

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 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  
SPRINT NEXTEL CORPORATION**

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**COMMENTS OF SPRINT NEXTEL CORPORATION**

Sprint Nextel Corporation (“Sprint”) hereby responds to the Commission’s request for comment on proposals to “reform and modernize how Universal Service Fund (USF or Fund) contributions are assessed and recovered.”<sup>1</sup> Sprint demonstrates below that the contributions system is severely broken and that a complete overhaul is needed.

Sprint further agrees with Commissioner Pai that the Commission “must take swift action” in reforming this outdated system because the current contribution factor is so high and as a result, has a “substantial impact on every American’s monthly phone bill.”<sup>2</sup> However, the Commission also needs to remember the business reality that industry requires a “reasonable transition period” to redesign systems to accommodate the changes the Commission makes.<sup>3</sup> Accordingly, the sooner the Commission decides upon a replacement methodology, the sooner

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<sup>1</sup> See *Universal Service Contribution Methodology*, WC Docket No. 06-122, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Further Notice of Proposed Rulemaking*, FCC 12-46, at ¶ 1 (April 30, 2012), *summary published in* 77 Fed. Reg. 33896 (June 7, 2012)(“*Contribution Methodology Reform and Modernization Further Notice*” or simply, “*Further Notice*”).

<sup>2</sup> Statement of Commissioner Ajit Pai on the Proposed Third Quarter 2012 Universal Service Contributions Factor, FCC NEWS (June 11, 2012).

<sup>3</sup> Statement of Chairman Genachowski, *Further Notice* at p. 180. See also *Further Notice* at ¶ 26 (“[W]e propose that reform should incorporate appropriate transition periods to allow service providers and consumers to adapt.”).

industry can begin to redesign their systems to accommodate the new requirements, and the sooner the new approach can be implemented, to the benefit of all involved.

## I. INTRODUCTION AND SUMMARY OF COMMENTS

There is widespread agreement that the current USF contribution system is broken. The Commission commenced its *First Contribution Methodology Reform NPRM* in 2001, only four years after it adopted the current methodology.<sup>4</sup> The FCC took this step because it recognized that over these first four years, the market had undergone “dramatic changes that may necessitate a reexamination of the way in which we recover universal service contributions.”<sup>5</sup> The new trends the FCC identified in 2001 (*e.g.*, flat-rated bundled service offerings) have continued and intensified since then. In addition, total program demand increased significantly. As a result of this increased funding and declines in the assessment base during the 11-year period between the release of the 2001 *NPRM* and the recent *Further Notice*, the contribution factor has increased by 152 percent, jumping from 6.9 percent to 17.4 percent.<sup>6</sup>

The current system is not just broken; it requires a complete overhaul. For example, the FCC recently established the Connect America Fund (“CAF”) to expand the availability of broadband connections in high-cost areas. Yet, under the current system, the most logical contributors to the CAF – the incumbent LEC operators of broadband networks that will benefit directly from receipt of CAF subsidies to expand their networks to new areas – contribute none of the revenue derived from their broadband capabilities to fund the CAF (or the other USF programs that are becoming increasingly broadband centric).

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<sup>4</sup> See *First Contribution Methodology Reform NPRM*, 16 FCC Rcd 9892 (May 8, 2001).

<sup>5</sup> *Id.* at 9899 ¶ 12.

<sup>6</sup> At the time the 2001 *NPRM* was released, the contribution factor was 6.9%. See *id.* at 9895-96 ¶ 5. This factor jumped to 17.4% by the time the *Further Notice* was released. See Public Notice, *Proposed Second Quarter 2012 Universal Service Contribution Factor*, 27 FCC Rcd 2534 (March 13, 2012).

Sprint urges the Commission to adopt *expeditiously*, at least for the mass market, a new contributions methodology that is compatible with a broadband-centric USF. Sprint could support either of two approaches for use with services provided to residential and small business customers:

1. A connections-based methodology, where consumers would pay the same fixed monthly charge for each network connection they use, regardless of the identity of the service provider(s) they choose to utilize. This approach (unlike the current system) would be competitively neutral, simple to administer, provide stability to USF funding, and easy for consumers to understand; *or*
2. A “total retail bill” revenue-based methodology, where consumers would pay USF charges based on a set percentage of their total bill for services provided over their network connections. This approach would also be competitively neutral (at least among providers of broadband connections), simple to administer and easy for consumers to understand. However, this approach would require the FCC to address certain issues, including:
  - ✓ Under existing court decisions, there is a question whether the FCC possesses the legal authority to impose USF charges on revenues generated from intrastate voice services; and
  - ✓ Given the limitations Congress has imposed on the FCC’s USF funding authority, it is doubtful the FCC can require contributions from providers of competing information services if these providers require their customers to “bring their own” broadband connection.

Sprint submits there is no reason to defer this “replacement methodology” decision any longer. Choosing a stable, competitively neutral contribution methodology that consumers can understand should not be a partisan political issue. Indeed, Sprint would hope that whatever new methodology the Commission chooses would be adopted unanimously.

Sprint further recommends that the Commission, concurrently with its “replacement methodology” order, release two supplemental NPRMs. One NPRM would address all of the practical issues raised in implementing the new methodology for residential and small business customers. The second NPRM would examine the appropriate methodology that should be used

with the services (or connections) provided to large enterprise customers. The types of services and networks used in providing services to business enterprises are so diverse that, Sprint submits, this important subject merits its own, separate NPRM.

Sprint believes its proposed blueprint for action would promote the public interest in two ways. First, a “replacement methodology” order would change the public debate from the contentious issue of which reform methodology to adopt to the more practical subject of how the FCC can implement most efficiently and effectively the replacement methodology it has chosen. Second, industry will need time to adjust its systems to accommodate whatever new methodology is adopted (perhaps 18 months depending on the particular approach chosen). The sooner the FCC adopts a replacement methodology, the sooner industry can begin this system redesign work, and the earlier the new replacement methodology can be implemented.

In addition, the *Further Notice* asks whether the Commission should, on an interim basis, expand the current (broken) contribution system to certain additional services that have found a “significant niche in today’s communications marketplace.”<sup>7</sup> The desire to expand the contribution base certainly is understandable, given the high contribution factors generated by the current methodology and contribution base. Nevertheless, Sprint is concerned that considering expansion of the broken system in the near term and on an *ad hoc* basis would delay the fundamental reform that is sorely needed. The FCC has finite resources, and attempting to tackle two large (and controversial) USF contribution matters simultaneously – expanding the base under the current system while deciding on the best approach for reform – could easily delay actions on both matters.

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<sup>7</sup> See *Further Notice* at ¶ 38.

Moreover, the Commission could realize sizable efficiencies by focusing near term on deciding how the current system should be reformed – efficiencies that could be lost if it concurrently considers expanding the base issues. For example, if the FCC adopts a connections-based methodology, it would no longer need to examine separately whether broadband Internet access services should be subject to assessment (because broadband connections would almost certainly be included in any connections-based approach the FCC adopts).

Finally, the Commission needs to remember that industry will require transition periods regardless of the orders it enters. All of industry will need a transition in response to a “replacement methodology” order. Some industry members will also likely require a transition if the FCC first enters an “expand the current system” order to certain additional services. Obviously, requiring industry to redesign their contribution/cost recovery systems twice in a short period of time is not ideal.

If the Commission adopts Sprint’s proposal to consider in a separate supplemental NPRM the contribution methodology for services provided to large business customers, there is one set of services that warrants interim action: Multi-Protocol Label Switching (“MPLS”)-enabled enterprise data services.<sup>8</sup> Sprint and five other MPLS providers recently submitted an interim contribution proposal that would eliminate the uncertainty and competitive distortions that exist today in this growing enterprise market. Sprint is hopeful this Industry Group proposal will not be controversial. As the proposal submitted is straightforward and complete, its adoption should require minimal FCC resources. And because this is an interim proposal only, its adoption will

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<sup>8</sup> Sprint also does not oppose expanding the current system to one-way VoIP services. Such a step should not be controversial as it would merely close an unintended loophole and a major competitive inequality in the current system.

not limit in any way the Commission’s future deliberations over the contribution methodology that should be used with regard to enterprise services (or connections).

## II. THE GOALS OF ANY USF CONTRIBUTION METHODOLOGY

The Commission seeks comment on three possible goals for reforming the contribution methodology and further asks whether it should be guided by any additional goals.<sup>9</sup> Sprint agrees with the FCC that it must identify the goals of reform before it can effectively evaluate different methodologies.

Sprint further agrees with the three goals the Commission has identified – efficiency, fairness and sustainability – for the reasons stated in the *Further Notice*.<sup>10</sup> Sprint submits, however, that the proposed “goal” of fairness, as defined in the *Notice*, is actually a statutory requirement. The Commission has repeatedly recognized that the plain language of § 254(d) of the Act explicitly “mandates” that any contribution system utilized be “equitable and nondiscriminatory.”<sup>11</sup> Put another way, the FCC does not, under the Act, have the flexibility to adopt a contribution methodology that is inequitable or discriminatory.<sup>12</sup>

Sprint submits that the Commission’s decisionmaking should also be guided by the following three principles:

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<sup>9</sup> See *Further Notice* at ¶ 27.

<sup>10</sup> See *id.* at ¶¶ 23-26.

