentives to engage in regulatory arbitrage and seek ways to minimize their contribution liability. *Second*, a

⁷ See *FNPRM* ¶¶ 36-40.

⁸ See *id.* ¶ 74.

⁹ See *Proposed Second Quarter 2012 Universal Service Contribution Factor*, Public Notice, 27 FCC Rcd. 2534 (2012).

broader contribution base will “ensure the Fund remains sustainable over time.”¹⁰ *Third*, expanding the contribution base to include service providers that are not subject to contribution obligations today will reduce the competitive distortions created by the current system. For example, as the Commission recognizes in the *FNPRM*, “[o]ne-way VoIP providers, on one hand, and providers of traditional telephone and interconnected VoIP services, on the other hand, . . . compete against each other” and yet the former are exempt from contribution obligations.¹¹

The Commission also requests comment on whether, if it adopts the broader definitional approach described above, it should create exceptions or exemptions for broadband Internet access service providers.¹² On the contrary, if the Commission seeks to achieve its goal of broadening the contribution base,¹³ it *must* impose contribution obligations on providers of broadband Internet access service. Given that the current contribution base has been shrinking,¹⁴ assessing broadband Internet access service is the only way to reduce the burden on existing contributors and create a stable and sustainable USF. Nor is there any question that the Commission has the authority to do so. Under the Commission’s so-called Section 254(d) “permissive authority,” the Commission may extend contribution obligations on “any . . . provider of interstate telecommunications . . . if the public interest so requires,”¹⁵ and the Commission has already held that “wireline broadband Internet access service includes a

¹⁰ *FNPRM* ¶ 25.

¹¹ *Id.* ¶ 61.

¹² *See id.* ¶ 84.

¹³ *See id.* ¶ 25; *see also* Connecting America: The National Broadband Plan, at 149 (Mar. 16, 2010).

¹⁴ *See FNPRM* ¶¶ 4, 20.

¹⁵ 47 U.S.C. § 254(d).

provision of telecommunications.”¹⁶ The Commission has also held that “the transmission component of wireless broadband Internet access service is telecommunications.”¹⁷ Thus, the Commission can and should extend contribution obligations to providers of broadband Internet access service. Indeed, it would be illogical for the Commission to establish a fund (*i.e.*, the Connect America Fund (“CAF”)) to subsidize voice and broadband Internet access services without requiring contributions from providers of broadband Internet access service.

Finally, the Commission asks whether it should exempt non-facilities-based providers from contribution obligations if it adopts a broader definitional approach to determining who should contribute.¹⁸ It would not make sense to exempt non-facilities-based providers either given that resellers already contribute to the USF today.¹⁹

B. The Commission Should Retain And Appropriately Reform Aspects Of The Existing Revenues-Based Contributions System.

In light of the substantial burden and costs to local exchange carriers that would result from an overhaul of the current revenues-based contributions system to a connections- and/or numbers-based system (*see* Part II.C *infra*), the Commission should retain the revenues-based

¹⁶ *See FNPRM* ¶ 66 (citing *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd. 14853, ¶ 14 (2005) (“*Wireline Broadband Classification Order*”).

¹⁷ *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, Declaratory Ruling, 22 FCC Rcd. 5901, ¶ 29 (2007); *see also id.* ¶ 31 (“We find that the transmission component used for wireless broadband Internet access is ‘telecommunications’ because it provides ‘transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.’”).

¹⁸ *See FNPRM* ¶ 83.

¹⁹ *See id.*

system. The Commission must, however, adopt appropriate reforms to eliminate competitive distortions and opportunities for arbitrage created by the existing system.

1. *How To Treat Bundled Services*

The Commission's Form 499-A Instructions direct carriers to apportion revenues from bundled services in one of the following ways: (1) apportion bundled revenues "based on the unbundled service offering prices, with no discount from the bundled offering being allocated to telecommunications services"; (2) "treat all bundled revenues as telecommunications service revenues"; or (3) apportion bundled revenues using "any other allocation method" that is considered "reasonable."²⁰ As the Commission has recognized, however, some carriers in the enterprise market have been allocating fewer revenues from bundled offerings to assessable services in order to reduce their contribution obligations and thereby gain a competitive edge, especially when competing for large corporate customers.²¹

The Commission should take two steps to address the problem of allocating bundled services revenues between assessable telecommunications services and non-assessable services.²² *First*, as discussed above, the Commission should expand the contribution base to include providers of broadband Internet access service. Because bundled services frequently

²⁰ 2012 Instructions to the Telecommunications Reporting Worksheet, Form 499-A, at 20 (rel. Mar. 5, 2012) ("Form 499-A Instructions").

²¹ See *FNPRM* ¶ 105.

²² To reduce opportunities for carriers to allocate fewer resources from bundled services to the interstate jurisdiction, the Commission should adopt a fixed allocation method for fixed local service that is provided as part of a bundle. Specifically, a carrier should not be permitted to allocate more than the incumbent LEC basic service rate to the intrastate jurisdiction for local service included in a bundle. Otherwise, in states without a universal service fund or a state with a contribution factor that is lower than the Federal contribution factor, some carriers may have an incentive to set their standalone local service rates high in order to minimize their Federal universal service contribution liability when providing local service as part of a bundle.

include broadband Internet access service, classifying broadband Internet access service as an assessable service will reduce much of the opportunities for arbitrage associated with allocating revenues from bundled services today. *Second*, the Commission should codify the Form 499-A Instructions quoted above regarding the allocation of bundled services revenues as enforceable rules. In so doing, the Commission will resolve the “questions [that] have been raised about whether the instructions have the force of binding rules, or whether they constitute non-binding agency guidance.”²³ Binding rules, subject to penalties for noncompliance, will help disincentivize carriers from underreporting—and consequently, failing to contribute on—assessable revenues from their bundled services offerings.

2. *How To Treat MPLS-Based Services*

The Commission seeks comment on how to treat MPLS-based services for USF contribution purposes.²⁴ However, the Commission’s Form 499-A Instructions already direct filers to treat revenues from MPLS-based services as assessable.²⁵ Some carriers have found that despite these Instructions, some of their competitors are not contributing on their MPLS-based services revenues. In order to ensure a level playing field among providers of MPLS-based services, the Commission should codify its guidance regarding the treatment of MPLS-based services revenues into an enforceable rule and make clear that such revenues are assessable.

²³ *Id.* ¶ 345.

²⁴ *See id.* ¶¶ 114-119.

²⁵ *See* 2012 Form 499-A Instructions at 3 (“For the purposes of filing, the term ‘interstate telecommunications’ includes, but is not limited to, the following types of services: . . . Multi-Protocol Label Switching (MPLS) services . . .”); *see also* “Wireline Competition Bureau Announces Release of the Revised 2009 Form 499-A and Accompanying Instructions,” Public Notice, 24 FCC Rcd. 2424, at 1 (2009) (amending Form 499-A to include MPLS under “Who Must File”).

Moreover, the Commission should not adopt the “MPLS Industry Group Proposal.”²⁶ That proposal raises several implementation challenges. *First*, it would require carriers to purchase or develop new software or applications that would apply the appropriate MPLS Assessable Revenue Component (“MARC”) proxy to each transmission component (and thus contribute based on imputed proxy revenues). At the same time, carriers would need to retain their existing software and systems to track and calculate actual revenues for purposes of making USF contributions on services other than MPLS-based services and making contributions to other funding mechanisms (*e.g.*, TRS, NANPA and LNPA). Assessing MPLS-based services based on imputed proxy revenues and all other assessable services based on actual revenues (for purposes of contributing to the USF as well as other funding mechanisms) adds complexity and increases compliance costs and the administrative burden on carriers.²⁷

Second, the MPLS Industry Group Proposal would require carriers to monitor the National Exchange Carrier Association tariff (from which the MARC proxies are derived) for access rate changes and update the new software or applications they purchase or develop accordingly. Under the proposal, a carrier would also be required to update the new software or applications whenever it introduced a new service (*i.e.*, the carrier would need to map each new service to the relevant capacity band to determine the MARC proxy that should be used).

²⁶ See *FNPRM* ¶ 116 & n.236.

²⁷ Under the MPLS Industry Group Proposal, “individual carriers could elect to use their actual access transmission rates to determine their USF contribution base provided those rates yield a larger USF contribution base than the [MPLS Assessable Revenue Component (MARC)] proxies.” See Letter from MPLS Industry Group, to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 06-122, Attachment, at 5 (filed Mar. 29, 2012) (“MPLS Industry Group Proposal”). This would, however, still require carriers to modify their existing software or systems to apply the MARC proxies to the transmission components at issue.