<sup>11</sup> See, e.g., *First USF Order*, 12 FCC Rcd 8776, 9172 ¶ 775 (1997); *2001 Contribution Methodology NPRM*, 116 FCC Rcd 9892, 9902 ¶¶ 17, 19 (2001); *2002 First Contribution Methodology FNPRM*, 17 FCC Rcd 3752, 3780 ¶ 64 (2002); *2006 Contribution Methodology Order*, 21 FCC Rcd 7518, 7521 ¶ 5 (2006). See also 47 U.S.C. § 254(d) (“Every telecommunications carrier that provides interstate telecommunications services shall contribute, *on an equitable and nondiscriminatory basis*, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.”)(italics added).

<sup>12</sup> Although the “equitable and nondiscriminatory” requirement is contained only in the first sentence of § 254(d), the so-called “mandatory contribution” provision, Sprint submits that an inequitable or discriminatory assessment mechanism adopted pursuant to the third sentence of the statute (the “permissive” authority provision) necessarily would not be consistent with the public interest, as the third sentence explicitly commands.

- Consumer Impact: While the contribution methodology applies to the assessments service providers pay to fund the USF, the methodology utilized necessarily has a large impact on consumers, small businesses and large enterprise customers. This is because service providers “typically pass through the cost of these [USF] assessments on to their customers.”<sup>13</sup>

Sprint submits that the Commission, in deciding how to reform the current contribution methodology, also consider the impact each proposal would have on end user customers, because different methodologies will have different impacts on how customer USF surcharges are calculated and the size of those charges. Sprint believes that any reformed contribution methodology should result in a surcharge system that customers will find easy to understand and that will improve the predictability of the surcharges contained in their bills. Above all, the reform methodology must ensure competitive neutrality so customers will pay the same USF surcharges regardless of their service provider. A customer’s decision to choose one service provider (or technology) over another should not be influenced by regulatory fees.

The Commission has previously considered consumer impacts in its USF decisionmaking process,<sup>14</sup> and Sprint encourages it to continue to consider this important matter.

- Eliminate Service Provider Discretion: The Commission adopted the current methodology because it believed the method would be “competitively neutral and easy to

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<sup>13</sup> NATIONAL BROADBAND PLAN at 149. Moreover, consumers ultimately bear the administrative and compliance costs associated with USF contributions in addition to the assessment amounts.

<sup>14</sup> See, e.g., *2001 Contribution Methodology NPRM*, 16 FCC Rcd at 9905 ¶ 28 (“We also seek comment on the resulting consumer benefits of a flat ‘per-unit’ assessment.”); *2002 First Contribution Methodology FNPRM*, 17 FCC Rcd at 3791 ¶ 89 (“[W]e seek to ensure that this process is . . . understandable for consumers.”).

administer.”<sup>15</sup> Experience over the past 15 years confirms that the current system is neither competitively neutral nor easy to administer.

The current system requires each service provider to perform three different regulatory allocations simply to determine which revenues are subject to USF assessment – a process that necessarily entails significant administrative costs.<sup>16</sup> Of equal, if not greater importance, “the lack of bright-line rules” leads to uncertainty and inquiries by regulators to determine whether such allocations, even if made in good faith, are reasonable. Carriers cannot rationally price their services and consumers cannot control their communications costs in light of such uncertainty. The best replacement methodology would not require service providers to perform any regulatory allocations. But if such allocations are necessary, it is important the Commission adopt bright-line rules – and further act promptly on all industry requests for clarification.<sup>17</sup> Perhaps more importantly, the FCC should es-

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<sup>15</sup> *First USF Reform Order*, 12 FCC Rcd 8776, 8797 ¶ 40 (1997).

<sup>16</sup> *See Further Notice* at ¶¶ 10-12.

<sup>17</sup> Taxing authorities (*e.g.*, income, property, and sales tax collectors) typically issue and maintain explicit, detailed rules accompanied by guideline materials to ensure all taxpayers can clearly understand their obligations. In addition, taxing authorities quickly, routinely and publicly provide rule interpretations when a tax treatment question arises. If there were similar transparency and clarity in the USF assessment process, service providers and their subscribers could plan appropriately and make economically rational decisions based on their communications needs as opposed to decisions based on the potential imposition of a significant USF surcharge in addition to paying for the actual costs of their services. If, for example, the FCC adopts a contributions approach which differentiates the assessment treatment among products and services, it should establish clear rules and USF-contributor guidance materials as to the treatment. In addition, when a new service or product is introduced, the FCC should timely provide a public interpretation as to its USF assessment treatment so that all contributors that begin to provide the new service will give the new service the same treatment. Similarly, if a question arises about the appropriate treatment of a particular product or service (perhaps as a result of a contributor audit), the FCC should quickly and publicly issue clear interpretive guidance in a manner that ensures all contributors have a common understanding. To this end, the FCC should consider maintaining a website devoted to providing clear definitions of the services which are subject and those not subject to assessment with regular updates as well as a listing of rule interpretations as questions arise. The rules should be simple and clear; should be obvious to any observer how a service or product should be treated. There should be bright lines and unambiguous direction. The amount of resources required for all of this can be significantly minimized if the FCC selects a simple contribution mechanism that eliminates, or at least minimizes, categorizations and allocations.

establish any allocators that service providers must use to help ensure a competitively neutral USF assessment mechanism.

• *Congruity With Fund Distributions*: Federal courts have held that “Congress designed the universal service scheme to exact payments from those companies benefiting from the provision of universal service.”<sup>18</sup> The Commission, in determining whether to expand the contribution obligation to additional services or service providers, has thus consistently examined whether the services or providers in question benefit from universal service.<sup>19</sup>

The Commission has recently changed the USF from a fund designed principally to support voice-centric narrowband networks to broadband networks capable of transporting voice, data and video. Sprint submits that in redesigning the contribution methodology, the Commission should adopt an approach that encompasses all of the services and service providers that benefit from a broadband-centric universal service program.

### **III. THE CURRENT CONTRIBUTION SYSTEM IS SEVERELY BROKEN AND REQUIRES COMPREHENSIVE OVERHAUL**

The Commission adopted the current contribution methodology – interstate and international end user telecommunications services revenues – 15 years ago, in 1997. The FCC chose this approach because it believed this method would be “competitively neutral and easy to ad-

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<sup>18</sup> *TOPUC v. FCC*, 183 F.3d 393, 428 (5<sup>th</sup> Cir. 1999), *cert. denied*, 530 U.S. 1210 (2000). The court explained that Congress adopted this design to “prevent[] the sums used to support the universal service program from being classified as ‘revenue’ within the meaning of the Origination Clause.” *Ibid*.

<sup>19</sup> *See, e.g., First USF Order*, 12 FCC Rcd 8776, 9183-85 ¶¶ 794-97 (1997)(providers of private networks and payphone aggregators should contribute because they benefit from PSTN interconnection); *VoIP Interim Contribution Order*, 21 FCC Rcd 7518, 7540-41 ¶ 43 (2006)(Interconnected VoIP providers should begin contributing because they benefit from PSTN interconnection).

minister,” while “maintain[ing] historic jurisdictional lines.”<sup>20</sup> The first contributions factor that the FCC adopted was 1.66 percent.<sup>21</sup>

Only four years later, the Commission recognized it was necessary to “revisit” this new methodology because the market had undergone “dramatic changes,” including growth in wireless services, the advent of VoIP services, and the introduction of flat-rated, bundled services.<sup>22</sup> The FCC was also “concerned” about the extent to which the USF line item fee “varies from one carrier to the next, even though the contribution factor . . . is uniform across carriers.”<sup>23</sup>

The Commission accordingly released in 2001 an NPRM to “streamline and reform” the contribution methodology.<sup>24</sup> Among other things, it specifically asked for comment on “a flat ‘per-unit’ assessment (*e.g.*, a fixed monetary assessment per-line, per-account, *etc.*),” noting that such an approach appeared to resolve most of the problems with the revenue-based system.<sup>25</sup> At the time the 2001 NPRM was released, the contribution factor was 6.88 percent.<sup>26</sup>

The FCC asked for two more rounds of comment the next year, in 2002,<sup>27</sup> and a fourth round of comment in 2003.<sup>28</sup> It asked for a fifth round of comment in 2006,<sup>29</sup> and a sixth round

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<sup>20</sup> See *First USF Order*, 12 FCC Rcd 8776, 8797 ¶ 40 (1997). See also *id.* at 9206-11 ¶¶ 843-54.

<sup>21</sup> See Public Notice, *Proposed First Quarter Universal Service Contribution Factor*, 12 FCC Rcd 18394 (Nov. 13, 1997).

<sup>22</sup> See *2001 Contribution Methodology NPRM*, 16 FCC Rcd 9892, 9894-95 ¶ 3, 9899-900 ¶ 12 (2001).

<sup>23</sup> See *id.* at 9895 ¶ 5.

<sup>24</sup> See *id.* at 9894 ¶ 2 and 9901 ¶ 16.

<sup>25</sup> See *id.* at 9902 ¶ 17. See also *id.* at 9905-06 ¶¶ 25-30.

<sup>26</sup> See Public Notice, *Proposed Second Quarter 2001 Universal Service Contribution Factor*, 16 FCC Rcd 5358 (March 9, 2001).

<sup>27</sup> See *2002 First Contribution Methodology FNPRM*, 17 FCC Rcd 3752 (Feb. 26, 2002); *2002 Second Contribution Methodology FNPRM*, 17 FCC Rcd 24952 (Dec. 13, 2002).

<sup>28</sup> See Public Notice, *Commission Seeks Comment on Staff Study Regarding Alternative Contribution Methodologies*, 18 FCC Rcd 3006 (Feb. 26, 2003).

<sup>29</sup> See *2006 Contribution Methodology NPRM*, 21 FCC Rcd 7518 (June 27, 2006).

of comment in 2008.<sup>30</sup> The most recent NPRM essentially asks the same questions posed in the earlier six comment cycles.

The revenue-based contribution methodology in use today remains largely the same as the one the FCC adopted 15 years ago. Yet, the market trends the FCC first identified 11 years ago, trends that undercut the viability of the current system, have unsurprisingly continued. Also unsurprisingly as a result, the contribution factor today is 15.7 percent,<sup>31</sup> which is down from the 17.9 percent and 17.4 percent factors used during the first two quarters of this year.<sup>32</sup>

The problems with the current system are many:

1. The current system is inequitable and discriminatory in contravention of the explicit commands of § 254(d) of the Act. No one can credibly claim that the current system is competitively neutral. As Chairman Genachowski has correctly observed, “[o]utdated rules and loopholes mean that services that compete directly against each other may face different treatment”:

For example, providers of business communications services that are required to contribute may find themselves bidding against providers of very similar services that are not contributing.<sup>33</sup>

The FCC’s own data shows that given the design of the current system, some wireless providers are able to contribute nothing towards the USF, while other wireless providers currently are paying 15.7 percent on the revenues generated by 30 percent of their voice traffic.<sup>34</sup> Similarly, the current system enables some VoIP providers to contribute nothing towards the USF, while other

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<sup>30</sup> See *2008 Contribution Methodology NPRMs*, 24 FCC Rcd 6475, Appendices A, B and C (Nov. 5, 2008).

<sup>31</sup> See Public Notice, *Proposed Third Quarter 2012 Universal Service Contribution Factor*, DA 12-917 (June 11, 2012).

<sup>32</sup> See Public Notice, *Proposed Second Quarter 2012 Universal Service Contribution Factor*, 27 FCC Rcd 2534 (March 13, 2012); Public Notice, *Proposed First Quarter 2012 Universal Service Contribution Factor*, 26 FCC Rcd 16814 (Dec. 14, 2011).

<sup>33</sup> Statement of Chairman Genachowski, *Further Notice* at p. 179.

<sup>34</sup> See *Further Notice* at ¶ 124 and Chart 3.

VoIP providers are paying 15.7 percent on the revenues generated by up to 60 percent of their VoIP traffic.<sup>35</sup>

2. The current system is unsustainable. The USF contribution base, Chairman Genachowski has noted, has “declined by roughly 10% since 2008.”<sup>36</sup> Commissioner Pai has further observed that the contribution factor has “increased more than 65% since the first quarter of 2009.”<sup>37</sup> Sprint agrees with Commissioner McDowell that this trend is “unacceptable because it is unsustainable.”<sup>38</sup>

3. The current system is not efficient. As the Chairman has correctly recognized, the current system imposes “significant compliance costs and creates inconsistencies”:

Responding to a contribution audit can cost upwards of half a million dollars, and some contributors can find themselves on the hook for tens of millions of dollars in unpaid contributions.<sup>39</sup>

Under the current system, Sprint and every other service provider must perform each quarter three separate regulatory accounting allocations simply to ascertain which revenues are subject to the USF assessment.<sup>40</sup> In addition to these regulatory allocations, the complexity of the current system also drives increased billing and customer care costs.

4. The current system harms consumers and business customers. The ever increasing contribution factor places a huge burden on all consumers who may have no means to verify independently that their provider has correctly calculated the USF contribution amount (because the rate is based on an undisclosed percentage of their bills), nor can they possibly understand

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<sup>35</sup> See *id.* at ¶ 125 and Chart 4.

<sup>36</sup> See Statement of Chairman Genachowski, *Further Notice* at p. 179.

<sup>37</sup> Statement of Commissioner Ajit Pai on the Proposed Third Quarter 2012 Universal Service Contributions Factor, FCC NEWS (June 11, 2012).

<sup>38</sup> See Statement of Commissioner McDowell, *Further Notice* at p. 181.

<sup>39</sup> Statement of Chairman Genachowski, *Further Notice* at p. 179.

<sup>40</sup> See *Further Notice* at ¶¶ 10-12.

why the amount of the factor changes so frequently. The current system is also misleading to consumers, as they would understandably assume they would pay the same USF contribution regardless of which service provider they use – when that is not the case (because of the complexity of the calculations service providers face in determining how much of their revenues are subject to USF contributions, coupled with the lack of bright-line rules).

5. The current system does not impose assessments on the principal beneficiaries of a broadband-centric USF. Logically, a broadband-centric fund should include broadband service in the contribution base. One of the most glaring incongruities in the current system is that while incumbent LECs claim they use USF proceeds to support their broadband networks, none of the revenue they generate from their broadband network capabilities is assessed. In effect, wireless and other voice service providers and their customers, who derive no benefit from, for example, the video entertainment services an ILEC offers over its supported network, end up shouldering the funding burden, while an ILEC’s own video entertainment customers contribute nothing to the fund. Since the explicit purpose of the CAF is broadband and the primary recipients of support will be incumbent LECs, it makes no sense for the broadband services of the incumbents to be exempted from assessment.

\* \* \*

In summary, the current system is neither “pragmatic nor fair,” nor does it put “consumers first.”<sup>41</sup> The problems with the current system are structural, and these problems cannot be fixed by the adoption of more band-aid remedies. A complete overhaul of the system is required.

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<sup>41</sup> See Statement of Commissioner McDowell, *Further Notice* at p. 181.

#### IV. AN ANALYSIS OF THE REFORM ALTERNATIVES

Sprint below responds to the Commission's request for an analysis of three different methodologies that could be used in a USF contributions system: (1) reforming the current revenue-based system; (2) assessing contributions based on telephone numbers; or (3) assessing contributions based on connections.

It bears noting at the outset that there are two additional possible methodologies, either of which Sprint believes would be superior to the three discussed in the *Further Notice*. The first is federal funding. Last month, John Holton, the Director of the White House Office of Science and Technology, stated that broadband networks are "absolutely critical to America's economic future":

In the same way that we invested in the Transcontinental Railroad and the Interstate Highway System, we need a communications infrastructure that is second to none. As the president has said, this isn't just about a faster Internet or being able to find a friend on Facebook, it's about connecting every corner of America to the digital age.<sup>42</sup>

If broadband funding is as critical as the Transcontinental Railroad and the Interstate Highway System, both of which were built with sizable federal financial assistance, then the federal government should also fund broadband support programs. Nevertheless, Sprint acknowledges the FCC cannot dictate federal budget appropriations, and timely Congressional action is unlikely.

The second possible approach is one that requires contributions from everyone who benefit from broadband networks, conceptually consistent with what the State Members of the Joint Board proposed last year, when they "recommend[ed] that the Commission broaden the federal universal service contributions base to include all services that touch the public communications network":

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<sup>42</sup> See COMMUNICATIONS DAILY, *Broadband Networks "Absolutely Critical," Top Obama Aide Says* (June 15, 2012).

This proposal would better match the realm of services that benefit from universal access to the services that must contribute to that universal access. \* \*  
\* Those who benefit from the universal service funding in the future should contribute equitably to its ongoing deployment.<sup>43</sup>

Sprint agrees with the State Members that a USF contribution system which includes all who benefit from expanded broadband availability would be consistent with the public interest.<sup>44</sup> The problem with the proposal is that the FCC does not possess the legal authority to adopt it. Specifically, Congress has not authorized the FCC to impose a contributions obligation on all beneficiaries of broadband networks, instead limiting its USF funding authority to “providers of interstate telecommunications.”<sup>45</sup> Thus, while the FCC possesses the authority to assess any information service offered by “any provider” of interstate telecommunications (because every information service necessarily includes a telecommunications component), the FCC does not have the authority to assess competing information services if they are offered by entities that do not “provide” telecommunications (*e.g.*, require their users to “bring their own” broadband connection).

#### **A. Reforming the Current Revenues-Based System**

The *Further Notice* identifies several changes that could be made to the current revenue-based system in the hope of improving this system.<sup>46</sup> Sprint believes that most of the reform proposals are problematic, as discussed in subsection 1 below. But as discussed in subsection 2,

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<sup>43</sup> State Members of Joint Board CAF Comments, WC Docket No. 10-90, at 118-19, 123 (May 2, 2011).

<sup>44</sup> In fact, while the State Members’ proposal would expand the base of contributors, it is worth noting that “those who benefit” from universal broadband networks, but are not assessed, is a much larger universe of businesses than just information service providers who are not interstate telecommunications providers. The list of “those who benefit” would necessarily include television, computing, equipment, gaming, and connected device manufacturers, application developers, advertisers, and content distributors, among others.

<sup>45</sup> See 47 U.S.C. § 254(d) (“Any other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires.”).

<sup>46</sup> See *Further Notice* at ¶¶ 98-218.

a total retail bill revenue-based approach could be attractive, although there are several issues that would need to be addressed.

**1. There Are Problems With Many of the Revenues-Based Revision Proposals Discussed in the *Further Notice***

Sprint below discusses some of the revenue-based reform ideas discussed in the *Further Notice*.

(a) Bundled Service Offerings. The growing proliferation of bundled service offerings that include both assessable and non-assessable services has been a challenge with the current contributions system. The problem arises because under the current system, each service provider has “wide latitude to determine assessable revenues within bundled services,” and with such latitude, each provider has both the incentive and ability to perform its regulatory allocations in a way that “reduce[s] their contributions obligations in order to gain a competitive edge” (by paying lower USF contributions than its competitors).<sup>47</sup> The *Further Notice* seeks comment on assessing contributions on the revenues of the entire bundle – unless the service provider offers the assessable services on a stand-alone basis, in which case the provider would then use the prices of its stand-alone offerings in computing its assessable revenues for the bundle.<sup>48</sup>

This approach is problematic. Among other things, it would create endless disputes over what constitutes a “stand-alone offering of equivalent service.” Worse, this approach does not eliminate the competitive disparity problem. As the *Further Notice* recognizes, under this approach one triple-play provider may charge \$22 for voice while its competitor may charge only \$10 for voice (thereby enabling it to pay less than half the USF assessments paid by its competi-

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<sup>47</sup> See *id.* at ¶¶ 102, 105.