Third, the proposal fails to account for the fact that some carriers offer services (such as “burstable” services) for which the pricing is not based on speed.

3. *How To Allocate Revenues Between The Interstate And Intrastate Jurisdictions*

In the *FNPRM*, the Commission seeks comment on “ways to simplify the allocation of interstate and intrastate revenues for USF contributions and reporting purposes.”²⁸ The Commission notes that “[w]hile there are no codified rules on how to allocate revenues, the FCC Form 499-A Instructions . . . direct contributors to report all of the revenues for private lines as 100 percent interstate if more than 10 percent of the traffic on that line is interstate.”²⁹ This footnote raises a critical jurisdictional issue. While the Commission instructs carriers to report revenues from a private line circuit as 100% interstate *only if* more than 10% of all the traffic at issue is interstate, USAC has incorrectly interpreted these instructions as creating a presumption that all revenues from private lines are 100% interstate *unless* the carrier can prove otherwise.³⁰ In particular, USAC has required carriers to reclassify their private line revenues as jurisdictionally interstate because the carriers did not have certifications from customers indicating that less than 10% of the traffic routed over their private line circuits was interstate.³¹

²⁸ *FNPRM* ¶ 121.

²⁹ *Id.* n.246.

³⁰ See Request for Review of PaeTec Communications, Inc. of Universal Service Administrator Decision, WC Dkt. No. 06-122, at 3-10 (filed Apr. 3, 2012) (“PaeTec Request for Review”); XO Communication Services, Inc. Request for Review of Decision of the Universal Service Administrator, WC Dkt. No. 06-122, at 7-23 (filed Dec. 29, 2010) (“XO Request for Review”); Request for Review by Madison River Communications, LLC of Decision of Universal Service Administrator, WC Dkt. No. 06-122, at 2-5 & 13-14 (filed Dec. 12, 2008) (“Madison River Request for Review”).

³¹ See PaeTec Request for Review at 2; Madison River Request for Review at 4-5.

The Commission must reverse these USAC decisions and clarify that under the 10% rule, a private line circuit is presumptively intrastate absent evidence that more than 10% of the traffic routed over that line is interstate. To begin with, USAC’s position is contrary to the purpose and history of the 10% rule as well as Commission precedent applying that rule.³² As XO has explained, the rationale behind the rule supports a finding that where “the [private line] circuits in question are physically intrastate and are configured by the provider as closed networks and there is no affirmative evidence that any of the traffic over such [private line] circuits is interstate, the revenues from such circuits must be treated as intrastate.”³³

Moreover, requiring carriers to obtain certifications from the customer as to the jurisdictional nature of the traffic routed over a private line is overly burdensome on both carriers and customers. Indeed, “USAC’s interpretation[] appears[s] biased toward reclassifying revenue by erecting insurmountable burdens of proof on contributing [providers of private line services].”³⁴

Finally, allowing USAC’s erroneous interpretation to stand will have harmful consequences for both service providers and the states. As PaeTec has described, carriers will be faced with “a precarious Hobson’s Choice: the carrier can follow Commission precedent and report traffic as state commissions and this Commission would expect, and potentially be liable for excess USF contributions should USAC apply its approach, or use USAC’s approach and be subject to penalties from state commissions for under-reporting intrastate revenue.”³⁵ In

³² See PaeTec Request for Review at 4-7; XO Request for Review at 16-20.

³³ XO Request for Review at v (emphasis omitted).

³⁴ *Id.* at iv.