<sup>48</sup> See *id.* at ¶ 106.

tor for bundled services).<sup>49</sup> If a revenue-based approach is adopted, Sprint recommends the entire bundle be subject to a USF contribution. Any separation of services will be difficult and subject to manipulation. Assessing the entire bundle will eliminate any decision on how to split the bundle or any verification of a proposed bundle split.

(b) The “Interstate Telecommunications Component Exception” Approach. This method is similar to the one just discussed except that the proxy that would be used in allocating revenues generated from a bundled offering would be the price for a stand-alone transmission-only capability.<sup>50</sup> This method appears to raise all of the same problems discussed above with regard to a “stand-alone assessable service-only” exception.

(c) Address the Interstate/Intrastate Jurisdictional Distinction. The *Further Notice* seeks comment on an approach that would expand the scope of assessable services by including revenues generated from intrastate traffic, action that would obviate the need to allocate revenues between the State and Federal jurisdictions.<sup>51</sup> Such an approach would provide considerable administrative efficiencies.<sup>52</sup> It would also be consistent with the unified national framework the FCC adopted in reforming universal service and intercarrier compensation. Moreover, eliminating the interstate/intrastate distinction would be much more compatible with the reality of the way services are sold today.

The issue with eliminating the interstate/intrastate distinction is whether the Commission possesses the legal authority to take such action, because the Fifth Circuit has already squarely

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<sup>49</sup> See *id.* at n.234.

<sup>50</sup> See *Further Notice* at ¶¶ 114-20.

<sup>51</sup> See *Further Notice* at ¶¶ 127, 129.

<sup>52</sup> However, even these administrative efficiencies would be mitigated by the fact that absent other changes to the revenue-based system, service providers would still need to conduct two regulatory allocations for purposes of the USF contributions system (separating end user from non-end user revenues, and telecommunications service from information service revenues).

held that the FCC does “not have jurisdiction to assess federal universal service contribution on intrastate revenues.”<sup>53</sup> Sprint agrees with the State Members of the Joint Board that the *TOPUC* decision was “wrongly decided.”<sup>54</sup> Unfortunately, if any party challenges an FCC order that begins assessing federal contributions on revenues generated from intrastate traffic, such litigation could create considerable uncertainty over the validity of the new contribution methodology – and entry of a stay during the pendency of the appeal in particular would be a significant setback to the reform effort.

If a state/interstate distinction is retained under a revenues-based reform methodology, at least for voice services,<sup>55</sup> in no event should the Commission permit the *status quo* to continue, where each service provider is able to determine for itself how much assessments it will pay (by virtue of the state/interstate allocation that it performs) – thereby continuing the very market distortion that reform should eliminate. It is therefore imperative that the FCC establish the fixed state/interstate factors that all contributors must use.

The *Further Notice* asks how many such allocators the FCC should adopt. The Commission should reject the suggestions of some that to achieve more perfection, it should establish numerous allocators, such as one for each major category of service or for each industry segment.<sup>56</sup> Such an effort could easily turn into a contentious regulatory quagmire, as parties urge the FCC to adopt low interstate allocators for their services but high interstate allocators for their competitors. The Commission must remember that “[p]erfection . . . is not what the law re-

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<sup>53</sup> See *Further Notice* at ¶ 129 (underscoring added); see also *TOPUC v. FCC*, 183 F.3d 393 (5<sup>th</sup> Cir. 1999), *cert. denied*, 530 U.S. 1210 (2000).

<sup>54</sup> See State Member CAF Comments at 124.

<sup>55</sup> It is noteworthy, as discussed below, that the state/interstate distinction becomes irrelevant with use of either a numbers-based or connections-based methodology.

<sup>56</sup> See *Further Notice* at ¶ 132.

quires.”<sup>57</sup> Indeed, perfection is impossible to achieve, given that the mix of traffic continually changes.

Only two fixed allocators are required. A fixed allocator should be established for use with standalone voice services.<sup>58</sup> A second fixed allocator would be established for broadband Internet access services and other bundled offerings. The Commission has already ruled that Internet access services are jurisdictionally interstate “because end users access websites across state lines.”<sup>59</sup> While voice services can be provided over broadband connection, the amount of capacity used by voice service is tiny – only 1.71 percent of the capacity of IP networks globally according to a usage study Cisco conducted in 2010.<sup>60</sup> This would suggest that a fixed 99% interstate/1% intrastate allocator would be reasonable for all traffic carried over broadband connections.

(d) Addressing the End User/“Carrier’s Carrier” Revenue Distinction. Under the current system, network operators must distinguish between end user revenues (some of which are assessable) and “carrier’s carrier” revenues (which are not assessable). Experience has proven this allocation is complex and time consuming, as each reseller may have a different mix of end user and carrier’s carrier revenues. The *Further Notice* seeks comment on possible use of a new value-added approach.<sup>61</sup>

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<sup>57</sup> *Vonage v. FCC*, 489 F.3d 1232, 1242 (D.C. Cir 2007).

<sup>58</sup> While the *Further Notice* asks about a 20% interstate/80% intrastate allocator (*See Further Notice* at ¶ 132), Sprint submits that to eliminate disparities, more important than the level of any interstate/intrastate allocation is that all providers of stand-alone voice services be required to use the same allocator.

<sup>59</sup> *See id.* at ¶ 133.

<sup>60</sup> *See Cisco White Paper, Visual Networking Index: Usage*, at 3 Table 1 (Oct. 25, 2010).

<sup>61</sup> *See Further Notice* at ¶¶ 143-61.

While this value-added concept is intriguing, Sprint does not support this approach. It would require carriers to track the amount paid for services obtained from other providers entailing a considerable amount of data for those carriers with extensive networks and a large, diverse product portfolio to track. In addition, carriers would be required to separate out the assessable amounts from the non-assessable amounts including allocations of expenses from invoices for facilities and services purchased from other carriers which serve multiple purposes (*i.e.*, reseller use, end user use and internal use). In some cases, it may be difficult to make the allocations and judgments would have to be made. Each such decision would present an opportunity for misallocation, which could result in competitive distortions.

Sprint is, however, concerned with the significant burden placed on wholesale carriers under the current system with the current requirement to obtain annually certifications from all of their resellers in order to categorize the revenues from resellers in Block 3 as “Revenues from Services Provided for Resale as Telecommunications by Other Contributors to Federal Universal Service Support Mechanisms.” This requirement, which makes the wholesale carriers the “cops” for the FCC and USAC, is not set forth in the Commission’s rules. Those rules specify only that a carrier providing service for resale “shall have an affirmative duty to ascertain whether a potential customer-carrier (*i.e.*, reseller) that is subject to the registration requirement pursuant to paragraph (a) of this section has filed an FCC Form 499-A with the Commission prior to offering service to that carrier-customer.”<sup>62</sup> Over the years, additional certification and verification requirements have been inserted into the Instructions to the Form 499. Sprint submits these additional requirements constitute new legal obligations and should have been subject to APA notice and comment, and not imposed through changes the Bureau makes to the Instructions.

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<sup>62</sup> 47 C.F.R. § 64.1195(h).

The reseller verification process as it now exists consumes a great deal of time and effort. Specifically, the wholesale carriers must craft a certification statement that the customer properly contributes to the USF. This certification must conform to the language in the Form 499 Instructions. Because the instructions change each year and may include changes to the certification requirements, carriers must revise their forms to conform to any changes made to the Instructions. The process is made more difficult because there is no fixed date for release of the revised instructions and changes are usually not highlighted.

In order to comply fully with the Form 499 Instructions, the wholesale carrier also must identify the appropriate person in the reseller's company who can certify the form and obtain an address for this employee. If the wholesale carrier's letter is returned because the reseller employee no longer works at the company, the wholesale carrier must find the successor. If the letter is returned as undeliverable, another address must be found. Finally, the wholesale carrier must verify that the resale carrier currently contributes using the Form 499 Filer Database.

The Commission also has asked whether it should impose an obligation on the wholesale provider "to check the registration status of their customers."<sup>63</sup> This would place yet another burden on the wholesale carriers and should not be adopted. At a minimum, this proposed rule should be adopted only if the Reseller Certification requirement is removed. Furthermore, this information is readily available to USAC and the FCC on the Commission's website.

The Commission has also proposed some specific language for the customer certification.<sup>64</sup> Language codified in the Commission's rules would obviously remove the burden on the wholesale carriers of drafting the certification and ensure consistency across all carriers. Of the two proposals set forth for the customer certification language, Sprint suggests adoption of the

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<sup>63</sup> See *Further Notice* at ¶ 385.

<sup>64</sup> See *id.* at ¶ 169.

later version, as it affords the reseller an alternative method of identifying revenues on which the reseller contributes.

Sprint further suggests that the Commission codify a requirement that all resale carriers provide the name and address of the officer of the company who will sign the certification. In this way, the wholesale providers will have the information they need to obtain the certification in a timely manner.

## **2. A “Total Retail Bill” Approach May be Workable, Although There Are At Least Two Major Issues That Need to be Addressed**

The *Further Notice* seeks comment on a contribution methodology that would assess “the full retail revenues of bundled services that contain ‘telecommunications’” – and which would include no exceptions.<sup>65</sup> Such a “total retail bill” approach is appealing in many ways. Its adoption should reduce dramatically the current contribution factor (as it would include sizable revenues not now subject to assessment). It would appear to be easy to administer. It would eliminate the need to conduct all regulatory allocations, resulting in considerable savings in administrative costs. Largely as a result, this approach would also be competitively neutral, at least among providers of telecommunications. It would also be easier for consumers to understand a surcharge applied to a total bill amount than a regulatory-categorized portion of a bill.

Sprint has two concerns, however, with such a “total retail bill” approach. The first is whether the approach is lawful under the Act because it would include assessments on revenues generated from intrastate services. As discussed above,<sup>66</sup> the Fifth Circuit has held that the FCC does not possess the authority to assess contributions on intrastate revenues. Again, while Sprint agrees with the State Members of the Joint Board that this decision was “wrongly decided,” the

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<sup>65</sup> See *Further Notice* at ¶ 113.

<sup>66</sup> See Subsection IV.A.1(c), *supra*.

fact is that any challenge to a reform methodology that applies to intrastate revenues will generate considerable uncertainty during the pendency of the appeals – when the need for reform is immediate.

Sprint’s second concern with a “total retail bill” approach is whether it would introduce a new major distortion in the market for information services. Congress has chosen to limit the Commission’s USF funding authority to “providers of interstate telecommunications,” which include network operators and their resellers. Many information services providers, including providers of services that compete with those offered by network operators, require their customers to “bring your own” broadband connection. Although these providers of “bring your own connection” services directly benefit from a broadband-centric USF (certainly as much as broadband network operators), these providers would appear to be beyond the reach of the FCC’s funding authority (because they do not “provide” any “telecommunications”).

In the end, an evaluation of a “total retail bill” approach requires access to more facts. For example, a 5 percent USF assessment on broadband connection providers, but not on “bring your own connection” providers, could easily distort consumer decisions over which information service provider to use, while a much smaller assessment may not have the same effect.

**B. A Numbers-Based System, While Superior to the Existing Revenue-Based Methodology, Is Not Suitable for a Broadband-Centric USF**

The *Further Notice* seeks comment on the use of a numbers-based methodology where there would be “a standard monthly assessment per phone number, such as \$1 per month.”<sup>67</sup> In the past, Sprint and many other parties have supported such an approach because it is superior to the current revenues-based system. Among other things, a numbers-based approach would be:

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<sup>67</sup> See *Further Notice* at ¶ 285.

- *Equitable and nondiscriminatory*, because it would reduce substantially (if not eliminate entirely) opportunities for service providers to game the system and gain a competitive edge in the market;
- *More consumer friendly*, because consumers would pay the same fixed USF charge regardless of whether they receive service from a wireless provider, a LEC, a cable provider or an interconnected VoIP provider;
- *More efficient*, as it would eliminate the need to perform all of the regulatory allocations undertaken each quarter today, and this would result in all service providers realizing a sizable reduction in their administrative and USF compliance costs – and thereby *lower* the cost of service to consumers;
- *More sustainable*, as the total count of telephone numbers historically has been more stable than assessable revenues;
- *It avoids the bundled services issue* with most revenue-based reform alternatives; and
- *Less regulatory intrusive*, as a number-based methodology would require far fewer regulations as compared to any revised revenue-based system.

Simply put, had the FCC adopted a numbers-based approach in response to the *2001 Contribution NPRM* (or in response to any of the subsequent *Contribution NPRMs*), none of the problems faced today with the contribution system would exist. To the contrary, as the total count of numbers has continued to increase, the Commission today would have been in a position of reducing the USF assessment per number (assuming continuation of the cap on USF distributions).

Sprint has explained that its past support for a numbers-based approach was predicated on the fact that the USF at the time consisted largely of programs designed to support narrowband networks (with voice being the principal service provided over narrowband networks):

Sprint noted that it continued to support a numbers-based contribution methodology for the existing high-cost USF, but noted that telephone numbers are voice-centric and, accordingly, inappropriate as the contribution basis of any new broadband USF.<sup>68</sup>

The Commission has recently transformed large parts of the USF to support broadband networks. Specifically, it has developed a Connect America Fund to replace the High-Cost

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<sup>68</sup> Sprint Ex Parte, WC Docket No 06-122, at 1 (Aug. 20, 2010).

Fund,<sup>69</sup> and it has begun the process of reforming the Lifeline and Linkup programs to support access to broadband networks as well.<sup>70</sup>

Broadband networks, unlike narrowband networks, are designed to support data and video applications in addition to voice. Voice, because it is “very lightweight in terms of bandwidth,”<sup>71</sup> constitutes only a tiny percent of all traffic transported over broadband networks – 1.71 percent globally according to an extensive usage study that Cisco performed in 2010.<sup>72</sup> While Cisco predicts that mobile VoIP globally will grow at a compound annual growth rate (“CAGR”) of 36 percent from 2011 to 2016, voice will still remain a small percentage of total broadband traffic because other, more capacity-intensive non-voice applications will grow at similar, if not faster rates (*e.g.*, mobile data will have a 78% CAGR).<sup>73</sup>

Because telephone numbers are voice-centric and because voice is such a small percentage of all broadband traffic, Sprint submits that a numbers-based system is not an ideal methodology to fund a broadband-centric USF.

### **C. A Connections-Based System Is A Sensible Contribution Methodology for a Broadband Ecosystem**

The *Further Notice* finally seeks comment “on moving from a revenue-based contribution assessment system to a system based on connections.”<sup>74</sup> Because a connections-based assessment is a flat, per-unit-based methodology, it has the same benefits as other flat, per-unit-

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<sup>69</sup> See *USF/ICC Transformation Order*, 26 FCC Rcd 17663 (Nov. 18, 2011).

<sup>70</sup> See *Lifeline Reform Order*, FCC 12-11 (Feb. 6, 2012).

<sup>71</sup> See Cisco Q&A, *Visual Networking Index: Forecast Q&A*, at 6 (June 2012), available at [http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/qa\\_c67-482177.pdf](http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/qa_c67-482177.pdf).

<sup>72</sup> See Cisco White Paper, *Visual Networking Index: Usage*, at 3 Table 1 (Oct. 25, 2010).

<sup>73</sup> See Cisco White Paper, *Visual Networking Index: Forecast and Methodology, 2011-2016*, at 6 Table 1, 12 Table 12 (May 30, 2012), available at [http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white\\_paper\\_c11-481360\\_ns827\\_Networking\\_Solutions\\_White\\_Paper.html](http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white_paper_c11-481360_ns827_Networking_Solutions_White_Paper.html).

<sup>74</sup> See *Further Notice* at ¶ 219.

based methodologies, such as the telephone number-based approach discussed above. Specifically, like the numbers-based approach, and *unlike* the current revenue-based system, a connections-based methodology would be equitable and nondiscriminatory; more consumer friendly; more efficient; more sustainable; and less regulatory intrusive. The fundamental advantage of a connections-based system over a numbers-based approach is that use of connections as the unit to assess contributions better matches the purpose of the USF – namely, to expand the number of broadband connections throughout the country.

Importantly, it appears that a connections-based approach is capable of generating sufficient revenue to fund the USF programs. There were 616 million connections (both narrowband and broadband) in June 2010, based on Form 477 reported data.<sup>75</sup> With this number of connections, an average monthly per-connection charge of \$1.10 would raise \$8.1 billion annually (610 million connections x \$1.10 x 12 months), which is the amount of total USF disbursements in 2011.<sup>76</sup> The FCC, however, estimates that the total number of connections will grow to 800 million connections by 2015.<sup>77</sup> With 800 million connections, the per-connection charge could be lowered to \$0.85 monthly and still generate sufficient revenues to fund the USF.

Admittedly, the number of connections reported in the Form 477 may, in one respect, be overstated because it “effectively categorizes connections according to services, so that a given provider may report separately about voice and broadband services delivered over the same physical facility.”<sup>78</sup> But it is also important to note, as the *Further Notice* recognizes, that the Form 477 data further understates the total number of connections because the Form does “not

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<sup>75</sup> See *id.* at ¶ 247.

<sup>76</sup> See *id.* at ¶ 8.

<sup>77</sup> See *id.* at ¶ 247.

<sup>78</sup> See *id.* at ¶ 229.

capture many connections provided to businesses, governmental entities, and other large institutions.”<sup>79</sup>

In response to the Commission’s question, the FCC unquestionably possesses the legal authority to adopt a connections-based methodology for the USF contribution system. Section 254(d) explicitly empowers the FCC to impose a USF contribution obligation on “[a]ny . . . provider of telecommunications,” and firms provide telecommunications *via* the network connections they make available to their customers. Notably, this statute does not dictate use of any particular contribution methodology;<sup>80</sup> the only requirement Congress has imposed is that whatever methodology the FCC adopts be “equitable and nondiscriminatory.” A connections-based approach would meet this standard as long as all providers of connections pay the identical assessment for connections of the same type and capacity.

Some have argued in the past that a flat USF charge (such as a connections-based charge) is unlawful because it supposedly would include contributions for intrastate traffic, which they claim is impermissible under the Fifth Circuit’s *TOPUC* decision. Many of these same parties have further claimed that any flat USF charge is “inherently unfair because it does not take into account that some people make many interstate and international calls, while others make few calls in a given month, yet all users (heavy users or light users) would be subject to the same flat monthly assessment amount.”<sup>81</sup>

The simple response is that the Commission and federal appellate courts have already rejected these arguments in the context of recovering the costs of connections. Nearly 30 years

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<sup>79</sup> *Id.* at ¶ 246.