³⁵ PaeTec Request for Review at 9.

addition, “[s]tates would be forced to cede regulatory authority over all private lines for which certification is not provided that are nevertheless sold within their boundaries.”³⁶ And “[t]his would, in turn, result in a dramatic decrease in the reporting of – and regulatory payments for – intrastate revenues associated with these private lines.”³⁷

4. *How To Clarify The Obligations Of Wholesalers And Their Customers*

a. *Special Access Inputs To Broadband Internet Access Service*

The Commission seeks comment on ways to simplify “the allocation that wholesale carriers must make between ‘carrier’s carrier revenues’ and ‘end-user revenues.’”³⁸ There, the Commission recognizes that it requires wholesalers to treat revenues from telecommunications services sold to broadband Internet access providers as “end user” revenues.³⁹ The Commission fails to acknowledge, however, the competitive distortions in the broadband Internet access market that result from this system. In particular, under the existing system, competitive LECs that purchase special access as inputs to broadband Internet access services are indirectly subject to universal service contribution obligations,⁴⁰ but incumbent LECs that rely on their own facilities to provide broadband Internet access services are not subject to any universal service contribution obligations.⁴¹

³⁶ *Id.* at 6.

³⁷ *Id.*

³⁸ *FNPRM* ¶ 143.

³⁹ *See id.* ¶ 163.

⁴⁰ While wholesale providers of special access must contribute to the USF, they generally pass this contribution obligation through to their customers, such as tw telecom.

⁴¹ *See* Letter from Thomas Jones, Counsel for tw telecom inc., to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 06-122, at 1-6 (filed Apr. 27, 2010) (“tw telecom April 27, 2010 Ex Parte Letter”).

As tw telecom has previously explained in this docket, imposing USF contributions on providers of telecommunications service inputs to broadband Internet access service and allowing the pass-through of those contribution charges to broadband Internet access service providers creates exactly the kind of regulatory distortion that the FCC sought to avoid in the *Wireline Broadband Classification Order*.⁴² As tw telecom has also explained, the effect of this distortion is likely to be greatest in the small and medium business market—the very sector of the economy that is likely to generate new jobs.⁴³

Regardless of the contributions system that the Commission adopts in this proceeding, the Commission must ensure that it eliminates the competitive distortions in the broadband Internet access market created by the existing system. If the Commission retains a revenues-based contributions system, it can accomplish this by exercising its Section 254(d) permissive authority and requiring providers of broadband Internet access service to contribute to the Fund. If the Commission broadens the contribution base in this way, then all providers of broadband Internet access service—regardless of whether they rely on their own facilities or on special access inputs to provide such service—would be required to contribute (and could pass those contributions through to their end-user customers).

If the Commission does not broaden the contribution base, then the Commission could establish a rule that wholesale carriers selling telecommunications services inputs to retail providers of broadband Internet access service must treat revenues from such inputs as “carrier’s carrier revenues” for USF contribution purposes. More specifically, the wholesale carriers

⁴² See *id.* at 3-5; see also *Wireline Broadband Classification Order* ¶ 45 (“[W]e believe that we should regulate like services in a similar manner so that all potential investors in broadband network platforms, and not just a particular group of investors, are able to make market-based, rather than regulatory-driven, investment and deployment decisions.”).

⁴³ See tw telecom April 27, 2010 Letter at 5-6.

would be required to accept certifications from purchasers of the inputs indicating that the purchasers are exempt from contribution obligations because the inputs are being used to provide broadband Internet access service, and accordingly, the wholesale carriers must treat the associated revenues as “carrier’s carrier revenues.”

b. Contributor Certifications

In the *FNPRM*, the Commission also seeks comment on whether it should “modify[] the current reseller certification process to provide greater clarity regarding contribution obligations when wholesale inputs are incorporated into other services that are not telecommunications services.”⁴⁴ Because the most common situation in which “wholesale inputs are incorporated into other services that are not telecommunications services” is when such inputs are used to provide broadband Internet access service, the Commission can provide such clarity by broadening the contribution base to include providers of broadband Internet access service. That is, by classifying broadband Internet access service as an assessable service for USF contribution purposes, the Commission will greatly reduce the number of situations in which a wholesale input is incorporated into a non-assessable service.

Similarly, while the Commission proposes “mandat[ing] greater specificity in contributor certifications”⁴⁵ and adding language requiring the wholesale customer to notify the wholesale carrier within 30 or 60 days if the information provided in the certification changes, imposing contributions on providers of broadband Internet access service would largely obviate the need for such language. This is because the most common situation in which the information provided in the proposed certification would change is when a wholesale customer changes the

⁴⁴ *FNPRM* ¶ 143.

⁴⁵ *Id.* ¶ 168; *see also id.* ¶ 169 (setting forth proposed language).

number of inputs it purchases to provide broadband Internet access service as opposed to assessable telecommunications services.

The Commission should, however, make one important change to the existing customer certification process. The Commission seeks comment on the time frame in which wholesale customers should notify their wholesale providers if their status changes from a contributor to a non-contributor or *vice versa* during the course of the year.⁴⁶ The Commission should require that wholesale customers notify their wholesale providers as soon as their contribution status changes. Immediate notification is necessary to ensure that the wholesale provider can make the appropriate corrections before the end of the relevant true-up period.

c. “Value-Added Approach”

Finally, the Commission should not adopt the proposed “value-added approach” to assessing contributions as a solution to the problems created by the current exemption from contribution obligations for wholesalers.⁴⁷ Under this approach, a service provider would contribute based on its projected assessable revenue minus a credit for telecommunications services or telecommunications that it purchased from other contributors in the distribution chain.⁴⁸ Such an approach would likely create opportunities for arbitrage and self-help. For example, a contributor could inflate the amount that it paid for a wholesale input in order to reduce its contribution liability.

⁴⁶ *See id.* ¶¶ 172-73.

⁴⁷ *See id.* ¶¶ 149-161.

⁴⁸ *See id.* ¶¶ 149-151.

C. If The Commission Adopts A Connections-Based, Numbers-Based, Or Hybrid Contributions System, It Must Address The Implementation Challenges And Other Complexities Associated With Such A System.

As discussed above, the Commission should retain—and reform—the existing revenues-based contributions system. If, however, the Commission adopts a connections-based, numbers-based, or hybrid contributions system, the Commission must account for the implementation challenges and other problems posed by establishing such a system.

As a threshold matter, such a fundamental change in the way contributions are assessed will require carriers to incur substantial costs to overhaul their billing systems and internal processes. In addition, the Commission would need to change how it assesses contributions to other funding mechanisms under its jurisdiction because carriers cannot be expected to rebuild their billing systems and processes for USF contributions purposes and retain their existing revenues-based billing systems and processes for purposes of contributing to the other FCC-mandated funds. As discussed below, departing from a revenues-based contributions system raises many additional concerns.

1. A Connections-Based System

To begin with, if the Commission were to adopt a service-based definition of “connection” (*e.g.*, two assessable services provided over one physical facility would be counted as two connections),⁴⁹ carriers would be forced to develop entirely new billing systems because those systems do not count “services” today. Even if the Commission were to adopt a facilities-based definition of “connection,” however, such a definition would pose several implementation problems for carriers that serve business customers. Under the proposed facilities-based definition of connection, a multi-line business customer would be assessed “based on speed or

⁴⁹ *Id.* ¶ 236.

capacity of the facility and not the services provided over the facility.”⁵⁰ But some carriers, including the Joint Commenters, do not track all lines by capacity in their existing billing systems. Moreover, as the Commission already recognizes, it is unclear how “burstable” services, which scale capacity to meet a customer’s needs at any particular point in time, could be treated under a connections-based approach.⁵¹ Nor is it clear how intelligent network solutions, which can dynamically allocate bandwidth, could be assessed under a connections-based system. Furthermore, while the Commission proposes to use speed or capacity tiers to calculate assessments for multi-line business connections,⁵² the differentials between the tiers are likely to be arbitrary and it is unclear how the Commission could design the tiers in a way that is “future-proof.”⁵³

2. *A Numbers-Based System Or A Hybrid System With A Numbers Component*

A fundamental problem with adopting a numbers-based contributions system is that it would not assess contributions on broadband Internet access service. As such, a numbers-based system would not serve the Commission’s goal of expanding the contribution base—a base that is currently supported by declining legacy services.⁵⁴ Moreover, it would be incoherent policy for the Commission to make subsidizing broadband Internet access service a focus of universal service (or more specifically, CAF) subsidies without requiring any contributions from providers of those services.

⁵⁰ *Id.* ¶ 231.

⁵¹ *Id.* ¶ 262.

⁵² *See id.* ¶ 249.

⁵³ *Id.* ¶ 258.

⁵⁴ *See id.* ¶ 20.