<sup>80</sup> *See, e.g., Further Notice* at ¶ 219 (“Nothing in the Act requires contributions to be based on revenues, and the Commission has explored a connections-based methodology in the past.”).

<sup>81</sup> *See Further Notice* at ¶ 287.

ago, the FCC determined that the cost of a local loop was best recovered with a fixed (vs. a usage) charge:

A subscriber who does not use the subscriber line to place or receive calls imposes the same NTS costs as a subscriber who does use the line. A subscriber who does not make local calls would normally pay a flat fee for the exchange portion of such costs. Imposing a flat charge for the interstate portion of those costs is equally reasonable. Any other procedure violates the general principle that costs should be recovered from the cost-causative ratepayer whenever it is possible to do so.<sup>82</sup>

On appeal, the D.C. Circuit affirmed the FCC's decision and rejected the arguments that the FCC lacked the authority to adopt its Subscriber Line Charge ("SLC") or that its decision was otherwise arbitrary, capricious and inequitable:

Local telephone plant costs are real; they are necessarily incurred for each subscriber by virtue of that subscriber's interconnection into the local network, and they must be recovered regardless of how many or how few interstate calls (or local calls for that matter) a subscriber makes. \* \* \* A subscriber's choice not to make or receive interstate calls, however, would not reduce the costs of that subscriber's loop; the local telephone plant costs would remain unchanged, as would the need to recover those costs.<sup>83</sup>

If it is lawful and reasonable to recover the costs of a connection using a flat-rated charge, it surely is lawful and reasonable to impose a USF contribution designed to fund additional broadband connections on a flat-rated basis as well.<sup>84</sup>

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<sup>82</sup> *Third MTS/WATS Market Structure Order*, 93 F.C.C.2d 241, 278 ¶ 121 (1983).

<sup>83</sup> *NARUC v. FCC*, 737 F.2d 1095, 1114-15 (D.C. Cir. 1984).

<sup>84</sup> The FCC would need to take two actions if it adopts a connections-based methodology. One, it should exercise its permissive § 254(d) authority to ensure that all providers of connections (including those like certain broadband Internet access service providers that do not provide any telecommunications service) are subject to USF assessment.

Second, because there are instances where certain telecommunications carriers do not provide connections (e.g., certain IXCs), the FCC should address the § 254(d) "every telecommunications carrier . . . shall contribute" requirement by either forbearing from applying this requirement to carriers that do not provide connections or adopting a hybrid system of the sort the FCC has discussed in earlier *Contribution NPRMs*. See, e.g., *Further Notice* at ¶¶ 221, 224.

**V. THE COMMISSION SHOULD DECIDE UPON A REFORM METHODOLOGY BEFORE EXPANDING THE CONTRIBUTION BASE ON AN AD HOC AND INTERIM BASIS**

The Commission is interested in expanding the contribution base. This is understandable. After all, the contribution factors that have been used this year (17.9%, 17.4% and 15.7%) are, as Commissioner McDowell has said, “unacceptable because [this trend] is unsustainable.”<sup>85</sup> The *Further Notice* therefore seeks comment on expanding the contribution obligation to include providers of four services: (1) enterprise services that include an interstate telecommunications component; (2) text messaging services; (3) one-way VoIP services; and (4) broadband Internet access services.<sup>86</sup> It appears these four services were selected for consideration because they have found a “significant niche in today’s communications marketplace.”<sup>87</sup>

Sprint has two concerns with the proposal to impose, on an interim basis, a contribution obligation on certain additional services before adopting fundamental reform of the contribution methodology, as discussed below. Sprint submits the public interest would be better served if the Commission instead focuses its attention in the near term to adopting a new contribution methodology to replace the current broken system, rather than deferring this decision while it considers expanding the base under the current system. The current system is so broken that it requires major surgery. The patient will not survive if surgery is delayed while decisions are being made to determine whether additional band-aids should be applied before the surgery that is inevitable.

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<sup>85</sup> Statement of Commissioner McDowell, *Further Notice* at p. 181.

<sup>86</sup> See *Further Notice* at ¶¶ 36-73.

<sup>87</sup> See *id.* at ¶ 38.

**A. EXPANDING THE CONTRIBUTION BASE ON AN AD HOC, INTERIM BASIS MAY BE APPROPRIATE FOR SOME SERVICES BUT INVITES LEGAL CHALLENGE, WHICH WILL CREATE NEW UNCERTAINTY TO THE USF**

The *Further Notice* seeks comment on whether the Commission should exercise its “permissive” authority to begin imposing USF assessments on one or more of the four services the *Notice* identifies. Section 254(d) authorizes the FCC to impose assessments on “any provider of interstate telecommunications, *but only so long as* “the public interest so requires.”<sup>88</sup> The Commission has applied two criteria in evaluating whether the public interest “requires” that a non-assessable service become subject to USF assessment:

1. Benefits from Universal Service. The Commission has always asked whether the service in question “benefit[s] from universal service.”<sup>89</sup> As one federal court has held, “Congress designed the universal service scheme to exact payments from those companies benefiting from universal service.”<sup>90</sup> For example, as the FCC stated in extending a USF contribution obligation to providers of interconnected VoIP services:

Like other contributors to the Fund, interconnected VoIP providers are “dependent on the widespread telecommunications network for the maintenance and expansion of their business,” and *they “directly benefit[] from a larger and larger network.”* It is therefore consistent with Commission precedent to impose obligations that correspond with the benefits of universal service that these providers already enjoy.<sup>91</sup>

2. Ensure Competitive Neutrality. The FCC has also asked whether the service in question “competes directly” with the assessable services provided

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<sup>88</sup> See 47 U.S.C. § 254(d).

<sup>89</sup> See *VoIP Interim USF Contribution Order*, 21 FCC Rcd 7518, 7540 ¶ 43 (2006).

<sup>90</sup> *TOPUC v. FCC*, 183 F.3d 393, 428 (5<sup>th</sup> Cir. 1999), *cert. denied*, 530 U.S. 1210 (2000).

<sup>91</sup> *VoIP Interim USF Contribution Order*, 21 FCC Rcd at 7540-41 ¶ 43 (internal citations omitted; italics added).

by mandatory contributors. Again, in deciding to impose assessments on VoIP providers, the Commission noted it was “inappropriate to exclude” these providers from contribution because they were “attract[ing] subscribers who previously relied on traditional telephone service.”<sup>92</sup> The FCC explained that it did “not want contribution obligations to shape decisions regarding the technology and interconnection VoIP providers use to offer voice services to customers or to create opportunities for regulatory arbitrage”:

The approach we adopt today reduces the possibility that carriers with universal service obligations will compete directly with providers without such obligations. We therefore find that the principle of competitive neutrality is served by extending universal service obligations to interconnected VoIP service providers.<sup>93</sup>

Any departure from this two-criteria standard would invite legal challenge to any “expand the base” order.

Sprint below discusses these two criteria in the context of the four services the *Further Notice* identifies.

1. One-Way VoIP Services. Sprint agrees that one-way VoIP providers should be subject to assessment (even under the current broken system). As the *Further Notice* states, this straightforward action would simply close “‘an enormous loophole’ that creates competitive disparities.”<sup>94</sup>

Imposing a contribution obligation on one-way VoIP services unquestionably meets the two criteria the Commission has utilized in applying its “permissive” authority. One-way VoIP

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<sup>92</sup> *Id.* at 7541 ¶ 44.

<sup>93</sup> *Ibid.*

<sup>94</sup> *See Further Notice* at ¶ 61.

providers concede their services compete with traditional voice and two-way VoIP services, both of which are subject to assessment.<sup>95</sup> And, one-way VoIP providers certainly cannot dispute that they directly benefit from universal service through their interconnection with the PSTN or through the expansion of the number of broadband connections. By closing this loophole, the Commission will ensure that contribution obligations will not influence consumer decisions to use one voice service over competing voice services.

2. Broadband Internet Access Services. Sprint agrees that the USF contribution base needs to include incumbent LEC providers of broadband Internet access services. Under the Connect America Fund (“CAF”), ILECs will receive billions of dollars annually to expand their existing broadband networks to additional areas. Yet, under the current system, none of the revenues these ILECs generate from the broadband capabilities of their networks is assessed. Under the current system, these CAF subsidies will be generated in large measure from wireless carriers (and their customers) – in disproportionate measure to the amount of contributions effectively available to wireless carriers – and even though wireless carriers (and their customers) derive no benefit from, for example, the video entertainment services that an ILEC offers over its supported network.

While broadband Internet access services certainly meet the “benefits from universal service” standard, it is not apparent how they satisfy the second standard: ensure competitive neutrality with currently assessable services. This is because broadband Internet access services are not subject today to assessment and, to the extent that voice services are provided over a broadband connection, these voice services are already subject to assessment.

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<sup>95</sup> *See ibid.*

Sprint's principal concern with applying the current broken methodology to broadband services on an interim basis is based on more practical considerations. Everyone agrees the current system is broken. Subjecting broadband providers to this broken system will require them to revise their systems twice: first to accommodate the broken system and later to accommodate the reforms the FCC adopts. As discussed below, Sprint believes it would be more efficient, and would likely result in broadband providers contributing sooner, if the Commission focuses its near term efforts on adopting a reform methodology for the mass market – rather than devoting resources at this time in determining how broadband providers should contribute under the broken system.

3. Enterprise Services That Include a Telecommunications Component. This subject raises issues similar to broadband Internet access services – namely, does it make sense to devote resources in determining how enterprise services should be subject to the current system, when everyone agrees this system is broken and needs to be replaced? Deciding on any approach to subject enterprise services to USF assessment will be no simple matter, given the diversity of services and network configurations involved. Sprint submits this step should be done once, not twice.

That said, there is one enterprise service the Commission should address on an interim basis – the MPLS proposal submitted by Sprint and five other MPLS providers – if it adopts Sprint's proposal to consider the contribution methodology for enterprise services in a separate supplemental NPRM. As Sprint explains in Part VII below, prompt FCC action on the MPLS Industry Group Proposal will remove current market distortions while providing a level of certainty for MPLS providers and enterprise MPLS customers alike. Because this proposal is both

concrete and complete, minimal FCC resources should be needed to act on the MPLS Group Proposal.

4. Text Messaging Services. The *Further Notice* asks whether text messaging services should be subject to USF contributions on an interim basis under the current, broken system.<sup>96</sup> This inquiry is surprising given that wireless carriers have been providing text messaging services for nearly 20 years and such services have never been subject to USF assessment. This is because text messaging is an information service, and information service providers are “not required to contribute to [USF] support mechanisms to the extent they provide such services.”<sup>97</sup> While USAC has asked the FCC to address the regulatory classification of text messaging services,<sup>98</sup> the *Further Notice* states that the Commission will not be addressing this request in this proceeding.<sup>99</sup> Accordingly, Sprint will not repeat here the analysis demonstrating that under the Act and FCC precedent, text messaging is an information service, and not a telecommunications service.<sup>100</sup>

Nor is there any basis to subject text messaging to USF assessments under the FCC’s “permissive” authority. In any event, regardless of its regulatory classification, applying the current broken system to text messaging would not “promote fairness and competitive neutrality.”<sup>101</sup> Last year, the wireless sector contributed more than one-third of all funds used in the USF.<sup>102</sup>

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<sup>96</sup> See *Further Notice* at ¶¶ 49-56.

<sup>97</sup> *First USF Order*, 12 FCC Rcd 8776, 9179 ¶ 788 (1997).

<sup>98</sup> See *Further Notice* at ¶ 49.

<sup>99</sup> See *id.* at n.151 (“[W]e are not proposing to classify text messaging as a telecommunications service or an information service in this Notice.”).

<sup>100</sup> See, e.g., Sprint Comments, WC Docket No. 06-122 (June 6, 2011).

<sup>101</sup> See *Further Notice* at ¶ 50.

<sup>102</sup> The wireless sector contribution percentage was estimated based on end user revenue data and carrier contribution data from Tables 1.1 and 1.10, respectively, of the Universal Service Monitoring Report 2011 (released December 2011).

Meanwhile, the CAF earmarks just 11 percent of all disbursements for wireless providers.<sup>103</sup>

Subjecting text messaging to the current broken system would only increase further this discriminatory funding arrangement.

Sprint submits that in no circumstances can it be reasonably claimed that applying the broken system to text messaging services would be “equitable and nondiscriminatory.”<sup>104</sup> If the Commission believes there is a need to expand the contribution base on an interim basis, it should examine additional services provided by landline carriers so the current disproportionate funding between the landline and wireless sectors is reduced rather than increased.

If the Commission nonetheless decides to apply the current broken system to text messaging services, at minimum it must take the same action with regard to all other applications that allow consumers to send messages, including email and chat-related applications. Subjecting wireless text messaging services to USF assessment, but not to other message-based services that can be substituted for text messaging, would not “promote fairness and competitive neutrality,”<sup>105</sup> but would rather introduce new competitive distortions.

**B. THE FCC SHOULD FOCUS ITS NEAR-TERM EFFORTS ON ADOPTING A NEW CONTRIBUTION METHODOLOGY TO REPLACE TODAY’S BROKEN SYSTEM**

Sprint is concerned that a near-term focus on expanding the contribution base will have the unintended consequence of delaying fundamental reform of the current contribution system. The current system is severely broken, the problems are many, and these problems are structural, as demonstrated in Part III above. The FCC has finite resources, and attempting to tackle two

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<sup>103</sup> In, *In the matter of Connect America Fund, Report and Order and Further Notice of Proposed Rule-making* (rel. Nov. 18, 2011), 26 FCC Rcd 17663, the Commission established an annual Universal Service Fund of \$4.5 billion (¶ 122) and the Annual Mobility Fund of \$500 million (¶126). Dividing the \$500 million Annual Mobility Fund by the Total Universal Service Fund of \$4.5 billion results in an 11 percent disbursement to wireless providers.

<sup>104</sup> See 47 U.S.C. § 254(d).

<sup>105</sup> See *Further Notice* at ¶ 50.

large (and controversial) USF contributions matters simultaneously – expanding the base under the current system while deciding on the best approach for reform – could easily delay action on both matters.

Sprint further submits that the Commission could achieve sizable efficiencies by focusing near term on deciding how the current system should be reformed – efficiencies that could be lost by focusing near term on expanding the base. For example, assume the FCC decides that the current revenue-based system should be scrapped in favor of a connections-based methodology. With such a decision, the Commission would no longer need to examine separately how to treat service bundles or whether broadband Internet access services should be subject to assessment (because broadband connections almost certainly would be included in any connections-based approach the FCC adopts).

Sprint also encourages the Commission to consider practical business realities – including the fact that industry will need time to implement whatever orders the FCC issues. Assume the Commission is able to issue an “expand the base” order by December 1, 2012, and that the affected industry providers require one year to implement the order. Assume further that the FCC is able to issue a “methodology reform” order on March 1, 2013, and industry may need 18 months to implement such an order (because it involves a more fundamental change to the current system). Those parties that had begun to revise their systems to include newly designated assessable services with a revenues-based approach would have to stop this work and begin revising their systems instead to work in a connections-based environment.

Sprint would like to think that if the Commission limits its near-term focus to how to reform the current system it will be able to enter a “methodology reform” order earlier than if it concurrently addresses the expand the base issues as well. Sprint submits that the better ap-

proach for all involved would be for the Commission to focus its near-term efforts on methodology reform so it can render a reform decision as soon as possible.

## **VI. A BLUEPRINT FOR TRANSITIONING TO THE REFORMED CONTRIBUTION METHODOLOGY**

Sprint believes that the Commission should focus its near-term efforts on considering and adopting an entirely new methodology for assessing USF contributions. As discussed above, Sprint can support either a connections-based approach or a “total bill” revenue-based approach – so long as with the latter, any regulatory allocations are minimal, clearly defined, and established by the FCC (*i.e.*, are not left to the discretion of individual service providers). Below is a blueprint involving a three-step process that the Commission may wish to consider.

### **A. STEP 1: RELEASE AN ORDER ADOPTING THE NEW METHODOLOGY FOR SERVICES/ CONNECTIONS PROVIDED TO RESIDENTIAL AND SMALL BUSINESS RETAIL CUSTOMERS**

In this first order, the Commission would adopt the contribution methodology that will be used for the mass market (services/connections provided to residential consumers and small businesses). The services provided to, and the connections used by, enterprise customers are so many that Sprint recommends that Commission initially defer action regarding the enterprise market and consider this matter in a separate supplemental NPRM.

This initial order would have two important consequences. First, it would change the public debate from what reform methodology should be adopted to how the Commission can implement most efficiently the methodology it has chosen. Second, with this order affected service providers could begin the process of planning system revisions to accommodate the new methodology. Obviously, the more detailed the order, the more facts service providers have to begin revising their systems to work in the new environment.

**B. STEP 2: CONCURRENTLY RELEASE A SUPPLEMENTAL NPRM TO ADDRESS THE IMPLEMENTATION ISSUES WITH THE NEW METHODOLOGY CHOSEN**

There will be many implementation details that must be addressed regardless of the reform methodology the FCC chooses. Sprint submits these details would be more productively addressed after the Commission resolves the most contentious subject: what methodology should be used for the mass market. With such a decision, both the FCC and industry can “roll up their sleeves” by focusing their attention on dealing with implementation details in a less emotionally charged environment.

Sprint envisions this supplemental implementation NPRM would seek comment on the following matters:

- The start date for implementation of the new methodology for the mass market;
- Reporting requirements (and this subject would be given priority because it may impact the system development work that service providers must undertake);
- If it adopts a connections-based methodology, the FCC would ask whether there should be different tiers for narrowband and broadband connections (or a subset of services within a category of connections);
- If the FCC instead adopts a “total bill” revenue-based methodology, it would seek comment on which regulatory allocations (if any) should be made and the level of those allocations;
- Because § 254(d) specifies that “every telecommunications carrier . . . shall contribute,” the FCC would seek comment on how USF assessments should be handled for those carriers that do not provide end-point connections (*e.g.*, interexchange carriers);<sup>106</sup> and
- Whether there are other providers of interstate telecommunications that should be subject to USF assessment even though they do not provide connections, and if so, which services/providers and at what rates.

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<sup>106</sup> Options would include Section 10 forbearance or adoption of one of the hybrid methods the FCC has considered in earlier contribution NPRMs.

**C. STEP 3: RELEASE A SEPARATE SUPPLEMENTAL NPRM TO ADDRESS THE METHODOLOGY THAT SHOULD BE USED WITH LARGE BUSINESS ENTERPRISE SERVICES**

Adoption of a contribution methodology for enterprise services is challenging, given the wide diversity of services provided to large businesses and the many different network configurations utilized in providing these services. Sprint submits that the Commission can greatly simplify its decisionmaking (and thereby accelerate its decision) by finalizing the methodology for the mass market before addressing the methodology that should be used for enterprise services. In addition, by addressing the methodology subject for enterprise services in a separate proceeding, both the FCC and industry will be able to better focus on the best approach for this important enterprise market.