A numbers-based system has several other limitations. For example, if the Commission adopted a definition of assessable numbers that is not consistent with the classifications currently used in Numbering Resource Utilization and Forecast (“NRUF”) reporting, carriers would be forced to overhaul their existing systems. This is because these systems generally classify numbers based on the NRUF definitions today. But even if the Commission defined assessable numbers as “assigned numbers” as that term is used in NRUF reporting, assessing assigned numbers could harm business customers. For instance, assessing assigned numbers could penalize business customers that have a surplus of numbers that are assigned to them but are not working (because, for example, the business has purchased many numbers so that it can retain 4-digit dialing as the company grows). At the same time, creating numerous exceptions (*e.g.*, for “assigned but non-working numbers”)⁵⁵ to the definition of assessable number could undermine a numbers-based contributions system.

Finally, “special access services . . . that are clearly assessed today, but that do not include a telephone number,” could not be assessed under a pure numbers-based approach.⁵⁶ Accordingly, the Commission would likely need to establish a hybrid numbers-revenues-based system or a hybrid numbers-connections-based system. But as the Commission recognizes, a hybrid system is likely “more complex and expensive to administer than a single system.”⁵⁷ In particular, a hybrid system with a numbers component would require carriers to maintain multiple systems and internal processes to track numbers as well as connections or revenues. As Integra has previously explained, “[r]etooling systems and operations alone could be expensive

⁵⁵ *See id.* ¶ 304.

⁵⁶ *Id.* ¶ 299.

⁵⁷ *Id.* ¶ 322.

and time consuming, and longer term maintenance and administration of such a hybrid system likely also would be more expensive, and more error prone, for all carriers, than the current revenues-only mechanism, with which carriers have the benefit of years of experience and compliance.”⁵⁸

D. The Commission Should Reduce The Administrative Burden On Contributors By Issuing The Form 499-A And Accompanying Instructions Well Before The Annual Filing Deadline.

One of the Commission’s stated goals in this proceeding is to simplify compliance with and administration of the contributions system.⁵⁹ To that end, the Commission should adopt its proposal to give contributors “prior notice of any proposed revisions to the [Form 499-A] instructions, and an opportunity to comment on such revisions” and to release the finalized worksheet and instructions no later than 60 days prior to the annual filing deadline.⁶⁰ As the Commission acknowledges, “for the Form 499-A due on April 1, 2012, the Bureau released the revised form and instructions on March 5, 2012.”⁶¹ Carriers should be given more than one month’s notice to adjust their systems and processes to comply with revised instructions. In addition, to achieve its goal of increasing efficiency in program administration, the Commission should adopt its proposed rule to require entities to file the Form 499-A electronically.⁶²

⁵⁸ Comments of Integra Telecom, Inc., WC Dkt. Nos. 06-122 et al., at 24 (filed Nov. 26, 2008).

⁵⁹ See *FNPRM* ¶ 346.

⁶⁰ See *id.*

⁶¹ *Id.* n.564.

⁶² See *id.* ¶ 378.

E. The Commission Should Not Require Universal Service Contribution Charges To Be Included In Advertised Prices And It Should Not Eliminate The Separate Universal Service Line-Item Charge.

In the *FNPRM*, the Commission seeks comment on whether it should require service providers to include the universal service contribution in the advertised price for a service (while allowing the continued publication of the universal service contribution as a line item on end-users' bills).⁶³ Such a proposal would be unworkable in a revenues-based contributions system. For example, carriers would be forced to continually change their advertised prices in light of the fact that the USF contribution factor changes quarterly. In addition, given that there may be a significant lag (*e.g.*, 60 days) in the time that a business customer receives a quote and signs a contract to purchase the service at issue, the advertised or quoted price could be different from the contract price if the USF contribution factor changed during that time. A proposal to “mandate that carriers disclose at the time of initial service subscription the amount of the quoted rate . . . that would be subject to assessment”⁶⁴ would also prove unworkable because carriers would have to estimate the amount subject to assessment.

Nor should the Commission adopt its proposal to eliminate the separate universal service line-item charge.⁶⁵ Otherwise, customers' rates for service would change every quarter consistent with the quarterly changes in the USF contribution factor.

III. CONCLUSION

For the foregoing reasons, the Commission should adopt the recommendations for reforming the universal service contributions system described herein.

⁶³ *See id.* ¶ 391.

⁶⁴ *Id.* ¶ 392.

⁶⁵ *See id.* ¶ 394.

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