The blueprint Sprint is proposing will likely result in a reformed methodology being used with the mass market before reforms are implemented for enterprise services. During this interim time period, service providers can continue to make contributions on enterprise revenues the same way they do today. In addition, if the FCC adopts the interim MPLS Industry Group proposal discussed below, additional contribution revenues will be generated from MPLS-based services.

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The debate over contribution methodology has lingered for years precisely because the industry and prior FCCs have continued to expound on seemingly every possible variation of every type of assessment mechanism. Narrowing the discussion to implementation by selecting the foundation structure will, Sprint submits, finally move this matter to much needed closure.

**VII. TO LEVEL THE PLAYING FIELD AND TO PROVIDE ENTERPRISE CUSTOMERS WITH SOME CERTAINTY, THE FCC SHOULD PROMPTLY ADOPT THE MPLS INDUSTRY GROUP'S INTERIM MPLS CONTRIBUTION PROPOSAL**

The *Further Notice* seeks comment on an interim USF contribution proposal that Sprint and five other providers of Multi-Protocol Label Switching (MPLS)-enabled enterprise data services submitted three months ago.<sup>107</sup> As the *Notice* states, under this proposal “revenues associated with the access transmission components of all MPLS-enabled services [would] be imputed on a uniform basis and made subject to USF contributions obligations through Commission-established ‘MPLS Assessable Revenue Component’ proxies” that would be calculated based on access rates in NECA tariffs.<sup>108</sup> This proposal is intended to eliminate the uncertainty and competitive distortions that exist today, while the Commission considers more permanent reform of the USF contribution system as applied to enterprise services.

Sprint urges the Commission to grant expeditiously this MPLS Industry Group Proposal. Issues regarding the appropriate regulatory classification and USF contribution obligations of MPLS-based services have been pending for seven years.<sup>109</sup> Three years ago, USAC and an MPLS-provider specifically asked the FCC to provide guidance on the USF contribution obligations of MPLS-based services, because the continuing uncertainty resulted (unsurprisingly) in different MPLS providers reaching different conclusions regarding the application of USF as-

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<sup>107</sup> See *Further Notice* at ¶ 116; see also Sprint *et al.* Letter, WC Docket No. 06-122 (March 29, 2012)(“MPLS Industry Group Proposal”).

<sup>108</sup> *Further Notice* at ¶ 116. See also *id.* at n.236, which includes a more detailed summary of the proposal. The specific proxies proposed are set forth in Attachment A of the MPLS Industry Group Contribution Proposal.

<sup>109</sup> See *IP-Enabled Services NPRM*, 19 FCC Rcd 4863 (2004).

assessments to MPLS-based services under current law.<sup>110</sup> These 2009 requests for clarification also remain unresolved, which has only continued the confusion that has characterized the appropriate classification of MPLS for purposes of USF and the market uncertainty that such confusion has generated (and continues to generate).

In fact, the *Further Notice* acknowledges this confusion and uncertainty, pointing out that the “continued lack of clarity on which MPLS-enabled services are assessable ‘will lead to one or more providers (whether a network services-based provider, systems integrator, or other) to leverage the lack of clarity and not pay into the [F]und’;” that “[c]ustomers may use this situation to demand that other providers do the same’;” and that accordingly competition is skewed since “it ‘is not realistic for one or more providers to charge corporate customers 11 to 12 percent more in USF fees on MPLS-enabled services and maintain market share when other providers do not assess their customers for such fees’.”<sup>111</sup>

In short, given the “absence of clear rules, there is an uneven playing field among competing service providers” because there exists “wide variation” among MLPS providers in their interpretation of applicable law in the context of MPLS-based services.<sup>112</sup> Sprint recognizes that the FCC’s finite resources are more productively focused on revising or replacing the current broken contribution system in its entirety (and that depending on the reform that the FCC adopts, the issues raised by the 2009 clarification requests could well become moot). But given the difficult issues that will need to be addressed especially in connection with enterprise services, USF

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<sup>110</sup> See USAC Letter to Wireline Competition Bureau, WC Docket No 06-122 (Aug. 24, 2009) (“USAC 2009 Guidance Request”); Masergy Petition for Clarification, WC Docket No. 06-122 (March 27, 2009).

<sup>111</sup> *Further Notice* at ¶ 42, quoting BT Americas Comments, WC Docket No. 0-122, at 11 (June 8, 2009). See also *id.* at ¶¶ 38, 105 (the question of whether MPLS-based services are assessable as telecommunications services or non-assessable as information services has led to “significant disputes [and] uncertainty” because there is “fierce competition to win contracts from large corporate clients.”).

<sup>112</sup> See MPLS Industry Group Proposal at 1 and 4.

reform is likely to be very difficult to achieve at least in the short run and postponing a decision on whether MPLS is an USF-assessable service will simply allow the untenable situation in which the industry finds itself to fester. Sprint thus strongly recommends that the FCC adopt MPLS Industry Group Proposal as an interim step toward resolving the current MPLS USF quagmire while the FCC seeks to establish a USF contribution framework that is based on the realities of the current telecommunications industry, not the one that existed in the last century.<sup>113</sup>

Notably, the Commission can adopt the Group Proposal without determining the regulatory classification of any individual MPLS-enabled service, by utilizing the same approach the FCC applied in imposing, “on an interim basis,” USF assessments on interconnected VoIP services.<sup>114</sup> The Commission took this action under its § 254(d) “permissive” contribution authority, and this FCC decision was affirmed on appeal.<sup>115</sup>

Section 254(d) imposes two conditions before the FCC may invoke its “permissive” authority: (1) the prospective contributors must “provide interstate telecommunications,” and (2) application of USF assessments would be in the “public interest.”<sup>116</sup> Both conditions are satisfied with MPLS Industry Group Proposal. First, like interconnected VoIP services, the FCC could find that MPLS-enabled services incorporate an access transmission component whether or

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<sup>113</sup> Of course, MPLS providers will have to comply with the permanent contribution reform the FCC adopts as a result of the rulemaking.

<sup>114</sup> See *VoIP Interim USF Contributions Order*, 21 FCC Rcd 7518, 7536 ¶ 34 (2006).

<sup>115</sup> See *Vonage v. FCC*, 49 F.3d 1232, 1235 (D.C. Cir. 2007)(“We conclude that the Commission has statutory authority to require VoIP providers to make USF contributions.”). Because the Court found that the FCC had correctly applied § 254(d), it found “no need to decide whether the Commission could have [reached the same result] under its Title I ancillary jurisdiction.” *Id.* at 1241.

<sup>116</sup> 47 U.S.C. ¶ 254(d)(“Any other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires.”).

not the services are considered integrated information services. Second, adoption of the Proposal would clearly promote the public interest because, among other things:

- It would stabilize one component of the universal service support base;
- It would remove the competitive disparity that currently exists between providers of MPLS-enabled services because the plan would require all providers to use the same uniform set of proxies to impute assessable revenues for the access transmission components of MPLS-enabled services;
- Customer confusion would be minimized because MPLS customers would pay the same USF charge regardless of the identity of their MPLS service provider;
- With knowledge of the ground rules for USF contributions, both providers and enterprise customers will be better able to negotiate long term contracts for MPLS-enabled services;
- It would avoid the protracted litigation that would result from attempting to impose contribution obligations retroactively on integrated revenues of services that providers have appropriately reported as non-assessable under existing law;<sup>117</sup> and
- The prospective adoption of the Proposal would ensure that the USAC would not be required to refund any contributions that providers have made based on historical MPLS-related revenues.

Sprint readily acknowledges that the MPLS Industry Group Proposal may not be perfect in all respects especially under the existing revenue-based contribution system. But to paraphrase the D.C. Circuit's observation, if the FCC "delays making any determination" because it is seeking perfection, it has unreasonably allowed "the best ...[to] become the enemy of the good."<sup>118</sup>

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<sup>117</sup> In this regard, the FCC should not require any retroactive USF contributions based on revenues associated with MPLS services. Such retroactive payments would be grossly unfair to carriers who have sought guidance from the FCC but have never received it. In addition, Sprint notes that in extending a contribution obligation to interconnected VoIP providers, the FCC imposed the obligation prospectively only. See *VoIP Interim Contribution Order*, 21 FCC Rcd 7518 (2006); *VoIP State USF Contribution Order*, 25 FCC Rcd 15651 ¶ 1 (2010)(States may impose their assessments "on a prospective basis.").

<sup>118</sup> *MCI v. FCC*, 627 F.3d 322, 341-42 (D.C. Cir. 1980). See also *Rural Task Force Order*, 16 FCC Rd 11244, 11248 ¶ 9 (2001) ("The 1996 Act charged the Commission with the task of resolving the different issues surrounding universal service, consistent with the principles enunciated in section 254. We take action today that is consistent with statutory requirements, recognizing that views may differ on the best policies to effectuate those requirements.").

The Proposal rather reflects a compromise among the six members of the group, who have decided that it is more important that the FCC adopt a good interim proposal – one that ensures competitive neutrality and would provide some certainty to large businesses – rather than continue to litigate the issues in the hope such action would achieve the perfect proposal – especially when the current system will likely be replaced shortly.

In closing, Sprint urges the Commission to expeditiously grant the MPLS Industry Group Proposal.

### **VIII. CONCLUSION**

For the foregoing reasons, Sprint respectfully requests the Commission to take actions consistent with the positions and recommendations made above.

Respectfully submitted,

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